

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BERNARDO MANZANO, DELFIN MANZANO AND VENERANDO
MANZANO, ACCUSED. BERNARDO MANZANO AND VENERANDO
MANZANO, ACCUSED AND A...**

G.R. No. L-33643. July 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

In L-33643 the brothers, Bernardo Manzano and Venerando Manzano, appealed from the decision of the Court of First Instance of Pangasinan, Lingayen Branch, convicting them of murder, sentencing each of them, together with Delfin Manzano, to reclusion perpetua, and ordering them to indemnify solidarily the heirs of Jose Quintos in the sum of P12,000 and to pay the costs (Criminal Case No. L-148). Delfin Manzano, the son of Bernardo, did not appeal.

Bernardo Manzano withdrew his appeal (Resolution of October 14, 1971). In view of that withdrawal his "notice for review" dated April 18, 1974 was denied in the resolution of June 5, 1974.

In L-33644 Venerando Manzano appealed from the decision of the same court, convicting him of attempted homicide, sentencing him to an indeterminate penalty of four (4) months of arresto mayor to three (3) years of prision correccional and ordering him to indemnify Alfredo Quintos in the sum of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs (Criminal Case No. L-149).

The trial court predicated the judgments of conviction on the following facts:

At noontime on January 11, 1970, Jose Quintos (a fifty-year-old farmer), his forty-three-year-old wife, his small children and a daughter-in-law, were having lunch in their house at Barrio Cabaluyan 2nd, Mangatarem, Pangasinan. While they were eating, someone outside the house called to them, saying, "Old man Jose, meet us if you still like us" Quintos' wife, Flora Lacuesta, "peeped" and saw outside Venerando Manzano, Bernardo Manzano and Delfin Manzano all carrying firearms. Venerando was armed with a pistol, Bernardo with a long rifle and Delfin with a carbine.

Flora knew them because Venerando was their neighbor who lived in a house about one hundred meters away from her house. She knew Delfin who was the son of Bernardo. Recognizing them, Flora replied, "Come up, brother". Whereupon Delfin twice discharged his carbine at the ground and the trio went up the house, entering by way of the kitchen. Quintos was still eating at the table.

Venerando boxed Quintos on the right side of the head. Delfin hit him on the buttocks with the butt of the carbine. Bernardo pummelled the back of Quintos. The three malefactors then asked Quintos to surrender his carbine but Quintos said that he had no carbine and he could not yield any carbine even if he would be killed. They continued to maltreat Quintos.

Flora gathered her children and they all hid behind a wall. In spite of the wall she saw what was being done to her husband. She was afraid. She was crying and shouting for succor but no one came to her aid. Her daughter-in-law was also crying and was nervous due to fear.

Alfredo Quintos, the son of Jose, who was at a volleyball court about twenty meters away from Quintos' house, had seen Delfin Manzano discharging a gun. He also saw Venerando, Bernardo and Delfin entering his father's house. He went to the house and saw his father being mauled by the trio. Venerando and Bernardo were boxing Jose Quintos. Delfin was hitting him with a gun.

Alfredo pleaded with the three tormentors not to maltreat his father because the latter was without fault. However, Venerando pushed Alfredo outside and then shot him with a pistol at a distance of about one meter. Alfredo was hit on the right upper lip. He covered his wound with his right palm and ran towards the road where he waited for his mother.

Flora Lacuesta who saw her son, Alfredo, being shot ran also towards the road. While mother and son were there, Venerando passed by, dragging Quintos behind while Delfin and Bernardo pointed their firearm at the back of Quintos. Bernardo kicked Quintos from time to time. The Manzanos led Quintos in the direction of Venerando's house. As they passed by, Flora kept shouting for help. Alfredo ran to his older sister's house and informed her of what had happened to their father. She went to Quintos' house. His brother-in-law apprised the authorities of the incident.

Flora Lacuesta, who was left near the road, tried to follow her husband but the Manzanos pointed their guns at her. Out of fear, she desisted in following farther. After she saw her husband being taken to Venerando's house, she returned to her own house and stayed there. At that time, she already had a premonition that her husband would be killed.

Patrolman Geronimo (Gavino) Toledo of the Mangatarem police was on that occasion at Barrio Magalong. He was informed that someone was killed at Barrio Cabaluyan 2nd. In the company of Sergeant Daniel Cacapit, he proceeded to that barrio, arriving there at about five-thirty in the afternoon. He found the lifeless body of Quintos in the yard of Venerando's house with pools of blood around it. An unserviceable, bloodstained rifle was beside the body (Exh. D). Bernardo was inside the house. Venerando, who was fully dressed, was walking around the cadaver. Coming from the backyard of Venerando's house, Delfin approached Toledo and Cacapit. Venerando did not answer when Toledo asked him what he had done to Quintos. It was Bernardo who replied that he had shot Quintos. Asked why he shot Quintos, Bernardo said that Quintos was only paying what he did to Bernardo's father. Queried as to what firearm he had used, Bernardo exhibited his carbine (Exh. C).

A picture was taken of the victim's body. The picture showed Quintos half-naked, lying in a pool of his own blood and with a rifle beside him (Exh. E). Flora, on being informed that her husband was already dead, went with Patrolman Toledo to Venerando's place and saw her husband's body in the yard. Bernardo was taken by the policemen to the municipal building. The fact that Quintos was killed and that the probable suspect was Bernardo was entered in the police blotter. Toledo also gave a written statement to Sergeant De Vera of the Constabulary concerning the former's investigation of the incident (Exh. F).

Doctor Raymundo Velasquez, the Rural Health Officer, conducted a postmortem examination at eight-thirty in the morning of January 12, 1970. His findings were as follows:

- "1. Contusion with hematoma, forehead, right.
2. Contusion with hematoma, both eyes.
3. Wound, lacerated, 3/4 inch, zygomatic region, left.

4. Wound, lacerated, 1 inch, temporal region in front of right ear.
5. Wound, lacerated, 3 inches, gaping by 1/2 inch portero-occipito-parietal region, right.
6. Wound, incised, gaping 3 inches long, gaping by 1/2 inch, incising and fronting the bones of the middle ring and small fingers.
7. Contusion with laceration, right angle of the lips.
8. Abrasion, multiple posterior chest left.
9. Abrasion, multiple sacral region.
10. Gunshot wound, point of entrance 1/2 centimeter in diameter, circular in shape, right hypochondrium 1/2 from the midline and 2 inches above the umbilicus. Wound of exit circular in diameter, 1-1/2 centimeters, intra-axillary region, right.
11. Abrasion, multiple, chest lateral, lower third right.

Cause of death: Shock, severe, instantaneous due to the gunshot wound described above.

Time of death: On or about 4:00 p.m. January 11, 1970.

Place of death: In front of the stairs of the suspect's house at Barrio Cabaluyan 2nd, Mangatarem, Pangasinan." (Exh. A).

Wound No. 10, the gunshot wound in the abdomen was fatal. It was inflicted by an assailant who was less than two meters away from the victim. Wounds numbers 1 to 5 and 7 to 9 were caused by a blunt instrument which could either be the butt of a gun or a closed fist while wound number 6 was caused by a sharp instrument. The other nine wounds could have caused death if there were no medical attendance.

Doctor Velasquez also examined the twenty-two-year old Alfredo Quintos. His findings were as follows:

"Gunshot wound, wound of entrance outer 3rd upper lip right of 1/2 cm. in width. 3/4 cm. in length, elliptical.

Wound of exit mandible, outer 3rd, right, 1 cm. in length by 1/2 cm. in width, elliptical in shape.

Barring complications above injury will heal ten (10) to fifteen (15) days." (Exh. 13).

Doctor Velasquez opined that even if the victim had not been given proper medical attendance the wounds would not have been fatal in the absence of complications. The wounds healed in five days (14-15 tsn).

What was the motive? From Bernardo's statement to Patrolman Toledo that Jose Quintos was made to pay for what he (Quintos) had done to Bernardo's father (an admission which was part of the *res gestae* or of a confession), it can be inferred that the Manzanos wreaked vengeance on Quintos. Bernardo said that his father was killed by the Huks in 1950. However, he did not suspect Quintos to be a Huk.

From Venerando's testimonies, it can be inferred that the motive was to confiscate the carbine of Quintos. The Manzanos suspected that Quintos was firing his gun at night. They wanted to stop that nuisance.

On January 19, 1970 Antero Teodoro, Flora Lacuesta, Avelino Cacayorin, Alfredo Quintos and Patrolman Toledo gave their statements to Sergeant Gonzalo de Vera of the Constabulary Company at Bayambang, Pangasinan, implicating the Manzanos in the killing of Jose Quintos and pointing to Venerando as the assailant of Alfredo Quintos. The statements were sworn to before the Municipal Judge.

On January 29, 1970 Sergeant De Vera filed in the Municipal Court a complaint for kidnapping with murder

against the Manzanos and a complaint for frustrated homicide against Venerando. Flora Lacuesta, Alfredo Quintos and Avelino Cacayorin, a nephew of Jose Quintos, testified at the preliminary examination.

The accused waived the second stage of the preliminary investigation. The record of the cases was remanded in November, 1970 to the Court of First Instance where the Fiscal filed informations for murder and frustrated homicide. After trial, the lower court rendered the judgments of conviction already mentioned.

In this appeal, Venerando, a forty-four-year-old farmer and barrio councilman, relies on his alibi. His story is as follows:

Before noontime on January 11, 1970 his brother Bernardo, a forty-six-year-old Constabulary sergeant, and his nephew Delfin, a twenty-one-year-old Constabulary soldier, arrived in his house at Barrio Cabaluyan II. Venerando and Delfin repaired to the house of Josefina Agsaoa to ask for chickens while Bernardo proceeded to the house of his sister, Ludovina. The chickens would be brought by Bernardo and Delfin to Tarlac. They were not able to get chickens because Josefina was not in her house which was about three hundred meters away from Venerando's house.

Venerando and Delfin decided to return to the former's house. While passing the house of Jose Quintos, Venerando remembered that at night someone used to fire a gun in that vicinity. He resolved to find out from Jose Quintos the identity of the gunwielder. Jose Quintos professed ignorance as to who was discharging the firearm. Quintos in turn inquired from Venerando who was the latter's companion. Venerando replied that Delfin was a Constabulary soldier. Thereupon, Quintos reprovingly told Venerando: "You purposely brought a PC (soldier) because you wanted me arrested." Delfin interjected: "Why are you angry?". Quintos retorted: "You really want me arrested". Delfin asked Quintos to produce his automatic firearm. Quintos said that his rifle was useless. They went to a nipa hut nearby and got the rifle (Exh D) which was hidden in the haystack.

According to Venerando, the wife and small child of Jose were present when he and Delfin accosted Quintos. Delfin requested Quintos to carry the rifle. They went to the house of the barrio captain, which was about five hundred meters away, in order to surrender Quintos but as that rural functionary was not at home, Venerando and Delfin brought Quintos to the fenced yard of Venerando's house.

Venerando allegedly left the house and proceeded to his irrigated ricefield which was about three hundred meters away from his house. He left Delfin in the yard to guard Quintos. Two hours later, while Venerando was allegedly in his ricefield, opening the dike, he heard a gunshot. He returned to his house and found Quintos already dead. Delfin reported to Venerando that Quintos tried to escape. Venerando Went to the house of his sister, Ludovina, to apprise Bernardo that Jose was dead. Ludovina's house was about two-hundred meters away from Venerando's house.

It was then already four o'clock in the afternoon. When Bernardo arrived at Venerando's house, he asked his son, Delfin, why he shot Quintos. Delfin explained that Quintos was trying to fight him and to grab his rifle. Delfin was armed with a carbine (Exh. C). According to Venerando, sometime later in that afternoon, Patrolman Toledo, Sergeant Cacapit and another policeman arrived in the yard of his house. Delfin admitted to them that he killed Quintos. The Manzanos were taken by the police patrol to the municipal building.

Delfin corroborated the foregoing story of his uncle. He admitted that he was armed with his father's carbine when he (Delfin) entered Quintos' house. Delfin said that, while guarding Quintos, the latter repeatedly rushed at him. He beat Quintos with the butt of the carbine. At the third time that Quintos rushed at him, Delfin stepped backward and he (Delfin) "suddenly pressed the trigger". Quintos was hit (60 tsn). He admitted that he came to Mangatarem to visit his uncle and that he was not on a mission to look for loose firearms.

Bernardo testified that he was in his sister's house when Delfin killed Quintos. Ludovina Manzano, the sister of Bernardo, corroborated his alibi.

Appellants' counsel stresses that no prosecution witness testified as to how Delfin killed Quintos. He argues that it cannot be inferred that Venerando had any participation in such killing. That argument is interwoven with the alibis of Venerando and Bernardo. It is refuted by the fact that the Manzanos conspired to kill Jose Quintos. Moreover, the alibis obviously did not render it impossible for Venerando and Bernardo to be at the scene of the crime at the time it was committed.

The testimonies of Alfredo Quintos and his mother prove beyond doubt the existence of a conspiracy. The close relationship among the three Manzanos, their common desire to avenge the wrong done to their father (grandfather in Delfin's case), their going together to the latter's house at lunchtime all armed, their concerted beating of Jose Quintos, their act of bringing him to the yard of Venerando's house, with Venerando dragging the victim and Bernardo and Delfin thrusting their rifles at his body, thus showing that Quintos was their common captive, and their presence at the yard when Patrolman Toledo and Sergeant Cacapit arrived thereat to investigate the killing are telltale indicia of a community of design to assassinate Quintos.

The numerous wounds sustained by the victim lead to the conclusion that, while in the yard, he was assaulted not only admittedly by Delfin but also by Bernardo and Venerando (Cf. *People vs. Dahino*, 88 Phil. 759). Bernardo at first owned sole responsibility for the killing undoubtedly because he wanted to shield his son Delfin who was only twenty-one years old. However, Delfin, during the trial, assumed responsibility for the killing because Bernardo, as theorized by the trial court, did not want to lose his retirement privileges, having served already in the armed forces for twenty years.

Appellant's alternative contention that he should be regarded only as an accomplice is untenable once it is postulated that he conspired with Bernardo and Delfin to kill Jose Quintos. The important role played by Venerando in the assassination can be visualized when it is noted that the killing was perpetrated in the yard of his house and that he was the one dragging Jose Quintos to his place. His felonious intent was evident.

Inasmuch as conspiracy was established, the act of one is the act of all. Venerando, as a co-conspirator or particeps criminis, is liable for the killing allegedly perpetrated by Delfin, his nephew.

Venerando's counsel insists that his alibi should be given credence. The trial court noted an inconsistency in his version. He testified that Delfin told him that he shot Jose Quintos because the latter was trying to escape (33 tsn) but a few moments later, he declared that Delfin had told his father Bernardo that he (Delfin) shot Quintos because Quintos "wanted to fight" Delfin or was trying to grab his rifle (36 tsn).

Venerando admitted that he and Delfin arrested Jose Quintos in order to surrender him to the police. The arrest was made after lunchtime. The poblacion could be reached by walking in half an hour. Yet, according to their story, instead of delivering Quintos immediately to the police, he and his nephew detained him in his fenced yard for three hours. That would indicate that Venerando and his nephew had planned all along to liquidate Quintos and never purposed to deliver him to the authorities.

The trial court did not appreciate abuse of superiority as an aggravating circumstance because, in its opinion, "the mere fact that there were three accused, does not per se show that they took advantage of their superior strength". The Solicitor General disagrees. He observes that there were three armed aggressors.

We hold that the proper qualifying circumstance in this case is abuse of superiority. The Manzanos cooperated and took advantage of their combined strength to overpower the unarmed victim and to render him an easy prey for the consummation of their objective of maltreating him, disabling him, making him their prisoner and

eventually killing him. Abuse of superiority was appreciated in a case where two policemen maltreated an unarmed victim who later died in consequence of the maltreatment (U.S. vs. Reyes and Palanca, 30 Phil. 551; U.S. vs. Tampacan, 19 Phil. 185).

The Solicitor General opines that treachery is aggravating. The trial court correctly held that there was no treachery. The initial assault on Quintos was not made in a sudden and unexpected manner. The malefactors gave him an ominous warning of their presence and heralded their entrance into his house by firing two gunshots at the ground. They first mauled him presumably in a frontal encounter.

There was no treachery at the inception of the attack. No prosecution eyewitness testified as to what the malefactors did to Quintos while in Venerando's yard and as to how the fatal gunshot wound in the abdomen was inflicted. Generally, treachery should exist at the commencement of the assault because that would insure the execution of the felony without any risk to the offender arising from any defense which the victim might make (Art. 14[16], Revised Penal Code; U.S. vs. Balagtas and Jaime, 11 Phil. 164; People vs. Canete, 44 Phil. 478).

The trial court ruled that there was evident premeditation. The Solicitor General avers that evident premeditation was proven because the Manzanos maltreated Quintos at about noontime, dragged him to Venerando's yard and shot him at about four o'clock. Bernardo's statement to Patrolman Toledo that he killed Quintos so that he (Quintos) would pay for what he had done to Bernardo's father was cited as an indication that the killing was premeditated (at the trial, it was Delfin who owned the killing).

The essence of premeditation "es la mayor perversidad del culpable juntamente con su serenidad o frialdad de animo". It is characterized (1) "por la concepcion del delito y la resolucion de ejecutarlo firme, fria, reflexiva, meditada y detenida" and (2) "por la persistencia en la resolucion de delinquir de mostrada por el espacio de tiempo transcurrido entre dicha resolucion y la ejecucion de hecho". Premeditation should be evident, meaning that it should be shown by "signos reiterados y externos, no de meras sospechas" (I Cuello Calon,Codigo Penal, 12th Ed., 1968, p. 561).

In order that evident premeditation may be appreciated, it is necessary to prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination and (c) a sufficient interval of time between the determination or conception and the execution of the crime that would be sufficient to allow him to reflect upon the consequence of his act and to allow his conscience to overcome the resolution of his will if he desired to hearken to its warnings (U.S. vs. Gil, 13 Phil. 530; People vs. Fuentesuela, 73 Phil. 553). Such proof is lacking in this case. The mere fact that after lunchtime the Manzanos mauled and detained Quintos and that at around four o'clock (37 tsn), while Quintos was in their custody, he was killed, would not mean that there was evident premeditation.

The Solicitor General opines that cruelty is aggravating because of the prolonged detention of Quintos before he was given the coup de grace, together with the fact that, aside from the fatal abdominal gunshot wound, he suffered ten (10) other wounds consisting of three contusions with hematoma in the head, three lacerated wounds in the head, a three-inch incised wound in the hand, and three abrasions. That opinion is not plausible under the facts of this case.

There is cruelty when "the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission" or when the culprit deliberately and inhumanly augmented the victim's suffering or outraged or scoffed at his person or corpse (Arts. 14[21] and 248[6], Revised Penal Code). It consists of "la inhumana y cruel prolongacion del dolor". It refers to "los males causados fria y reflexivamente, 'deliberadamente', con el proposito de aumentar los sufrimientos de la victima. El criminal que despues de haber causado el ofendido heridas mortales, de modo refinado y cruel prolonga sus sufrimientos, manifestaba una

especial perversidad y se revela un criminal sumamente peligroso" (2 Cuello Calon, Codigo Penal, 10th Ed. 464-5). There is cruelty when the culprit, like a sadist, enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary moral and physical pain in the consummation of the criminal act (People vs. Dayug and Bannaisan, 49 Phil. 423, 427).

In the instant case, no eyewitness testified as to what the Manzanos actually did to Quintos during the three-hour period after they brought him to Venerando's yard and before the police discovered the killing. The number of wounds is not the criterion for the appreciation of cruelty as an aggravating circumstance. Cruelty was not aggravating in case where thirteen wounds were inflicted on the victim (People vs. Jumauan, 98 Phil. 1).

There being no generic aggravating and mitigating circumstances, the penalty of reclusion perpetua was properly imposed on Venerando Manzano (Arts. 64[1] and 248, Revised Penal Code).

The case for attempted homicide was appealed to this Court because it arose on the same occasion as the murder case wherein the penalty of reclusion perpetua was imposed (Sec. 17[1], Judiciary Act of 1948; People vs. Padernal, L-30527, March 29, 1974).

Appellant Venerando Manzano asserts that he did not shoot Alfredo Quintos because the latter was not present when Venerando and Delfin arrested Jose Quintos. That denial cannot be given credence. The testimony of Alfredo and his mother that he was shot by Venerando and that Alfredo was wounded, as shown in the medical certificate (Exh. B), is unquestionably veracious.

Appellant Venerando Manzano's alternative contention is that the wounding of Alfredo is only lesiones leves and not attempted homicide. That contention cannot be sustained. The intent to kill may be inferred from the circumstance that Venerando used a deadly weapon and fired at Alfredo's face, hitting him in the lip. He did not perform all the acts of execution which were necessary to consummate the homicide (Art. 6, Revised Penal Code; People vs. Kalalo, 59 Phil. 715).

Venerando's motive was simply to prevent Alfredo from interfering with the maltreatment of Jose Quintos. Only one shot was fired. The wounds healed in five days. Alfredo was incapacitated from performing his customary labor only for three days. Under article 250 of the Revised Penal Code, the court, after considering the facts of the case, may reduce the penalty for attempted homicide by one degree, meaning that, instead of only a two-degree reduction, as authorized under article 51 of the Revised Penal Code, a three-degree reduction may be allowed. The facts surrounding the commission of the attempted homicide justify a three-degree reduction.

The imposable penalty is arresto mayor. The Solicitor General asserts that dwelling is aggravating. The truth is that Alfredo was shot outside the family dwelling. He was pushed outside the house by Venerando and then shot by the latter. Under the circumstances, dwelling is not aggravating.

WHEREFORE, the judgments of the trial court as to Venerando Manzano are affirmed with the modification that in the attempted homicide case he is sentenced to a penalty of three (3) months of arresto mayor (Criminal Case No. L-149, now L-33644) and that the provision for subsidiary imprisonment for the indemnity of P300, in case of insolvency, is eliminated. Republic Act No. 5465, which took effect on April 21, 1969, amended article 39 of the Revised Penal Code by restricting the subsidiary imprisonment to the fine. Appellant Venerando Manzano shall pay his proportionate share of the costs.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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