

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. ALBERTO BENITO Y RESTUBOG, DEFENDANT AND APPELLANT.*G.R. No. L-32042. February 13, 1975*

Ponente: ESGUERRA, J.

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This is a mandatory review of the judgment of the Circuit, Criminal Court of Manila in Criminal Case No. CCC-VI-609, entitled "People of the Philippines vs. Alberto Benito y Restubog," imposing upon the accused, Alberto Benito y Restubog, upon his plea of guilty to the charge of murder, the penalty of "death; to indemnify the heirs of the deceased as follows: P12,000.00 for the death of the deceased; P20,000.00 as indemnity for loss of earning capacity of the deceased who was then only 36 years of age at the time of his death and earning P7,597.80 per annum; P20,000.00 for exemplary damages; P25,000.00 for moral damages, all amounts to bear interest until they shall have been fully paid; and to pay the costs".

The issues raised by the accused revolve around the alleged errors of the lower court in considering the mitigating and aggravating circumstances attendant to the commission of the crime to determine the proper penalty to be imposed on the accused.

It is not controverted that at about 5:30 p.m. of December 12, 1969, the victim Pedro Moncayo, Jr., Assistant Chief of Personnel Transaction and Acting Chief of the Administrative Division of the Civil Service Commission, while driving his car on P. Paredes street in front of the Office of the Civil Service Commission was followed by the accused, and when the car was about to turn at the intersection of P. Paredes and Lepanto Streets, Manila, the accused shot him eight times with a .22 caliber revolver, causing the victim's death. The accused was charged with murder and when the case was called for trial, through counsel de parte, he manifested his desire to withdraw his previous plea of not guilty and substitute it with a plea of guilty without prejudice to proving mitigating circumstances. The prosecution manifested that it would controvert whatever mitigating circumstances the accused would prove and also prove other aggravating circumstances. The trial court repeatedly explained to the accused the nature and consequences of his plea of guilty to the offense charged and warned him that the maximum penalty imposable is death. Notwithstanding the explanation and warning of the trial court, the accused, assisted by his counsel de parte upon being re-arraigned, entered a plea of guilty. The accused presented evidence to prove mitigating circumstances and the prosecution subsequently introduced evidence to prove aggravating circumstances not mentioned in the information. The Court sentenced the accused to death after finding him guilty as principal in the crime of murder qualified by treachery, with the aggravating circumstances of evident premeditation and disregard of the respect due to the offended party on account of his rank, offset by the mitigating circumstance of accused's plea of guilty.

I

On the first assignment of error regarding the failure of the lower Court to consider the mitigating circumstance of voluntary surrender, both the accused and the Solicitor General are agreed that the said mitigating circumstance should be considered in his favor. The intention of the accused to surrender could be clearly discerned from the

fact that immediately after the shooting, the accused having all the opportunity to escape, did not do so but instead called up the Manila Police Department. When the policemen went to the scene of the crime to investigate, the accused voluntarily approached them and, without revealing his identity, told them that he would help in connection with the case as he knew the suspect as well as the latter's motive. While it may be true that the accused did not immediately tell the police that he was the assassin, perhaps because he was momentarily shocked by the enormity of his crime, nevertheless when brought to the police station immediately thereafter as a possible witness (accused was with the police investigators all that time), he confided to the investigators that he was "voluntarily surrendering" and also surrendering the fatal gun used in the shooting of the victim" (p. 9, t.s.n. December 26, 1969). We fully subscribe to appellee's observation that all the aforementioned acts of the accused were strongly indicative of his intent or desire to surrender voluntarily to the authorities. The accused must be credited with the mitigating circumstance of voluntary surrender.

II

It is the contention of the accused that the criminal act of murder was committed in the immediate vindication of a grave offense done by the victim against the accused and, therefore, this mitigating circumstance must be credited in his favor. The supposed grave offense done by the victim was an alleged remark made in the presence of the accused at about 11:00 a.m. of December 12, 1969, that the Civil Service Commission is a hangout of thieves. The accused felt alluded to because he was facing then criminal and administrative charges on several counts involving his honesty and integrity.

There is merit in appellee's argument that said victim's remark even if actually uttered in the presence of the accused, cannot be considered a grave offense against the latter. The remark itself was general in nature and not specifically directed to the accused. If he felt alluded to by a remark which he personally considered insulting to him, that was his own individual reaction thereto. Other people in the vicinity who might have heard the remark could not possibly know that the victim was insulting the accused unless they were aware of the background of the criminal and administrative charges involving moral turpitude pending against the accused. At most, said remark might be considered a mere provocation and not a grave offense which might have impelled the accused to commit a crime in immediate retaliation. As the provocation was not sufficient and did not immediately precede the act, it may not be considered as a mitigating circumstance.

In this case, however, the provocation was the remark uttered at 11:00 a.m. of December 12, 1969, while the crime of murder was committed by the accused at about 5:30 p.m. of the same day, giving him several hours to reflect and hold his temper. Stated otherwise, the act of killing did not immediately or proximately follow the supposed sufficiently insulting and provocative remark. The juridical reason for appreciating this mitigating circumstance is the implied recognition by the law of the weakness of human nature such that an ordinary human being if sufficiently provoked would immediately retaliate in the unchristian spirit of vindictive retribution. But the circumstances of this case are such that the act of murder committed by the accused could not reasonably be attributed to an immediate or proximate retaliatory action on his part to vindicate what personally appeared to him as sufficient provocation in the form of an insulting remark allegedly uttered by the victim. The failure of the accused to immediately react to the supposed provocative insulting remark might even be taken as his ignoring it altogether, or considering it unimportant at the moment he heard the remark. In other words, the remark was inadequate to stir or drive the accused to violence at the time it was uttered and he had more than sufficient time to suppress his emotion over said remark if he ever did resent it. The trial Court did not commit any error when it rejected the aforementioned incident as a basis for crediting a mitigating circumstance in favor of the accused.

III

The accused also claims that the lower Court should have considered the mitigating circumstance that sufficient

provocation or threat on the part of the deceased immediately preceded the act because of the alleged statement of the deceased in Tagalog uttered at about 7:00 p.m. on the night of December 11, 1969 (night preceding the day of the crime), to wit, "Umalis ka na nga diyan baka may mangyari pa sa iyo at baka ipayari kita dito" (Get out of there, because something might happen to you and because I might have you finished here). That statement of the deceased was supposed to have been uttered in the presence of other people almost twenty four (24) hours before the crime was committed. It was not accompanied by any overt act against accused and nothing more happened during that night, so that the accused by that utterance could not have felt sufficiently provoked or threatened so as to immediately react in his defense or retaliate by committing a crime. The provocation or threat, did not immediately precede the shooting. In other words, the accused had almost a day to mull over the alleged threat or provocation before he reacted by shooting the victim. The inevitable conclusion is that the accused did not feel sufficiently threatened or provoked by the alleged utterance of the victim at the time it was uttered, or within a reasonable time thereafter, and when he shot the victim the next day, it was a deliberate act of vengeance and not the natural reaction of a human being to ward off a serious threat or to immediately retaliate when provoked.

We agree with appellee's contention that "provocation or threat to constitute a mitigating circumstance, must, in the language of the law, be "sufficient", that is, adequate to excite the person to commit the wrong and must accordingly be proportionate to its gravity and must also immediately precede the act."

The lower Court correctly rejected the claim of the accused to this mitigating circumstance.

IV

The generic aggravating circumstance of disregard of rank considered by the lower Court against the accused is being assailed on the ground that at the time of the commission of the murder, the accused was no longer connected with the Civil Service Commission as the decision in the administrative case against him ordering his dismissal from the service became effective February 16, 1966.

There is no question, however, that accused was a clerk in the Civil Service Commission and the victim was Assistant Chief of the Personnel Transaction of that Office. When the accused saw and talked with the deceased regarding the former's administrative case that proved to be the motive for the murder by his own admission, accused made it very obvious that he recognized the deceased as his superior officer. The mere fact that the dismissal of the accused from office was made immediately executory was of no moment since he appealed that decision and the case was still pending and, by his own allegation, he was later completely exonerated by the Civil Service Board of Appeals in its decision of February 17, 1971.

It may be true that this aggravating circumstance was considered against the accused even if it was not alleged in the information, but this is a generic aggravating circumstance, and not a qualifying circumstance that would change the nature or affect the gravity of the crime committed, but one which is capable of being proven and taken into consideration even if it was not alleged in the information. The lower Court in considering this generic aggravating circumstance against the accused did not violate his constitutional right to be informed of the nature and cause of the accusation against him for murder. This aggravating circumstance was correctly considered against the accused.

V

We cannot see Our way clear to the argument of the accused that the aggravating circumstance of evident premeditation, although included in the information, should not be considered against the accused because although he pleaded guilty to the charge unconditionally, the prosecution sought and was allowed to adduce evidence to show the criminal participation of appellant in the commission of the offense and the background of the crime imputed to him, and the evidence submitted by the prosecution failed to establish the elements of the

aggravating circumstance of evident premeditation. It is further argued that the prosecution is deemed to have thereby waived the effect of the unconditional plea of guilty by the accused in so far as the aggravating circumstance of evident premeditation is concerned.

What upsets the entire argument of the accused is the fact that the prosecution successfully proved the existence of evident premeditation because Exhibit "A", his own declaration, narrates fully the several attempts of the accused to talk with the deceased; how he was rebuffed in those attempts and even insulted, and that he was jobless after having been dismissed from the office on allegedly fabricated charges made by the deceased. All of these admissions provided a strong motive for the accused to plan on how to retaliate against the victim by taking the law into his hands.

We cannot disregard the fact that the accused unconditionally pleaded guilty to the offense charged after the lower Court specifically called his attention to the aggravating circumstance of evident premeditation before he was re-arraigned (p. 5, t.s.n. December 26, 1969), and after the Fiscal had rejected his counsel's proposal to delete this aggravating circumstance from the information (p. 3, t.s.n. December 26, 1969). The accused was fully aware of the consequences of his unconditional plea of guilty to the offense of murder after it was explained to him, and the serious implication and meaning of the aggravating circumstance of evident premeditation expressly mentioned in the information.

The admission of the accused that he had with him a .22 caliber revolver on the afternoon of December 12, 1969; that when he saw the victim driving his car on P. Paredes Street he followed him up to the corner of P. Paredes and Lepanto Streets where he shot the victim eight times suddenly and without any warning, speaks eloquently of his plan, generated by an all consuming hatred, to kill the person whom he considered responsible for all his misfortunes.

The lower Court did not, therefore, err in considering the aggravating circumstance of evident premeditation against the appellant.

For all the foregoing, the guilt of the appellant has been established beyond reasonable doubt, with two mitigating circumstances in his favor, that of plea of guilty and voluntary surrender. However these are offset by the aggravating circumstances of evident premeditation and disregard of respect due to the deceased. The crime of murder being punishable with reclusion temporal in its maximum period to death (Art. 248, Revised Penal Code), the penalty, pursuant to Article 248 in relation to Article 64 of the Revised Penal Code, should be, as it is hereby, imposed in its medium period, or reclusion perpetua.

The penalty of death imposed by the trial court is hereby modified and reduced, as above indicated, to reclusion perpetua with accessories of the law. Costs against the accused.

SO ORDERED.

Fernando, Makasiar, Antonio, Fernandez, and Aquino, JJ., concur.

Castro and Teehankee, JJ., concur in the result.

Barredo, J., appellant should be credited with the mitigating circumstance of vindication of a grave offense, hence the penalty should be correspondingly lowered. In all other respects, I concur.

Muñoz Palma, J., concurs except for No. IV on the aggravating circumstance of "disregard of rank" to which he disagreed.

Makalintal, C.J., is on official leave.

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