

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMUALDO CAPILLAS AND AQUILINO PACALA,
ACCUSED-APPELLANTS.**

G.R. No. L-38756. November 13, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of the decision rendered by the defunct Circuit Criminal Court at Pasig, Rizal, in CCC-VII-1335 Rizal, for murder.

ROMUALDO CAPILLAS and AQUILINO PACALA were accused of the crime of murder alleged to have been committed as follows:

"That on or about September 9, 1971, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while then confined at the said institution, conspiring, confederating and helping one another with treachery and evident premeditation, and each armed with improvised deadly weapons did then and there willfully, unlawfully and feloniously assault and wound therewith one Patricio Gallardo, No. 39072-P a sen-tenced prisoner in the same institution, inflicting upon him the multiple stab wounds, while then unarmed and unable to defend himself/themselves from the attack launched by the accused, as a re-sult of which the said Patricio Gallardo died instantly;

"That the offense when committed by the above accused was attended by the aggravating circumstances of recidivism in the case of both accused." (Expediente, p. 1.)

When the accused were arraigned on July 5, 1973, with the assistance of counsel, both pleaded GUILTY. Thereafter, according to the trial court:

"The accused were apprised by the Court of the consequence of their plea of guilty that there is no other penalty to be meted upon them except death and the said accused manifested that although they are aware that they might be punished with death, still they are pleading guilty to the crime they have committed.

"Pursuant to the doctrine laid down by the Supreme Court in the case of People vs. Daeng, et al., G.R. No. L-34091, January 30, 1973, the Court ordered the presentation of evidence to determine the degree of culpability of the accused." (Id., p. 113.)

The trial court rendered the following judgment:

"WHEREFORE, in view of the spontaneous and voluntary confession of guilt made by the accused Romualdo Capillas and Aquilino Pacala, the Court finds them GUILTY, beyond reasonable doubt, of the crime of Murder in accordance with Article 248 of the Revised Penal Code, as charged in the information, and hereby sentences them to suffer the penalty of DEATH; to indemnify the heirs of the offended party in the amount of P12,000.00; to pay the amount of P5,000.00 as moral damages; another P5,000.00 as exemplary damages; and to pay the costs. (Id., p. 118.)

The appellants do not dispute the factual findings of the trial court. The errors which they impute to said court relate to the propriety of imposing the death penalty on them and ordering the payment of moral and exemplary damages.

The People's version of the facts is as follows:

"Romualdo Capillas and Aquilino Pacala are both inmates of the death row of the National Prisons at Muntinlupa (p. 2, tsn, November 28, 1973; p. 2, tsn, November 27, 1973). Romualdo Capillas has been confined in the national penitentiary since 1964. He was sentenced to death for the crime of robbery in band with homicide by the Court of First Instance of Samar (pp. 4-6, tsn, November 27, 1973; pp. 24 and 28, Records). Aquilino Pacala was sentenced to death together with his brother by the Court of First Instance of Samar (pp. 8-9, tsn, November 28, 1973) for robbery with homicide (p. 24, Records). As of September 9, 1971, the date of the slaying of the victim in the instant case, the decisions convicting both accused were still un-der automatic review by this Honorable Court (p. 6, tsn, November 27, 1973; pp. 24, 28 & 30, Records).

"Sometime before September 9, 1971, the vic-tim Patricio Gallardo, also an inmate of Muntinlupa, was transferred from his original cell to the so-called death row dormitory. His leg was chained when he was transferred there (p. 9, tsn, November 27, 1973). Accused Capillas was the squad leader of dormitory 1-D, the dormitory to which the victim was transferred (p. 3, tsn, November 27, 1973).

"On September 9, 1971 at about 11:00 A.M., the victim was in cell 32, dormitory 1-D (p. 3, tsn, November 27, 1973).

"While the victim was seated near the door of his cell (Cell No. 32), accused Capillas stabbed him without any warning, first in the stomach, then suc-cessively in different parts of the body (pp. 8-9, tsn, November 27, 1973; Exhibit G).

"Accused Pacala is one of the followers of accused Capillas (p. 7, tsn, November 28, 1973). Before and up to September 9, 1971, Capillas' Batang Samar Leyte gang was fighting the Genuine Ilocano gang of Gallardo. (p.12, tsn, November 28, 1973). Capillas had previously told Pacala that he entertained ill feelings against the victim (p. 8, tsn, November 28, 1973). When he saw Capillas stabbing the victim, and with his previous knowledge of the ill feeling entertained by Capillas against the victim, Pacala got out of his cell, took his weapon and also stabbed the victim (p. 8, tsn, November 28, 1973) on the chest. At the time that the victim was being stabbed by the accused, he was pleading for his life saying, 'Maawa na kayo sa akin' (p. 5, tsn, November 28, 1973), 'Huwag mo na akong patayin' (p. 11, tsn, November 11, 1973). The accused, nevertheless, disregarded his plea for mercy and proceeded to stab him. Because of the multiple wounds, death was immediate (p. 5, tsn, Oct. 27, 1973).

"An autopsy was conducted by Dr. Ricardo G. Ibarrola of the NBI who found the following wounds:

Exhibit 'A' (p. 96, Records)

Aside from abrasives

Inside wound, left hand, dorso-medial aspect, 6.5 cm, long running almost vertically, involving deeply the muscles.

Stab wounds, elliptical in shape, with clean-cut edges, one of the extremities of which is blunt and the other sharp.

1. Left mamary region, medial aspect, level of the third interscostal space along the paraster-nal line, 4.8 cm. from the anterior midline, 1.8 cm. long, running downwards medially, superior extremity, of which is sharp, directed slightly upwards, medially and backwards, involving among others the soft tissues x x x 12.0 cm. depth.

2. Left inframary region x x x
3. Left infraxillary region - 15.0 cm. depth.
4. Left infra-axillary line - 9.0 cm. depth.
5. Left hypochondriac region - 11 cm. depth.
6. Umbilican region - 9.0 cm. depth.
7. Right arm - 2.3 cm. depth.
8. Left forearm - 3.5 cm. depth.
9. Left thigh - 7.0 cm. depth.
10. Left thigh - 9.0 cm. depth.
11. Left thigh - 6.0 cm. depth.
12. Left thigh - 10.0 cm. depth."

(Brief, pp. 3-6.)

The trial court appreciated in favor of the accused the mitigating circumstances of voluntary surrender and plea of guilty. Nonetheless the death penalty was imposed on them because, according to the court, "this being a case of quasi-recidivism, as special aggravating circumstance, the same cannot be offset by any ordinary mitigating circumstance because of the mandatory provision of Article 160 of the Revised Penal Code which specifically provides that the offender shall be punished by the maximum period of the penalty prescribed by law for the new felony. (Pp. vs. Perete, 58 O.G. 8628)." (Expediente, p. 118.)

The appellants claim, and the Solicitor General agrees, that Article 160 of the Revised Penal Code does not apply to them. The codal provision reads as follows:

"Art. 160. Commission of another crime during service of penalty imposed for another previous offense - Penalty. - Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony."

In the case at bar the appellants committed the crime of murder while they were confined at the New Bilibid Prison. But such fact does not justify the application of Article 160 of the Revised Penal Code to them because the record is bereft of any evidence introduced by the prosecution showing that they were serving sentence by virtue of final judgments.

Romualdo Capillas had been sentenced to death for robbery in band with homicide by the Court of First Instance of Samar but when he committed the murder on September 9, 1971, his sentence had not yet become final because it was still under review by this Court.

As to Aquilino Pacala he admitted that he had been sentenced to death for a crime committed in Laya, Samar, and that he had been previously convicted of trespass. But there is no evidence to the effect that when he took part in killing Patricio Gallardo he was serving final sentence for the crime committed in Samar.

(The death sentence imposed on Romualdo Capillas was reduced to reclusion perpetua for lack of necessary votes in a decision promulgated on October 21, 1981. See *People vs. Capillas*, L-27177, 108 SCRA 173. As to Aquilino Pacala the death sentence imposed on him was likewise reduced to reclusion perpetua in a decision pro-mulgated

on August 15, 1974. See *People vs. Pacala*, L-26647, 58 SCRA 370.)

It is true that the information alleges recidivism as an aggravating circumstance for the two accused. True it is also that a plea of guilty is deemed as an admission of all the material allegations in the information including the attendant circumstances. But in the instant case the trial court proceeded to receive evidence despite the plea of guilty because of the serious nature of the offense and the evidence shows that the appellants are not recidivists. The evidence, under the circumstances, must prevail over the admission.

The Solicitor General concedes that Capillas is entitled to two mitigating circumstances: voluntary surrender and plea of guilty.

The Solicitor General concedes that Pacala is entitled to the mitigating circumstance of plea of guilty but denies that he can invoke voluntary surrender because it is not supported by the evidence. The latter point is well-taken because Pacala himself stated during the hearing that he did not surrender; he merely waited in his cell until prison employees took him out.

The penalty for murder is reclusion temporal in its maximum period to death. Capillas has two mitigating circumstances in his favor so that the penalty is reduced by one degree to prision mayor maximum to reclusion temporal medium. As to Pacala who has one mitigating circumstance in his favor, the minimum period of the penalty for murder is applicable.

The appellants claim that the trial court erred in awarding moral and exemplary damages. This claim appears to be academic and would require no discussion in the light of their economic condition. Nonetheless, it is useful to state that the relevant provisions of the Civil Code do authorize the award not only of compensatory or actual damages in delicts and quasi-delicts but also of moral and exemplary damages. (See *People vs. Pantoja*, L-18793, Oct. 11, 1968, 25 SCRA 468.)

WHEREFORE, the judgment of the court a quo is modified; Romualdo Capillas is sentenced to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum; Aquilino Pacala is sentenced to an indeterminate penalty of fifteen (15) years of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum; both shall indemnify, jointly and severally, the heirs of the deceased in the amount of P30,000.00, and to pay the costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, De la Fuente, and Cuevas, JJ., concur.

Gutierrez, Jr., J., no part.

Fernando, C.J., on official leave.

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