

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO AGBOT, DEFENDANT-APPELLANT.***G.R. No. L-37641. July 31, 1981*

Ponente: DE CASTRO, J.

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Charged with murder in the Court of First Instance of Davao Oriental, Antonio Agbot was, after due trial, convicted of the crime charged, and sentenced to death and ordered to indemnify the heirs of the deceased, Leona Agbot Subat, in the sum of P12,000.00. Hence this mandatory review of the death sentence.

The facts upon which appellant was convicted, as quoted from the People's brief are as follows:

At about 4:00 o'clock in the afternoon of October 8, 1972, the accused Antonio Agbot went to the house of his sister Leona Agbot, married to Asisclo Subat, in sitio Panganudan, barrio Lamiawan, Carraga, Davao Oriental, and demanded from her the return of his twelve-year old daughter Milagrosa, who had been under the care and custody of Leona Agbot Subat since she was two years old. Leona refused to surrender the child to the accused because of her sacrifices and expenses in the upbringing and education of Milagrosa. The accused left angrily, saying -- "tighten your belt", a phrase which, in the custom of the Mandayan tribe to which they belong, meant "something bad will be forthcoming to you not long from now." (tsn, pp. 45-47, Mar. 26, 1973)

"At about 7:30 o'clock in the evening of October 8, 1972, while Asisclo Subat and Francisco Baucan, step-son of the victim, were relaxing at the porch of their house, and Leona Agbot Subat was preparing supper in the kitchen, a gun explosion was heard. Asisclo Subat and Francisco Baucan tried to ascertain where the gun report came from. Suddenly, Francisco called out -- "Mama, mama," directing his call to his step-mother Leona Subat who came rushing from the kitchen, wounded and bleeding on the right breast. In a few seconds, the latter dropped on the floor and ex-pired. (tsn, pp. 48-50, Mar. 26, 1973)

"At about 5:00 o'clock in the following morning, October 9, 1972, Francisco Baucan, who was a councilor of the place, went to barrio captain Pacifico Sobiaco and reported the incident. The latter sent a note to Patrolman Manuel Quiros who was assigned in a nearby police checkpoint and, together, they proceeded to the house of the victim. (tsn, pp. 5-6, Mar. 26, 1973) A joint investigation was conducted by Sobiaco and Pat. Quiros. They found the cadaver already dressed up and ready for burial. They also saw gunshot wounds on the right breast of the deceased. (tsn, pp. 6-7, id.) Patrolman Quiros drew a sketch (Exh. D) indicating the place where the victim was found dead and the location of the wounds sustained by the deceased. (tsn, pp. 117-118, June 21, 1973) No post-mortem examination was conducted on the cadaver of Leona Subat.

"While thus conducting their investigation in the house of the victim, the accused arrived thereat and admitted to Sobiaco that he was the one who shot the victim using a "paltik" shotgun. (tsn, pp. 11-12, 16-18, Mar. 26, 1973) Whereupon, Sobiaco ordered two of his barrio councilmen, Luis Ligasan and Adolfo Benaning, who were present to proceed to the house of the accused and get the firearm. After getting the firearm, the same was shown to the accused who identified it as the weapon he used in shooting the deceased. (tsn, pp. 8-13, Mar. 26, 1973) Thereafter, Barrio Captain Sobiaco turned over the shotgun and empty shell, as well as the person of the accused to Patrolman Quiros (tsn, pp. 23-24, Mar. 26, 1973).

"On October 16, 1972, appellant executed an extrajudicial confession before the police authorities of Caraga (Exh. C) which was subscribed and sworn to by him before Municipal Judge Manuel B. Castro. (tsn, pp. 107-108, June 21, 1973; pp. 34-35, Mar. 26, 1973)"

From the fact that no post-mortem examination was made, nor was a ballistic examination conducted, appellant would dispute the sufficiency of the evidence to support his conviction. Thus, he would claim that no competent proof was adduced that the wounds were caused by a gunshot, or that assuming that they were, the home-made gun (paltik) belonging to appellant was the gun that fired the shots.

That a gun explosion was heard just seconds before the deceased was wounded while she was alone in the kitchen is by itself an almost undisputable evidence that the wounds were caused by that same gunshot. No one was seen near her who could have inflicted the wounds with a weapon that could find its mark only if the victim was within physical reach of the assailant. Only a gun could have caused the wounds which can reach its target even from an appreciable distance.

The wounds themselves, as seen by the state witnesses, particularly Barrio Captain Pacifico Sobiaco and Patrolman Manuel Quiros, were readily described by them as gunshot wounds, one as big as one and one-half inches in diameter and six (6) smaller ones obviously caused by pellets of a bullet fired from appellant's kind of a gun, a shotgun. There can hardly be any ground for doubt as to their competence in identifying the wounds as caused by a gun as distinguished from one caused by a sharp-bladed weapon, much less a blunt instrument. The existence of exits of the wounds, as testified to by Patrolman Quiros[1] bolsters the conclusion or finding that the wounds sustained by the victim were gun-inflicted.

In an effort to discredit the testimony of Patrolman Quiros and Barrio Captain Sobiaco, appellant points to Patrolman Quiros allegedly saying that he saw one (1) big penetrating wound while Barrio Captain Sobiaco, as well as Asisclo Subat, declared he saw six (6). An examination of Patrolman Quiros' testimony will show that he did not say that he saw only one (1) wound with no other wounds sustained by the deceased. The small wounds caused evidently by tiny pellets bursting out of a shotgun bullet may not have been noticed by Patrolman Quiros, and so, he made mention only of the one (1) big penetrating wound.

The lack of ballistic examination can neither detract from the weight of the evidence presented showing that appellant's gun was the offending weapon. It fits the nature of the wounds inflicted on the deceased, being a shotgun whose bullet emits pellets, and the empty shell which was found with the shotgun (paltik) taken from appellant's house. Ballistic experts are not needed to establish the relation between the wounds and appellant's "paltik" shotgun in the face of the evidence that the weapon is admittedly one that belonged to appellant, and the empty shell found in his house even smelled gun powders which was proof of recent firing. The shotgun (Exh. A) and the empty shell (Exh. B) were indeed retrieved from appellant's house the morning following the night of the shooting made possible by appellant's own admission of authorship of the shooting, without which these objects could not have been traced to, and recovered from, his house.

Appellant's denial of having made the foregoing admission and of having mentioned anything about the shotgun to Barrio Captain Sobiaco is unworthy of belief. If he did not make the admission when confronted by the barrio captain at the victim's own house, how could the two (2) barrio councilmen, Luis Ligasan and Adolfo Benaning, have been sent to recover appellant's firearm at the latter's house? A fact related to what part the weapon had in the killing and the person who actively played the role in using it, must have surfaced. No other fact suggests itself more than the appellant's owning the shooting when confronted by the barrio captain to whom report of the shooting had been earlier made, and to whom the only suspect was mentioned, together with the circumstance that drew suspicion to appellant -- the threat of harm befalling the deceased with the meaningful words "tighten your belt."

The verity of appellant's admission of guilt having been firmly established, the contention that the confiscation or seizure of the gun was illegal, there being no search warrant and its use as evidence is not permissible, clearly becomes devoid of factual or legal basis. With his confession, his voluntarily surrendering the weapon with which he committed the offense would be but a natural consequence of his having admitted guilt. The taking of the gun from his house was, therefore, with consent and acquiescence that would not constitute a violation of the constitutional guaranty against the admissibility of illegally seized objects as evidence against an accused.[2]

Appellant's claim of his confession having been extracted by force and maltreatment would, likewise, be completely unbelievable. Having readily admitted his guilt when confronted by the investigators right in the house of the victim, the very presence of his own departed sister laying in state perhaps unnerving him in his vile desire to conceal the truth, how could he still try to deny and turn back from his earlier admission made to a barrio official when he later was formally investigated by the police? No less than the Municipal Judge Manuel B. Castro, testified to appellant having answered in the affirmative when asked if he was willing to swear to the truth of his confession[3].

The confession itself, by the facts with which it is so replete, which appellant alone could have supplied and the obvious attempt to mitigate his liability by alleging that he did the act in a fit of vengeance because the victim was the one who ordered the killing of his brother Ansog Agbot, bears the earmarks of voluntariness.[4] The police investigators could not have just conceived of this alleged fact from pure imagination to be placed in appellant's confession, considering the extreme improbability of a sister ordering the killing of a brother. For the motive of the killing, what should have found its way to the confession is the incident just before the shooting when appellant hurled a threat at his sister, as narrated by the victim's husband to the barrio captain, had appellant not been allowed full freedom to tell his story.

With appellant's confession fulfilling all elements of admissibility, and supported as it is by independent evidence of corpus delicti, which is the fact of the crime having been committed,[5] together with the finding in appellant's house of the weapon that undisputably inflicted the fatal wounds sustained by the deceased, it would be futile to argue against the sufficiency of the evidence to prove guilt beyond reasonable doubt, as counsel has tried to do, and commendably so, had it not been for his manifest misreading of the evidence. Thus, he would aver that corpus delicti has not been proven[6] when the fact of death due to foul means has been so undeniably established by the lifeless body bearing wounds that undisputably caused the death to the victim.

The crime committed is murder, qualified by treachery and with the aggravating circumstances of dwelling[7] and relationship, the victim being the sister of appellant.[8]

Evident premeditation cannot be appreciated against appellant it appearing that no time sufficient for calm reflection of the consequences of the crime committed intervened between planning and execution.[9] Neither sex could be taken against appellant there being no proof that there was deliberate intention to offend or insult the sex of the victim.[10]

While lack of instruction may not be appreciated in favor of appellant as argued by counsel, the offense of taking one's life being forbidden by natural law and therefore within the instinctive knowledge and feeling of an human being not deprived of reason,[11] appellant being a member of the cultural minority may be considered in his favor, pursuant to Sec. 106 of the Administrative Code of Mindanao and Sulu and entitle him, regardless of the attending circumstances, to life imprisonment instead of death.[12] It is no legal obstacle to accord to him this benefit of the law because he failed to invoke same in the court a quo, for in an appeal of a criminal case, same is thrown open for a complete review of all errors, by commission or omission, as may be imputable to the trial court.

WHEREFORE, the judgment of conviction is affirmed, but the death sentence is hereby reduced to life imprisonment, taking also into account the length of time he had already been in the death row. Cost de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

[1] t.s.n. p. 117, June 21, 1973.

[2] See Rule 126, Sec. 12, Rules of Court; People vs. Malasugui, 63 Phil. 221.

[3] t.s.n., p. 38, March 26, 1973.

[4] People v. Viduya, 97 SCRA 666; People vs. Laureta, 95 SCRA 166; People vs. Opiniano, 22 SCRA 177; People vs. Cruz, 73 Phil. 651.

[5] People v. Kiram, 93 SCRA 696; People v. Abrera, 17 SCRA 771; People vs. Taruc, 16 SCRA 834.

[6] p. 27, Appellant's Brief.

[7] People vs. Ompad, et al., G. R. No. L-23513, Jan. 31, 1969, 26 SCRA 750.

[8] People vs. Alisub, 69 Phil. 362.

[9] People vs. Carillo, 77 Phil. 572.

[10] People vs. Mangsat, 65 Phil. 548.

[11] People vs. Mutyat, G.R. Nos. 11255-56, Sept. 30, 1959.

[12] People vs. Pawin, 85 Phil. 528; People vs. Disimban, 88 Phil. 120.

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