

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNULFO AQUINO, ALFREDO POSADAS, JR., ALIAS
“FRED”; JULIO GUMBAN AND JEFFREY MONTAÑO,
DEFENDANTS APPELLANTS.**

G.R. No. L-49808. February 26, 1988

Ponente: YAP, J.

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YAP, J.:

Arnulfo Aquino, Alfredo Posadas, Jr., Julio Gumban, Jeffrey Montaña, Peter Doe, Jack Doe and John Doe were charged with the crime of "Murder with Rape", allegedly committed as follows:

"That on or about the 9th of December, 1972, in the Municipality of Ilog, Province of Negros Occidental, Philippines, the above-named accused, armed with a rifle and boloes, cons-piring, confederating and mutually helping one another, with evident premeditation and treachery and with intent to kill, did then and there, attack, assault, stab, hack with their boloes and strike with a rifle one MRS. INOCENCIA M. TIAGA, thereby inflicting upon the latter the following injuries:

"1. Incised wound with complete fracture of the radius and ulna at the level of the wrist, left forearm;

"2. Fracture, frontal bone of the skull, forehead;

"3.

Incised wound, 4 inches, involving the trachea, esophagus, sternocloide-mastoid muscles and blood vessels of the neck on the right side;

"4. Stab wound, 1 inch, deltoid region, left arm;

"5. Contusion, 1 inch, right thigh;

"6. Contusion, 2 inches, left buttocks;

"7. Abrasion, 1 cm., right labia majora;

"8. Laceration, media portion, 1 cm. perineum.

which caused her death, after forcibly having sexual intercourse with her against her will.

CONTRARY TO LAW."

After trial, the Circuit Criminal Court, Bacolod City, rendered judgment dated December 15, 1978, found all the four accused Arnulfo Aquino, Alfredo Posadas, Jr., Julio Gumban and Jeffrey Montaño, guilty beyond reasonable doubt of the crime of murder as principals by direct participation, but acquitted them of the crime of rape on the ground of reasonable doubt. Finding the presence of aggravating circumstances and no mitigating circumstance, the trial court imposed the supreme penalty of death.

Because of the death penalty imposed, the case was elevated to this Court for automatic review. Accused-appellants Arnulfo Aquino, Alfredo Posadas, Jr. and Julio Gumban filed their briefs on November 5, 1980. Accused-appellant Jeffrey Montaño filed his brief on July 13, 1982. A consolidated brief for the appellee was filed by the Solicitor General on June 16, 1983.

On the urgent motion of appellant Julio Gumban, dated August 4, 1987, the Court granted the withdrawal of his appeal on August 18, 1987 and remanded the records of the case to the court a quo for execution of the judgment. At the same time, considering that because of the abolition of the death penalty under the 1987 Constitution, the sentence imposed by the court a quo was automatically commuted to reclusion perpetua, the Court resolved to require the other accused-appellants to manifest in a statement personally signed by them with the assistance of their counsel whether or not they wished to continue with their appeal and that failure on their part to file such statement within 30 days from notice would result in the dismissal thereof and the remand of the case to the trial court for execution of the judgment. Accused-appellants Jeffrey Montaño and Alfredo Posadas, Jr. manifested their desire to continue with their appeal.

Appellant Arnulfo Aquino did not file any written statement required by the Court's resolution, hence, the appeal, with respect to him, is hereby DISMISSED and the case as to him is remanded to the court a quo for execution of the judgment.

Review of this case continues only with respect to appellants Jeffrey Montaño and Alfredo Posadas, Jr.

The version of the prosecution as summarized in appellee's brief[1] is as follows:

"On December 19, 1972, the victim Inocencia Tiaga was the only elderly person present in her house at Sitio Hag-it, Balicotok, Ilog, Negros Occidental. Her husband, Miguel Tiaga, was detained at the municipal jail of Ilog by virtue of a charge of malicious mischief filed against him by the management of the neighboring ranch allegedly for stabbing some cow in the ranch. Inocencia Tiaga was sleeping in the sala together with her six children; her little brother Jonah Mayang; a neighbor's child, Edwin Amarila, who was invited to sleep in her house by her eldest child Jimmy Tiaga; and the three children of Maximo Gaem, her husband's co-accused. (tsn, November 8, 1976, pp. 3-5, tsn, November 23, 1976, pp. 30-31).

At about 12:00 o'clock midnight, Inocencia Tiaga was awakened by the barking of the dog and the noise of the geese. She awakened her companions Jimmy Tiaga, Jonah Mayang and Edwin Amarila. She heard someone calling, "Tiyang, ara bala si Tiyo Miguel?" (Auntie, is Uncle Miguel there?). She did not answer. She went near the door while the three children peeped outside through the wall which was made of split bamboo. The surroundings were lighted by a full moon. The voice called again. On the third call, Inocencia Tiaga replied, "He is not here, he is in Ilog, in jail." (tsn, November 8, 1976, p. 5; tsn, November 23, 1976, pp. 16, 32-36).

Upon hearing the answer, appellant Fred Posadas, Jr. forcibly pushed open the door, which was also made of split bamboo and suddenly grabbed Inocencia Tiaga. Appellant Arnulfo Aquino followed Fred Posadas, Jr. and

together they proceeded to drag Inocencia Tiaga down the house. Inocencia Tiaga held on to a post and begged them not to take her away as she had not yet fed her child. But Arnulfo Aquino commanded, "Let us go to the corn field." When Inocencia Tiaga refused to heed his order, Arnulfo Aquino hit her with the butt of his rifle. At that point, for fear of their lives, Jonah Mayang and Edwin Amarila jumped through the destroyed door and hid in the cogon grasses near the house. Jimmy Tiaga followed the two. (tsn, November 8, 1976, pp. 6-8; tsn, November 23, 1976, pp. 34, 37-43, 84).

Arnulfo Aquino returned to the house. Upon seeing the animals of Miguel Tiaga, he stabbed the two goats, the cow and the carabao. Then he returned to Fred Posadas, Jr. upon hearing his whistle. Appellants Jeffrey Montaña and Julio Gumban, who had posted themselves at the side of the house, followed Arnulfo Aquino and Fred Posadas, Jr. (tsn, November 8, 1976, pp. 8, 9; tsn, November 23, 1976, pp. 22, 23, 25, 43, 44, 98).

On the following day, December 20, 1972, Inocencia Tiaga was found dead in the camote patch. Her neck was slashed and her left hand was almost severed from the wrist. (Photographs; tsn, November 8, 1976, p. 9; tsn, November 23, 1976, pp. 46-47)."

At the trial, the prosecution presented six (6) witnesses, namely, S/Sgt. Primo Gavanelo of the 334th PC Command, stationed at Sagay, Negros Occidental, Jimmy Tiaga, Edwin Amarila, Dionisio Amarila, Miguel Tiaga and Dr. Arturo Gebusan.

The accused put up the defense of alibi, claiming that they could not have caused the death of the deceased Inocencia Tiaga, as at around 12:00 o'clock midnight or thereabouts of December 19, 1972, they were all at their quarters at the ranch owned by Sergio Montinola, which was around two (2) kilometers away from the house of the deceased, playing cards and conversing up to 2:00 o'clock in the morning.

The trial court gave credence to the evidence of the prosecution, stating:

"In the light of the explicit and positive identification of the four (4) accused as perpetrators of the killing, and the plausible showing of their motive, that is, to drive the settlers headed by Miguel Tiaga, husband of the deceased, out of the lands they were occupying, as against the flimsy defense of alibi put up by the accused, which, in a long list of jurisprudential edicts, must be clearly and convincingly shown that it was physically impossible for them to be at the scene of the crime, which is not in the case extant; the Court must have to extend full credence to the declarations of the witnesses for the prosecution. The concerted defense of alibi by all accused, although corroborated but by patently biased witnesses, is self-serving evidence, hence, deserves no serious consideration."

In his appeal, appellant Alfredo Posadas, Jr. claims that the trial court erred in "imposing the death penalty by holding that there was evident premeditation in the commission of the crime."

Appellant Jeffrey Montaña alleges the following errors committed by the Trial Court:

"1.

In finding all the accused guilty beyond reasonable doubt as principals by direct participation of the offense of murder;

"2.

In sentencing all accused to death;

"3.

In finding that there was conspiracy among the four accused in the alleged killing of the victim;

"4.

In finding and in taking into consideration the aggravating circumstances of treachery, evident premeditation, insult or disregard of respect due to the offended party on account of her sex, nighttime and in cuadrilla and that the wrong done in the commission of the crime be deliberately augmented by causing another wrong not necessary for its commission."

The appellants' above assigned errors will be taken jointly for both accused since they necessarily apply to both of them.

Appellants assail the finding of the trial court that there was evident premeditation attendant in the commission of the crime, qualifying the offense as murder, instead of being merely homicide. According to the appellants, in arriving at the conclusion that the circumstance of evident premeditation was present, the trial court based its conclusion on mere inference from alleged antecedent facts, to wit:

"The total evidence adduced tend to indicate that there was evident premeditation as could be strongly inferred from the antecedent facts.

Even defense witness Romeo Victoriano in his affidavit executed on January 3, 1973, (Exhibits "3" and "3-A") said:

'When I arrived in the ranch from Tapi, at about 7:00 00 in the evening, I set in the bench to refresh my tiredness, while I am sitting in the bench, the five men are drinking the whiskey, they are Hernan Aquino, the overseer, his brother Arnulfo Aquino, Jeffrey Montanio, Fred Posadas, and Julio Gumban, alias Kokok, I heard 'When can we get our reward' and 'when can we kill this squatter persons' and Arnulfo answered 'When can we do that' and Hernan answered immediately, 'Even at this time we can do that', but they continue drinking the whiskey. Afterwards, I asked permission from them that I will go home because my wife has no companion in our house. And in the next morning, December 20, 1972, I heard that Nene Mayang, the wife of Miguel Tiaga, was already dead.'

just several days after the incident when opportunity for concoction was still minimal, if not nil. Although he tried to impugn this later on the alleged ground of involuntariness and duress (Exhibits "4" and "4-A"); the threats to Miguel Tiaga to get out or else; the charge of Malicious Mischief filed against the latter in order to put him away from his family, and the mode of execution as already pointed out in the preceding analysis." (Pages 13-14, Decision, December 15, 1978).

Appellants contend that there was no direct evidence of any planning or preparation prior to the alleged commission of the offense. The contents of the affidavit of Romeo Victoriano, (Exhibits "3" and "3-A"), which mentioned the alleged conversation between the overseer of the ranch and the accused as to when they could get the supposed reward and when they could kill the "squatter persons", were never testified to directly by the witness on the witness stand; on the contrary, the witness repudiated the said affidavit and testified on the averments of a later affidavit (Exhibits "4" and "4-A"). The contents of the affidavit, Exhibits "3" and "3-A", relied upon by the court as part of the antecedent facts justifying the inference of evident premeditation could not be taken as evidence against the accused, since apart from being repudiated by the witness, the facts recited therein were not testified to by the witness on the stand. Neither can evident premeditation be inferred from the alleged motive for the killing, supposed to be shown by antecedent facts such as the alleged threat to kill Miguel Tiaga, husband of the deceased victim, and the filing of charges for malicious mischief against him. Appellants maintain that direct evidence, not circumstantial, of the planning or preparation to kill the victim must be

established, since it is not sufficient that premeditation be merely suspected or inferred.

We agree with appellants. The qualifying circumstances should be alleged in the information and must be established by direct and positive evidence, not by mere presumption or inferences.[2] Circumstances which qualify criminal responsibility, whatever their nature and effect, can in no case rest on mere presumption, no matter how reasonable or probable. They must be based on facts which the judicial mind considers to be of unquestionable existence and which show clearly and indubitably that the criminal calmly and reflectively meditated upon the preparation of the crime. Where no evidence is offered to prove the qualifying circumstances alleged in the information, these circumstances cannot be appreciated.

In the case at bar, while the qualifying circumstance of evident premeditation is alleged in the information, it has not been established by direct and positive evidence. Hence, it can not be taken to qualify the offense as murder. However, the information also alleges treachery as a qualifying circumstance attendant in the commission of the offense. The presence of treachery or alevosia, if established, is enough to qualify the offense as murder.

A careful review of the records shows that the attendant circumstance of treachery or alevosia has been established by direct and positive evidence. It has been established by clear evidence that the appellants employed means in the execution of the killing which insured its consummation without risk to themselves. They deceived the victim by pretending to be relatives looking for the husband of the deceased. When they were assured of the absence of the husband, they forced themselves into the house, dragged the victim to the camote patch and the four of them armed with deadly weapons ganged up on her. The victim was completely helpless in the suddenness and viciousness of the attack. She could not defend herself. She posed no threat to her assailants.

We likewise find no merit in appellants attributing error to the trial court's finding that there was conspiracy among the four accused in committing the offense charged. Conspiracy among the four original appellants in the commission of the crime was sufficiently established by the evidence. When Alfredo Posadas, Jr. broke open the door of the victim's house, Arnulfo Aquino followed him and both of them dragged the victim down the stairs. During that time, Julio Gumban and Jeffrey Montano were at the rear of the house to look out for neighbors or members of the settlers' cooperative association who might come to the aid of the victim. As soon as Aquino and Posadas Jr. had brought the victim down the stairs and towards the cornfield, Gumban and Montano followed them. These concerted acts clearly show unity of design to assault the victim.

Appellants also assign as errors the findings of the trial court as to the presence of aggravating circumstances, namely, disregard of the respect due to the offended party on account of her sex, commission of the crime at nighttime and by a band, and deliberately augmenting the offense by causing another wrong not necessary for its commission, such as the hacking of the carabao and the killing of the goat and cow owned by the family of the deceased. We find the findings of the court supported by the evidence and in accord with law and jurisprudence, except with respect to: (1) the finding that the crime was committed by a band, since there is no positive evidence showing that all the four accused were armed; 2) the finding that the crime was aggravated by the hacking of the carabao and the killing of the goat and cow belonging to the family of the victim, since it can not be said that such act augmented the suffering of the victim. On the other hand, the trial court failed to consider as aggravating circumstance the fact that the offense was committed in the dwelling of the offended party who did not give any provocation to her attackers. Be that as it may, however, in view of the absence of any proven mitigating circumstance, the number and nature of the aggravating circumstances present would not matter insofar as the imposable penalty is concerned, which is the maximum of the penalty prescribed by the law.

FOR THE FOREGOING REASONS, the decision dated December 15, 1978 in Criminal Case No. CCC-XII-994, finding the accused guilty beyond reasonable doubt of the crime of Murder, is hereby AFFIRMED. However, in

view of the abolition of the death penalty under the 1987 Constitution, the death penalty imposed is commuted to reclusion perpetua. In line with our policy, the indemnification to be paid by the accused, jointly and severally, to the heirs of the victim is increased to P30,000.00. No costs.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] Rollo, pp. 347-350.

[2] *People v. Payao*, 68 SCRA 70; *People v. Jovellano*, 56 SCRA 156; *People vs. Samonte*, 64 SCRA 319.

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