

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIPE YTURRIAGA, DEFENDANT AND APPELLANT.

G.R. No. L-2816. May 31, 1950

Ponente: TUASON, J.

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TUASON, J.:

The appellant was charged with murder In the Court of First Instance of Samar allegedly with two aggravating circumstances. Arraigned, the accused pleaded guilty except as to the generic aggravating circumstances of evident premeditation and taking advantage of his position as municipal mayor charged in the information. At the same time, he invoked the mitigating circumstances of plea of guilty, drunkenness and voluntary surrender, which he offered to prove.

Evidence was received thereafter to determine the presence of modifying circumstances for and against the accused, and upon the evidence thus presented, the court handed down a decision of the following tenor:

"The court accepts the plea of guilt of the accused and declares him guilty beyond doubt of the crime of murder with which he is charged with the concurrence of the aggravating circumstance of premeditation and his plea of guilty as mitigating. There being one aggravating circumstance which is compensated by one mitigating, the penalty to be imposed is the medium penalty. The Court, therefore, sentences the accused to suffer an imprisonment of reclusion perpetua with civil interdiction for life and perpetual absolute disqualification, indemnify the heirs of Jose Balite in the sum of P4,000 and pay the costs of this action."

Not satisfied with the decision, the defendant's counsel filed a motion for reconsideration with a prayer that "if the said circumstance of voluntary surrender, which is a matter of record, cannot be taken into consideration, then on behalf of the accused the undersigned requests that the plea of guilty be set aside and that this case be set for trial at the first opportunity."

Five days later the trial court promulgated an order the dispositive part of which reads:

"The court, therefore, allows the accused to change his plea of 'guilty' to that of 'not guilty', voids the sentence rendered convicting the accused to reclusion perpetua, and orders that the case be set on the calendar for its trial on the merits."

The defendant being arraigned anew, his counsel manifested that except for the aggravating circumstance of evident premeditation, their client was pleading guilty to the charge. At this juncture, the prosecuting attorney asked if the defendant also was pleading guilty to the aggravating circumstance of taking advantage of his official position, but before appellant's counsel could reply, the trial court intervened and stated that the only question to be resolved was whether the aggravating circumstance of evident premeditation and the mitigating circumstance of voluntary surrender were present in the commission of the crime. Forthwith, the trial court ordered the parties to proceed with their evidence, which the parties did. After the prosecution had rested its case, defense counsel manifested to the court that they had inadvertently forgotten to state at the opening of the hearing that the accused did not plead guilty to the aggravating circumstance of taking advantage of his official position, and for that

reason moved that it be excluded from appellant's plea of guilty. After a brief discussion, the court denied the petition.

The appellant makes three assignments of error, all of which deal with the presence or absence of modifying circumstances and the refusal of the court below to allow him to prove or disprove some of them. We will pass over the last point as the evidence actually introduced enables us to reach a decision on the first.

The Solicitor General believes that there was evident premeditation, but agrees with the appellant that the defendant did not take advantage of his position. The Government also agrees that the appellant should be credited with the mitigating circumstance of voluntary surrender as well as that of plea of guilty found by the lower court.

To understand the issues intelligently, it is convenient to set out briefly the facts surrounding the commission of the crime.

It appears that the appellant was municipal mayor of Bobon, province of Samar. On August 3, 1947, at about 6 o'clock in the afternoon, accompanied by a policeman, he raided a house where a game of monte was being or was to be played. Upon seeing the accused, the gamblers or would be gamblers fled from the house and were not arrested, except one whom the defendant caught up with and grabbed. When he emerged from the gambling house, the accused met Jose Balite walking down the street with a 12-year old daughter. The evidence disagrees about what occurred, if any, between the defendant and Balite immediately before the killing; but it is admitted that the defendant shot and killed Balite with a pistol or revolver treacherously, as treachery is defined in the Revised Penal Code. It also appears that Balite had been a rival candidate for mayor and was a political enemy of the accused.

In finding the concurrence of evident premeditation as a generic aggravating circumstance, the court relied solely on the testimony of witnesses that the defendant in a speech in February, 1947, attacked Jose Balite saying, "You people in San Antonio, you are wild and savages, and I understand you are the supporters of Jose Balite. But you must understand that I am now the one in power, and do not rely on Jose Balite because he is no longer the one in power. This coming election in 1947, bear in mind, I am going to kill him because I have also a man whom I confided."

We do not think that the accused called his audience wild and savages unless he was out of his mind; and if the witnesses lied in this respect, there is ground to believe that they may also have lied or exaggerated with reference to other parts of the defendant's speech.

However the case may be, the remarks attributed to the accused, granting he was correctly quoted, are utterly insufficient to warrant the finding of evident premeditation. It is more reasonable to believe that the accused made those remarks, if he made them, in a fit of anger without meaning what he said. It is worth noting that the defendant is impulsive and hot tempered, as the record abundantly indicates.

In the second place, supposing again that the accused was in earnest when he made the threat, yet there is no showing that he persisted in his plan and that the killing was the culmination of it. It should be kept in mind that the alleged threat was made six months before Balite was murdered. Living in the same town as the deceased all that time, the defendant could easily have killed his enemy long before August 1947, if he had not given up his determination to slay him. What the preponderance of evidence does tend strongly to show is that the accused shot down the deceased as the result of the latter's alleged remark on the occasion of the defendant's raid of the gambling house, to wit that the defendant was abusing his authority although he was only an appointive mayor, appointed by President Roxas. We are inclined to the theory that there was some provocation.

In U.S. vs. Gil, (13 Phil. 530) and other decisions of this Court, it was laid down as a rule that the circumstance of evident premeditation must be evident and not merely suspected, by which is meant "a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient to allow the conscience of the actor to overcome the resolution of his will If he desires to harken to Its warnings." Judged by this standard, the aggravating circumstance of evident premeditation has not been satisfactorily established in this case.

The allegation that the defendant took advantage of his office is also unwarranted by the proof. In killing the deceased, the appellant did not avail himself of "the influence, prestige, or ascendancy which go with his position as a means of securing the execution of the crime." In other words, his being mayor did not in any way facilitate the murder. He could have committed the crime in the same form or manner and with the same ease if he had been a plain citizen.

There is no doubt that the appellant gave himself up to the Philippine Constabulary voluntarily and that this surrender satisfies the requirement of subsection 7 of Article 13 of the Revised Penal Code. It only remains to consider briefly whether the defendant's plea of guilty in the form it was entered constitutes a voluntary confession of guilt before the court as defined in the same subsection of Article 13. We think it does.

Although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently fully justified. It was not the defendant's fault that aggravating circumstances were erroneously alleged in the information and mitigating circumstances committed therefrom. If such qualification could deprive accused of the benefit of plea of guilty, then the prosecution could nullify this mitigating circumstance by counteracting it with unfounded allegations of aggravating circumstances.

In conclusion, there are two mitigating circumstances without any aggravating circumstances to offset them. ISider Article 64 (5) of the Revised Penal Code, these circumstances entitle the defendant to a lowering of the penalty by one degree; the penalty lower by one degree is prision mayor in its maximum degree to reclusion temporal in its medium degree.

The appealed judgment is modified so that the appellant will be sentenced to eight years and one day of prision mayor, as minimum, and 14 years, eight months and one day of reclusion perpetua, as maximum, and to pay the heirs of the deceased an indemnity of P6,000, and the costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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