

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO CAPALAC, DEFENDANT-APPELLANT.*G.R. No. L-38297. October 23, 1982*

Ponente: FERNANDO, C.J.

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It was not unexpected, considering the close family ties so traditional among Filipinos, that the stabbing, apparently without provocation, of one Moises Capalac by Jimmy Mag-aso, would be attended with serious, if not tragic, consequences. It happened on September 20, 1970 at around 2:00 o'clock in the afternoon, the scene of the gory incident being a duly licensed cockpit in the City of Iligan. The aggressor, attempting to escape, was confronted by two brothers of Moises, Jesus Capalac, originally included in the information but now deceased, and appellant Mario Capalac. The attempt of Mag-aso to board a jeep was unsuccessful, he having alighted after two shots were fired in succession. Knowing that he was completely at the mercy of the two brothers, he raised his hands as a sign of surrender, but they were not to be appeased. He was pistol-whipped by appellant Mario Capalac, being dealt several blows on the head and the face. After he had fallen to the ground, Jesus Capalac stabbed the deceased on the chest three or four times. He was brought to the hospital where he died, the cause, according to the coroner's report, being "hemorrhagic shock due to a wound of the heart."

The above facts are not open to dispute, the decision of the lower court and the briefs for both appellant and appellee being substantially in agree-ment. After trial duly held, Mario Capalac was convicted of murder. The lower court found that the crime was committed with evident premeditation and treachery. The lower court also held that appellant took advantage of his position as a police officer and employed means or brought about circumstances which added ignominy to the natural effects of his act. It sentenced him to suffer the death penalty. Hence, this case is before this Tribunal for auto-matic review.[1]

The brief for the appellant prays for the reversal of the judgment and assigns four errors as having been committed by the lower court. The first error speaks of the absence of conspiracy. The second and the third deny the existence of the qualifying as well as the aggravating circumstances. Lastly, the brief imputes as error of the lower court what it referred to as "discarding the ante mortem statement of the victim." As will be shown, there is no basis for reversal. The judgment, how-ever, calls for modification. Murder was committed, the qualifying circumstance of alevosia being quite evident. The aggravating circumstances, however, were not proved. Moreover, the lower court did not take into consideration the existence of the mitigating circumstance of the immediate vindication of a grave offense. Hence, the imposition of the death penalty was not warranted.

1. The circumstances indicative of the manner by which the two brothers, as well as their two companions, who apparently were not apprehended as they were not included in the information, attacked the hapless victim, would suffice to show conspiracy. They apparently had one purpose in mind, to avenge the stabbing of Moises Capalac. Such a reaction, as noted at the outset, is quite understandable. It was not to be expected that they would even bother to inquire why their brother was stabbed. It was enough that it was done. They were impelled by a common purpose. They acted in concert. There is sufficient basis for the finding of conspiracy

then. As far back as *United States v. Magcamot*,^[2] a 1909 decision, Justice Mapa stressed as the essential element for conspiracy to exist the "concurrence of wills" and "unity of action and purpose."^[3] A recent decision is partial to the phrase, "tacit and spontaneous coordination," in the assault.^[4] A careful analysis of the evidence by the lower court can yield no other conclusion but that conspiracy was duly proved.

2. From the facts as narrated above, there can be no other conclusion except that the crime was one of murder, the qualifying circumstance of treachery being present. The specific language of the Revised Penal Code calls for application: "There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."^[5] Mag-aso's situation was hopeless. Any defense he could have put up would be futile and unavailing. His hands were raised in surrender. That notwithstanding, he was pistol-whipped. When lying prostrate on the ground, he was stabbed. It must be remembered that, according to the testimonial evidence, there were two other persons assisting the brothers Capalac. If they were not included in the information, the explanation would appear to be that they managed to elude capture. There was no risk, therefore, to the aggressors, no hope for the victim.^[6] The trial court committed no error then in appreciating the circumstance of treachery as being present.

3. The lower court erred, however, in finding the aggravating circumstances of evident premeditation, of means being employed or circumstances brought about to add ignominy to the natural effects of the act, and of the crime being committed with the offender taking advantage of his official position as having attended the commission of the crime. As early as 1903, Justice Mapa, in *United States v. Alvarez*,^[7] made clear that an aggravating circumstance must be "as fully proven as the crime itself."^[8] He added: "Without clear and evident proof of their presence, the penalty fixed by the law for the punishment of the crime cannot be increased."^[9] Moreover, insofar as evident premeditation is concerned, there is this relevant excerpt from the same opinion: "The record contains no evidence showing that the defendant had, prior to the moment of its execution, resolved to commit the crime, nor is there proof that this resolution was the result of meditation, calculation and persistence."^[10] In *People v. Mendova*,^[11] it was emphasized that it should not be "premeditation" merely; it is "evident" premeditation.^[12] A recent decision, *People v. Anin*,^[13] ruled that the perpetration of a criminal act "evidently made in the heat of anger" did not call for a finding that there was evident premeditation.^[14] What is required is that the offense was "the result of cool and serene reflection."^[15] What was done by the brothers of Capalac cannot be categorized as falling within the norm of means being employed or circumstances being brought about to add ignominy to the natural effects of the act. It is well to stress that they were prompted by their desire to avenge their brother. They went after Mag-aso, the victim. They assaulted him, relying on the weapons they carried with them. Jesus stabbed him and appellant Mario pistol-whipped him. They did what they felt they had to do to redress a grievance. It cannot be said, therefore, that they deliberately employed means to add ignominy to the natural effects of the act. It is quite apparent that all they were interested in was to assure that there be retribution for what was done to their brother. The mere fact that appellant Mario Capalac is a member of the police force certainly did not of itself justify that the aggravating circumstance of advantage being taken by the offender of his public position be considered as present. He acted like a brother, instinctively reacting to what was undoubtedly a vicious assault on his kin that could cause the death of a loved one. It would be an affront to reason to state that at a time like that and reacting as he did, he purposely relied on his being a policeman to commit the act. He pistol-whipped the deceased because he had his pistol with him. It came in handy and he acted accordingly.^[16] That he was a policeman is of no relevance in assessing his criminal responsibility.

4. There is another aspect of the decision that calls for correction. The mitigating circumstance of immediate vindication of a grave offense was not considered. There is no ambiguity in the language of the Revised Penal Code: "That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity within the same degree."^[17] What was done was an immediate vindication of the stabbing perpetrated by Mag-aso on appellant's brother Moises. For relatively less serious crimes than this, this Court

has taken into consideration this mitigating circumstance.[18] Certainly it seems probable that the reason why the lower court failed to do so was the fact that appellant was a member of the police force. That is not conclusive. What is decisive is the fact that the brothers Capalac, responsive to what is a traditional norm of conduct, reacted in a manner which for them was necessary under the circumstances. That was a fulfillment of what family honor and affection require. The aggressor who did them wrong should not go unpunished. This is not to justify what was done. It offers though an explanation. At the same time, the rule of law, which frowns on an individual taking matters into his own hands, re-quires that every circumstance in favor of an accused should not be ignored. That is to render justice according to law. This mitigating circumstance calls for application.

5. There is no point in discussing the fourth assigned error, namely, that the ante mortem statement of the victim should have been given weight by the Court. Such exhibit,[19] even if considered a dying declaration, would not call for a reversal. It consisted of seven questions and answers. The answers to the second and the third questions referred to what happened to Mag-aso and who was responsible. His answer was that he was stabbed, and that it was done by Jesus Capalac. The other questions dealt with when and where it happened as well as whether or not he was in possession of his senses, and a rather unnecessary question as to whether he was aggrieved. This Court, as was the lower court, is aware that the stabbing was by Jesus Capalac, not by appellant. It does not thereby mean that no criminal liability was incurred by him. In the light of the foregoing, and following the case of *People v. Rosel*[20] where the murder was qualified by the circumstance of treachery and there was likewise considered the mitigating circumstance of immediate vindication of a grave offense, the penalty imposed on the accused should be "ten years and one day of prision mayor to seventeen years, four months and one day of reclusion temporal." [21]

WHEREFORE, the accused is found guilty of murder, but the decision of the lower court is hereby modified. The accused is sentenced to ten years and one day of prision mayor minimum to seventeen years, four months and one day of reclusion temporal maximum. In all other respects, the lower court decision stands affirmed.

Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, and Relova, JJ., concur.

Makasias and Vasquez, JJ., reserve their votes.

De Castro, J., in the result.

Aquino and Gutierrez, Jr., JJ., no part.

Teehankee, J., on official leave.

[1] He remained the sole accused, there being an order of the lower court of February 12, 1972 dismissing the charge against his brother, Jesus, who, had died in the meanwhile.

[2] 13 Phil. 386.

[3] Ibid.

[4] *People v. Aleta*, L-40694, August 31, 1976, 72 SCRA 542, per Aquino, J.

[5] Article 14, par. 16 of the Revised Penal Code.

[6] Cf. *People v. Ong*, L-34497, Jan. 30, 1975, 62 SCRA 174; *People v. Mabuyo*, L-29129, May 8, 1975, 63 SCRA 532; *People v. Bautista*, L-38624, July 25, 1975, 65 SCRA 460 (where deceased had no chance to defend himself); *People v. Tizon*, L-29724, Aug. 29, 1975, 66 SCRA 372; *People v. Payao*, L-29364, Nov. 21, 1975, 68 SCRA 70; *People v. Pajenado*, L-26548, Jan. 30, 1976, 69 SCRA 172; *People v. Mojica*, L-30742, April 30, 1976, 70 SCRA 502; *People v. Palencia*, L-38957, April 30, 1976, 71 SCRA 679; *People v. Benito*, L-32042, Dec. 17, 1976, 74 SCRA 271; *People v. Pascual*, L-29893, Feb. 23, 1978, 81 SCRA 548; *People v. Plateros*, L-37162, May 30, 1978, 83 SCRA 401; *People v. Alegria*, L-40392, Aug. 18, 1978, 84 SCRA 614; *People v. Cuadra*, L-27973,

Oct. 23, 1978, 85 SCRA 576; *People v. Barbosa*, L-39779, Nov. 7, 1978, 86 SCRA 217; *People v. Damaso*, L-30116, Nov. 20, 1978, 86 SCRA 370.

[7] 3 Phil. 24.

[8] *Ibid*, 32.

[9] *Ibid*.

[10] *Ibid*, 31-32.

[11] 100 Phil. 811 (1957).

[12] *Ibid*, 818.

[13] L-39046, June 30, 1975, 64 SCRA 729.

[14] *Ibid*. 734.

[15] *Ibid*.

[16] Cf. *United States v. Rodriguez*, 19 Phil. 150 (1911); *People v. Yturriaga*, 86 Phil. 534 (1950); *People v. Ordiales*, L-30956, November 23, 1971, 42 SCRA 239.

[17] Article 13, par. 5 of the Revised Penal Code.

[18] Cf. *United States v. Ampar*, 37 Phil. 201 (1917); *People v. Diokno*, 63 Phil. 601 (1936); *People v. Rosel*, 66 Phil. 323 (1938); *People v. Domingo*, 118 Phil. 1384 (1962) only alternatively.

[19] Exhibit 1.

[20] 66 Phil. 323 (1938).

[21] *Ibid*, 326.

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