

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO TOLEDO, DEFENDANT-APPELLANT.

G.R. No. L-38495. July 25, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of the judgment of the Circuit Criminal Court of Pasig, Rizal, dated March 15, 1974, finding Wilfredo Toledo guilty of the crime of murder and sentencing him "to suffer the penalty of death; to indemnify the heirs of the offended party the amount of P10,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages; and to pay the costs."

The facts of the case are not controverted.

About nine o'clock in the morning of September 23, 1971, Rodolfo Torres, a second year high school student at the Roman Catholic Center, inside the New Bilibid Prison, Muntinlupa, Rizal, was attending his class. The accused Wilfredo Toledo, a third year high school student, was also in the same building. The instructor of the second year class was calling the roll when Wilfredo Toledo went to where Rodolfo Torres was and, from behind stabbed the latter with a "balila." Rodolfo Torres sustained a stab wound at the back, above the scapular. He was brought to the New Bilibid Prison hospital where he died of hemorrhage at about 11:33 in the morning of the same day, September 23, 1971.

There was a commotion after the stabbing because an alarm was sounded and the majority of the students scampered for safety. Muntinlupa guard Tolentino Avelina proceeded to the place of the incident and, on the way, met Wilfredo Toledo who was already with another guard after he had voluntarily surrendered with his bloodstained and sharp-pointed "balila."

The two prison guards, Avelina and Cardona, brought Toledo to the investigating section where he was interrogated and in the course of which he admitted having stabbed Rodolfo Torres.

Atty. Antonio G. Ibarra, counsel de oficio for Wilfredo Toledo, concurs with the finding of the trial court and even agrees with the imposition of the death penalty, although he submitted that "the trial court erroneously considered the presence of the aggravating circumstance of evident premeditation in the killing of the victim." The Solicitor General, in his brief, admitted that "there is no evidence to show Wilfredo Toledo's preconceived plan to kill the victim, hence, evident premeditation cannot be considered as present in this case."

Further, the People's counsel manifested that the aggravating circumstance of recidivism was erroneously considered against accused-appellant. In the case at bar, at the time Wilfredo Toledo committed the crime charged, he was already convicted by final judgment of robbery. The two felonies are not embraced in the same title of the Revised Penal Code. Murder is a crime against person under Title VIII, Chapter I of the Revised Penal Code; while robbery is a crime against property, under Title X, Chapter I of the same code. However, appellant's liability is aggravated by the special aggravating circumstance of quasi-recidivism where a person, after having

been convicted by a final judgment, shall commit a new felony, before beginning to serve such sentence, or while serving the same. He shall be punished by the maximum period of the penalty prescribed by law for the new felony (Art. 160, Revised Penal Code). Thus, the mitigating circumstance of voluntary surrender cannot be considered in appellant's favor.

We sustain the finding of the trial court that the crime committed is murder considering that the stabbing was sudden and unexpected and the victim was not in a position to defend himself. But, as held in *People vs. Melendres*, 106 SCRA 575, "justice is not blind to compassion. The wretched conditions in the National Bilibid Prison, i.e. congested cells, meager allowance for meals, and sheer boredom of routinary activities, are matters of judicial notice. Such miserable conditions far from rehabilitating the inmates, only drive the bestial in them." As in *People vs. Garcia, et al.* (G.R. No. L-40106, March 15, 1980, 96 SCRA 497) citing *People vs. de los Santos* (L-19067-8, July 30, 1965, 45 SCRA 702) the death penalty should be commuted to reclusion perpetua.

WHEREFORE, the judgment of the court a quo is modified in that instead of the death penalty appellant Wilfredo Toledo is hereby sentenced to suffer reclusion perpetua for the murder but affirmed in all other respects.

SO ORDERED.

Fernando C.J., Teehankee, Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin and Gutierrez, Jr., JJ., concur.
De Castro and Vasquez, JJ., on leave.

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