

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NICOLAS MOJICA Y GIRA, ACCUSED AND APPELLANT.

G.R. No. L-17234. March 31, 1964

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PER CURIAM:

Review of the judgment of the Court of First Instance of Rizal finding appellant Nicolas Mojica guilty of murder and sentencing him to death penalty, and the accessories.

Appellant Mojica and Primitivo Ala were charged in the said Court with having murdered prisoner Ruperto Artus y Garcia in Muntinlupa, Rizal, on the 24th day of March, 1959.

Primitivo Ala pleaded guilty to the information and was consequently sentenced to death. This Court affirmed the sentence upon review in G. R. No. L-15633.

Mojica, on the other hand, did not plead guilty. So trial proceeded, after which he was found guilty as charged, and sentenced to death.

As stated, this is a review of the judge's decision.

It appears that at about 4:00 o'clock in the afternoon of March 24, 1959, Gabriel Buclating, one of the leaders of the "OXO gang"[1] was stabbed to death by certain members of the "Siguesigue gang"[2] inside the New Bilibid Prisons at Muntinlupa, Rizal. To avenge the death of such leader, a member of the "Siguesigue gang", a prisoner named Ruperto Artus was stabbed to death two hours thereafter (at about 6:00 p.m.) in Cell No. 1 of Dormitory No. 3-C of the said prisons. Immediately after the stabbing of said Artus, Nicolas Mojica and Primitivo Ala, both prisoners and members of the "OXO gang" offered to surrender to the prison guard, Jose Magkalas. Before they were brought out of the cell, they were ordered by said Magkalas to throw out of the window of the cell, the weapons used in the killing, an icepick and a flat and pointed instrument. Both accused, upon coming out of the cell, had blood on their clothes and hands. At the time Mojica, inside the cell, expressed willingness to surrender to the prison guard, he was holding in his hands, the flat and pointed instrument, Exh. "A". Both prisoners admitted having stabbed and killed the prisoner Artus. Benito Geronimo, the officer-in-charge of the security guards, took their confession in writing, and the same was subscribed and sworn to before the Assistant Director of Prisons. Another prison guard, Benjamin Aman witnessed the investigation and the taking down of the confession.

In Mojica's confession, it is related that;

"This afternoon at about 6:00 p.m., 24 March 1959, after having Board that one of our leaders in the OXO gang, GABRIEL BUCLATING was stabbed to death by members of the Siguesigue gang, 1 and prisoner PRIMITIVO ALA decided to kill a tagalog prisoner inside our dormitory called RUPERTO ARTUS in revenge to the death of our leaders.

Q.—How did you effect the killing of Ruperto Artus?

A.—While Artus was standing inside Cell No. 1 of Dormitory S~C, I immediately stabbed him on the waist

followed by my co-prisoner Primitive Ala with the use of an improvised "Weapon made out of steel drum.

Q.—How many times did you stab prisoner Artus?

A.—Four times, sir.

Q.—In what part of the person of Artus was hit?

A.—On the stomach and on his sides.

Q.—When did you decide to kill Artus?

A.—We decided to kill Artus immediately after the killing of Buclatin at about 4:15 p.m., 24 March 1959.

x x x x x

Q.—Why did you want to kill Artus, had you any altercation or misunderstanding with him?

A.—We had no ill-feeling: against each other, I only want to revenge the killing of Mayor Abing meaning GABRIEL BUCLATIN.

x x x x x

Q.—Are you a member of the OXO gang?

A.—Yes, sir, I have a tatoo with number 11 as membership of the gang.

Q.—When did you join the OXO gang?

A.—In 1957, sir.

Q.—Do you have something more to say, add, or retract from this statement?

A.—No more, sir.

Q.—Are you willing to sign this statement?

A.—Yes, sir." (Exh. B)

During the trial, Mojica admitted being a member of the "OXO gang". He, however, denied the commission of the crime, claiming that he had signed the extra-judicial confession because he had been beaten by men in khaki pants whose identities he did not know. He further claimed that his surrender was, likewise, only forced upon him by leaders of the "OXO gang", namely Fortunato Birotiao, Cresencio de la Cruz, Francisco Brillantes and Rodolfo Ibanez; that these threatened him with death should he refuse to admit the killing. He explained that his hands had blood in them because his co-accused, Primitivo Ala smeared them with his (Ala's) bloody hands.

Upon review of the records, we find substantial evidence corroborating the extra-judicial confession of Mojica. The murder weapon he described in the extra-judicial confession was the very same weapon he was seen holding in his hands inside the prison cell by prison guard, Jose Magkalas, and the same weapon which appellant Mojica threw out of the cell window upon orders of the prison guard. In this extra-judicial confession, he admitted having stabbed the deceased on the sides and the stomach. The deceased was found to have suffered stab wounds on said parts. Moreover, those parts of appellant Mojica's narration (in the extra-judicial confession) concerning the participation of his co-accused, Ala, (aside from the fact that said co-accused confessed to the crime before the lower court and was thereby convicted), are also corroborated by the testimony of the prison guard, Jose Magkalas.

As to the voluntariness of the execution of the extra-judicial confession, there is no question that it had been

voluntarily made. The statement was subscribed and sworn to before the Acting Assistant Director of Prisons before whom appellant could have complained had there really been any irregularity, or any violence used upon him. Furthermore, appellant could not identify the people who allegedly forced him to execute the admission. As to his surrender to the prison guard thru intimidation by the leaders of the "OXO GANG", his explanation is unconvincing. He could have sought protection from the prison authorities once he was out of the cell; he could have revealed to the same, the frame-up against him, and pleaded for separation from the vicious gang. The explanation relative to the blood on his hands contradicted the testimony of his co-accused Ala. While Mojica said that it was Ala who placed blood on his hands, the latter (Ala) said that it was Fortunato Birotiao who placed blood on the hands of Mojica. The presence, though, of blood on Mojica's clothes was not at all explained.

The testimony of Primitivo Ala pointing to Fortunato Birotiao, Jose Garcia, Rodolfo Ibanez and Francisco Brillantes as the perpetrators of the crime is completely inconsistent with his plea of guilt when he was arraigned for said crime in the lower court. When his judgment of conviction was brought before this Court en consulta case G. R. No. L-15633,[3] we found upon study of the case that he had adequate knowledge of the nature of the charge against him, of the meaning of his plea of, guilt and of the consequences thereof. And we affirmed the judgment of conviction against him.

The element of conspiracy attended the commission of the instant crime. Both the extra-judicial confessions of appellant and of convict Primitivo Ala as well as the latter's judicial confession contain statements to the effect that they had agreed to kill the deceased Artus to avenge the death of a leader of the "OXO gang". The circumstance of evident premeditation attended the commission of the crime. There is ample evidence of how and why the crime was planned, sufficient time[4] having been shown to intervene between its inception and execution. There is also treachery. Two men stabbing another forty times in vital parts of the body cannot but insure the death of the latter. Also, the attack on the victim was sudden. As Mojica has described in his extra-judicial confession, the victim was just standing inside the said cell when appellant suddenly stabbed him on the waist followed by his co-accused Primitivo Ala.

Considering that Primitivo Ala, appellant's co-accused has been sentenced to die, (despite his judicial confession which is a mitigation), considering that conspiracy has been shown, and considering that the crime was committed while the accused was serving sentence, the extreme penalty of death necessarily is in order.

The judgment en consulta is affirmed in all parts and respects.

Bengzon, C, J. Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1]The "OXO gang" is composed of prisoners from the Visayan provinces.

[2]The "Sigue-sigue gang" is composed of prisoners from Luzon.

[3]Decided August 31, 1960.

[4] From the death of a leader of the "OXO gang" at about 4:15 to about 6:00 P.M. of March 24, 1959, there is sufficient time to plan and reflect on the commission of the crime.

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