

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FILOMENO CAMANO, DEFENDANT-APPELLANT.

G.R. Nos. L-36662-63. July 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

MANDATORY REVIEW of the death sentence imposed upon the accused Filomeno Camano by the Court of First Instance of Camarines Sur, in Criminal Case Nos. T-20 and T-21, for the killing of Godofredo Pascual and Mariano Buenaflor.

The inculpatory facts as stated by the trial court show that:

On February 17, 1970, in the barrio of Nato, Municipality of Sagñay, Province of Camarines Sur, between the hours of four and five o'clock in the afternoon, after the accused had been drinking liquor, he stabbed twice the victim Godofredo Pascua with a bolo, called in the vernacular Bicol "palas", which is a sharp bladed and pointed instrument about two feet long including the black handle, tapering to the end, about one and one-half inches in width, (Exhibit "C") while the latter was walking alone along the barrio street almost in front of the store of one Socorro Buates. The victim, Godofredo Pascua, sustained two mortal wounds for which he died instantaneously, described by Dr. Constancio A. Tan, Municipal Health Officer, of Sagñay, Camarines Sur, in his Autopsy Report (Exhibit "A", pp. 5, Record Crim. Case No. T-21) as follows:

"NATURE OF WOUNDS UPON AUTOPSY:

"1. WOUND STAB - three (3) inches long at left side, three (3) inches below left axilla, a little bit posteriorly, cutting the skin, subcutaneous tissues, muscles one (1) rib, pleura of left lung, pericardium, penetrating the ventricles of the heart, Media stinum, the right lung and exit at the right chest. One inch opening.

"2. WOUND INCISED, one inch long at the left arm.

"CAUSE OF DEATH - Wound No. 1 causing instant death due to severe hemorrhage."

After hacking and stabbing to death Godofredo Pascua, the accused proceeded to the seashore of the barrio, and on finding Mariano Buenaflor leaning at the gate of the fence of his house, in a kneeling position, with both arms on top of the fence, and his head stooping down hacked the latter with the same bolo, first on the head, and after the victim fell and rolled to the ground, after said blow, he continued hacking him, until he lay prostrate on the ground, face up, when the accused gave him a final thrust of the bolo at the left side of the chest above the nipple running and penetrating to the right side a little posteriorly and superiorly with an exit at the back, of one (1) inch opening, (Exhibit B) causing instant death. The victim, Mariano Buenaflor sustained eight wounds, which were specifically described by Dr. Tan in his Autopsy Report (Exhibit "B" dated February 17, 1970, as follows:

"NATURE OF WOUNDS UPON AUTOPSY:

"1. WOUND STAB, Two (2) inches long at the left side of chest above the nipple, running to the right side a

little posteriorly and superiorly with an exit at the back of one (1) inch opening. Penetrating the skin, subcutaneous tissues, pericardium the suricles of the heart, the left lung to-wards the right side of back.

"2. WOUND STAB at sternum one and one-half (1-1/2) inches deep three fourth (3/4) inch long penetrating the skin and the sternum.

"3. WOUND STAB left side of neck three-fourth (3/4) inch long one and one-half (1-1/2) inches deep.

"4. WOUND HACKED, cutting left ear and bone four (4) inches long.

"5. WOUND HACKED, left leg three (3) inches long cutting skin and bone of anterior side.

"6. WOUND INCISED left palm two (2) inches long.

"7. WOUND STAB, one (1) inch long two (2) inches deep at the back near spinal column.

"8. WOUND HACKED, two (2) inches long at dome of head cutting skin and bone.

"CAUSE OF DEATH - Wound number one (1) causing instant death due to severe hemorrhage from the heart."

Out of the eight (8) wounds, two (2) are mortal wounds, namely, wound Number one (1) and wound Number Three (3), (Exhibit "B") (t.s.n., pp. 18-20, Session November 22, 1971). The two victims Godofredo Pascua and Mariano Buenaflor, together with the accused are neighbors, residing at the same street of Barrio Nato, Sagñay, Camarines Sur (t.s.n. pp. 31, Session Nov. 22, 1971). The bloody incident was not preceded or precipitated by any altercation between the victims and the accused (t.s.n. p. 60, Nov. 22, 1971).

Likewise, it is an undisputed fact that three years prior to this incident, the two victims had a misunderstanding with the accused while fishing along Sagñay River. During this occasion it appears that the accused requested Godofredo Pascua to tow his fishing boat with the motor boat owned by Mariano Buenaflor but the request was refused by both. This refusal greatly offended and embittered the accused against the victims. From this time on, the accused begrudged the two, and entertained personal resentment against them. And although on several occasions, the accused was seen at the same table with Godofredo Pascua drinking liquor, the friendly attitude towards Pascua, seems to be merely artificial than real, more so, with respect to Mariano Buenaflor whom he openly detested. He consistently refused to associate since then with the two victims, especially, Mariano Buenaflor. In fact, no less than ten attempts were made by Amado Payago, a neighbor, inviting the accused for reconciliation with the victims but were refused. Instead, defendant when intoxicated or drunk, used to challenge Mariano Buenaflor to a fight, and announce his evil intention to kill them. (t.s.n. pp. 50-53, Session November 22, 1971.)

Also proved beyond dispute, the fact that the bolo or "palas" belongs to the accused. That after killing the two victims, he returned to his house, where he subsequently surrendered to Policemen Adolfo Avila, Juan Chavez, and Erasmo Valencia, upon demand by said peace officers for him to surrender. When brought to the Police Headquarters of the town for investigation he revealed that the bolo he used in the killing was hidden by him under the table of his house. Following this tip, Patrolman Jose Baluyot was dispatched, and recovered the weapon at the place indicated, which when presented to the thief of Police was still stained with human blood from the base of the handle to the point of the blade. And when asked as to who was the owner of said bolo, the accused admitted it as his. He also admitted the killing of Godofredo Pascua and Mariano Buenaflor. However, when he was asked to sign a statement, he refused.[1]

For the killing of Godofredo Pascua and Mariano Buenaflor, Filomeno Camano was charged, under two (2) separate informations, with the crime of murder attended by evident premeditation and treachery. By agreement

of the parties, the two cases were tried jointly.

The accused admitted killing Mariano Buenaflor, but claims that he did so in self-defense. He denied killing Godofredo Pascua. He also denied holding a grudge against Godofredo Pascua and Mariano Buenaflor and belittled the fist fight he had with Mariano Buenaflor. He said that while they were drinking, they had a heated discussion, and because they were drunk, it resulted in a fist fight, which they had soon forgotten.[2]

His version of the incident is that in the early morning of February 17, 1970, he was fishing in the open sea. He went ashore at about 7:00 o'clock in the morning and was met by Mariano Buenaflor who, upon seeing that he had a big catch, demanded a percentage for the fishery commission. When he refused to give what was asked, Buenaflor remarked that he was hard-headed. He went home, taking his things along with him. After eating breakfast, he went to sleep and awoke at about 3:30 o'clock in the afternoon.[3] He ate his dinner[4] and prepared to go out to sea again. While he was standing in the yard of his house, Mariano Buenaflor, Godofredo Pascua, Gorio Carable, Jesus Carable, Tomas Carable, Abelardo Bolaye, Amado Payago, and Loreto Payago, who were drinking at the store of Socorro Buates, went to him and Godofredo Pascua, without any provocation whatsoever, boxed him. He recounted what happened next: "I defend myself but inspite of that I was hit on my upperarm. Then after that I was again boxed by Mariano Buenaflor and I was hit on my lower jaw. (Witness pointing to the bolo marked Exhibit C.) And I was able to grab that bolo from him."

"When I met Godofredo Pascua he was on the act of boloining me but I was able to take hold of his hands and I was able to grab the bolo. After I have taken the bolo from Godofredo Pascua, all I know is that he fell on the ground and the rest of the group except Mariano Buenaflor run away after seeing that Godofredo Pascua fell already on the ground. Mariano Buenaflor approached me having also a bolo then immediately when we meet each other I bolloed him and when he was wounded he run away and when he was running away I run after him. After I have bolloed Mariano Buenaflor he run away so I run after him because I know that he has a gun and if he reach home he will get that gun and he might shoot me." [5] Mariano Buenaflor was hit on the head.

The trial court, however, rejected the defense of the accused, saying:

"Coming to the evidence for the defense, the Court, much to its regret cannot give credence to the testimony and story of the accused, and his lone witness, Nemesio Camano, who is his first cousin. The claim of self-defense does not find support in the evidence presented. The claim, that a group of eight (8) men headed by Godofredo Pascua and Mariano Buenaflor ganged up on him by boxing him one after another while others were throwing stones at him; that he was attacked by Godofredo Pascua with a bolo which he succeeded in wresting from him; that he did not know Godofredo Pascua was killed; that he killed said Mariano Buenaflor after a bolo duel, are mere fictions of a desperate man without evidentiary support. His testimony on these points, and that of his cousin Nemesio Camano are simply incredible not only because they are inherently improbable in themselves, but also because of their clear inconsistencies on contradictions against each other. For, conceding in gratia arguementi that he was really ganged up by eight persons, some boxing him while others throwing stones at him, and two of whom were armed with a bolo, and that he was all alone fighting then, and yet he did not suffer any physical injury, is indeed incredible and beyond belief. With eight (8) persons to contend with, two armed with bolos, it is simply unbelievable that he should come out of the melee unscathed.

"The Court has carefully examined and verified very carefully each and every piece of evidence presented by the defense and has relaxed all technical rules of evidence in favor of the accused in search for evidentiary support of his claim of self-defense in vain. Conscious of the enormity of the offense and the bitterness attached to an adverse decision, the Court has earnestly searched in vain for facts upon which to lay the basis at least of a finding of reasonable doubt in favor of the accused at least just to avoid the ugly and unpleasant task of signing an adverse court decision. But, the falsity of their concocted story is so apparent and self-evident to

need further elucidation. This is demonstrated by the record. They simply cannot stand, as basis of belief. Moreover, the Court feels very much intrigued by the fact that notwithstanding that many people witnessed the incidents, having occurred in broad daylight, and that the accused had more sufficient time to look for witnesses among his friends, relatives, and neighbors in the barrio, during the long period that this case has been pending trial since February 17, 1970, that he could not get any witness to testify in his favor, other than his lone witness, Nemesio Camano, whose testimony, coming as it is from a very close relative is naturally very vulnerable to grave doubt and suspicion for coming from a biased source. Could this mean lack of public sympathy because the horrible act was in truth committed by the accused? Is this a sign of public condemnation? Be it as it may, this unpleasant circumstance has no bearing or influence in the painful decision of this case. What impelled and compelled this Court in making this painful decision, much to his dislike, are the bare and incontrovertible facts of the case born out by the evidence presented indicating beyond peradventure of doubt the stark reality which shows that there exist that moral certainty that convinces and satisfies the reason and conscience of those who are to act upon it. (People v. Lavarios, L-24339, June 29, 1968, 22 SCRA 1321) For the bitter conclusions herein reached, is based on the compelling and irresistible facts born out by the evidence of record found after sleepless night of study that the accused is guilty beyond reasonable doubt of the crime charged committed with the aggravating circumstances of evident premeditation, treachery, abuse of superior strength, and intoxication no mitigating circumstance. The accused and his only witness, Nemesio Camano changed their declarations not only once, twice, or thrice, but many times, placing the Court in quandary and confused that theory or testimony is to be believed and considerations among the mess of contradictory, inconsistent, and diametrically opposed statements. Considering the manner and tenor they were given, - the accused and his only witness changing stand in every turn, leaves no room for doubt than that said testimonies are merely concocted and fabricated as a desperate attempt to salvage a hopeless case."[6]

In this appeal, the fact of death of Godofredo Pascua and Mariano Buenaflor and the cause of their deaths are not disputed. Counsel, de officio merely claims that the accused is guilty of homicide only in each case, and not murder, as charged; and prays for the modification of the judgment and the consequent reduction of the penalty imposed upon the accused Filomeno Camano.

(1) Counsel contends that there is no evident premeditation since the acts of the accused, as testified to by the prosecution witnesses, are all indicative of a "spur-of-the-moment" decision and action.

The contention is well taken. There is evident premeditation when the killing had been carefully planned by the offender, when he prepared beforehand the means which he deemed suitable for carrying it into execution, and when he had sufficient time dispassionately to consider and accept the consequences, and when there has been a concerted plan.[7] It has also been held that evident premeditation requires proof of the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient lapse of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[8] In the instant case, it cannot be stated that the killing of Pascua and Buenaflor was a preconceived plan. There is no proof as to how and when the plan to kill Pascua and Buenaflor was hatched or what time had elapsed before the plan was carried out. The trial court merely concluded that the killing of Pascua and Buenaflor was premeditated because "the accused has been nursing the evil design to kill both the victims since three years prior to the occurrence of the incident on February 18, 1970, when both of them refused the request of the accused to have his boat towed by the motor boat belonging to Mariano Buenaflor while fishing along Sañgay River," and "from that time on, to the fatal killings, said accused refused consistently to join his neighbors in their drinking spree where both the victims especially Mariano Buenaflor were present;" "in fact, no less than ten attempts made by witness Amado Payago inviting the accused to be reconciled with the victims were rejected;" and that "on the contrary, it has been established that whenever the accused was drunk, he announces his intention to kill the

victims, and as a matter of fact he challenged several times Mariano Buenaflor to a fight."

The incident referred to, however, does not establish the time when the appellant decided to commit the crime. If ever, the aforementioned incident merely established the motive for the killing of the two victims.[9]

The fact that the accused had challenged Mariano Buenaflor to a fight whenever he was drunk and announces his intention to kill the latter does not reveal a persistence of a criminal design since there is no showing that in between the utterances of the threats and the consummation of the crime, the appellant made plans or sought the deceased to accomplish the killing.

As there is no direct evidence of the planning or preparation in the killing of Pascua and Buenaflor and of the marked persistence to accomplish that plan, the trial court's conclusion cannot be sustained.

(2) Counsel for the accused also claims that treachery is not present in the commission of the crime.

The contention is without merit. Amado Payago categorically declared that Filomeno Camano attacked Godofredo Pascua from behind, a method which has ensured the accomplishment of the criminal act without any risk to the perpetrator arising from the defense that his victim may put up. His testimony reads, as follows:

"Q At that time and date while you were in front of your house did you notice whether there is anything unusual incident that happened?

A Yes, sir.

Q Can you relate before this Honorable Court?

A Yes, sir.

Q Please relate it?

A I saw Filomeno Camano run towards his house and took a bolo and run after Godofredo Pascua and immediately stabbed him.

Q How far more or less were you when Godofredo Pascua was stabbed by Filomeno Camano?

A More or less 12 to 15 meters.

Q What was Godofredo Pascua doing when he was stabbed by Filomeno Camano?

A He was walking to his house.

Q In relation to Godofredo Pascua where was Filomeno Camano at the time that Filomeno Camano stabbed Godofredo Pascua?

A From behind sir.

Q After Godofredo Pascua was stabbed by Filomeno Camano what happened to Godofredo Pascua?

A He fell down and keep on turning.

Q What about Filomeno Camano, what did he do after Godofredo Pascua fell down?

A He run towards the seashore looking after Mariano Buenaflor."[10]

His testimony is corroborated by the nature and location of the wounds sustained by the deceased Godofredo Pascua. The autopsy report,[11] showed that the point of entry of the stab wound inflicted upon Pascua was three (3) inches long and three (3) inches below the left armpit, a little bit posteriorly or toward the hinder end of the

body; and the point of exit was the right chest, one (1) inch lateral to the right nipple with a one (1) inch opening. If the deceased was stabbed while he was facing his assailant, as claimed by counsel for the accused, the entrance wound would have been in the front part of the body, and its exit wound, if any, would be at the back. The trial court, therefore, did not commit an error in finding that the deceased Godofredo Pascua was assaulted from behind.

With respect to Mariano Buenaflor, the evidence shows that he was attacked while in a kneeling position, with his arms on top of the gate of the fence surrounding his hut and his head was "stooping down." [12] He was hacked on the head, causing him to fall to the ground, and then successively hacked and stabbed without respite, as he lay on the ground, until he died. The attack was also sudden, unexpected, and lethal, such as to disable and incapacitate the victim from putting up any defense.

(3) Counsel de officio further claims that the aggravating circumstance of abuse of superior strength, which the lower court appreciated in fixing the penalty, is absorbed in treachery.

This contention is likewise correct. The rule is already settled that abuse of superiority is absorbed in treachery. [13]

(4) Counsel next contends that the alternative circumstance of intoxication was erroneously appreciated as an aggravating circumstance. Counsel argues thusly:

"As to the alternative circumstance of intoxication, it is respectfully submitted that there was no proof that the accused was intoxicated at the time of the killing other than the bare testimony of Payago that from his house he allegedly saw the accused drinking in his house which is about 30 meters away. The prosecution did not present any police report or doctor's certification that accused was found to be intoxicated at the time of the killing. Moreover, it was not shown by competent evidence that accused purposely became drunk to facilitate the commission of the offense.

"If at all, intoxication should be properly appreciated as a mitigating circumstance because it affected accused's mental faculties such that it diminished his capacity to know the injustice of his acts and to comprehend fully the consequences of his acts." [14]

There is merit in the contention. Drunkenness or intoxication is mitigating if accidental, not habitual nor intentional, that is, not subsequent to the plan to commit the crime. It is aggravating if habitual or intentional. [15] To be mitigating, it must be indubitably proved. [16] A habitual drunkard is one given to intoxication by excessive use of intoxicating drinks. The habit should be actual and confirmed. It is unnecessary that it be a matter of daily occurrence. It lessens individual resistance to evil thought and undermines will-power making its victim a potential evildoer. [17]

The records of these cases do not show that the appellant was given to excessive use of intoxicating drinks although he used to get drunk every now and then. The testimony of Amado Payago to this effect, reads as follows:

"Q But after that incident Godofredo Pascua and Filomeno Camano are already in good terms because they even go on drinking spree, is it not?

A Yes, sir, that is true but Filomeno Camano has an evil plan against Godofredo Pascua.

Q And how did you come to know about this plan?

A He talk(s) (about) that very openly specially when he is drunk.

Q During the three years that the incident where Camano's boat was not towed, could you remember had many

times more or less did you hear him speak about his plan before the stabbing incident?

A Whenever he is drunk.

Q Can you not remember more or less how many times have you heard him?

A I cannot remember, sir.

Q About five times?

FISCAL CLEDERA:

Already answered.

A Whenever he is drunk.

ATTY. TRIA:

Q How often does he drunk (sic), if you know?

A I cannot estimate, sir.

Q What about Mariano Buenaflor, could you also state that there had been an altercation between him and Filmeno Camano prior to the incident, is it not?

A Yes, sir.

Q What was this altercation about?

A It started when the request of Filomeno Camano to tow his boat was refused by Godofredo Pascua because that boat used by Godofredo Pascua is owned by Mariano Buenaflor.

Q How did you also know that Camano resented against (sic) this Buenaflor?

A Everytime he is drunk he keep(s) on challenging Mariano Buenaflor."

xxxxx xxxxx xxxxx

Q Have you ever seen the accused Filomeno Camano drink liquor immediately prior to the incident?

A Yes, sir.

Q Where?

A In his house.

Q When you saw him where were you?

A I was also in my house because I can just see his house from our window.

Q About had far is your house from the house of Filomeno Camano so that you can see from your house?

A More or less 30 meters.

Q With whom was Filomeno Camano drinking?

A Bienvenido Pascua, Leopoldo Balaye and this (sic) persons (who) are living far from our house.

Q According to your personal knowledge do you know whether or not the accused was drunk when this incident happened?

A Yes, sir.

Q But the truth is that, you still affirm that you don't know of any incident immediately prior that has precipitated this stabbing incident between the accused and the victim?

A None, sir.

ATTY. TRIA:

Q How about you, did you now drink that time?

A No, sir."[18]

The intoxication of the appellant not being habitual, and considering that the said appellant was in a state of intoxication at the time of the commission of the felony, the alternative circumstance of intoxication should be considered as a mitigating circumstance.

5. Finally, counsel claims that death is a cruel and unusual penalty and not proper in the cases at bar, citing Art. IV, Sec. 21 of the Constitution which provides that: "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."

The

contention is without merit. The death penalty is not cruel, unjust or excessive. In the case of *Harden vs. Director of Prisons*,[19] the Court said:

"The penalty complained of is neither cruel, unjust nor excessive. In *Ex-Parte Kemmler*, 136 U.S. 436, the United States Supreme Court said that 'punishments are cruel when they involve torture or a lingering death, but the punishment of death is not cruel, within the meaning of that word as used in the Constitution.' It implies there something inhuman and barbarous, something more than the mere extinguishment of life."

The trial court, therefore, did not err in finding the accused Filomeno Camano guilty of Murder in each of the two cases. The offense being attended by the mitigating circumstance of intoxication, without any aggravating circumstance to offset it, the imposable penalty is the minimum of that provided by law or 17 years, 4 months and 1 day to 20 years of reclusion temporal. Applying the Indeterminate Sentence Law, the appellant should be, as he is hereby, sentenced to suffer an indeterminate penalty ranging from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum, in each case.

WHEREFORE, with the modification of the penalty imposed upon the appellant, as above indicated, the judgment appealed from should be, as it is hereby, **AFFIRMED** in all other respects. With costs against the said appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr. JJ., concur. Makasiar, J., besides intoxication, voluntary surrender shall also mitigate the guilt of appellant, who had the choice to surrender or not when demanded by the policemen, who did not place him under arrest nor had an arrest warrant. Aquino, J., dissents. Premeditation is aggravating. The accused should be sentenced to two reclusion perpetuas.

[1] Decision, pp. 2-6.

- [2] t.s.n., Nastor, p. 102.
- [3] Id., pp. 97-98.
- [4] Id., p. 107.
- [5] Id., pp. 100-101.
- [6] Decision, pp. 13-16.
- [7] U.S. vs. Cornejo, 28 Phil. 457.
- [8] People vs. Verges, G.R. Nos. L-36882-84, July 24, 1981, 105 SCRA 744.
- [9] People vs. Alde, 158 Phil. 1285.
- [10] t.s.n., Nastor, pp. 45-46.
- [11] Exhibit "A".
- [12] t.s.n., Nastor, p. 62.
- [13] People vs. Guarnes, 110 Phil. 379; People vs. Belen, 118 Phil. 880; People vs. Tiongson, 120 Phil. 1197.
- [14] Appellant's Brief, p. 7.
- [15] Aquino, Revised Penal Code, p. 407.
- [16] Id., at p. 408.
- [17] Id., at pp. 408-409.
- [18] pp. 51-53 and 60-61, t.s.n., taken by E. Nastor.
- [19] 81 Phil. 741, 747.

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