

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIX MAGPANTAY AND EUGENIO ALCARAZ, ACCUSED AND APPELLANTS.

G. R. No. L-19133. November 27, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Review of the decision of the Court of First Instance of Oriental Mindoro, in its Criminal Case No. R-1788, for multiple murder, sentencing the accused, Arnulfo Estabaya, to the penalty of reclusion perpetua, and imposing on the other accused, Felix Magpantay and Eugenio Alcaraz, the death penalty; ordering them to pay, jointly and severally, the heirs of each of the ten deceased persons named in the information the sum of P6,000.00, and to pay the proportionate costs. The dispositive portion of the decision states, in addition to the foregoing, that "the penalties herein imposed are subject to the provision of Article 70 of the Revised Penal Code in case of commutation of penalties", and that the accused shall be credited with one-half of their respective preventive imprisonment.

The indictment, under date of 19 January 1960, to which these three accused pleaded guilty, charges them as follows:

"That on or about the 2nd day of June, 1950, at 7:30 o'clock in the evening, more or less, in the barrio of Villa-pagasa, municipality of Bongabon, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused. Felix Magpantay, Arnulfo Estabaya, Eugenio Alcaraz and Catalino Fajardo, all provided with unlicensed carbine rifle caliber .30 conspiring and confederating together, mutually helping one another and acting in common accord, with treachery and evident premeditation and the decided purpose to kill, taking advantage of the darkness of the night and their superior strength, wilfully, unlawfully and feloniously way laid, ambushed, attacked, assaulted and shot Lope Cadacio, Emilio Claveria, Doroteo Malabanan, Albino Sarian, Rosendo Raes, Ignacio Francisco, Hermogena Atilano, Catalino Gervacio, Filomeno Macalalad and Alejandro Fernandez with their said carbine rifles, while the victims were riding in a passenger-jeep bearing Plate No. TPU-14016, and inflicting upon them several gunshot wounds in the different parts of their bodies which caused their instantaneous death.

"That in the commission of the crime, the qualifying circumstance of treachery and the generic aggravating circumstances of evident premeditation, and taking advantage of their superior strength, are present.

"Contrary to law."

The fourth accused Catalino Fajardo having pleaded not guilty, the decision under review was rendered with respect only to those named heretofore. The judgment considered two aggravating circumstances, those of evident premeditation and superior strength, as present in the commission of the crime; Arnulfo Estabaya was, however, credited with the mitigating circumstances, those of plea of guilty and voluntary surrender, while Magpantay and Alcaraz were credited with one mitigating circumstance, that of having pleaded guilty.

In addition to their plea of guilty, each of the three accused, Magpantay, Alcnraz and Estabaya, insists on the mitigating circumstance of voluntary surrender. Magpantay claims, in addition thereto, lack of instruction. Estabaya adduced no evidence when the fiscal admitted that his surrender was voluntary.

In support of their claim for additional mitigation, Magpantay and Alcaraz declared that, after committing the crime, at about 7:00 in the evening of 2 June 1959 they went for the purpose of surrendering, to a certain Labo, a former barrio lieutenant of Villapagasa. They met him at about ten o'clock that same night. Labo refused to accept their surrender because he was no longer the incumbent official of the barrio; whereupon, Mappantay requested him to send word to the municipal mayor, Angel Rodriguez.

The accused then proceeded to barrio Rosacara, but the barrio lieutenant there also refused to accept their surrender on the ground that the crime was committed outside his territory. Magpantay requested him to fetch the mayor. The trio then proceeded to barrio Sapang Dagat, and from there Catalino Fajardo this co-accused had been with Magpantay and Alcaraz) prepared a letter to PC Sgt. Araman.

From Villapagasa to the poblacion of Bongabon is a distance of about 13 kilometers; Rosacara is farther by some kilometers. The route taken by the accused from the scene of the crime was away from the poblacion and towards the mountains. . On the second day of the incident, the accused had been informed that PC soldiers had been issued orders to kill them at sight.

Mayor Rodriguez of Bongnbon was informed of Magpantay's desire to surrender to him at about seven o'clock in the morning of 10 June 1959. He reported the matter to the PC detachment in Bumagui and to Colonel Ver. That same morning Magpantay, in tears and without a firearm, surrendered to the mayor in a sitio of Villapagasa, about two kilometers inland from Liberty Sawmill. Thereafter, the mayor delivered custody of Magpantay to Colonel Ver at the sawmill where he had waited, as pre-arranged with the mayor.

Sgt. Araman, P.C., received Fajardo's note of surrender on the 11th of June, referred it to the provincial commander, contacted Fajardo and Alcaraz on the 12th, slept with, them that same night, and on the following morning, on their way to the poblacion, the sergeant delivered the accused to his superiors. The accused then handed over their carbines.

Testifying in rebuttal for the prosecution, Sgt. Exequiel, Martinez asserted that civilians had informed the PC, of the whereabouts of the accused and that the area was cordoned with 160 soldiers. Said witness opined that this contingent provided no means of escape to the accused. When and how the area was cordoned was not touched upon, nor did he explain how escape had become impossible. Nor was it established that the accused knew' of their Alienated encirclement and that it prompted them to surrender in earnest.

We agree with herein appellants Alcaraz and Magpantay that the court below should have appreciated in their favor the mitigating circumstance of voluntary surrender Not only was there failure to prove that they felt that they had no other alternative course; but the fact that the PC authorities had waited at a designated place for the mayor to bring Magpantay down shows that they con-informed to his offer of voluntary surrender PC Colonel. Vcr waited at the sawmill to receive the surrender and not to capture him. The same thing can be said of appellant, Alcaraz, because the PC had prior knowledge of his offer to surrender when, on receipt of Fajardo's letter, Sgt. Araman referred it to the provincial commander; nor can it be contented that the P.C. officers and men effected a capture when they met Sgt. Araman and accused Alcaraz and Fajardo, already peacefully on their Way to the poblacion.

The flight of the accused from the scene of their crime to the mountains cannot be taken as belying their bona fide intention to surrender, because the evidence is un rebutted that they did earlier take steps to surrender. After

"ommitting the crime, they defied no law or agent of authority, and when they did surrender, they did so with meekness and repentance.

Appellant Alcaraz, undisarmed, slept with Sgt. Araman in an isolated place; had he been wanting in sincerity, Alcaraz, together with Fajardo, could easily have overpowered the sergeant, but did not do so. On the following morning, when the trio met the constabulary men on the way to the poblacion, Alcaraz surrendered himself and his rifle without any trouble.

We find no particular reason, however, to disturb the trial court's rejection of Magpantay's alleged lack of instruction as a mitigating circumstance. His answer to the questions propounded to him show that he understood the significance of his acts, notwithstanding his illiteracy (*People vs. Ripas, et al.*, 95 Phil. 63; *People vs. Sari*, L-7169, May 30, 1956).

The narration of the commission of the crime in the information avers five (5) circumstances which may qualify or aggravate the crime, namely: treachery, evident premeditation, superior strength, nocturnity, and band. However, in the succeeding paragraph, it specifies only the qualifying circumstance of treachery and the generic aggravating circumstances of evident premeditation and superior strength, without alleging anew the other circumstances. In view thereof, the Solicitor-General believes that only evident premeditation and abuse of superior strength should be taken into account in determining the penalty to be imposed, "since the view more favorable to the accused is that they had in mind" these two aggravating circumstances, which were reiterated by the fiscal in the paragraph following the narration of the commission of the crime "presumably for emphasis or clarification". To this view we agree. This separate specification certainly could have misled the accused and diverted their attention from the other aggravating circumstances included in the detailing of the crime. Under the circumstances, appellants in all probability pleaded guilty upon the estimation that the two aggravating circumstances stressed in the last portion of the information could be, and were, neutralized by their voluntary surrender and plea of guilty. The doubt should be resolved in favor of the accused, considering that they were in no way to blame for the ambiguous terms in which the information is couched.

Wherefore, the appealed judgment is affirmed, in so far as it finds the accused guilty of ten (10) separate murders, and modified by declaring that the aggravating circumstances of premeditation and superior strength were balanced by the mitigating circumstances of voluntary surrender and plea of guilty. Consequently, the penalty should be that of the imprisonment (reclusion perpetua) for each offense, to be successively served up to the maximum limit of forty (40) years imprisonment provided by Article 70 of the Revised Penal Code.

The solidary civil indemnity of P6,000.00 for each one of the ten persons slaughtered, payable to the respective heirs, is also affirmed. Each appellant shall pay one fourth of the costs.

Bautista Angelo, Concepcion, Barrera, Parades, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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