

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY TIONGSON, DEFENDANT-APPELLANT.

G.R. Nos. L-35123-24. July 25, 1984

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

At about 5:30 o'clock in the afternoon of October 26, 1971, the accused Rudy Tiongson escaped from the Municipal Jail of Bulalacao, Oriental Mindoro, together with George de la Cruz and Rolando Santiago, where they were detained under the charge of Attempted Homicide. While in the act of escaping, the said Rudy Tiongson killed Pat. Zosimo Gelera, a member of the police force of Bulalacao, Oriental Mindoro, who was guarding the said accused, and PC Constable Aurelio Canela of the PC Detachment stationed in Bulalacao, Oriental Mindoro, who went in pursuit of them.

By reason thereof, Rudy Tiongson was charged with Murder, in two separate informations, committed as follows:

1. Crim. Case No. R-DJC-243:

"That on the 26th day of October, 1971, at 6:00 o'clock in the evening, more or less, at Rizal, of the Municipality of Bulalacao, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RUDY TIONGSON, conspiring and confederating with Rolando Santiago and George de la Cruz, who are both at large by reason of their forced escape, and with treachery, wilfully, unlawfully and feloniously waited in ambush, waylaid and shot one C2C AURELIO M. CANELA, a member of the local Philippine Constabulary Command, while the latter was in hot pursuit of said accused who had earlier escaped from custody, thus fatefully resulting to the instantaneous death of the victim.

That the commission of the offense was qualified by the circumstance of treachery, and aggravated by the circumstances of evident premeditation, in contempt of or with insult to the public authorities, nocturnity, committed in an uninhabited place and with abuse of superior strength."

2. Crim. Case No. R-DJC-244

"That on the 26th day of October, 1971, at 5:30 o'clock in the afternoon, more or less, inside of the Municipal Building, of the Municipality of Bulalacao, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RUDY TIONGSON, conspiring and confederating with George de la Cruz and Rolando Santiago, and under the pretext that they would answer the call of nature, convinced Police First Class Patrolman Zosimo Gelera to allow them to go out from their being confined and detained in the Municipal Jail of same Municipality by virtue of a previous offense, and while still hardly out of said jail, ganged up said Zosimo Gelera, took the latter's service pistol, and with it, with treachery, shot point blank said police officer at his right cheek, tragically resulting to the victim's instantaneous death, and thereafter, made good their escape.

That the offense is qualified by the circumstance of treachery, and aggravated by the circumstances of evident premeditation, in contempt of or with insult to the public authorities and with abuse of superior strength."

Upon arraignment, the said accused, assisted by counsel de oficio, pleaded guilty to both informations. The trial court, however, did not render judgment out-right, but ordered the prosecution to present its evidence, after which, it sentenced the said accused to suffer the death penalty in each case, to indemnify the heirs of the victims in the amount of P12,000.00, and to pay the costs.

The death penalty having been imposed, the cases are now before the Court for mandatory review.

1. Able counsel appointed for the accused first claims that the acceptance of the plea of guilty was precipitate since the trial judge did not ascertain from the accused that the latter was aware of the consequences of his plea of guilty and that he fully understood the significance and meaning thereof. Wherefore, he prays that the cases be returned to the court below for proper proceedings.

The norm that should be followed where a plea of guilty is entered by the defendant, especially in cases where the capital penalty may be imposed, is that the court should be sure that defendant fully understands the nature of the charges preferred against him and the character of the punishment provided by law before it is imposed. For this reason, the Court requires that in every case under a plea of guilty, where the penalty may be death, the trial court should call witnesses for the purpose of establishing the guilt and degree of culpability of the defendant and not only to satisfy the trial judge but to aid the Supreme Court in determining whether accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.[1]

In the instant case, the trial judge required the taking of testimony as to the circumstances under which the crime was committed before passing judgment so that the resulting verdict cannot in any way be branded as deficient.

2. Counsel also contends that the evidence present-ed by the prosecution does not warrant, nor support, the finding that the killing of Pat. Zosimo Gelera was qualified by treachery since the prosecution failed to present any eyewitness who directly saw the killing of Pat. Gelera. The Solicitor General agrees with counsel for the accused.

According to the Revised Penal Code,[2] "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."

In the instant case, it does not appear how and in what position the victim was when he was killed so that it cannot be said for certain that the accused had adopted a mode or means of attack tending directly to insure or facilitate the commission of the offense without risk to himself arising from the defense or retaliation which the victim might put up.

Pat. Nicandro Garcia of the Bulalacao police force merely declared that he was in his house, about 15 meters away from the municipal building when the accused Rudy Tiongson and his companions escaped from prison,[3] and he did not see the accused shoot Pat. Gelera.[4]

Police Chief Edwardo Borwangga did not also see the accused Rudy Tiongson shoot Pat. Gelera. He declared that Pat. Gelera was already dead when he arrived at the municipal building in the afternoon of October 26, 1971. [5]

PC Sgt. Teotimo Saway, who led the pursuit of the escaped detainees, declared that he was in one of the stores in front of the Bulalacao municipal building, about 60 meters away, when he heard two (2) gunshots coming from the direction of the municipal building,[6] and Pat. Gelera was already dead when he saw him.[7]

The circumstances qualifying or aggravating the act of killing a human being must be proved in an evident and incontestable manner, mere presumptions or deductions from hypothetical facts not being sufficient to consider them justified. Thus, in the case of U.S. vs. Barbosa,[8] the Court said that "since the case does not furnish any evidence to the effect that Barbosa had formed the deliberate, premeditated intention to take the life of his wife,

and there was no eyewitness as to the manner in which the deceased was strangled; consequently there is no provision of law under which we can hold that the crime was committed with treachery, and it must be borne in mind that the qualifying circumstances of a crime in its commission, in order to be considered, must be established by competent evidence as well as the crime to which they relate."

In the case of *U.S. vs. Perdon*,^[9] the Court said that since "neither this witness nor any other gives any particulars whatever as to the manner in which the aggression was made, nor how the act which resulted in the death of the deceased began and developed; and this being the case, it can not be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that the accused had employed means tending to insure its success without any danger to his person, which constitutes treachery (*alevosia*) as defined by the Penal Code. The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and can not produce the effect of aggravating the condition of the defendant."

The Court, in *U.S. vs. Asilo*,^[10] also ruled that since it was not established "that the aggressors employed any means which might have rendered all defenses impossible for the deceased, inasmuch as no one witnessed the very act of aggression, there is not sufficient ground to establish the conclusion that the attempt which deprived Anastacio Claridad of his life was made with treachery (*alevosia*). The treachery can in no way be presumed, but must be fully proven in order to be appreciated for the effects of the Penal Code."

In *People vs. Ramiscal*,^[11] the Court rejected the claim that treachery was present because "at the time that the accused inflicted the wound upon the deceased there was not a single eyewitness, for when the witnesses Umali and Chua Chuan entered the store the wound had already been inflicted."

The Solicitor General also agreed with the defendant's counsel that treachery is not present in the killing of PC Constable Aurelio M. Canela since the deceased was actually warned by PC Sgt. Saway not to remain standing but seek cover because of the known presence of the accused in the vicinity, but that the said deceased disregarded the warning. The pertinent portion of the testimony of PC Sgt. Saway reads, as follows:

"FISCAL SADICON:

Q Were you alone while you were pursuing those three escaping prisoners?

A No, sir.

Q Who was your companion if there was any?

A Pat. Nicandro Garcia, sir.

Q While you were pursuing these prisoners what happened next?

A When we were already along the mountain then watching for the appearance of the three escapees, I saw C2C Aurelio Canela, sir.

Q What does this C2C mean?

A Constable Second Class, sir.

Q After seeing C2C Aurelio Canela approaching while you were waiting for the three escapees what did you do?

A I signaled him to lie flat and indicated to him where the escapees seem to be moving, sir.

Q Then what did C2C Canela do upon your signal?

A He continued walking towards me and at that precise moment I signaled him again to lie down because the escapees-prisoners were there, sir.

Q After that what happened?

A He did not heed my instruction and because of that I approached him and tried to hold him instructing him to lie down but on that precise moment two shots were fired, sir.

Q From what direction those two shots came from?

A From my left approximately 4 meters away from me, sir.

Q What happened after hearing those two shots?

A I saw Canela already hit and shouting 'aruy' sir."[12]

Considering that PC Constable Canela had been sufficiently forewarned of the presence of the appellant in the vicinity and that he was not completely deprived of an opportunity to prepare and repel or avoid the aggression, treachery cannot be appreciated.

Since treachery, which would qualify the killing of Pat. Gelera and PC Constable Canela to Murder, was not present, the crimes may only be punished as Homicide. It may be true that a judicial confession of guilt admits all the material facts alleged in the information, including the aggravating circumstances listed therein, as stated by the trial judge, yet where there has been a hearing and such circumstances are disproven by the evidence, they should be disallowed in the judgment.[13]

3. We also agree with the parties that the aggravating circumstances of (1) evident premeditation, (2) in contempt of or with insult to public authorities, (3) uninhabited place, and (4) abuse of superior strength were not present in the commission of the crimes.

Evident premeditation must be ruled out in view of the absence of sufficient proof that a plan to kill the victims existed, the execution of which was preceded by deliberate thought and reflection. Besides, with respect to the killing of PC Constable Canela, only ten minutes passed from the time the accused escaped from the Municipal Jail up to the time he shot PC Constable Canela near the cemetery,[14] so that there was no lapse of time during which he could have deliberately planned the kill-ing of the said PC Constable and meditated on the consequences of his act.

4. The aggravating circumstance that the crimes were committed in contempt of or with insult to the public authorities cannot also be appreciated since Pat. Gelera and PC Constable Canela were the very ones against whom the crime were committed. Besides, Pat. Gelera and PC Constable Canela are not persons in authority, but merely agents of a person in authority.[15]

5. The lower court also found that the killing of PC Constable Canela was committed in an uninhabited place. It has not been shown, however, that the offense was committed in an isolated place, far from human habitation. In order that the aggravating circumstance of the commission of a crime in an uninhabited place may be considered, it is necessary that the place of occurrence be where there are no houses at all, a considerable distance from the village or town, or where the houses are a great distance apart.[16] Here, PC Sgt. Saway merely declared that the place where PC Constable Canela was shot was about 700 meters away from the Municipal Building of Bulalacao, Oriental Mindoro,[17] which does not satisfy the requirement. Besides, the record does not show that the place was intentionally sought by the accused to facilitate the commission of the crime. The accused was trying to evade his pursuers, PC Constable Canela among them, and their encounter was purely by chance. The lower court, therefore, erred in finding that the crime was

committed in an uninhabited place.

6. Finally, the aggravating circumstance of abuse of superior strength must also be ruled out since there is no direct evidence that the accused employed superior strength in the killing of Pat. Gelera. The accused was then a detainee and was unarmed while Pat. Gelera had his service pistol with him. With respect to PC Constable Canela, the accused was alone against three armed pursuers, namely: PC Sgt. Saway, PC Constable Canela, and Pat. Nicandro Garcia and a civilian by the name of Fred Barcelona.[18]

As heretofore stated, the accused is guilty only of the crime of Homicide in the killing of PC Constable Canela and Pat. Gelera. The Solicitor General recommends that the accused should be sentenced to suffer imprisonment of from 8 years and 1 day to 14 years and 8 months, with the accessory penalties, for each homicide committed by him. The penalty recommended is within the range provided by law.

WHEREFORE, with the modification that the accused Rudy Tiongson should be sentenced to suffer imprisonment of from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, for each homicide committed by him, the judgment appealed from should be, as it is hereby, **AFFIRMED**. The indemnity to be paid to the heirs of the victims is hereby increased to P30,000.00 in each case.

SO ORDERED.

Aquino, Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Fernando, C.J., in the result.

Teehankee, J., no part.

Makasiar, J., reserves his vote.

[1] People vs. Gonzales, L-34674, Aug. 6, 1979, 92 SCRA 527 and other cases cited therein.

[2] Art. 14, No. 16.

[3] tsn. of Dec. 20, 1971, p. 11.

[4] Id., p. 4.

[5] Id., p. 13.

[6] tsn. of Dec. 20, 1972, p. 2.

[7] Id., p. 4.

[8] 1 Phil. 741 (1903).

[9] 4 Phil. 141 (1905).

[10] 4 Phil. 175 (1905).

[11] 49 Phil. 104.

[12] tsn of Jan. 4, 1972, p. 3.

[13] People vs. Boyles, 120 Phil. 92.

[14] tsn of Dec. 20, 1971, p. 11.

[15] *People vs. Verzo*, 129 Phil. 628.

[16] *U.S. vs. Salgado*, 11 Phil. 56.

[17] tsn of Jan. 4, 1972, p. 11.

[18] tsn of Dec. 20, 1971, p. 10; tsn of Jan. 4, 1972, p. 4.

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