

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIEGO BALONDO, DEFENDANT-APPELLANT.

G.R. No. L-27401. October 31, 1969

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

The Court of First Instance of Leyte found the defendant Diego Balondo guilty of the crime of murder and sentenced him to suffer the extreme penalty of death. This case is now before this Court on automatic review of the decision of the trial court.

On October 21, 1966 the Provincial Fiscal of Leyte filed the following information against the defendant:

"The undersigned Provincial Fiscal accuses Diego Balondo of the crime of murder, committed as follows:

"That on or about the 29th day of September, 1966, in the Municipality of Kawayan, Subprovince of Biliran, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and strangle one Gloria Bulasa and inflicting upon the said Gloria Bulasa the following injuries, to wit:

- '1. Liver mortis of the face, anterior abdominal wall, and anterior chest wall;
2. Semi-circular marks at the lateral portion of the neck, both sides;
3. Circular incision around the upper third of the thigh at the level of the inferior border of the gluteal muscles of both thighs;
4. Complete lose of the soft tissues of the thighs and legs in such manner that only the bones of the parts mentioned were left;
5. Both feet were missing from the ankle joints downwards;
6. All digits of the left hand were missing from the carpal-metacarpal joints downward;
7. Incised wound from the left shoulder along the medial border of the left scapula to the inferior angle of the right scapula, upwards along its lateral border to the right shoulder, medially towards the base of the neck posteriorly to the left shoulder, with lose of the skin and the underlying tissues.'

thus causing the instantaneous death of the aforementioned Gloria Bulasa.

"That the crime was committed with the aggravating circumstances of abuse of superior strength; that the wrong done in the commission of the crime was deliberately augmented by causing another wrong not necessary for its commission; that means was employed or circumstances brought about which add ignominy to the natural effects or the act; that the act was committed in utter dis-regard of sex; and also the aggravating circumstance of relationship, the victim being the niece of the accused.

"Contrary to Article 248 or the Revised Penal Code."

The record shows that when this defendant was apprehended after the discovery of the dead body of Gloria Bulasa, upon being investigated by the Chief of Police of Kawayan, he readily admitted having killed Gloria Bulasa. His admission was reduced to writing in the Visayan dialect understood by him, and signed by him. Subsequently, a more lengthy investigation was conducted by the Chief of Police, and again the defendant admitted having killed Gloria Bulasa and narrated in detail how he killed Gloria Bulasa and what he did with the body of Gloria Bulasa. The defendant was taken to the place where the crime was committed and he even reenacted what he did with the deceased Gloria Bulasa. The statements made by the defendant in this detailed examination by the Chief of Police, including his statements during the reenactment of the crime, were reduced to writing, and were subscribed and sworn to by him before the municipal Judge of Kawayan. The statements made by the defendant in his written admissions" were corroborated in important details by Meliton Bulasa, father of the victim, and by Anatalio Bulasa, an uncle of the victim, who both signed sworn statements before the municipal judge. A post mortem examination of the body of the deceased Gloria Bulasa was made by Dr. Jose J. Tupaz, the municipal health officer of Kawayan, and the injuries found by the medical officer on the body of the deceased indicated the brutal acts committed by the defendant on his victim, as narrated by the defendant him-self in his sworn statements.

The corresponding criminal complaint was filed by the Chief of Police of Kawayan, Leyte, before the municipal court of the said municipality. During the preliminary investigation of the case, the defendant pleaded guilty to the charge of murder when he was arraigned. He not only admitted his guilt, but he narrated before the municipal judge the circumstances attending the killing of Gloria Bulasa.

On October 24, 1966 the defendant was arraigned before the Court of First Instance or Leyte. The trial court appointed Atty. Delia Tantuico counsel de oficio for the defendant. Atty. Tantuico conferred with the defendant, and after the conference the counsel manifested before the court that the defendant was ready for arraignment. The information was read to the defendant in the local dialect, called the Waray-Waray dialect, which is understood by the defendant. After the reading of the information the defendant voluntarily pleaded guilty to the charge of murder alleged in the information. Thereafter, the trial court rendered the decision which is now before this Court on review.

We have carefully examined the record of this case, and We fully agree with the findings and observations of the trial court in its decision, as follows:

"From the records and varied written admissions of the accused, Diego Balondo, that on Sept. 29, 1966, at about 6:00 o'clock, A.M., he was in his farm in the barrio of Balacson, Kawayan, Subprovince of Biliran, Leyte. That he stayed in his farm for about three hours clearing his camote plantation; that at about 9:00 o'clock in that same day, he went home to take his breakfast; that at about 1:00 o'clock, he saw Gloria Bolasa going to the direction of the nipa grooves of the Ayono Asilo, behind the Aglipayan church; that upon seeing her, he followed behind surreptitiously; that upon seeing her cutting the banana leaves he told her, 'why, you are here again to cut the banana leaves?', that the late Gloria Bolasa answered, 'it is none of your business for its the property of the government'; that he got furious and immediately grabbed her by his left hand strangled her by the neck and pushed her violently to the ground face downward; that he firmly held her left arm and neck, rode on her back and pinned her down with his knees and then continuously lifting her head and smashed her face against the mud; that he choked and buried her face in the mud for about an hour until she died.

"And that when she was already dead, he lifted her from the mud and laid her flat on her back, and then he held her by the feet, dragged her to a place from where he killed her, at a distance of about thirty brazas; that he covered the body with nipa leaves to keep her from the sunlight; that the deceased was carrying a knife for cutting the banana leaves, and she was a niece of the accused from a second degree cousin; that he sliced and

took the flesh from the thighs, legs and shoulder by the use of the knife or Gloria Bolasa because his bolo was dull, after which he throw the knife away; that he cut away also the feet; that he intended to slice all the flesh of the cadaver but he was caught by the darkness of the night; that he put the sliced flesh with a piece of rattan, tied it and brought it to his farm; that upon reaching his farm, he started to build a fire and bar-becued the sliced pieces of human flesh (roasted it) and he ate the barbecued pieces of human flesh and used it as a viand for the roasted banana fruits; that the taste of the human flesh was bitter and poignant like a gall bladder; that he killed Gloria Bolasa first to taste the human flesh if its good; that after doing all those atrocious acts, he went home at about 7:00 o'clock in that evening."

x x x x

"In passing judgment to the accused, Diego Balondo, the Court has this lamentable observation with this peculiar case.

"The spectacle of knowing a human being killed and slaughtered in this island, subprovince at Biliran, Leyte, for unknown motivation is not a news at all in this jurisdiction because such incident are too common and numerous for the court to recall. But when one, like in this case, choked a maiden to death just 16 years old for the simple reason that she was getting leaves from the banana plants of the accused to wrap a local cookies, the said accused-after killing her, sliced the flesh of the legs, shoulder and the thigh, cooked those human flesh; devoured them like an ancient cannibal; the accused, Diego Balondo went bizarrely beyond the extreme or a carnivorous wild beast."

Counsel de oficio, Atty. Justo R. Albert, in his brief for the defendant, urges that the trial court should have subjected the defendant to some psychiatric test to determine his sanity before rendering judgment, and prays this Court "that the judgment of the lower court be set aside and this case be remanded for trial with admonition to the lower court to order the submission of the accused to a psychiatric test to determine his sanity." We do not find merit in the plea of counsel de oficio. We find in the record sufficient justification for the conclusion that the defendant was not insane at the time of the commission of the crime. The defendant had made several statements, which were reduced to writing and duly signed by him. We find that the facts and circumstances narrated by the defendant in those different statements tally in important details. The defendant voluntarily admitted his guilt before the municipal court during the preliminary investigation. He likewise voluntarily pleaded guilty when arraigned before the trial court. Considering that the defendant is charged of having killed Gloria Bulasa way back on September 29, 1966 - or more than three years ago - it is not possible now to ascertain the mental condition of the defendant as of the time when he committed the crime or which he is charged.

The trial court has correctly found that in killing the deceased Gloria Bulasa, the defendant had taken ad-vantage of his superior strength. This attendant circumstance qualifies the crime committed as murder, defined in Article 248 of the Revised Penal Code.

We agree with the trial court that the commission of the crime by the defendant was attended by the aggravating circumstances of (1) disregard of the respect due the offended party on account of her sex, and (2) that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission.

The trial court, however, erred when it declared that two other aggravating circumstances attended the commission of the crime; namely, that means was employed or circumstance brought about which add ignominy to the natural effects of the act, and that the victim was the niece of the accused. We find nothing in the record which shows that before the deceased Gloria Bulasa died she was subjected to such indignities as would cause her shame or moral suffering. Under Article 15 of the Revised Penal Code, the alternative circumstance of relationship shall be taken into consideration only when the offended party is the spouse, ascendant, descendant,

legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offended (U.S. vs. Insierto, 15 Phil. 358).

One mitigating circumstance can be considered in favor of the defendant, namely, the circumstance of his having made a voluntary plea of guilt in court before the presentation of evidence by the prosecution.

We, therefore, find that the defendant had committed the crime of murder, with two aggravating circumstances that should be counted against him, and one mitigating circumstance in his favor. However, for lack of the required number of votes by the members of the Court, for the imposition or the maximum penalty of death, the Court has resolved to modify that portion of the judgment of the trial court which imposes the penalty of death, by imposing on the defendant the penalty of reclusion perpetua.

WHEREFORE, the decision of the lower court is modified. The defendant is sentenced to reclusion perpetua, to indemnify the heirs of the deceased Gloria Bulasa in the sum of P12,000.00, and to pay the costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Barredo, J., took no part.

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