

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. FLAVIANO PUDA Y GARAPEA ALIAS “FLAVIO PUDA”;
ACCUSED-APPELLANT.**

G.R. No. L-33841. October 31, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This case is before us for the automatic review of a decision of the Court of First Instance of Rizal, Branch II, sentencing the accused-appellant to suffer the penalty of death after finding him guilty beyond reasonable doubt of the crime of murder qualified by treachery and premeditation with two aggravating circumstances. The accused-appellant was also ordered to indemnify the heirs of the victim in the sum of P6,000.00 and to pay the costs.

The original information for murder reads:

"That on or about the 19th day of December, 1959, in the municipality of Parañaque, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the said accused, with evident premeditation and treachery and with intent to kill, did then and there willfully, un-lawfully and feloniously attack and wound with a dagger one Ching Tian Un while he was sleeping, thereby inflicting upon him two mortal wounds which directly caused his instantaneous death.

"All contrary to law, and with the following aggravating circumstances, to wit:

"1. That the crime was committed in the dwelling of the victim, Ching Tian Un, the latter not having given provocation;

"2. That the crime was committed in the night time, a circumstance deliberately sought by the accused to facilitate the commission thereof;

"3. That the crime was committed after an unlawful entry; and

"4. That as a means to the commission of the crime a wall or window was broken."

At his arraignment, the appellant, with the assistance of his counsel de oficio, Atty. Norberto Inlayo, voluntarily and spontaneously pleaded guilty. In view however of the gravity of the offense charged and because several aggravating circumstances were alleged, the lower court required the prosecution to submit evidence.

From the evidence submitted, the following facts were established and were made the basis by the court a quo for its decision:

"x x x it appears that in the early morning of December 19, 1959 defendant Flaviano Puda climbed over the fence of the house of Luis Ching Kiat Biak located at 557 Tomas Claudio Street, Parañaque, Rizal, then once over the fence he clamb-ered to the awning (media agua) of the back part of the ground floor of the house and from there, he went up to the second story, removed the wooden mouldings which held in place the glass plates

of the transom located over one of the windows and then removed the glass plates thereby causing an opening to be made; that thereafter he removed his rubber shoes and went thru the opening and gained entrance into the bedroom of Ching Tian Un, son of the owner of the house, who was then sleeping alone in said bedroom at the time; that after having gained entry into the bedroom, defendant stabbed twice the sleeping Ching Tian Un with a dagger causing the death of the latter (Confession of defendant marked Exhibit H). The method of entry into the house by the defendant as herein outlined is corroborated by the testimony of Purisima de Dumaul, a chemist of the National Bureau of Investigation, who examined the rubber shoes used by the defendant and who testified that she had examined the same and had found on their soles paints identical with the paint of the awning where the defendant walked on in going up towards the window of the house over which he gained entrance.

"Demetrio de Leon, Chief of Police of Parañaque, Rizal, testified that in the morning of December 19, 1959 he received a report that a Chinese boy was killed in his bedroom at Tomas Claudio, Baclaran, Parañaque, and so he sent Lt. Peñafiel, Sgt. Siga, and Pat. Rosendo Cruz of his office to conduct an investigation. Pat Rosendo Cruz, one of the policemen mentioned by the Chief of Police, testified that about 3:30 in the morning he went to the house of the victim Ching Tian Un and found the room where he slept splattered with blood; that all the windows of the room were closed and barred by iron grills but he found that the glass plates of the transom over one of the windows had been removed. According to him he found the pair of rubber shoes (Exhibit C), the glass plates of the transom as well as the mouldings that had kept them in place on the awning below the transom. He also found in the yard of the house the hunting knife, Exhibit B, and a handkerchief, Exhibit C; that the handkerchief, the knife or dagger and the pair of rubber shoes which were used allegedly by the defendant were all sent to the Bureau of Investigation for examination.

"According to the examination conducted by the chemist of the National Bureau of Investigation, the aforementioned Purisima Dumaul, the stains which she found in the handkerchief, Exhibit C and the dagger, Exhibit B, were human blood.

"The evidence further established that after the defendant had been arrested and after he had made the statement, Exhibit H, he was requested to re-enact his movements and from the re-enactment it was shown that defendant really climbed over the fence and went over the awning of the house wearing the pair of rubber shoes, Exhibit C-1; that after he had removed the mouldings around the glass plates of the transom he removed his shoes and left them on the awning and then he entered the room.

"Dr. Jesus Crisostomo of the National Bureau of Investigation who performed the autopsy on the body of the deceased Ching Tian Un testified that he found two stab wounds on the chest and upper abdomen of the deceased, the one on the chest having a width of 2-1/2 cm. and a depth of 12 cm. the right ventricle of the heart having been penetrated down to the left ventricular chamber. The other wound was a gaping one 3.1 cm. in length and extended down the upper abdominal cavity to a depth of 13 cm. and involved the supermedial aspect, left lobe of the liver. Dr. Crisostomo gave an opinion that the stab wound on the chest was fatal and was the one which caused the death of the deceased. The other testimonies established that the fingerprints found on the window under the transom and in the room of the victim when developed were found to be identical to those of the defendant."

When it came to the turn of the appellant to testify, he at first stated that he was not guilty. Later on, however, he reverted to his plea of guilty. Contrary to his previous confession, however, the appellant testified that he gained entry into the house of the victim at around 3:00 o'clock that morning through the main door which was open. Thereafter, he directly proceeded upstairs to the bedroom of the victim, the door of which was also open in order to steal some money although he did not know whose money he was looking for. According to the appellant, the victim who was out of the room when he entered, immediately came and attempted to hit him three times with a piece of wood about two feet and one and a half inches wide, but he managed to evade the attack and instead the victim hit the window. He then stabbed the victim twice with something that he picked up from the

drawer even before the victim attempt-ed to hit him again. After the stabbing, the appellant ran away by passing through the transom of the window which had no glass or shade. (T.S.N., pp. 12-19, August 9, 1960) During the cross-examination, the appellant testified that he found the blade which he used in stabbing the victim in-side the drawer while he was ransacking the same to look for money and he took the blade because he wanted it. (T.S.N., p. 21, August 9, 1960) Reminded that when he re-enacted the crime, he showed that he reached the bedroom by passing through the transom of the window, he stated that he made that re-enactment only because he was beaten on the left part of his face between the left eye and the left ear. (T.S.N., p. 23, August 9, 1960).

The trial court found the version of the prosecution more credible especially since it was supported by the accused's confession, Exhibit H, which showed that the accused had been earlier convicted by the Court of First Instance of Rizal for having stolen P100.00 from the father of the victim and for which reason he was dismissed as houseboy and that because of this and of the fact that he had not been treated well by the deceased he went to the victim's house in the night of December 19, 1959 with the intention to kill the deceased; that the court also found that the shoes the accused used were stolen by him from the said house; that he really passed through the transom of the window, removing however the said shoes before enter-ing the room; that once inside the room, he stabbed the deceased twice; that after stabbing the deceased who was then sleeping, he escaped but left behind him the pair of shoes and that he also lost on the way the dagger he used in stabbing the deceased.

The trial court also found the following aggravating circumstances to be present, namely - treachery which qua-lified the killing to murder; evident premeditation which was off-set by the appellant's plea of guilty; unlawful entry and dwelling.

Thus, on November 21, 1960, the trial court found the accused guilty of murder with two aggravating circumstances and sentenced him to the supreme penalty of death.

Unfortunately because of negligence of some court personnel, the records of the case were not forwarded by the court a quo to this Court for automatic review.

Eleven years after his conviction, the accused wrote a letter to this Court inquiring about the status of his case. We inquired through a letter addressed to the Clerk of Court of the Court of First Instance of Pasig, Rizal, about the veracity of the allegations of the letter of the accused and received a reply informing us that due to the inadvertence of the then clerk in charge of criminal cases of Branch II, the records of this case were placed in the archives sometime in 1960 instead of being forwarded to us. Hence, it was only then that the entire records were ele-vated to this Court.

The accused raises the following alleged errors:

I

THE TRIAL COURT A QUO ERRED IN ADMITTING THE ACCUSED-APPELLANT'S PLEA OF GUILTY FOR BEING IMPROVIDENTLY GIVEN.

II

THE TRIAL COURT ERRED IN APPRECIATING AND GIVING CREDENCE TO ACCUSED-APPELLANT'S ALLEGED CONFESSION STATEMENT (EXH. H) FOR BEING VIOLATIVE OF HIS RIGHT TO COUNSEL AND AGAINST SELF-INCRIMINATION AND DUE PROCESS OF LAW.

III

THE TRIAL COURT A QUO ERRED IN APPRECIATING AND IN GIVING FULL CREDENCE TO EVIDENCE TAKEN FROM THE ACCUSED-APPELLANT ALLEGED RE-ENACTMENT WITHOUT ASSISTANCE OF COUNSEL DURING CUSTODIAL INVESTIGATION IN GROSS VIOLATION OF THE ACCUSED' RIGHT AGAINST SELF-INCRIMINATION AND DUE PROCESS OF LAW.

IV

THE TRIAL COURT A QUO ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT'S TESTIMONY INTERPOSING QUASI-SELF DEFENSE TENDING TO ESTABLISH HOMICIDE.

V

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCES OF TREACH-ERY AND EVIDENT PREMEDITATION.

VI

THE TRIAL COURT A QUO ERRED IN NOT GRANTING THE ACCUSED-APPELLANT FULL OPPORTUNITY TO AN EFFECTIVE DEFENSE TEND-ING TO ESTABLISH HOMICIDE.

VII

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY FOR BEING VIOLATIVE OF THE CONSTITUTIONAL PROVISION (1935 CONSTITUTION) AGAINST THE IMPOSITION OF CRUEL AND UNUSUAL PUNISHMENT.

VIII

IN ANY EVENT, ACCUSED-APPELLANT SHOULD NOT BE METED WITH THE SUPREME PENALTY OF DEATH BY THIS HONORABLE SUPREME COURT AS HE HAS FULLY PAID HIS DUE TO SOCIETY FOR HAVING SUFFERED ENOUGH IN STAYING IN DEATH ROW FOR MORE THAN TWENTY (20) YEARS.

With respect to the first assignment of error, the accused contends that his plea of guilty was not voluntarily and spontaneously made but was improvidently given because neither his counsel nor the respondent judge informed him of the consequences of his plea.

This contention has no merit. The records show that after entering his plea of guilty, the accused withdrew the same in open court on April 25, 1960 stating as the reason that he was not thinking at the time he made the plea. Subsequently, however, on August 9, 1960, he reiterated his plea of guilty with the assistance of his counsel who assured the court that the accused under-stood the purpose of trial based on the plea of guilty and that they were only proving mitigating circumstances. Thus, it is clear that aside from having been assisted by his counsel when he reiterated his plea, the accused also had sufficient time to think about the consequences of the same. Furthermore, notwithstanding his plea, the lower court continued with the trial and required the prosecution to present its evidence and also gave the defense a chance to present its side. The conten-tion, therefore, of the appellant that the case should at least be remanded to the lower court for re-arraignment and further proceedings on the ground that his plea was improvidently given cannot be sustained.

The ruling in the case of *People v. Onavia* (120 SCRA 232) is applicable:

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"x x x Although it did not explain to the accused the full import of his plea of guilty, neither did it automatically accept that plea nor did it render judgment based exclusively thereon. It accepted evidence for the purpose of determining the accused's guilt and the degree of his culpability to the end that such evidence would dispel all doubt that the accused misunderstood the nature and effects of his plea of guilty. (*People v. Daeng*, 49 SCRA 222 [1973]. Where the Trial Court received evidence on the crime, there is no improvident acceptance of a plea of guilty. (*People v. Nismal*, 114 SCRA 487, 490 [1982] citing *People v. Apduhan, Jr.*, 24 SCRA 798 [1968] The defense contention, therefore, that the plea of guilty, having been improvidently accepted, the case should be remanded to the trial court, is bereft of basis. The validity of the judgment under review is unassailable."

Similarly, in *People v. Nismal*, *supra*, we ruled:

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"x x x When, as in this case the trial court in obedience to this Court's injunction in *Apduhan* (*People v. Apduhan*, 24 SCRA 798) and similar cases, receives evidence to determine precisely whether or not the accused has erred in admitting guilt, the manner in which the plea is made loses legal significance, for the simple reason that the conviction is, as in this case, predicated not on the plea but on the evidence proving the commission by the accused of the offense charged."

Coming to the second and third assignments of errors, the accused maintains that the trial court erred in appreciating and giving credence to the accused's confession and his alleged re-enactment of how he gained entry into the house of the victim on the ground that both were executed by the accused without the assistance of his counsel and therefore violated his right against self-incrimination.

It should be noted that the confession and re-enactment were executed by the accused long before the effectivity of the 1973 Constitution. The "Miranda-type" protection given to the accused during a custodial investigation, cannot be invoked by herein appellant as said right was incorporated into the Bill of Rights only in 1973 and has no retroactive effect. In the case of *Magtoto v. Manguera* (63 SCRA 4) we have settled this issue and ruled that:

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"x x x a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

Hence, the trial court did not err in taking into account the confession and re-enactment of the accused as part of the evidence against the latter.

With regard to the fourth, fifth and sixth assignments of errors, the accused contends that the trial court erred in appreciating treachery and evident premeditation as qualifying circumstances and in not finding that the crime committed was only homicide.

We are convinced that the crime committed was murder. Treachery and evident premeditation were both present in the commission of the crime. The records of the case clearly establish the fact that the accused after having served for eleven months as a houseboy of the victim's family was dismissed because he stole money from his

employers and for which he was convicted by the Court of First Instance of Rizal. Because of this and the fact that he was not treated well by the deceased, he decided to seek revenge and did so in the early morning of December 19, 1959. While everyone in the house of the deceased was still asleep, he forcibly removed the glass from the transom of the window of the room of the deceased after he stealthily climbed up the same. After he succeeded in entering the room, he stabbed the deceased twice while the latter was still asleep and thereafter, he hurriedly climbed up the same window and made his exit through the same opening of the transom which he had created upon his entry.

We cannot lend credence to the appellant's testimony that he gained entry into the house through the main door which happened to be open at that time because aside from the testimony of Luis Ching Kia Bak, the father of the deceased that he checked the doors of the house and the rooms of his children and found them locked from the inside, it is also highly improbable that the main door of a house would be left open at 3:00 o'clock in the morning while every member of the household was still sleeping. Lt. Ismael de Leon also testified that he did not see any piece of wood in the bedroom of the deceased which the accused claimed was used by the deceased when the latter tried to hit him. There were also no signs of a struggle that may have ensued between the deceased and the accused tending to establish the fact that the accused was really asleep when the deceased stabbed him.

From the necropsy report, it was shown that the deceased weighed 78 kilograms or around 171.6 pounds and had a height of 168 centimeters or around 5' feet and 6 inches tall. The accused on the contrary weighs only 110 pounds and stood at 5 feet. If there was really a struggle which ensued between the two and if the deceased really attempted to hit the accused, three times with a piece of wood, the latter could not have stabbed the deceased twice; once on the chest and the other on the abdomen with a depth of 12 and 13 centimeters respectively and in so short a time. According to the accused, he was in the room of the deceased at 3:00 o'clock in the early morning of December 19, 1959 (T.S.N., p. 14, August 9, 1960) while according to Patrolman Rosendo Cruz, he arrived at the house of the deceased at around 3:30 a.m. on the same day (T.S.N., p. 34, February 17, 1960). By that time, the accused had already escaped through the transom of the window of the deceased's room and was outside of the premises of the house. It is, therefore, highly improbable that between 3:00 o'clock and 3:30 a.m., or a span of less than 30 minutes, the accused was able to enter the room of the deceased, evade the piece of wood which the deceased attempted to hit him with three times, pick up a bladed instrument from the drawer and stab the latter twice one of which caused the mortal wound and finally escape from the premises of the house by passing through a high window. The only way he could have accomplished all of these in less than 30 minutes is if the deceased were asleep at that time so much so that the accused did not have to exert extra effort to ensure his victim's death.

The trial court, therefore, correctly ruled that the crime committed was murder qualified by treachery and that evident premeditation dwelling and unlawful entry were also present.

The next assignment of error alleges that the death penalty is violative of the constitutional right against the imposition of cruel and unusual punishment. In the case of *People v. Camano*, (115 SCRA 688), we ruled that the death penalty is not cruel, unjust or excessive. Citing the case of *Harden v. Director of Prisons*, 81 Phil. 741, 747, we further said that:

"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 Court, however, agrees with the accused's contention that the penalty should not be imposed on him since he has been detained and continues to be in the death row for about 24 years now since as stated earlier, it took

eleven years after his trial and conviction before the records of this case were discovered and transmitted to this Court for automatic review. For lack of the needed votes, the penalty of death is reduced to reclusion perpetua. (People v. Advincula, 96 SCRA 875; People v. Saravia, 127 SCRA 100)

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of death is reduced to reclusion perpetua and the indemnity for the heirs of the victim increased to **THIRTY THOUSAND (P30,000.00) PESOS**

In view of the long period of time during which the accused-appellant has been in Death Row, this case is referred to the Board of Pardons and Parole for a thorough study of all aspects of the case, including the accused's conduct while in prison, with the end in view of recommending executive clemency if warranted by the facts.

SO ORDERED.

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

Fernando, C.J., in the result.

Makasiar, J., Evident premeditation has not been proven, concurs in all other respect.

Teehankee, J., no part.

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