

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. RICARDO BERNAL, DEFENDANT.

G.R. No. L-25623. May 08, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The legal issue raised in this automatic review is whether or not defendant Ricardo Bernal may be held guilty of the complex crime of murder with double frustrated murders and sentenced to death upon the plea of guilty to the amended information,[1] which reads:

"AMENDED INFORMATION

The undersigned accuses RICARDO BERNAL and EDUARDO BERNAL of the crime of MURDER WITH DOUBLE FRUSTRATED MURDER, defined and penalized under the provisions of Art. 248 of the Revised Penal Code of the Philippines in relation to Art. 48 of the same Code, committed as follows:

That on or about the 18th day of February, 1965, in the Municipality of Tayum, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill and with out justifiable motive, with treachery and evident premeditation, by conspiring, confederating and mutually helping one another in that the accused Eduardo Bernal handed a firearm namely, a car-bine caliber .30, to accused Ricardo Bernal, while in the dwelling of the offended parties and taking advantage of night time and the slumber of the intended victims; and disregarding any respect due to one of the victims who is an old man and being his father-in-law, did then and there willfully, unlawfully and feloniously shoot one, Guillermo Barro, inflicting upon him multiple gunshot wounds on the different parts of his body which caused his instantaneous death; and on the same commission of Murder, the accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously assault and shot Anastacio Barro, inflicting upon him gunshot wound, per-forating, medical aspect of the distal end of the humerus; chip fracture medial condyl, humeral end of the mumerus; repair of wounds; and Mrs. Dominga Carnate Barro, inflicting upon her gun-shot wound, penetrating, ankle, left; bullet slug extracted, chip fracture, medial condyl of distal end of tibia, repair of wound; thus performing all the acts of execution which should have pro-duced the crime of Multiple Murder as a conse-quence but which nevertheless did not produce it by reason of causes independent of their own free will, that is, the timely and able medical assistance rendered to the offended parties, Mr. Anastacio Barro and Mrs, Dominga Carnate Barro.

CONTRARY TO LAW, with the aggravating circumstance of disregard of the age of the victim.

Bangued, Abra, August 10, 1965.

(SGD.) LORETO C. ROLDAN

Provincial Fiscal"[2]

The controlling facts are these: On September 21, 1965, accused Ricardo Bernal, assisted by his counsel de parte Atty. Demetrio Pre, pleaded guilty to the foregoing information. The trial court withheld sentence upon said Ricardo Bernal. And this because his co-accused Eduardo Bernal, likewise assisted by counsel, pleaded not guilty. By reason of which, the hearing of the case as against the last named accused was transferred.

When the case against Eduardo Bernal came up for hearing on January 13, 1966, the Provincial Fiscal moved for the provisional dismissal of the case against him upon the ground that the evidence he had on hand was not sufficient to convict said accused. Eduardo Bernal and his defense counsel both gave their consent to the provisional dismissal. Whereupon, the case against Eduardo Bernal, was provisionally dismissed with one-half of the costs de oficio, and the Provincial Warden was directed to effect his release unless detained for another case.

On the same day, January 13, 1966, the trial court promulgated its judgment upon the plea of guilty of Ricardo Bernal. The lower court declared that the circumstance of disregard of age of the victim, Guillermo Barro, alleged in the information, is offset by the accused's plea of guilty. The court ruled, however, that the "penalty imposable under Art. 248 of the Revised Penal Code is reclusion temporal in its maximum period to death which, pursuant to Article 48 of the same CODE, should be imposed in its maximum period." Because, as the court said, the crime committed by Ricardo Bernal is "murder with double frustrated murder." The trial court thereupon sentenced him to suffer the supreme penalty of death, to indemnify the heirs of the deceased Guillermo Barro in the amount of P6,000.00 and to pay one-half of the costs.

Two errors were assigned in the brief de oficio: First the lower court erred in ruling that the crime to which the accused, Ricardo Bernal pleaded guilty is a complex crime; and second the lower court erred in imposing the death penalty.

1. The first error assigned calls for a close scrutiny of the averments of the amended information. So examining, we find that the shots fired by the accused - which caused the death of Guillermo Barro and inflicted the almost fatal wounds to Anastacio Barro and like wounds inflicted on Dominga Carnate Barro were distinct and separate acts on the part of the accused. On this, we are not alone. Both the brief of the accused and the People's brief confirm this view.

Our inquiry then is narrowed down to the application to the facts of the provisions of Article 48 of the Revised Penal Code, as amended, which reads:

"ART. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Not long ago in *People vs. Pineda* (July 21, 1967), 20 SCRA 748, 751, we held that "Article 48 provides for two classes of crimes where a single penalty is to be imposed: first, where a single act constitutes two or more grave or less grave felonies (*delito compuesto*) and, second, when an offense is a necessary means for committing the other (*delito complejo*)."[3]

Easily the grave offenses committed in the instant case were not caused by one single act. Neither was the murder committed by defendant Ricardo Bernal a necessary means for committing each of the frustrated murders charged in the information or vice-versa. The conclusion then is that defendant is guilty of three separate crimes: one for the murder of Guillermo Barro; another, for the frustrated murder of Anastacio Barro; and a third, for the frustrated murder of Dominga Carnate Barro.

2. We now come to the problem of the penalty imposable.

No evidence was taken by the trial court prior to the imposition of the penalty. We are to be guided solely by the

avermments of the information. We note that on page 2 of the information (page 39 of the record below), the aggravating circumstances of nighttime and dwelling were stricken off in ink and initialed.

We first take up the crime of murder. We take stock of the fact that in the body of the information and in paragraph two thereof, averment is made that the commission of the offense of murder in which Guillermo Barro was the victim was attended by the aggra-vating circumstance of disregard of said victim's age. The lower court's decision considered this circumstance offset by the plea of guilty.

But two other circumstances, treachery and evident preme-ditation, are alleged in the main body of the amended information. One of these two must be the qualifying circumstance for the crime of murder. And the other is to be considered as the remaining aggravating circumstance.[4]

The result is that there are two aggravating circumstances to be taken against defendant, one of which is offset by the plea of guilty. As the case for the crime of murder committed stands, there exists one qualifying circumstance and one aggravating circum-stance. For lack of necessary votes, however, we may not impose the death penalty for the crime of murder.

In reference to each of the two frustrated murders, two circumstances are attendant: treachery and evident premeditation. One qualifies the crime, the other in aggravation. There is, of course, the plea of guilty in mitigation. Accordingly, neither aggravating nor mitigating circumstance may be considered. The Indeterminate Sentence Law is applicable. The penalty imposable upon defendant ranges from four (4) years, two (2) months and One (1) day of prision correccional to ten (10) years of prision mayor, as minimum, to a maximum of from ten (10) years and one (1) day of prision mayor to twenty (20) years of reclusion temporal.

For the reasons given -

(1) Defendant Ricardo Bernal is hereby declared guilty beyond reasonable doubt of the crime of murder for the death of Guillermo Barro and sentenced to reclusion perpetua and to indemnify the heirs, of said Guillermo Barro in the sum of P12,000.00;

(2) Said defendant Ricardo Bernal is declared guilty of two frustrated murders for having shot at and wounded Anastacio Barro and Dominga Carnate Barro; and for each of these two crimes of frustrated murder said defendant Ricardo Bernal is hereby sen-tenced to imprisonment to an indeterminate period ranging from four (4) years, two (2) months and one (1) day of prision correccional to ten (10) years and one (1) day of prision mayor.[5]

Costs against defendant Ricardo Bernal,

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Fernando, Capistrano, and Teehankee, JJ., concur.
Concepcion, C.J., and Ruiz Castro, J., on official leave.
Barredo, J., took no part.

[1] Criminal Case 505, Court of First Instance of Abra, entitled "People of the Philippines, Plaintiff, versus Ricardo Bernal and Eduardo Bernal, Accused."

[2] Emphasis supplied.

[3] Citing Tomo I, Cuello Calon, Derecho Penal, 1960 ed., p. 635.

[4] Article 14(13) and (16), and Article 248 (1) and (5), both of the Revised Penal Code.

[5] *People vs. Ducosin*, 59 Phil. 109, 114-116.

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