

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO SATORRE AND PAULINO RONDINA, ACCUSED-APPELLANTS.

G.R. No. L-26282. November 29, 1976

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal from the decision of the Court of First Instance of Leyte (Carigara), Branch VI, in Criminal Case No. 2641, finding the accused Benito Satorre and Paulino Rondina guilty beyond reasonable doubt of the crime of double murder, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Benito Satorre and Paulino Rondina guilty beyond reasonable doubt of the crime of double murder which is punished under Article 248 of the Re-vised Penal Code, without any aggravating or mitigating circumstances present in the com-mission of the offense. Taking into consider-ation the provisions of said Article in relation to Article 64, paragraph 1, of the same Code, the Court hereby sentences each of the defend-ants Benito Satorre and Paulino Rondina to suffer reclusion perpetua for each of the two murders, and jointly and severally to indem-nify the heirs of each of the deceased Carlos Espina and Loreto Silva the sum of Six Thousand Pesos (P6,000.00) without subsidiary imprisonment in case of insol-vency, the principal penalty being higher than prision correccional, and to pay the costs of the proceedings. However, the duration of the aggregate penalties herein imposed shall not exceed forty (40) years for each of the accused in accordance with the provision of Article 70 of the Revised Penal Code."[1]

During the pendency of the appeal, the appellant Paulino Rondina died on December 11, 1975 in the New Bilibid Prison Hospital, Muntinglupa, Rizal,[2] and the case against him was dismissed per Resolution[3] of this Court, dated August 27, 1976.

Hence, only the appeal of appellant Benito Satorre remains to be resolved.

From the evidence of record, the trial court found the facts as follows:

On May 2, 1962, the appellants Benito Satorre and Paulino Rondina, both members of the municipal police force of Leyte, Leyte, were sent by the Chief of Police to Bo. Toctoc to maintain peace and order on the occasion of the celebration of its barrio fiesta on the third of the same month.[4]

On the eve of the barrio fiesta, the appellants together with Gavino Delantar, Domingo Espina, Santiago Dagandan, and Carlos Espina, were drinking "tuba" in the house of Juan Lucero.[5] Thereafter, the group went to the dance at the basketball court.[6]

After the dance at about 2:00 o'clock in the morning of May 3, 1962, Carlos Espina, Gavino Delantar, Dodong Delima, and the appellants went to the place of Carlos Espina and stayed in front of his house. Thereupon, Gavino Delantar and the appellants invited Carlos Espina for more drinks, but the latter was advised by his brother, Domingo Espina, not to accept the invitation because he (Carlos) was already drunk. Carlos Espina answered him saying: "Do not be afraid, my brother, anyway the persons taking me are agents of the law."[7]

Thereafter, the appellants placed their arms around the shoulder of Carlos Espina and pulled him away saying, "Come, Ling, let us go and drink a little more." There-upon, his brother Domingo Espina held Carlos by the waist and drew him back. Carlos Espina resisted facing the appellants while Domingo Espina was dragged behind. Then, the appellants pointed their guns at Carlos Espina. Benito Satorre's gun exploded first, followed by the gunfire of Paulino Rondina. Immediately thereafter, Carlos Espina shouted, "I am hit", while Loreto Silva was also hit by the gunfire.[8] Thereupon, Domingo Espina sought cover inside the house of Carlos Espina and, while inside, he heard another shot.[9]

Immediately after the shooting, Domingo Espina came out of the house and found Carlos lying on the ground, face down, already dead, while Loreto Silva was on the floor near the door with his breast bleeding. Domingo Espina sent Alfredo Silva to fetch the Barrio Lieutenant,[10] a certain Baltazar Montecillo.[11] Upon his arrival, Baltazar Montecillo immediately took the ante-mortem statement[12] of Loreto Silva to the effect that Benito Satorre shot him after shooting Carlos Espina with Paulino Rondina as his companion. Loreto Silva died after affixing his thumbmark to his dying declaration, aided by the Barrio Lieutenant.[13]

The foregoing facts are not disputed in his appeal. The appellant merely assails the trial court in holding that there was treachery in the commission of the crime, and in convicting him of two separate crimes of murder.

The Solicitor General concedes that treachery did not attend the commission of the crime. We agree and adopt the well-reasoned observation of the Solicitor General in the following tenor:

"it is generally conceded that there is no alevosia or treachery where attack is frontal (People vs. Matbagon, 60 Phil. 887) or where the assault is made face to face (People vs. Luna, 76 Phil. 101). But it is also true that although an assault is made face to face, yet it may also constitute treachery if the attack was sudden and unexpected to the point of incapacitating the victim to repel and/or escape from it (People vs. Noble, 77 Phil. 93). The doctrine deducible is that if the slayer makes a sudden and unexpected attack with a deadly weapon on an unarmed and unsuspecting victim under conditions which makes it impossible for the party assailed to flee or make defense before the fatal blow is delivered, the act should be considered qualified by alevosia (People v. Pengson, 44 Phil. 0224; People v. Felipe, G.R. No. L-4617, prom. Jan. 25, 1952). Be that as it may, it was held that an attack which was sudden and unexpected to the person assaulted would not constitute the element of alevosia necessary to raise a homicide to murder where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of homicide without risk to himself. (People vs. Tumaob, 46 O.G. (Supp. 11) 190; U.S. vs. Namit, 33 Phil. 926).

"The records in this case are bereft of any evidence to indicate that appellants reflected, much less planned, on the means, method and form of killing the victims. The firing came immediately after the brother of the victim Carlos Espina was trying to wrest him away from appellants, and the latter were seen pointing the gun at said victim before the actual firing commenced. As to motive, the evidence is not clear, although it could be surmised, to be consistent with the legal presumption favoring an accused, that the latter killed the victims as a result of an impulsive decision brought about because of the alleged slight or insult, real or imagined, on appellants proximately caused by the act of the brother of Carlos Espina of taking him away from the former. It is to be noted that appellants were then intoxicated to the extent that their senses might have been blurred. In any event, a reasonable doubt appears as to the existence of the qualifying circumstance of treachery." [14]

In the absence of treachery as a qualifying circumstance, the crime committed is only homicide and not murder.

This brings us to the question as to whether the herein appellant should be held liable for two separate crimes of homicide or for only one.

From the evidence, it appears that appellant Benito Satorre was the first one who fired his gun at Carlos Espina, followed immediately by the shot fired by Paulino Rondina. The two gunshot wounds suffered by the deceased

Espina were therefore inflicted by Satorre and Rondina, in that order.[15] The lone gunshot wound suffered by the deceased Loreto Silva was inflicted also by appellant Satorre. This is clearly established in Silva's dying declaration taken by Barrio Lieutenant Baltazar Montecillo of Barrio Toctoc, Leyte, Leyte. In the said dying declaration, Silva categorically stated that he was shot by Benito Satorre.[16]

Appellant Benito Satorre should therefore be held liable for two separate offenses of homicide. Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. There being no mitigating or aggravating circumstances, the penalty imposed by law for the crime committed should be imposed in its medium period.[17]

WHEREFORE, the appealed judgment is hereby modified. Appellant Benito Satorre is declared guilty of two separate offenses of homicide, without any mitigating or aggravating circumstances, and, applying the Indeterminate Sentence Law, sentenced to imprisonment of not less than ten (10) years of prison mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum, for each offense. The indemnity awarded by the trial court to the heirs of Carlos Espina and Loreto Silva in the sum of P6,000.00 should be increased to P12,000.00, for each set of heirs.

Thus modified, the judgment of the lower court is affirmed in all other respects, with costs.

SO ORDERED.

Fernando, (Chairman), Antonio, and Aquino, JJ., concur.

Barredo, J., no part.

Martin, J., designated to sit in the Second Division.

[1] pp. 70-71, Record.

[2] p. 155, Rollo.

[3] p. 181, Rollo.

[4] pp. 131, 185, t.s.n.

[5] pp. 5-6, 69, t.s.n.

[6] pp. 8-9, 70, t.s.n.

[7] pp. 11-12, 70-72, t.s.n.

[8] pp. 12-13, 72-73, t.s.n.

[9] pp. 12, 13, t.s.n.

[10] pp. 11-12, t.s.n.

[11] p. 25, t.s.n.

[12] Exhibits "B", "B-1", pp. 6-7, Record of Exhibits.

[13] p. 115, t.s.n.

[14] Appellee's Brief, pp. 8-9.

[15] pp. 12-13, 72-73, t.s.n.

[16] Exhibits "B", "B-1", pp. 6-7 Record of Exhibits.

[17] Art. 64, Par. 1, Revised Penal Code.

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