

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILSON PAROHINOG, ACCUSED-APPELLANT.

G.R. No. L-47462. February 28, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Convicted of murder and sentenced to suffer an imprisonment of 17 years, 4 months and 1 day of reclusion temporal, to indemnify the heirs of the deceased the amount of P12,000.00, and to pay the costs, Wilson Parohinog appealed to the Court of Appeals which certified this case to us on October 27, 1977, on the ground that only questions of law are involved in the appeal.

The procedural background of the case is as follows: Wilson Parohinog, together with Soterania Parohinog, Robinson Parohinog, Loreto Parohinog and Rodulfo Theodore were charged with murder before the Court of First Instance of Capiz in Criminal Case No. 121. Upon arraignment they pleaded not guilty to the information.

After the prosecution had rested its case, Atty. Tomas Navarro who was counsel for all the accused, announced in open court that Wilson Parohinog wanted to change his plea of not guilty to that of guilty to the lesser offense of homicide. The prosecuting fiscal gave his conformity, so Wilson Parohinog was re-arraigned and thereupon pleaded accordingly. He was not sentenced immediately and the trial was continued. On March 16, 1973, after the defense had presented its first witness, Wilson Parohinog, through counsel, filed a written MOTION TO CHANGE PLEA OF GUILTY TO THAT OF NOT GUILTY on the grounds that he did not comprehend the consequences of his plea of guilty and he had a valid and meritorious defense.

Acting on the motion, the trial court on the same day issued the following Order: "As prayed for by the accused that the motion to his plea of guilty to that of not guilty be withdrawn, and finding it to be justified, the same is granted."

During our deliberations on this case the question arose as to what the trial court granted in the above-quoted order which is obviously vague. An opinion was advanced that what the trial court granted was the withdrawal of the motion of the accused to change his plea of guilty to that of not guilty. Under this construction, the accused reverted to his plea of guilty to the lesser offense of homicide. Another opinion which is shared by this writer is that the trial court granted the withdrawal of the plea of guilty to the lesser offense of homicide so as to substitute it with that of not guilty to crime charged which is murder. Howsoever the order might be construed, the legal question is the effect of the plea of guilty to the lesser offense of homicide after the prosecution had rested its case.

In this case Wilson Parohinog was accused of murder. After the prosecution had rested its case he was allowed to plead guilty to the lesser offense of homicide. The change of plea at that stage would have been highly improper and irregular if the evidence for the prosecution had made out a case of murder against him for then both the trial court and the prosecuting fiscal would be helping the accused to avoid receiving a more severe penalty. Attributing good faith to both the trial court and the prosecuting fiscal, the plea of guilty to the lesser offense of

homicide must have been allowed only because the evidence for the prosecution had proved that homicide, not murder, had been committed. In fact, a reading of the trial court's decision shows this to be the case.

The information alleged evident premeditation and abuse of superiority but the trial court said that the latter was not present and made no finding as to the former. It found that Wilson Parohinog was entitled to the mitigating circumstance of immediate vindication of a grave offense. Additionally, he is also entitled to the mitigating circumstance of voluntary surrender for at the back of the warrant for his arrest is the notation: "The accused Wilson Parohinog voluntarily surrender in this department," meaning the Police Department of Sapián, Capiz.

In the light of the foregoing, even assuming that Wilson Parohinog did withdraw his plea of guilty to the lesser offense of homicide and reverted to his former plea of not guilty, he cannot be convicted of murder because the evidence for the prosecution made out a case of homicide only with no aggravating circumstance but with two mitigating circumstances.

WHEREFORE, the decision appealed from is hereby modified by finding Wilson Parohinog guilty of the crime of homicide penalized by reclusion temporal but with the presence of two mitigating circumstances and no aggravating circumstance has to be reduced to prision mayor (Art. 64, par. 5, Rev. Penal Code). Accordingly, Wilson Parohinog is hereby sentenced to suffer an indeterminate penalty of six (6) years of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum. The decision appealed from is affirmed in all other respects. Costs de oficio.

In closing we have to point to the fact that the trial court in convicting the accused of murder imposed a straight penalty of 17 years, 4 months and 1 day of reclusion temporal. The penalty for murder is reclusion temporal in its maximum period to death. It found no aggravating circumstance out appreciated one mitigating circumstance. The minimum period of the penalty is, therefore, applicable, i.e., 17 years, 4 months and 1 day of reclusion temporal. However, the Indeterminate Sentence Law should have been applied. Accordingly, we urge the trial judge, Tomas R. Leonidas to re-read the Indeterminate Sentence Law.

SO ORDERED.

Antonio and Concepcion, Jr., JJ., concur.

Barredo, J., concurs in a separate opinion.

Aquino, J., see concurring opinion.

CONCURRING OPINION

BARREDO, J.:

I concur in the judgment that appellant is guilty only of the crime of homicide and is entitled to two mitigating circumstances stated, (plea of guilty and voluntary surrender) for which reason he should suffer the penalty imposed on the main opinion. This conclusion of mine is based on the evidence in the record as to what actually happened, which was more or less as stated in the concurring opinion of Justice Aquino, and regardless of the confusion regarding the varying pleas entered by appellant.

As to such changes of the plea made by appellant, my considered view is that it has become secondary. In this connection, I hold that after the prosecution had already rested, the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason

for this being that Section 4 of Rule 118 under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining. It is the duty of the fiscal to always prosecute the proper offense, not any lesser or graver one, when the evidence in his hands can only sustain the former.

Thus, when appellant here offered to withdraw his plea of not guilty to murder to enter a plea of guilty to homicide, it was within the spirit of the rule aforementioned for the court and the fiscal to have acted as they did. Indeed, I might add, it is not indispensable under our jurisprudential rulings to make the change of plea before the prosecution has presented evidence, (See *Peo. vs. Ortiz*, 15 SCRA 352, citing *Peo. vs. Intal*, 101 Phil. 306) and what is more, as in these cited cases, for changing their pleas, the accused were given the benefit of the mitigating circumstance of plea of guilty, the fiscals concerned having amended the respective informations accordingly and the accused having been rearraigned and entered pleas of guilty. I must hasten to add, however, that the more regular procedure is for such a change of plea under discussion to be made before the prosecution starts.

In the light of the foregoing, it is not of any legal consequence to dwell into the details of the withdrawal by appellant of his previous change of plea. In fact, the records of these two separate cases of murder and frustrated murder elevated to Us are short of being what they ought to be. One can easily get confused as to what exactly happened in the court below. For my part, I am inclined to hold that after appellant had entered his plea of guilty in the amended homicide case and thereafter proven the mitigating circumstance of voluntary surrender, that particular case was already terminated and all that was needed was the judgment, hence, the second "withdrawal" of appellant could have referred to the frustrated murder case. But even of this, I am not sure. Be that as it may, the accused were all acquitted in the frustrated murder case, so any further discussion to clear up the whole matter is now pointless.

CONCURRING OPINION

AQUINO, J.:

I concur. Wilson Parohinog is not guilty of murder. He should be convicted of homicide only.

The facts surrounding the killing may be gleaned from the testimonies of three witnesses, Jaime Oxeñola, Leonardo Dalmacio and Regalado Tinagan.

Oxeñola and Dalmacio, both defense witnesses, testified that in the afternoon of December 13, 1971, when the jeep, wherein they and Rodriguez Garcia and Rafael Leal were riding, stopped at Sitio Perrara, Barrio Dapdapan, Sapián, Capiz, there was a confrontation between Wilson Parohinog and Garcia. There had been bad blood between the two. Wilson grabbed the collar of Garcia's shirt. Oxeñola pulled Wilson. Garcia jumped out of the jeep.

Tinagan testified that Garcia ran and went to the balcony of the house of Saturnino Dedoro. He was not able to enter the house because it was closed. He was pursued by Wilson who shot him once, hitting him fatally in the left eye.

The examining doctor described the gunshot wound as having entered the left eyeball, perforating the skull and penetrating the brain where lead pellets were extracted.

Accused Rodolfo Theodore stated in his affidavit of December 16, 1971, which was sworn to before the municipal judge, that Garcia first shot Wilson, hitting him on the left hand and that, thereafter, Garcia jumped out of the jeep and "ran to the house of Saturnino Dedoro where he was shot by Wilson Parohinog". Theodore did not testify.

Recaredo Oleo corroborated Theodore's statement. Oleo stated in his affidavit, also sworn to before the municipal judge, that after Garcia had shot Wilson, he (Garcia) came out of the jeep and ran to Dedoro's house where he was shot by Wilson on the balcony. Oleo did not testify.

On the basis of those two sworn statements, Wilson was charged with homicide by the chief of police in the municipal court.

However, when the case was elevated to the Court of First Instance, the fiscal filed an information for murder against Wilson and his sister Soterania, his brothers Robinson and Loreto, and his companion Theodore. Evident premeditation and abuse of superiority were alleged as aggravating circumstances.

At the arraignment, Wilson Parohinog and his four co-accused pleaded not guilty. After the prosecution had presented its evidence, the defense counsel manifested that, because conspiracy had not been proven, Wilson was willing to admit the killing and to change his plea of not guilty to a plea of guilty to the crime of homicide.

The fiscal agreed that the prosecution had not proven conspiracy. He did not interpose any objection to the motion of Wilson's counsel that he (Wilson) be allowed to plead guilty to homicide. So, Wilson was re-arraigned and he pleaded guilty to homicide (3 tsn March 6, 1973).

Then, the defense counsel moved that Wilson should be given the benefit of the mitigating circumstance of voluntary surrender to the authorities. The fiscal interposed no objection to that motion because on the back of the warrant of arrest, there appears the following notation signed by the acting chief of police: "The accused Wilson Parohinog voluntarily surrender(ed) in (to) this department", meaning the police department.

Thus, the murder case was terminated, although the trial judge did not immediately render his decision therein and did not impose the corresponding sentence for homicide upon Wilson Parohinog.

The trial was continued with respect to the attempted homicide wherein the offended party was Rafael Leal (3 tsn March 6, 1973).

But after a defense witness had testified at the continuation of the trial, the defense counsel filed a motion dated March 16, 1973 praying "that the instant motion to change plea of guilty to that of not guilty be granted" because Wilson Parohinog allegedly had a "meritorious defense". That motion was set for hearing on March 19, 1973. On that day, the trial court issued an order, which, by using the word "withdrawn", became ambiguous or out of context.

The order reads: "As prayed for by the accused that the motion to change his plea of guilty to that of not guilty be withdrawn, and finding it to be justified, the same is granted".

It may be asked: what did the trial court grant in that order? It granted the withdrawal of the motion of the accused to change his plea of guilty to that of not guilty. The order did not grant the motion to withdraw the plea of guilty and to substitute for it the plea of not guilty.

But did accused Wilson Parohinog file another motion withdrawing his motion to change his plea of guilty to not guilty? The record does not show that he filed such a motion. It is the order itself which states that he filed such a motion.

The defense presented three more witnesses. Wilson and his co-accused did not testify. The trial court in its lengthy but confusing and inadequate decision did not make coherent and definitive factual findings. It merely stated that the version of the defense "is a truthful reflection of the facts and circumstances of this incident" but it did not make a complete recital of the facts as shown in the evidence of the defense. It merely summarized the testimonies of the witnesses and stated why some testimonies of the prosecution witnesses should not be given

credence.

The trial court convicted Wilson of murder without stating why the crime was murder. It found that there was no abuse of superiority. It did not find that there was evident premeditation. It found that Wilson was entitled to the mitigating circumstance of immediate vindication of a grave offense because Garcia had shot Wilson with the gun of Rafael Leal, the victim in the attempted murder case.

Hence, the trial court sentenced Wilson to a straight penalty of seventeen years, four months and one day of reclusion temporal and ordered him to pay an indemnity of twelve thousand pesos to the heirs of Garcia. It acquitted Wilson of attempted murder with respect to Leal.

The trial court also acquitted Wilson's sister Soterania, his brothers Robinson and Loreto and his companion Theodore.

That the trial court was confused and did not scrutinize the record carefully is shown by the fact that on page two of its decision, it noted that Wilson and his co-accused pleaded not guilty. Then, on page five, it noted that after the prosecution had rested its case, Wilson changed his plea of not guilty to that of guilty. It forgot that Wilson pleaded guilty to the charge of homicide and not murder. It also forgot that Wilson tried to change his plea of guilty to not guilty and that it issued an order allowing the withdrawal of his motion for a change of plea.

On page 17 of its decision, the trial court noted once more that Wilson "entered a plea of guilty" but it did not clarify that it was a plea of guilty to the charge of homicide.

Considering all the foregoing, I concur in the opinion that Wilson is guilty of homicide only.

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