

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AIROL ALING Y MAJURI, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-38833. March 12, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a parricide case. Norija T. Mohamad, 30, was stabbed in the chest and diaphragm on January 28, 1972 at Calarian, Zamboanga City. She died at the Brent Hospital two days later.

Girlie Aling, a relative of Airol Aling, stated in her affidavit of February 21, 1972 that she and Daria Aling (Norija's daughter) brought the victim to the hospital. They learned from the police that Norija was stabbed by her husband (p. 4, Record).

On March 24, 1972 Airol Aling, 35, was investigated by the police. He declared in the Chavacano dialect (his declaration was translated into English) that he killed his wife (whom he married according to Muslim rites) because he was informed in prison by his relatives that his wife was living with another man and fooling around with other men. He recounted the killing in this manner:

"At or about one o'clock in the afternoon of January 28, 1972, I was at the seashore of Calarian relaxing since I have just arrived from Jolo, Sulu that particular day.

"At that time, I was already running away from the authorities because I am an escapee from San Ramon Prison and Penal Farm.

"Later on, I proceeded to my father's house which is just near the seashore. Upon reaching the house, I saw Nori Mohamad but I had no time to talk to her because immediately after seeing me, Nori ran away, going to the direction of the street.

"Armed with the bolo which I had been carrying with me, I chased after Nori and I catch up with her at the street where I started stabbing her with the bolo, hitting her on the different parts of the body.

"When I saw Nori fell down on the street badly wounded, I hurriedly left the place and ran towards the far end of Calarian." (Exh. 2).

Two policemen in their affidavit of March 24, 1972, affirmed that Airol admitted to Sergeant Antonio Macrohon in their presence that he stabbed his wife because she had been going with many men (Exh. 1).

On April 19, 1972, Airol Aling was charged with parricide in the Court of First Instance of Zamboanga City. It was alleged in the information that Airol was a convict serving sen-tence at the penal colony for robbery with frustrated homicide.

The case was first called for arraignment on March 15, 1974. The accused signified his willingness to plead guilty although he had no lawyer. A counsel de oficio was appointed for him. The trial court granted counsel's motion to

transfer the arraignment to March 18.

On that date, by agreement of the parties, the arraignment was transferred to March 29, then to April 5, and later to April 30, 1974. On that last date, the information was translated into the Tausug dialect which is spoken by the accused. With the assistance of his counsel, he pleaded guilty.

Then, the accused was placed on the witness stand and examined by his counsel. He admitted that he killed his wife. He declared that after he was informed by his counsel that the penalty for parricide is death or life imprisonment, he, nevertheless, admitted the killing of his wife because that was the truth.

In answer to the question of the fiscal, the accused said that he understood that by pleading guilty he could be sentenced to death or reclusion perpetua because he was an escaped convict.

He described the confrontation with his wife. When he arrived at his home, his wife ran and he pursued her. He over-took her, stabbed her but she was able to parry the blow, and when she fell on the ground, he repeatedly stabbed her in the abdomen.

He said that he was not coerced nor cajoled into entering a plea of guilty. He admitted that he was a prisoner in the penal colony. He was a Muslim belonging to the Samal tribe of Siasi, Sulu. He killed his wife because while he was in prison, she did not visit him and she neglected their four children.

He agreed that his father-in-law could have the custody of his children. He was able to leave the penal colony because he was a "living-out-prisoner". When he went to his house on January 28, 1972, his purpose was to be reconciled with his wife but when she saw him, instead of waiting for him, she ran away. He had information that his wife was guilty of infidelity or had a "kabit". That was a grievous offense under Muslim customs.

He identified his signature in his confession which was sworn to before the clerk of court (Exh. B or 2).

The trial court sentenced Airol Aling to death and to pay an indemnity of twelve thousand pesos to the heirs of Norija Mohamad. It noted that he pleaded guilty with full knowledge of the meaning and consequences of his plea.

The case was elevated to this Court for automatic re-view of the death penalty.

Counsel de oficio, assigned to present the side of the accused in this review, contends that the marriage of Airol to Norija was not indubitably proven. That contention cannot be sustained. The testimony of the accused that he was married to the deceased was an admission against his penal interest. It was a confirmation of the maxim semper praesumitur matrimonio and the presumption "that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage" (Sec. 5[bb], Rule 131, Rules of Court).

He and the deceased had five children. He alluded in his testimony to his father-in-law. That implies that the deceased was his lawful wife. The fact that he bitterly resented her infidelity, her failure to visit him in prison and her neglect of their children are other circumstances confirmatory of their marital status.

The contention that the accused did not understand fully the nature and effect of his plea of guilty is belied by the record. The trial judge, a Muslim, took pains to follow the rule that in case a plea of guilty is entered in a capital case, evidence should be received in order to leave no room for reasonable doubt that the accused is guilty of the offense charged and that he had full knowledge of the meaning and consequences of his plea of guilty (People vs. Duaban, L-31912, August 24, 1979).

In this case, the arraignment was postponed three times in order to enable his counsel to confer with him and explain to him the consequences of his plea of guilty. The accused testified. His confession and the affidavit of the

policemen who investigated him were presented in evidence.

The contention that the crime was mitigated by the plea of guilty, lack of intention to commit so grave a wrong and the circumstance that the accused is a non-Christian is not well taken because he is a quasi-recidivist. The special aggravating circumstance of quasi-recidivism cannot be offset by generic mitigating circumstances.

The fact that he escaped from confinement in order to kill his wife shows a high degree of perversity and incorrigibility. His being a non-Christian cannot serve to extenuate the heinousness of his offense. He understood the gravity of his crime because he had attained some education. He reached first year high school and he used to be a checker in a stevedoring firm.

However, only nine Justices (Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro and Melencio-Herrera) voted for the imposition of the death penalty.

WHEREFORE, the trial court's judgment is affirmed with the modification that, for lack of one vote, the accused is sentenced to reclusion perpetua. Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur. Fernando, C.J., I concur with Justice Teehankee and Fernandez. I vote for the imposition of reclusion perpetua.

Teehankee, J., I vote with Justice Fernandez to reduce the penalty to reclusion perpetua.

Fernandez, J., I vote to impose the penalty of reclusion perpetua. I doubt whether the accused and the victim were legally married.

Aquino, J., I certify that Mr. Justice Abad Santos voted for the imposition of the death penalty.

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