

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO REGULACION ALIAS “PEDOY”;
DEFENDANT-APPELLANT.**

G.R. No. L-33489. March 18, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

The accused Alfredo Regulacion alias "Pedoy" was charged before the Court of First Instance of Samar with Murder committed as follows:

"That on or about the 6th day of March, 1966, in the municipality of Pambujan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with evident premeditation and treachery, did then and there wilfully, unlawfully, and feloniously, shoot one Cayetano Sosing with a .22 caliber firearm which the said accused had conveniently provided himself for the purpose, thereby inflicting upon the person of Cayetano Sosing multiple gunshot wounds on the different parts of his body, which wounds caused the instantaneous death of the latter.

"With the aggravating circumstance that the accused is a recidivist having been convicted by final judgment to suffer Three (3) months of *arresto mayor* and to pay the cost of the proceedings in Criminal Case No. 2773 by the Court of First Instance of Samar, Branch III for Less Serious Physical Injuries on April 7, 1964." [1]

Judgment was rendered on the case on January 21, 1971, whereby the said accused was sentenced, under the charge aforesaid, to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of the deceased, Cayetano Sosing in the amount of P12,000.00, and to pay the costs of suit. From that sentence, the accused appealed to this Court.

The record of the case shows that at about 4:00 o'clock in the afternoon of March 6, 1966, the accused Alfredo Regulacion, Manuel Balanquit, Romualdo Acebuche, and the deceased Cayetano Sosing were drinking beer in the house of a certain Panoy in Barrio Camparangan, Pambujan, Northern Samar. After drinking for about an hour, the group went to the poblacion of Pambujan on board the jeep of one Dandoy Poso and proceeded to the store of Genaro de la Cruz where they ordered a case of beer. They stayed there for another hour and then went to the house of the accused Alfredo Regulacion where they were served food and drinks. Music from a radio-phono was played while they were eating and drinking. In the course of their meal, Romualdo Acebuche asked to dance with the daughter of the accused who was serving them, but the accused demurred, saying that the girl did not know how to dance. However, the deceased Cayetano Sosing butted in and insisted that the accused should allow the girl to dance with Romualdo Acebuche saying: "Oh, come on, let your daughter dance with Padi Nanong. Anyway, my nephew is already thru with your daughter and someday well be in-laws." [2] Upon hearing this, the accused stood up in anger and threw a glass half-filled with beer at Cayetano Sosing, hitting him on the shoulder. Sosing also stood up. He was also very angry and would have fought with the accused had not their companions separated them. Manuel Balanquit pushed the deceased towards the door who then left with 2 companions. As he turned to go, the deceased Cayetano Sosing said: "Time will come that we'll meet." [3] Cayetano Sosing went to

the house of Manuel Balanquit to play monte where he was heard to say: "I'm in bad luck. I was at Pedoy's house and there Pedoy broke a glass on me but we will meet some day. We will meet some day I'll give him what he wants." [4]

Meanwhile, those left in the house of Alfredo Regulacion continued with their eating and drinking. After an hour, Romualdo Acebuche thanked his host and begged leave to go home to Rawis. The accused insisted on accompanying him home. While on their way, Manuel Balanquit asked to be dropped at his house. But, the accused refused and told him that they should accompany Romualdo Acebuche. Manuel Balanquit pleaded with the accused that he be allowed to go home or at least inform his pregnant and jealous wife where he was going. But, Regulacion was adamant. Finally, they agreed that the accused who is a cousin of Manuel Balanquit should be the one to inform the wife of Balanquit and Romualdo Acebuche told the driver of the jeep to turn back. When the jeep stopped in front of the house of Balanquit, the latter and the accused alighted. Manuel Balanquit crossed the street to buy some cigarettes, while the accused went upstairs. The accused asked for Lucring, the wife of Balanquit, and was informed that she was inside taking care of her child. The accused was invited to enter the house. [5]

What transpired next is the bone of contention. Hugo de la Cruz, testifying for the prosecution, declared that when the jeep stopped in front of the house of Manuel Balanquit, Lucring looked out of the window and then told Cayetano Sosing: "Pedoy is coming, you hide Tanoy." But, the deceased merely said: "We are not enemies." Immediately thereafter, Hugo de la Cruz left. Downstairs Hugo de la Cruz heard several gun shots coming from the house of Manuel Balanquit. [6] Antonio Baluyot, another witness for the prosecution, declared that when Hugo de la Cruz left, the accused Alfredo Regulacion and his son, Dolodoy, came inside and shot the deceased Cayetano Sosing several times. Then, the accused went to the house of Juan Lukban and challenged the latter: "You go down Juan, you'll be next to Tanoy." The accused challenged Juan three or four times, and suddenly, there was a gun shot and the accused fell down. [7]

The accused, Alfredo Regulacion, upon the other hand, declared that upon entering the sala of the house of Manuel Balanquit, the deceased Cayetano Sosing saw him and said: "So, you are here now, animal," and drew his gun and shot him. So, the accused also drew his gun and fired at the deceased. In the exchange of fire, he was shot three times— on the stomach, knees, and back-while the deceased was hit seven times. Thereafter, he went down. Upon reaching the ground, he fell unconscious and regained consciousness only in the house of his in-laws where he was attended by Dr. Castro. He was brought to the hospital at Catarman, Samar, where he was confined for two months. [8]

As the accused-appellant Alfredo Regulacion, admitted having shot the deceased Cayetano Sosing, it was incumbent upon him to establish clearly and sufficiently that he did the act in self-defense and should plant his case on the strength of his own evidence and not on the weakness of that of the prosecution. [9]

In the instant case, We feel that the burden has not been met. The version of the accused-appellant that the deceased Cayetano Sosing was the aggressor and fired the first shot is belied by the physical facts. Dr. Leovegildo Mijares, who treated the wounds of the accused after the shooting incident complained of, testified that the accused was shot from behind, [10] and the course of the bullet was downwards, [11] so that the deceased could not have shot the accused who is bigger and taller, in the manner described by the accused. The following observation of the trial court is well-taken:

"Furthermore when Dr. Mijares who treated the accused at the Northern Samar General Hospital testified he stated that in his opinion the assailant was probably on a higher level than where the accused was because the course of the bullets in the body of the accused was downward. This probability which is basic would give the lie to the claim of the accused and his witnesses that he was shot by the deceased who was only more than four

feet in height. As the accused was much taller than the deceased the latter would have slanted the position of the gun slightly upward in order to hit his target. The trajectory of the missile would have been going up and not down as found by the doctor. Besides, the slug that was palpable at the lumbar region which was recovered by surgical excision was, according to the doctor, from the bullet of a carbine which is true as the said slug, Exh. '5' is identical with the bullet of a .30 caliber carbine."

The crime committed, however, is only homicide, in the absence of circumstances that would qualify the killing to murder. The findings of the trial court that the killing was treacherous because the deceased was not in a position to defend himself as he was unarmed is not supported by conclusive proof. Romualdo Acebuche declared for the prosecution that the deceased, Cayetano Sosing, was armed on the night in question. He said:

"Q

You had occasions, frequent occasions to observe the person of Cayetano Sosing, was he not?

A Yes, sir.

"Q He was usually armed, was he not?

A Sometimes.

"Q That evening of March 6, 1966, he was armed, was he not?

A I've seen it.

"COURT—

"Q What do you mean by that Mr. Witness?

A Shall we begin your honor please,

"Q What do you mean?

A I've seen the .45 caliber.

"Q

You mean you saw that Cayetano was carrying with him a .45 caliber revolver or pistol?

A Yes, sir, pistol.

"Q. When you say pistol it is automatic?

A Yes, sir, automatic."[12]

The fact that Sgt. Lagrimas did not find any weapon near the body of the deceased when he went to the house of

Manuel Balanquit is not sufficient to disprove the foregoing testimony of Romualdo Acebuche since Sgt. Lagrimas did not stay long and did not conduct a thorough examination of the scene of the crime, prompting the trial judge to comment that the witness was inefficient.[13]

Besides, the testimony of Sgt. Lagrimas contradicts the declarations of other witnesses for the prosecution on vital material points as to render it unworthy of credence. Thus, he declared that it was Pat. Antonio Balanday who notified him of the shooting incident in the house of Manuel Balanquit.[14] Pat. Antonio Balanday declared, however, that Sgt. Lagrimas was already in the house of Manuel Balanquit when he arrived, half an hour after they heard the gun fire while they were on patrol.[15]

Sgt. Lagrimas further stated that Lucring, the wife of Manuel Balanquit was alone,[16] and screaming when he arrived in the house of Manuel Balanquit.[17] If this was true, then Sgt. Lagrimas must have arrived earlier than Manuel Balanquit and Romualdo Acebuche who were just downstairs when the shots were fired, because it was Manuel Balanquit who tried to calm down his hysterical wife. But, Manuel Balanquit testified that he did not see Sgt. Lagrimas in his house on that night in question.[18]

At any rate, the deceased was forewarned of the coming of the accused and was given ample opportunity to prepare for the aggression so that the circumstance of treachery, necessary to elevate the crime to murder is wanting. Hugo de la Cruz, a prosecution witness, declared as follows:

"Q

While you were conversing, while Cayetano Sosing and Lucring Balanquit were conversing in the sala of the house of the latter, you said that you saw a jeep passed by. To what direction did this jeep go?

A Towards Laoang.

.....

"Q

I'll reform my question. After you saw the jeep passed by and while you were in the house of Lucring Balanquit together with Cayetano Sosing, what did you tell Cayetano Sosing if you told him anything?

A

These were the words I told him - 'that may be you are the one searched by the jeep, being looked for by the jeep.'

.....

"Q

Considering that the jeep is in inanimate thing, what did you exactly mean when you said the jeep was looking for you?

A

The driver because he was the one managing the jeep, may be he was looking for him.

"Q

What was the answer of Cayetano Sosing if he answered anything?

A

Tanoy said: 'he might come if I'm the one being intended to look for.'

.....

"Q

While you were in the house of Manuel Balanquit after the jeep went to the direction of Laoang, what happened if there was anything that happened?

A

After a while there was another jeep that stopped in front of the house of Manuel Balanquit.

"Q

Was the same jeep that stopped near the house of Manuel Balanquit to Laoang?

A

I do not know because I did not look out of the window, it was Lucring who looked out of the window.

"Q

Now, when Lucring looked outside of the window and found out the jeep that stopped in front of the house, what happened if there was anything that happened?

A

When Lucring looked out from the window she made a remark saying, 'Pedoy is coming, you hide Tanoy.'

"Q

What was the answer of Cayetano Sosing if he made an answer?

.....

A Tanoy said: 'We are not enemies.'"[19]

Evident premeditation has not also been established because the meeting of the accused and the deceased in the house of Manuel Balanquit was a chance encounter and not purposely sought after. Romualdo Acebuche, a witness for the prosecution, declared that when he went home from the house of the accused, the latter insisted on escorting him home to Rawis. Then, while on their way, Manuel Balanquit asked the driver of the jeep to drop him at his house, but the accused objected, saying that both of them shall accompany Romualdo Acebuche home. Manuel Balanquit pleaded with the accused that he be allowed to go home or at least inform his wife where he was going since his wife was jealous and pregnant and about to give birth, but the accused was adamant. The accused finally consented after they agreed that he be the one to inform the wife of Manuel Balanquit where they were going. So, Romualdo Acebuche told the driver of the jeep to turn back.[20] They did not know that the deceased Cayetano Sosing was in the house of Manuel Balanquit at the time. Had they known, Manuel Balanquit said that he would not have insisted on going back.[21]

The accused-appellant is also entitled to the mitigating circumstance of having acted in proximate vindication of a grave offense committed by the deceased against the honor of his daughter when the deceased said:

"Oh, come on, let your daughter dance with Padi Nanong. Anyway, my nephew is already thru with your daughter and someday we'll be in-laws."

It is not denied that the appellant was embarrassed, to say the least, by the utterance of these words. In fact, he threw a glass half-filled with beer at the deceased and they would have fought had not their companions separated them. No doubt, the accused-appellant sought to vindicate the honor of his family and appease his self respect when he killed the deceased.

The crime of homicide is punishable by reclusion temporal. There being one mitigating circumstance and no aggravating circumstance to offset it, the penalty should be imposed in its minimum period. Applying the Indeterminate Sentence Law, the accused-appellant should be sentenced to suffer an indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum.

WHEREFORE, the judgment appealed from is modified and the accused-appellant should be, as he is hereby, sentenced to suffer imprisonment ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. The judgment is affirmed in all other respects. With costs against the accused-appellant.

SO ORDERED.

Makasiar (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., on leave.

[1] Original Record, p. 82.

[2] t.s.n. of Nov. 29, 1967, p. 236.

[3] t.s.n. of Jan. 16, 1968, p. 267.

[4] t.s.n. of July 22, 1969, p. 12.

[5] t.s.n. of Nov. 29, 1967, pp. 246-248; t.s.n. of July 22, 1969, p. 13.

[6] t.s.n. of Nov. 28, 1967, pp. 29-31.

[7] t.s.n. of Jan. 17, 1968, pp. 336, 339-341.

[8] t.s.n. of April 10, 1970, pp. 151-159, 164.

[9] People vs. Cruz, 53 Phil. 635; People vs. Gutierrez, 53 Phil. 609; People vs. Alviar, 59 Phil. 98; People vs. Berio, 59 Phil. 533; People vs. Espenilla, 62 Phil. 264.

[10] t.s.n. of Sept. 30, 1969, p. 89.

[11] t.s.n. of April 8, 1970, p. 125.

[12] t.s.n. of Jan. 16, 1968, pp. 270-271.

[13] t.s.n. of Nov. 29, 1967, p. 201.

[14] Id., p. 220.

[15] t.s.n. of June 27, 1968, pp. 11, 28.

[16] t.s.n. of Nov. 29, 1967, p. 208.

[17] Id., p. 196.

[18] t.s.n. of Nov. 28, 1967, p. 115.

[19] Id., pp. 26-30.

[20] t.s.n. of Nov. 29, 1967, pp. 246-247.

[21] t.s.n. of Nov. 28, 1947, p. 102.

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