

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CATAUTAN Y TARUC, ACCUSED-APPELLANT.

G.R. Nos. L-36987-88. September 28, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

PEDRO CATAUTAN alias "Pedro Duling" was accused of murder and frustrated murder before the defunct Circuit Criminal Court of Manila.

The information for murder reads as follows:

"That on or about the 22nd day of August, 1971, at nighttime purposely sought to better accomplish their criminal design, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two (2) others whose true names, identities and whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and by means of treachery, attack, assault and use personal violence upon the person of one Ligaya Santos y Santos, by then and there shooting her several times with an unknown firearm, thereby inflicting upon her mortal gunshot wounds which were the direct and immediate cause of her death soon thereafter." (Expediente, CCC-VI-1261, p. 1.)

And the information for frustrated murder is worded as follows:

"That on or about the 22nd day of August, 1971, at nighttime purposely sought to better accomplish their criminal design, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two (2) others, whose true names, identities and whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and by means of treachery, attack, assault and use personal violence upon the person of one Renato Licup, by then and there shooting the latter several times with an unknown firearm, thereby inflicting upon him gunshot wounds which are necessary mortal and fatal, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of accused's own will, that is, the timely and able medical assistance rendered to the said Renato Licup, which prevented his death." (Expediente, CCC-VI-1262, p. 1.)

The trial court adjudged the accused guilty of murder qualified by treachery for the death of Ligaya Santos. For the injury sustained by Renato Licup, the accused was adjudged guilty of attempted murder only because Licup would not have died even without medical attention. Nocturnity was not considered because the site of the shooting was well lighted and for lack of evidence to indicate that nighttime was purposely chosen to facilitate the commission of the crimes. Finally, recidivism was considered because the accused "admitted that in 1963 he was convicted of murder and frustrated murder for which he was sentenced to serve 8 years to 14 years imprisonment. As a matter of fact, he was granted parole and it the time of the incident he was a parolee." (Expediente, CCC-VI 1261, p. 104.)

The accused was sentenced as follows:

"In Criminal Case No. 1262, accused is hereby found guilty beyond reasonable doubt as principal of the crime

of attempted murder qualified with treachery and there being proved the aggravating circumstance of recidivism without any mitigating circumstance to offset the same, the Court sentences him to an indeterminate imprisonment ranging from FOUR (4) YEARS and TWO (2) MONTHS of prison correccional as minimum to TEN (10) YEARS of prison mayor as maximum.

"In Criminal Case No. 1261, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified with treachery and there being proved the aggravating circumstance of recidivism without any mitigating circumstance to offset the same, the Court sentences him to DEATH; to indemnify the heirs of victim Ligaya Santos the sum of P12,000.00 for the death of the latter; P10,000. 00 as moral damages; and P10,000.00 as exemplary damages." (Id., p. 105.)

Criminal Case No. 1261 was not appealed for an appeal was unnecessary in the light of the Rules of Court provision that, "The records of all cases in which the death penalty shall have been imposed by any Court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgment as law and justice shall dictate." (Rule 122, Sec. 9.) As to Criminal Case No. 1262, it was appealed to the Court of Appeals instead of to this Court. In this connection and in order to save time, members of the Bar are reminded that the appellate jurisdiction of the Supreme Court includes:

"(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories, or whether they have been tried jointly or separately." (Judiciary Act of 1948, as amended, Sec. 17.)

The People's version of the facts is as follows:

"At about 9 o'clock in the evening of August 22, 1971, a block rosary procession took place at Tondo, Manila. It started from the house of Mrs. Fely Franco at Wagas street, then turned left to Moriones and ended at the house of Aling Mading at Masinog street (pp. 2-3, tsn, Nov. 20, 1972; p. 2, tsn, Dec. 12, 1972). Many persons attended the procession among whom were Ligaya Santos, her daughter Leticia, Ligaya Castillo, Federico Bernal and Fely Franco. After the prayer which lasted about 20 minutes in the house of Aling Mading was over, the participants led by Ligaya Santos went down the house (pp. 3, 7, tsn, Nov. 20, 1972). As they reached the gate, Leticia saw the appellant aim his gun at his mother and immediately fired a shot. Before the appellant fired the shot, he remarked, 'papatukin natin' (pp. 3, 9, tsn, id.). At that time appellant had two companions, one of whom was brandishing a jungle bolo and the other aiming a sling with a dart at the group approaching the gate (pp. 3, 10, tsn, id.). When the appellant fired his gun, the group ran backwards to the yard (pp. 10-11, tsn, id.). A total of four shots were fired by the appellant from his gun (pp. 4, 15, tsn, id.). The first shot hit 'Nene' (Renato Licup) who was among those near Ligaya Santos at the gate. Another shot hit Ligaya Santos. Upon seeing her mother fall to the ground, Leticia shouted: 'My mother is dead, please help me.' At this juncture, the appellant and his two companions ran away (pp. 4, 11, 16, tsn, id.).

"Both victims were rushed to the Mary Johnston Hospital at Tondo. On the way to the hospital Ligaya Santos expired (p. 4, tsn, Nov. 20, 1972; p. 6, tsn, Dec. 12, 1972).

"Dr. Abelardo Lucero, Medico-legal examiner of the Manila Metropolitan Police performed an autopsy on the cadaver of Ligaya Santos and submitted a post-mortem findings report (Exh. J, p. 54, rec.) which reads as follows:

'External findings:

Gunshot wound of entry measuring 0.5 cm. without any powder mark located at the tip of the nose and the bullet came out thru wound No. I-A measuring 0.6 x 0.8 cm. The bullet is directed slightly upwards into the right.

Internal findings:

Central Nervous system:

Laceration gunshot, right frontal, right parietal, right occipital lobes of the brain, subarachnoid hemorrhage, extensive.

Bones and joints:

Gunshot wound, fracture, right frontal and right occipital bones of the skull.

Cause of death:

Subdural and subarachnoid hemorrhage due to gunshot wound thru and thru the head lacerating the brain.'

"A medical certificate (Exh. A, p. 44, rec.) issued by Dr. Florencio P. Neri, physician of the Mary Johnston Hospital, showed that Renato Licup suffered the following injury:

'Gunshot wound, left flank 2 openings 1/2 cm. each anterior - inverted, posterior - everted, rule out bond injury.'

"That same evening, an investigation of the shooting incident was conducted by the Manila Metropolitan Police. Patrolman Ranulfo Soriano interviewed witnesses at the crime scene and at the Mary Johnston Hospital. According to his report (Exh. B, p. 45, rec.), the appellant was positively identified by witnesses to be the gunwielder (p. 4, tsn, Feb. 12, 1973). Subsequently, Leticia Santos, Ligaya Castillo, Renato Licup and Federico Bernal who were eyewitnesses to the incident gave statements (Exhs. C, p. 47; D, p. 48; E, p. 48; and F, p. 50, respectively, rec.) categorically pinpointing to the appellant as the assailant who shot at Ligaya Santos and Renato Licup. Leticia Santos, Renato Licup and Federico Bernal likewise testified for the prosecution.

"After more than a year or on August 30, 1972, the appellant was finally arrested by the Manila Metropolitan Police (p. 12, tsn, Dec. 12, 1972).

"During the trial, appellant admitted that he was previously convicted of murder and frustrated murder, and had served his sentence (p. 8, tsn, Mar. 12, 1973)." (Brief, pp. 2-6.)

The appellant, on the other hand, claims that he was a participant in the block rosary procession and it was Renato Licup, Romeo Santos and their companions who "suddenly appeared in the procession and without any warning fired upon them (ambushed) many times." The appellant asserts that, "In short, in the middle and/or during the procession, two (2) warring groups, that of one headed by Romeo Santos, the son of the victim, Ligaya Santos, and that of (sic.) led by the accused-appellant, Pedro Catacutan y Taruc, fought it out, each group firing towards the other." (Brief, pp. 3-4.)

In the light of the foregoing, the decision of the trial court is assailed on the ground that it opted to believe the version of the prosecution instead of that of the defense. The appellant impugns the credibility of the prosecution's evidence by claiming that the testimony of Leticia Santos and that of Renato Licup are not congruent on material points.

The discrepancy in the testimony of Leticia and Renato was on a minor point only. While Leticia said that the block rosary procession started from the house of Mrs. Fely Franco at Wagas street, Renato said it started from the house of Ligaya Castillo in Masinloc street. The important point is that both witnesses identified the appellant as the one who fired shots from his gun which hit Ligaya Santos and Renato himself.

Upon the other hand, the appellant's claim that it was the group of Romeo Santos who perpetrated the "ambush" is incredible. He presented no witness to corroborate his claim. He did not file a complaint with the police. When a

member of the Manila Metropolitan Police, Ranulfo Soriano, went to the house of the appellant in the evening of August 22, 1971, he found it to be completely abandoned. (TSN, Gella, Feb. 12, 1973, p. 4.) It was only on August 30, 1972, a year after the incident, when the appellant was arrested.

The appellant also claims that the trial court erred when it concluded that there was treachery. He avers that if the intended victim was Ligaya Santos, a woman, as the trial court said, then "there is no necessity to prepare, such as hiding (sic) himself and had to prepare for the opportune time, armed and/or aided by armed men." (Brief, p. 5.) But the record shows that the appellant had a previous misunderstanding with Ligaya Santos; and that when he suddenly attacked her he was with a group of armed men so that there was present not only the element of surprise but also the advantage of no risk to himself. Alevosia was certainly present.

The trial court committed no error in imposing the penalties on the appellant. Nonetheless, for lack of the necessary number of votes, the death penalty cannot be affirmed.

WHEREFORE, the judgment of the trial court in Criminal Case No. 1262 is affirmed in toto; and the judgment in Criminal Case No. 1261 is modified in that the appellant shall suffer the penalty of reclusion perpetua and indemnify the heirs of Ligaya Santos and amount of P30,000.00. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., on leave.

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