

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO CASTRO, ACCUSED-APPELLANT.

G.R. No. L-38989. October 29, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the decision of the Court of First Instance of Camarines Sur, convicting Romeo Castro of the crime of murder, qualified by treachery, and sentencing him "to suffer the penalty of reclusion perpetua and to pay the heirs of Ferdinand Recoco the amount of P12,000.00 as indemnity for death; P540.10 as actual damages; and P2,000.00 as moral damages; with costs against the accused."

Appellant does not dispute his guilt for the death of 9-year old Ferdinand Recoco. He contends, however, that his conviction for the crime of murder and the penalty of reclusion perpetua imposed upon him are not warranted by the circumstances established by the evidence. He assigns as error the failure of the trial court to appreciate the extenuating circumstances of defense of his son and lack of intent to commit so grave a wrong. Appellant thus prays that he be declared guilty only of simple homicide, with the foregoing circumstances considered in his favor to mitigate the penalty.

The facts established by the prosecution are as follows:

At about 4:30 in the afternoon of November 17, 1971, Leonor Gata, aunt of the deceased, was looking out of the window of her house when she saw the appellant, then the barrio captain of San Juan, Pili, Camarines Sur, running towards Ferdinand Recoco, who was in the middle of the street. Upon reaching Ferdinand, appellant boxed him with his left fist, hitting him on the right eye, followed by another fist blow on the left temple and a "karate chop" below the right ear. Ferdinand fell on the asphalt road, face downward. Leonor went down the house and asked appellant why he boxed Ferdinand. The appellant replied that he was angered when he saw Ferdinand box his 4-year old son, Ely. The deceased forthwith admitted having boxed Ely because the latter took a potshot at him with a water pistol.[1]

That evening, Ferdinand developed a fever; and the following morning, Dr. Mateo Dalisay treated Ferdinand for fever and inflammation of the right eye. When the boy's condition showed no sign of improvement after four days of treatment, Dr. Dalisay advised the family that the boy be taken to an eye specialist.[2] On November 25, 1971, Ferdinand was brought to the pro-vincial hospital in Pili, Camarines Sur, where he was treated by Dr. Jesus Miraflores. On December 5, 1971, i.e., 13 days after the incident, he died.[3]

Dr. Zenaida S. Decena, who conducted a post-mortem examination of the deceased on December 8, 1971, rendered the following autopsy report:

"External finding ?

1) Superficial abrasion, 2 inches in length, temporal side, right eye;

- 2) hematoma, upper and lower lids;
- 3) with bluish discoloration of entire anterior abdominal wall;
- 4) intestines gangrenous and inferior surface of liver greenish in color.

"Internal finding ?

- 1) purulent exudate recovered surrounding tissues of right eye;
- 2) with clotted blood over cerebral blood vessels and slight purulent material frontal lobe.

"Cause of death - Septicemia secondary to pan-ophthalmitis due to trauma."

The appellant's version of the incident, on the other hand, is as follows:

At about 4:00 in the afternoon of the day in question, while appellant was in the public market of Pili, Camarines Sur, helping his wife sell fish, his 4-year old son Ely arrived and asked money for merienda. The appellant bought biscuits for him and told him to go home. As the boy was walking home, Ferdinand Recoco approached Ely and boxed him. The appellant immediately ran toward the place where the boys were and, upon seeing that Ely was being boxed by Ferdinand for the second time, he hit Ferdinand on the face and pushed him aside. Thereafter Ferdinand ran away.[4]

The appellant vehemently denied having delivered several fist blows and a 'karate chop' on Ferdinand, claiming that he hit the latter only once on the face after which he pushed him.[5]

To corroborate appellant's version of the incident, Teofilo Casero, a porter at the PNR station at Pili, Camarines Sur, testified that he was about 12 meters distant when he saw Ferdinand box Ely Castro; that when Ferdinand was about to box Ely for the second time, barrio captain Romeo Castro arrived and struck Ferdinand on the face with his fist. Casero denied having seen appellant deliver several fist blows and a 'karate chop' on the deceased.[6]

In pronouncing appellant guilty of murder, the court a quo rationalized its conclusion thus: "in giving successive boxing and karate blows on a child of tender years any possibility of danger resulting to the accused from the child was nil. The qualificative circumstance of treachery therefore attended the killing." [7]

The appeal is impressed with merit.

For treachery to be considered as an aggravating circumstance, it must be established that the means, method or manner of execution of the offense was deliberately and consciously adopted in order to make it impossible or difficult for the victim to defend himself or to retaliate.[8]

In the case at bar, appellant had neither the opportunity nor the reason to plan or deliberate on the mode of execution of the crime because he undoubtedly acted at the impulse of the moment. Instinctively, he lifted a hand when he saw his 4-year old son being boxed by a bigger boy. Clearly, the method of attack he adopted was not consciously chosen to facilitate the execution of the crime without risk to himself. Treachery must therefore be ruled out.

Moreover, the lower court's conclusion that appellant dealt successive blows on the deceased finds no basis in the physical evidence adduced at the trial. Dr. Mateo Dalisay, who treated Ferdinand from November 18 to December 21, 1971, testified that "aside from the fever and inflammation of the right eye, he could not find any other lesion, abrasion or contusion on the body of the deceased." [9] Dr. Dalisay diagnosed his patient's ailment as conjunctivitis or sore eye.[10] Likewise, Dr. Jesus Miraflores, to whom the deceased was later referred for medical treatment, declared that "there was no other lesion on the body of the patient, aside from the fever and the

patient's inflamed right eye." [11]

The testimonies of these doctors strongly corroborate the defense version that appellant merely gave one fist blow on the deceased. And even conceding that he did deliver another fist blow on the left temple of the victim and a karate chop below his right ear, the findings of Drs. Dalisay and Miraflores strongly sustain the conclusion that these subsequent blows were not sufficiently forceful as to produce even the slightest contusion in the areas where the deceased was allegedly hit.

Taking into consideration the circumstances under which the appellant's act was executed, as well as the marked disproportion between the means employed and the ultimate consequence thereof, the appellant's claim that he merely intended to chastise Ferdinand, and not to do away with him, deserves the fullest credence. On this premise, the mitigating circumstance of lack of intent to commit so grave a wrong should be appreciated in his favor.

As heretofore stated, appellant does not seek acquittal, for he does not justify his act. But in passing judgment upon his criminal liability, it behooves the Court to consider the cause or motive that impelled him to act as did. This is not to justify the offense he committed, but only to demonstrate the lesser degree of depravity in his act. In this connection, advertence should be made of portions of the testimony of Cresencia Recoco, mother of the deceased. As aptly put by Cresencia herself, appellant committed the offense because he was "carried away by the impetus of the moment." She further declared that, as proof of appellant's remorse, he accompanied her to the hospital and volunteered to give his share on the medical and hospital expenses; and that when the eye specialist gave a prescription for Ferdinand's medication, appellant voluntarily bought the medicine. [12]

The trial court, in brushing aside appellant's claim of passion and obfuscation, opined that the act of Ferdinand in boxing appellant's 4-year old son was too trivial and insignificant to have produced the passion or obfuscation contemplated by law. But while the cause would indeed seem trivial and slight, it is nevertheless to be noted that the appellant's actuation arose from a natural instinct that impels a father to rush to the rescue of a beleaguered son, regardless of whether the latter be right or wrong. Hence, when the appellant saw his son Ely being boxed by Ferdinand, a much bigger boy, and that the latter was in the act of delivering another blow, the appellant, momentarily blinded by anger, lost sight of the fact that his son's adversary was but a 9-year old boy. Clearly, when appellant hit the deceased, he did so on the impulse of passion and obfuscation.

Under the circumstances aforementioned, We hold that appellant is guilty only of the crime of homicide, mitigated by two mitigating circumstances, to wit: (1) lack of intent to commit so grave a wrong; and (2) passion and obfuscation.

WHEREFORE, the judgment appealed from is hereby modified in the sense that appellant Romeo Castro is hereby declared guilty of the crime of homicide; and applying the provisions of the Indeterminate Sentence Law, he is hereby sentenced to a term of imprisonment ranging from four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, to indemnify the heirs of deceased Ferdinand Recoco in the amount of P12,000.00, and to pay the costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] TSN, pp. 4-7, May 8, 1972.

[2] TSN, p. 116, Oct. 22, 1972.

[3] TSN, p. 43, May 8, 1972.

[4] TSN, pp. 218-221.

[5] pp. 221, 225-226, *ibid*.

[6] pp. 145-147, Oct. 22, 1972.

[7] p. 5, lower court's decision.

[8] *People vs. Capiling*, 74 SCRA 285; *People vs. Latorre*, 74 SCRA 106.

[9] TSN, p. 186, Oct. 11, 1972; pp. 156-157, Oct. 22, 1973.

[10] p. 159, Oct. 22, 1973.

[11] p. 40, May 8, 1972.

[12] TSN, pp. 67-69, 74, May 9, 1972.

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