

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE AVELLANA AND RODOLFO CERVANTES, ACCUSED WHOSE DEATH SENTENCES ARE UNDER REVIEW.

G.R. No. L-38345. March 28, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is another murder case involving convicts in the New Bilibid Prison. At about one-thirty in the afternoon of October 2, 1970, prisoner Carlos Estrosos, 26, was assaulted. He suffered twelve stab wounds in the chest and abdomen, some of which lacerated his lungs and heart and caused his death.

For that killing, prisoners Jose Avellana (Abellana) 25, of Southern Leyte, and Rodolfo Cervantes, 22, of Surigao del Norte were charged in the Circuit Criminal Court at Pasig, Rizal with murder qualified by treachery and aggravated by evident premeditation (Criminal Case No. 1013).

Both accused pleaded not guilty when arraigned on April 28, 1972 with the assistance of counsel de oficio. At the commencement of the trial on May 20, 1972, a medico-legal officer testified on the injuries suffered by the victim.[1]

At the resumption of the trial on July 29, 1972, the two accused, with the assistance of another counsel de oficio, were allowed to substitute a plea of guilty for their prior plea of not guilty. The trial court forthwith rendered judgment, convicting the accused of murder, sentencing each of them to death and ordering them to pay to the heirs of the victim a total indemnity of thirty-six thousand pesos.[2]

However, the trial court recommended to the President of the Philippines that the death penalty be commuted to reclusion perpetua.

Notwithstanding the rendition of that judgment, the lower court presided over by Judge Onofre A. Villaluz, on that same day, July 29, 1972, issued an order directing the prosecutor to continue the presentation of his evidence. Judge Villaluz cited the rule that when the accused pleads guilty in a capital case it is advisable to take testimony (People vs. Flores, L-32692, July 30, 1971, 40 SCRA 230).

At the continuation of the trial, the confessions of accused Avellana and Cervantes which like the confessions presented in numerous criminal cases, are difficult to read, being hardly legible, were presented in evidence. The two accused took the witness stand.

Both testified that they stabbed the victim, Estrosos, because they harbored grudges against him. Each testified that he was alone in stabbing Estrosos, that the assault was made face-to-face and that it was not planned beforehand.

On the other hand, in their confessions, it was made to appear that they collaborated in stabbing Estrosos and that their motive was revenge for the false accusations made by Estrosos against them which resulted in their being

maltreated or punished by the prison authorities. The voluntariness of the confessions was not impugned.

The prosecution did not present any eyewitness to prove how the stabbing was perpetrated by the two accused.

After the termination of the trial, Judge Villaluz rendered a second decision dated March 1, 1974, wherein he affirmed his 1972 judgment of conviction for murder, imposing on the two accused the death penalty and the same civil liability. He found that the murder was qualified by treachery and was aggravated by evident premeditation and recidivism and that, as the two accused were quasi-recidivists, he had no alternative but to impose the death penalty.

The case was elevated to this Court for review of the death penalty. By reason of the death of accused Cervantes in the prison hospital on February 21, 1978, his criminal liability was extinguished. The case against him was dismissed in this Court's resolution of July 18, 1978.

Counsel de oficio contends that the plea of guilty entered by Avellana cannot be a valid basis for conviction because the information was defective. It was defective because, although it was alleged therein that the accused assaulted Carlos Estrosos, in the last clause of the first paragraph it was stated that as a result of the assault "Alejo (not Estrosos) died instantly".

At the hearing on May 20, 1972, or before the accused had withdrawn their plea of not guilty and changed it to a plea of guilty, the prosecutor, having noticed the error, moved that he be allowed to amend the information by changing "Alejo" to "Estrosos". The trial court did not resolve that motion which was objected to by the counsel for the defense.

That incident disclosed that the error in the information was merely clerical and not substantial. The accused and their counsel were already alerted before they pleaded guilty later, or on July 29, 1972, that the name "Alejo" should be read as "Estrosos".

That clerical error was committed because on April 26, 1972, when the information in this case, Criminal Case No. 1013, was filed in the lower court, another information, docketed as Criminal Case No. 1012, was filed in the same court and the victim in that other information was Carlito Alejo. This would explain why the name "Alejo" was found in the information wherein the victim was Carlos Estrosos.

The trial court should have allowed the rectification of the clerical error. In any event, the judgment of conviction herein was not based merely on the plea of guilty of the accused but on their confessions, judicial and extrajudicial. Hence, defense counsel's first assignment of error is devoid of merit.

But there is merit in defense counsel's second contention that the attendance of treachery and evident premeditation was not proven beyond reasonable doubt. The circumstances surrounding the killing of Estrosos, as recounted in the judicial and extrajudicial confessions of the accused, do not show that the assault was treacherous nor that the elements required for the appreciation of evident premeditation are present.

So, the killing should be characterized as homicide. And because Avellana is a quasi-recidivist, the penalty for homicide should be imposed in its maximum period notwithstanding the presence of mitigating circumstances.

WHEREFORE, the trial court's judgment is set aside. Accused Avellana is convicted of homicide and sentenced to an indeterminate penalty of twelve years of prison mayor as minimum to twenty years of reclusion temporal as maximum and to pay solidarily the heirs of Carlos Estrosos an indemnity of twelve thousand pesos. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, concur.

Teehankee and Abad Santos JJ., took no part.

[1] Before that trial, someone had handwritten a letter for the two accused, which was sent to Judge Onofre A. Villaluz. In that letter, the two accused pleaded that they be sentenced to reclusion perpetua. The letter reads as follows:

"Kgg. Hukom O. Villaluz,

"Sumulat po ako sa inyo lakip ang taimtim na dala-ngin na sanay pagukulan po ninyo ng pan sin ang nilalaman ng liham kong ito.

"Noon pong nakaraang linggo petsa 28 ng Abril, 1972 ay humarap kami sa inyo ng aking kakusa na si Rodolfo Cer-vantes, sa Court ng Pasig, Rizal. Sinabi po sa amin ng abo-gado na ang magiging sentensya sa amin ay 'bitay'. "Sa ngayon po kaya ako sumulat sa inyo sapagkat sa petsa 17 ng buwan pong ito ay mull kaming haharap sa inyo. Kami po ay nagsusumamo sa inyo, nagmamakaawa na gawin na po ninyong habang buhay na pagkabilanggo ang magiging hatol sa amin upang magkaroon pa po kami ng pagkakataon na makapag bagong buhay.

"Nais ko pong ipaalam sa inyo na ako, Jose Avellana, ay lalaya na sa taong ito, 1972, at si Rodolfo Cervantes ay lalaya sa 1973. Totoo nga po na kami ay pumatay, subalit ginawa po namin ang gayon ng labag sa aming kalooban.

"Sana po ay maniwala kayo na sa boob ng bilangguan ito, kung panahong nagkakagulo, ay batas ng mga naghahari-hariang mga bilango ang nasusunod sa loob ng mga dormitoryo ng mga preso.

"Ang sino mang mautusang pumatay ay hindi maaring tumutol at kung tangkain mang magsumbong sa mga kinauukulan ay buhay ang magiging kapalit. Sana po ay maunawaan ninyo kami, at madama ang hangarin namin upang makapag bagong buhay. "Diyos na po ang bahalang gumanti sa inyo sa anomang tulong na ipagkakaloob ninyo sa amin. Inuulit ko po sa Mayo 17, 1972 ay haharap kami sa inyo at ilimos na po ninyo sa amin ang inyong habag. Pagpalain nawa kayo ng Diyos. "Lubos na gumagalang, "Jose Avellana Rodolfo Cervantes."

[2] At that July 29, 1972 hearing, the trial court dis-posed of two other murder cases of prisoners in the national penitentiary, namely, Criminal Case No. 966, People vs. Romeo Corpus, Victor Bangayan and Hernanie Soto, regard-ing the killing of prisoners Rodolfo Legaspi and Antonio Silva on December 30, 1970, and Criminal Case No. 1012, People vs. Paulito Garcia and Pablo Canonigo, regarding the killing on November 21, 1970 of prisoner Carlito Alejo. In those two cases, the accused were also sentenced to death. Only one decision was rendered for the three cases.

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