

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO SARMIENTO, DEFENDANT AND APPELLANT.*G.R. No. L-19146. May 31, 1963*

Ponente: BARRERA, J.

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Defendant-appellant, Pedro Sarmiento, together with the Jose Vajilidad, was accused by the Provincial Fiscal of Antique of the crime of murder under an information charging that the crime was committed with the qualifying circumstance of treachery and the generic aggravating circumstance of known premeditation.

At the trial, the defendant-appellant Sarmiento, admitted the killing but pleaded self-defense. The lower court rejected this plea and found the defendant Sarmiento guilty, convicting him however, only of the crime of homicide. The trial court was of the opinion that the Qualifying and aggravating circumstances were not fully proven. On the other hand, not having found from the evidence sufficient grounds to convict Jose Vajilidad, the lower court acquitted the latter of the charge. From this decision, defendant Sarmiento appealed to the Court of Appeals.

Upon appeal, the appellate court, while agreeing with the lower court's finding that the elements of self-defense were not satisfactorily established, advanced the opinion that the accused herein should have been found guilty of the crime of murder on the ground that the killing was committed with the qualifying circumstance of evident premeditation. The accused, according to the Court of Appeals, should be sentenced to the penalty of reclusion perpetua. The case was therefore, by resolution of October 14, 1961, certified to this Court for final determination pursuant to Section 34 of Republic Act 296.

After carefully examining the evidence on record, we are satisfied that appellant's theory of self-defense cannot stand. In the first place, the deceased Baldestamon was not, contrary to appellant's claim, holding a bolo when shot. This is shown by the fact that although the hilt of his bolo was hit by a bullet and damaged (Ext. H-1), not one of the deceased's hands was wounded, clearly indicating that he was not wielding the bolo when he was shot. Secondly, it appears from the sketch of the scene of the incident showing the spot where the empty cartridges were found and the place where blood stains were located, that the deceased was shot by appellant from a distance of about 24 meters from where appellant was, which also indicates that appellant could not have acted in self-defense in repelling an alleged aggression by the deceased who was decidedly at a distance.

The only question left to be determined by this Court is whether or not the qualifying circumstances heretofore mentioned were sufficiently established to qualify the homicide, admittedly committed by defendant Sarmiento, as one of murder.

The qualifying circumstances of treachery and evident premeditation were alleged in the information, and had the court a quo found the same sufficiently proven by the evidence, it could have been correctly taken into account to qualify the killing. However, the lower court was of the firm belief that the evidence did not sufficiently establish the same, and in this connection stated:

"Evidence of the treacherous character of the shooting was introduced thru the testimony of Miguel Nacor, who said that Baldestamon (deceased) was shot from a distance of about 24 meters by Sarmiento, without any previous warning and with his left side turned towards Sarmiento. The court cannot but regard the testimony of this witness with caution. He is a brother of the widow of the deceased. He said that he was only 30 meters away from Baldestamon when it happened, and he saw everything clearly. From the distance he could easily have shouted a warning to Baldestamon but he kept silent, and when Angel was shot all he did was to run home. The most natural reaction for him, even if he had been too afraid of Sarmiento to intervene during the incident, was to have run to the police authorities, but he said he did not do so until the following day, and even that is open to serious doubt. The medical findings also point to the fact that Baldestamon was shot from the left, but that alone does not establish that the shooting was treacherous. The victim may have instinctively tried to turn sideways when he saw Sarmiento aiming the gun at him, and he received the blast on his left side.

"The Court finds that neither of the qualifying circumstances of treachery or evident premeditation has been established beyond reasonable doubt. While it is true that Sarmiento went to the land that morning bent on getting it, it does not necessarily follow that he had already made up his mind to kill Baldestamon in the process."

Evidence of the treacherous nature of the killing was introduced through the uncorroborated testimony of a sole witness and this testimony was taken by the court below with caution as the witness is a brother of the widow of the deceased. In discrediting this testimony, the trial court reasoned that if the witness had been too afraid to shout a word of warning to the deceased, when the defendant allegedly aimed his shotgun, the most natural reaction for the witness was to have immediately reported the killing to the police authorities, instead of waiting until the following day to do so. We agree with the lower court that the sole fact that the deceased was shot from the left side, does not in itself and alone, sufficiently and positively prove the treacherous nature of the killing. Under the law, there is treachery when the offender commits the act by "employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take." (Article 14, para. 16, Revised Penal Code). There is lack of evidence on the record to sustain a finding that the defendant herein employed such means, or that the attack was of such treacherous nature since the sole testimony on the point has been discredited by the court below.

Upon the other hand, the appellate court in taking into consideration the qualifying circumstance of evident premeditation, laid emphasis on the evidence in the record that two days immediately preceding the fatal shooting the appellant threatened to shoot the deceased and expressed intention to finish him; that on the eve of the killing the appellant uttered the following words to the deceased in the presence of witnesses: "This night I was not able to shoot you, but tomorrow I will."

We disagree with the appellate court that evident premeditation was present in the case at bar. Note that although threatening remarks were made by the appellant on deceased, the same were made on different occasions. There was no showing that in between, appellant made plans or sought the deceased to accomplish the killing. In fact, the killing of the deceased happened when appellant was plowing the field disputed by the deceased and appellant, and the deceased unexpectedly appeared thereat. In the circumstances, it seems clear that appellant's act of shooting the deceased was not premeditated.

The rule is settled that the qualifying circumstance of premeditation is satisfactorily established only if it is proved that the defendant had deliberately planned to commit the crime, and had persistently and continuously followed it, notwithstanding that he had ample time and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection. In other words, it contemplates cold and deep meditation, and tenacious persistence in the accomplishment of the criminal act (People vs. Gonzales, 76 Phil., 473). Even granting that the defendant herein had arrived at a determination to commit the crime when he

made the alleged statement, this fact does not of itself establish evident premeditation for it must appear, not only that the accused made a decision to commit the crime prior to the moment of execution, but also that this decision was the result of meditation, calculation or reflection or persistent attempt (People vs. Carillo, 77 Phil., 572); or that sufficient time had elapsed between its inception and its fulfillment, to dispassionately consider and accept the consequences (People vs. Custodio, 97 Phil., 698; People vs. Mendova, 100 Phil., 811). While it is true, that defendant herein, could have really intended to kill the deceased upon making these statements, it has been held that mere threats to kill, without evidence of sufficient time for meditation and reflection do not justify a finding of evident premeditation (People vs. Upao Moro, G.R. No. L-6771, May 28, 1957). Moreover, this circumstance is not proven where there is no evidence as to the time when the defendant decided to kill the victim (People vs. Bautista, 79 Phil., 652). Therefore, no matter how strong the suspicion can be as to what actually took place on the morning of the fatal shooting, no evidence on the record I indisputably prove evident and known premeditation on the part of the accused herein.

The question at issue can be best answered by stating that the circumstances mentioned in Article 248 of the Revised Penal Code, qualifying as they do the crime of murder, should be established by direct and positive evidence; mere presumptions or inferences are insufficient (U.S. vs. De Jesus, 2 Phil., 514; U.S. vs. Baguiao, 4 Phil., 110; U.S., vs. Bañagale, 24 Phil. 69). The trial court had the opportunity to carefully weigh the testimony of the witnesses, and was satisfied therefrom that neither treachery nor evident premeditation was sufficiently proven in this case. It is a settled rule that this Court will not interfere with the intelligent and impartial conclusion of a trial court concerning the credibility of witnesses, the court having seen them in the act of testifying and having had the opportunity to observe their manner and demeanor as witnesses, unless the record discloses some fact or circumstance of weight or influence overlooked by the court, or its significance misunderstood or the fact or circumstance misapplied (U.S. vs. Ambrosio, 17 Phil., 295; see also People vs. Cabrera, 43 Phil., 82; U.S. vs. Maralit, 36 Phil., 155; U.S. vs. Remigio, 37 Phil., 599; U.S. vs. Rica, 27 Phil., 641), which circumstance we do not find in the case at bar. It is the peculiar province of the trial court to resolve questions as to the credibility of witnesses, and unless there is something in the record which by fair interpretation impeaches the resolutions of the trial court, this Court will assume that the court below acted fairly, justly, and lawfully (U.S. vs. Pico, 15 Phil., 549).

WHEREFORE, finding the decision of the trial court in accordance with the facts of the case and the law applicable thereto, the same is hereby affirmed an all respects, without costs.

SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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