

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOLAS LAYSON, CEZAR RAGUB, CEZAR FUGOSO AND JOVENTINO GARCES, DEFENDANTS-APPELLANTS.

G.R. No. L-25177. October 31, 1969

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PER CURIAM:

This is an automatic review of the decision dated September 25, 1965 of the Court of First Instance of Davao in criminal case 8495 imposing the death penalty on Nicolas Layson, Cezar Ragub, Cezar Fugoso and Joventino Garces.

On January 17, 1964 when these four accused stabbed Regino Gasang to death, they were inmates of the Davao Penal Colony serving sentences of conviction for the following crimes:

"Nicolas Layson - kidnapping with robbery, homicide, homicide and theft;

"Cezar Ragub - frustrated murder and homicide;

"Cezar Fugoso - robbery in an inhabited house and theft;

"Joventino Garces - robbery hold-up and robbery in an uninhabited house."

In the early morning of that hapless day, at about 4:45 o'clock, the four accused, armed with bladed weapons, entered the cell where the unsuspecting victim, prisoner Regino Gasang, was. Layson locked the door of the room. Without warning and acting in concert they then swiftly took turns in stabbing Gasang. They thereafter barricaded themselves, refusing to surrender to the trustees who had come to the scene of the crime, agreeing to surrender only to Vicente Afurong, the supervising prison guard. Afurong arrived, identified himself, and assured them of their safety, whereupon they handed their weapons through the hole of the barricaded door and surrendered themselves.

Gasang died shortly after being brought to the prison hospital. Death was caused by severe internal and external hemorrhage and shock, all secondary to multiple stab wounds.

Layson, Ragub and Fugoso admitted that they killed Gasang because the latter urinated on their coffee cups a number of times. Garces stated that he killed Gasang because the latter spat on him a week before. The four plotted to kill Gasang a few days prior to the actual slaying.

On March 25, 1964 all the accused were indicted for the crime of murder. The information recites:

"The undersigned accuses Nicolas Layson, Cezar Ragub, Cezar Fugoso and Joventino Garces of the crime of Murder, under Art. 248, in relation to Art. 160, of the Revised Penal Code, committed as follows:

"That on or about January 17, 1964, in the Davao Penal Colony, Municipality of Panabo, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, while then being convicts serving in the said Davao Penal Colony their corresponding sentences of conviction by reason of final

judgment imposed upon them, conspiring and confederating together and helping one another, armed with sharp-pointed instruments, with treachery, evident premeditation and abuse of superior strength, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab with said weapons Regino Gasang, their co-inmate in the said Colony, thereby inflicting upon him serious injuries which caused his death; with the aggravating circumstances of (1) recidivism with respect to the accused Nicolas Layson and Cezar Ragub, and (2) all of them with two or more prior convictions."

Upon arraignment, all the four accused, assisted by counsel de oficio, freely and spontaneously pleaded guilty. Notwithstanding the plea of guilty, the court a quo proceeded to receive testimony because of the gravity of the offense. On September 30, 1965 the court rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt as principals of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, with the mitigating circumstance of plea of guilty in favor of all of them and the aggravating circumstances of recidivism and having been previously punished for two or more crimes to which the law attaches a lighter penalty with respect to the accused Nicolas Layson and Cezar Ragub, the aggravating circumstance of having been punished with two or more offenses to which the law attaches a lighter penalty with respect to the accused Cezar Fugoso and Joventino Garces and the aggravating circumstances consisting of any two of the qualifying circumstances alleged in the information which are treachery, evident premeditation and abuse of superior strength for one is sufficient to qualify the crime to murder and the special aggravating circumstance of having committed the crime charged while serving the penalty imposed upon them for previous offenses as regards all the accused and conformably with Article 160 of the Revised Penal Code, hereby sentences all of them to DEATH, to indemnify jointly and severally the heirs of the deceased Regino Gasang in the amount of Six Thousand Pesos (P6,000.00) without subsidiary imprisonment in case of insolvency by reason of the penalty imposed and to pay the costs proportionately."

For the purposes of this review, suffice it to consider, on the one hand, the aggravating circumstances of evident premeditation and treachery and the special aggravating circumstance of quasi-recidivism, and, on the other, the mitigating circumstance of plea of guilty.

We reject the recommendation of the Solicitor General that the mitigating circumstance of passion and obfuscation be considered in favor of all the accused. For this circumstance to exist, it is necessary that the act which gave rise to the obfuscation be not removed from the commission of the offense by a considerable length of time, during which period the perpetrator might recover his normal equanimity.[1]

Three of the accused admitted that they harbored ill-feeling against Gasang because the latter urinated on their coffee cups several times, all these taking place at least ten days before the actual slaying. Gasang spat on Garces a week before the day of the killing. All of the accused plotted to kill Gasang a few days before January 17, 1964. In the light of these circumstances, it is evident that sufficient time had elapsed during which the accused regained their equanimity. They moved their evil scheme forward to consummation after obtaining weapons from their fellow inmates whose aid they had solicited. The aforementioned circumstances negate the presence of passion and obfuscation; upon the contrary, they prove the attendance of the aggravating circumstance of evident premeditation.

Treachery attended the commission of the crime. The necropsy report (exh. I) and the diagram (exh. J), plus the testimony of Dr. Guillermo de Guzman, conclusively prove that the victim was killed in a manner insuring utter suddenness and complete surprise in the execution of the offense, with resultant incapability of the victim to offer resistance. That there was abuse of superior strength would suffice to qualify the crime to murder, but this circumstance must be considered as absorbed in treachery.[2]

Treachery qualifies the killing to murder;[3] evident premeditation becomes a mere generic aggravating

circumstance[4] which is offset by the mitigating circumstance of plea of guilty. A qualifying circumstance not only gives the crime its proper and exclusive name but also places the author thereof in such a situation as to deserve no other penalty than that specially prescribed for said crime.[5]

The special aggravating circumstance of quasi-recidivism (art. 160, Rev. Penal Code) was correctly considered against all the accused, who, at the time of the commission of the offense, were undoubtedly serving their respective sentences for previous convictions. Quasi-recidivism has for its effect the punishment of the accused with the maximum period of the penalty prescribed by law for the new felony, and cannot be offset by an ordinary mitigating circumstance.[6]

When they pleaded guilty to the charge of murder, all the accused admitted all the material facts and circumstances alleged in the information. The crime of murder is punished with reclusion temporal in its maximum period to death. Because of the attendance of the special aggravating circumstance of quasi-recidivism, this Court is left with no alternative to affirming the death penalty imposed by the court a quo.

It was error for the trial judge to consider against the accused the aggravating circumstance of having been previously punished for two or more crimes to which the law attaches lighter penalties because the said aggravating circumstance of "reiteracion" requires that the offender against whom it is considered shall have served out his sentences for the prior offenses. Here all the accused were yet serving their respective sentences at the time of the commission of the murder.

Concurrence in the grim view that we take of this case is given by Attorney Potenciano Villegas, Jr., counsel de oficio for the four accused, who unqualifiedly recommends affirmance of the judgment a quo.

It is indeed a lethal hand that pens affirmance of a death sentence, but ours is the inescapable duty to enforce the inexorable mandate of the law.

ACCORDINGLY, the judgment a quo imposing the death penalty on Nicolas Layson, Cezar Ragub, Cezar Fugoso and Jo-ventino Garces, is affirmed. The indemnification to the heirs of the victim, Regino, Gasang, is hereby increased to P12,000,[7] to be paid jointly and severally by the four accused. Costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.

Barredo, J., did not take part.

[1] U.S. vs. Pilares, 18 Phil. 87; U.S. vs. Taylor, 6 Phil. 162; U.S. vs. Sarikala, 37 Phil. 486; People vs. Alanguilang, 52 Phil. 663.

[2] People vs. Mobe, 81 Phil. 58; People vs. Redoña, 87 Phil. 743; People vs. Quesada, 62 Phil. 446; People vs. Jamoralin, L-2257, Feb. 19, 1951.

[3] Art. 248, Revised Penal Code.

[4] U.S. vs. Labai, 17 Phil. 240.

[5] People vs. Ubiña, L-6969, Aug. 31, 1955.

[6] People vs. Perete, L-15515, April 29, 1961, 1 SCRA 1293; People vs. Peralta, L-19069, Oct. 29, 1968, 25 SCRA 788.

[7] People vs. Pantoja, L-18793, Oct. 11, 1968, 25 SCRA 469, 473.

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