

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELO UMAGUING, DEFENDANT WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-52797. August 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

There is no controversy as to the facts of this extra-ordinary case where the accused attempted to hasten the death of a septuagenarian woman who had suffered a stroke.

In the evening of January 8, 1977, Amparo Lazo y Villaflor, 76, a resident of 45-B 11th Avenue, Cubao, Quezon City (a native of Sto. Domingo, Ilocos Sur), had a severe headache and a bout of vomiting, followed by cerebral hemorrhage. She fell into a coma.

She was rushed by her relatives and two boarders to the Polymedic General Hospital, located at E. de los Santos Avenue, Mandaluyong, Metro Manila and administered by Doctor Victor Potenciano. She arrived in the emergency room at seven-forty-five. She was on a stretcher.

She was unconscious due to cerebro-vascular congestion. She had difficulty in breathing. Her blood pressure was 200/100. Her pulse rate was 100 per minute (Exh. B-1).

The nurse on duty administered oxygen inhalation to the patient. She was given dextrose, penicillin, solu-cortef, serpasil, decadron and sodium bicarbonate. A vein of the patient was cut to diminish the blood pressure.

As the patient had apnea, Doctor Emmanuel Favila called the other resident physicians for a consultation. At about eight-thirty, Doctor Estacio, an anesthesiologist, inserted into the patient's mouth and windpipe an endotracheal rubber tube, about six inches long and half an inch in diameter with a plastic ventilator. It was taped to the patient's mouth by means of a plaster. The purpose was for "ventilation" or the excretion of the carbon dioxide (to prevent "drowning", according to Doctor Favila).

After the endotracheal tube had been inserted, Angelo Umaguing, a janitor, for reasons known only to himself and without the least justification, tried to remove the plaster holding the tube in place. Doctor Estacio shoed him away. That episode was witnessed by Doctor Favila (81-82 tsn March 9, 1977).

Then, a few minutes later, after the doctors had left the emergency room and while the nurse's back was turned, Umaguing went to the patient's bed and, to suit his purpose (for being a mere janitor he had nothing to do with the patient), he removed the endotracheal tube. His reckless and irrational act was witnessed by Jojo Cruz and Adelaida Apostol, the patient's grandson and niece, respectively.

According to Adelaida, the removal of the tube caused the patient to bleed in the mouth and to have a convulsion (nangisay). Umaguing even closed the patient's eyes, (6-7 tsn November 11, 1977).

The nurse called the doctors to the emergency room. Doctor Ramon Sison, the chief resident physician, restored

the endotracheal tube. The patient was still breathing. The security guard was alerted and directed to detain Umaguig. A relative of the patient called a policeman. Umaguig was arrested and brought to the police station of Mandaluyong where the incident was investigated.

The removal of the tube impelled the patient's relatives to transfer her to the Cardinal Santos Hospital. She was brought there in an ambulance. She died there the next day at four-quarter in the morning. Death was due to cardio-respiratory arrest brought about by cerebro-vascular hemorrhage and hypertension (Exh. A).

The Mandaluyong police secured the statement of Jojo Cruz, Gloria Apostol, Adelaida Apostol and the nurse who pointed to Umaguig (he was present when the statements were taken) as the culprit who removed the endotracheal tube.

Jose Cruz, the sixteen-year-old grandson of the patient, in his statement taken in Umaguig's presence, said:

"... ng nasa emergency room kami ay ginamot siya (the patient) ng doktor ay nandurun siya (Angelo Umaguig, the accused) ay inaalal niya ang plaster ng gomang inilagay ng doktor sa bibig ng aking Lola, ay pinalis ng doktor ang kanyang kamay at sinabi sa kanya na: 'Bakit mo pinakiki-alaman iyon?' at umalis na siya (Angelo Umaguig).

"Pumunta kami ng tiyahan kong si Gloria Apostol, sa information para iconfine ang aking Lola. Ako po ay bumalik sa emergency room. Nakita ko ang aking tiyang si Adelaida na nakaupo at minamasahe ang kamay ng aking Lola.

"Mga ilang sandali po ay biglang lumapit siya (Angelo Umaguig) ulit at tinanggal ang plaster na nakakabit sa gomang nakalagay sa bibig ng aking Lola at hinugot iyon.

"Mabuti at may lumabas na nurse at tinanong kami: 'Sino ang nagalis niyan?' Ang taong iyan (Angelo Umaguig) ay pilit na ipinipikit ang (mga) mata ng aking Lola at tinanong si Angelo na kung bakit siya nakikialam.

"At lumabas itong si Angelo patungo sa corridor at siya ay hinabol ng nurse at narinig ko na huwag papaalisin ang taong iyan." (Exh. F, p. 62, Record).

Adelaida Apostol, a niece of the patient who was also in the emergency room, in her statement gave the following account of what Umaguig did:

"Ng aming pong dalahin ang aking tiyang si Amparo Lazo sa Polymedic Hospital ay ipinasok siya sa emergency room. Agad namang inasikaso ng mga doktor at ng nurse ang aking tiyahan. Kami nuon ng aking pamangking si Jojo (Jose Cruz) at ang dalawang boarders ng aking tiya ay nasa paligid din ng emergency room.

"Nakita ko na may nagmamasahang sa tiyan ng aking tiya. May nagbobomba sa bibig niya at may nagsaksak ng iniksyon sa kamay. Ng may inilagay na ang isang doktor sa bibig ng aking tiya na parang tubo ay nakita ko ang taong iyan (Angelo Umaguig) na inalis ang plaster (adhesive tape) at pinalis pa ang kamay niya (Angelo Umaguig) ng doktor at pinaalis.

"Ng ang aking hipag na si Gloria ay lumabas upang ipaconfine na ang aking tiyahan at matapos na ang paglalagay ng tubo sa bibig ng aking tiya. Hindi nagtagal ay umalis na rin ang doktor at ang natira ay ang orderly na isang lalaki, ay pumasok ang lalaking iyan (pointing again to Angelo Umaguig) at biglang inalis ang nasabing tubo sa bibig ng aking tiya, at nakita ko na parang hinabol ng Tiya Amparing ko ang kanyang hininga at ang orderly ay nagsalita ng: 'Bakit mo inalis iyan?' at inutusan ang isang guwardiya yata na pigilin ang taong iyan (Angelo Umaguig) ng siya ay palabas na" (Exh. H, p. 64, Record).

These statements are reflected in the initial police investigation report of the incident, excerpts from which are

quoted below:

"During the process when the endotracheal tube was being installed/inserted, the suspect, Angelo Umaguig, took off the adhesive tape that strengthened the said tube and the doctor attending to it, seeing the hands of the suspect, warded them and was sent off (shooed away) by him (the first attempt).

"After the installation of the endotracheal tube and the doctor was out, the suspect returned and in the clear view of the witnesses, Jose Cruz, Gloria Apostol and the other relatives of the victim, took out the said tube from the mouth of the victim Amparo Lazo y Villaflor, causing a disruption of her breath." (Exh. D, p. 151, Record).

Nurse Tessie Piad gave the following account of Umaguig's wrongful act:

"Suddenly, Mr. Makinano (the orderly) shouted and said that the endotracheal tube was removed by Mr. Umaguig (the janitor). According to one of the relatives (of the patient) (the one watching the patient) that Mr. Umaguig (the janitor) open(ed) the curtain and suddenly took the endotracheal tube without any word.

"So, I went immediately to the patient and looked at her. The patient was still breathing same as before and did not look like she was in distress. I take (took) the vital signs; then called for the doctor. Dr. Enrile, Dr. Sison and Dr. Favila went down immediately. Dr. Sison did the reinsertion of the endotracheal tube.

"The relatives requested to transfer the patient to the Cardinal Santos Memorial Hospital. Our ambulance took the patient there, accompanied by Dr. Enrile and Miss Abuan and some relatives of the patient. The patient was still in the same condition when she left the hospital (Polymedic General Hospital)." (Exh. C, p. 149, Record).

On January 12, 1977, the chief investigator of the Mandaluyong police filed in the municipal court a complaint for murder against Umaguig. He waived the second stage of the preliminary investigation. On January 20, 1977, the fiscal filed an information for murder against Umaguig in the Circuit Criminal Court at Pasig, Rizal.

After trial, the court convicted Umaguig of consummated murder, qualified by treachery and aggravated by abuse of superiority, nocturnity, disregard of old age and ignominy, sentenced him to death and ordered him to pay an indemnity of twenty-two thousand pesos to the heirs of Amparo Lazo (Criminal Case No. 1858). The case was elevated to this Court for review of the death penalty.

Umaguig, 29, who finished third year high school, testified that in 1976 he started working as janitor in the hospital. He became a member of the Bahala na Gang in 1967.

His defense was that at past nine o'clock he was categorically ordered by Doctor Sison to remove ("alisin na") the endotracheal tube and other instruments and devices because the old woman's case was hopeless. The order was allegedly given to him and to the nurse and the orderly or attendant named Abundio Makinano (3, 9-10 tsn January 5, 1978).

In the courtroom Umaguig demonstrated the giving of the signal by sitting on the floor, his left elbow on top of the witness stand and his right hand making a sign that there was no more hope for the patient (9 tsn January 5, 1978).

Immediately after Umaguig mentioned the name of Sison, Judge Onofre A. Villaluz ordered that he be sub-poenaed to testify. In his testimony, Sison denied that he gave a signal to Umaguig to remove the endotracheal tube.

Umaguig denied that he was connected with any funeral parlor. Doctor Sison did not know whether Umaguig was an agent of any mortician.

Umaguig admitted that after removing the endotracheal tube he was called by the head nurse. He was running

because he was nervous. He was nervous because he had pulled out the tube. He admitted that removing the tube was a mistake. He was apprehended by the security guard at the gate. He did not tell the police during the investigation that Doctor Sison ordered him to remove the tube (11-12 tsn).

Umaguig's counsel in the trial court admitted that "there is no dispute that" Umaguig "removed the endotra-cheal tube" (p. 164, Record). In the police station, when two relatives of the patient, Jose Cruz and Adelaida Apostol, fingered him as the malefactor who removed the endotracheal tube, he did not controvert that accusation. He did not execute any sworn statement to prove his innocence.

Umaguig's counsel de oficio contends that the trial court erred in finding that the removal of the endotracheal tube shortened the old woman's life or caused her death and in holding that he committed murder.

He argues that because of the old woman's critical condition she was sure to die a natural death; that the tube was inserted into her windpipe merely to lessen her suffering and that she did not die immediately after the removal of that tube.

It is also contended that the accused accidentally re-moved the tube while he was cleaning the emergency room and, therefore, he did not deliberately intend to kill the old woman. Hence, he could not be guilty of murder.

Those contentions are devoid of merit. As a janitor, the accused had no compelling reason to be in the emergency room to watch the old woman's condition while medical assist-ance was being extended to her.

His presence in the emergency room was for some ulterior motive and that motive became evident when he removed the tube. The removal of the tube was not acci-dental. Evidently, counsel de officio did not remember the testimony of Umaguig, which counsel himself elicited on direct examination, or counsel did not bother to read the record.

Since Umaguig testified that he removed the tube because he was ordered to do so by Doctor Sison (3-4 tsn January 5, 1978), the removal of the tube was not accidental.

Umaguig was not cleaning the emergency room when the old woman was brought there. He had stationed himself in the emergency room to monitor or observe the medical treatment being administered to her. His diabolical purpose was to wait for a good opportunity when he could attempt to hasten the old woman's demise.

On the other hand, the Solicitor General recommends the acquittal of the accused on the ground that the proximate cause of the patient's death was not the removal of the endo-tracheal tube but cardio-respiratory arrest and that it was not shown that the accused acted with criminal intent.

That recommendation is not well-taken. Umaguig's removal of the endotracheal tube was utterly malicious and felonious. The victim's relatives, who saw him committing that act, sensed immediately that he was trying to kill the old woman. And so, they lost no time in calling a policeman to apprehend and investigate him.

Umaguig, as a janitor, had nothing to do with the patient. He had no business being in the emergency room at eight o'clock in the evening. As his act of removing the tube was wrongful, it is to be presumed that he did so with an evil intent (See 5[b], Rule 131, Rules of Court; U.S. vs. Apostol, 14 Phil. 92; U.S. vs. Tria, 17 Phil. 303; U.S. vs. Ballesteros, 25 Phil. 634; People vs. Sia Teb Ban, 54 Phil. 52; People vs. Cubelo, 106 Phil. 496).

Umaguig was not able to rebut satisfactorily that presumption. As already noted, his testimony that he was ordered by Doctor Sison, the chief resident physician, to remove the tube was denied by the latter (22 tsn January 5, 1978). Doctor Favila testified that the removal of the tube was a serious matter (65 tsn March 9, 1977).

The overt acts committed by the accused constitute attempted murder. He was not able to perform all the acts of

execution necessary to consummate the crime because the victim was transferred to another hospital and the accused was immediately apprehended. Moreover, the tube was re-inserted into the victim's mouth.

We find the accused guilty beyond reasonable doubt of attempted murder without any aggravating circumstances.

The trial court's decision is modified. The death penalty is set aside. Umaguig is sentenced to an indeterminate penalty of four years of prision correctional as minimum to eight years of prision mayor as maximum and to pay an indemnity of five thousand pesos to the heirs of the victim, Amparo Lazo. Costs de oficio.

SO ORDERED.

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

Abad Santos, J., on leave.

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