

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NONCETO GRAVINO ALIAS CETO ALIAS NONOY, DEFENDANT-APPELLANT.

G.R. Nos. L-31327-29. May 16, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us for automatic review is the decision of the Court of First Instance of Davao del Sur, 16th Judicial District, Branch V, finding the accused NONCETO GRAVINO, guilty beyond reasonable doubt in Criminal Case No. 124 for the crime of MURDER of Nicolas Diagbel, Jr., and sentencing him to suffer the supreme penalty of DEATH, and to indemnify the heirs of Nicolas Diagbel, Jr., the amount of P12,000.00; in Criminal Case No. 124-A for the crime of FRUSTRATED MURDER of Nicolas Diagbel, Sr., and sentencing him to suffer an indeterminate penalty of six (6) years of prision correccional as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum; and in Criminal Case No. 124-B for the crime of MURDER AND UNINTENTIONAL ABORTION of Anita Diagbel and sentencing him to suffer the capital penalty of DEATH and to indemnify the heirs of Anita Diagbel the sum of P12,000.00 without subsidiary imprisonment in case of insolvency; and in all the above three cases, to pay the costs.

The defendant-appellant was originally charged with only one crime that of "double murder with frustrated murder" but the trial judge was of the belief that three crimes were actually committed. He therefore, directed the fiscal to confer with defense counsel Cesar Javier and, if the latter was agreeable to amending the information, to charge the three proper offenses in amended informations.

As a result, the following three amended informations were filed.

CRIMINAL CASE NO. 124

"That on or about June 10, 1969, in the Municipality of Magsaysay, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and a firearm, with treachery and evident premeditation, and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and stab Nicolas Diagbel, Jr., with said weapon, inflicting upon the latter injuries which caused his death.

"That the commission of the foregoing offense was attended by the aggravating circumstances of disguise, the accused having worn a mask to conceal his identity which facilitated its commission and dwelling.

CRIMINAL CASE NO. 124-A

"That on or about June 10, 1969, in the Municipality of Magsaysay, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bolo and firearm, with treachery and evident premeditation, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and shoot Nicolas Diagbel, Sr., with said weapons inflicting upon the latter injuries which could have caused his death, thus the accused performed all the acts of execution which could have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of

some causes independent of the will of the accused that is, by the timely and able medical assistance rendered to said Nicolas Diagbel, Sr.

"That the commission of the foregoing offense was attended by the aggravating circumstance of disguise, the accused having worn a mask to conceal his identity, nighttime, which facilitated its commission and dwelling.

CRIMINAL CASE NO. 124-B

"That on or about June 10, 1969, in the Municipality of Magsaysay, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and a firearm, with treachery and evident premeditation, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab Anita Diagbel with said weapon who was in the family way inflicting upon the latter with wounds which caused her death and the death of the fetus inside her womb.

"That the commission of the foregoing offense was attended by the aggravating circumstance of disrespect due to the offended party on account of her sex, disguise, the accused having worn a mask to conceal his identity, nighttime, which facilitated its commission, and dwelling."

There is no dispute over the main facts of the case.

The defendant-appellant Nonceto Gravino, a 27 year old farmer at the time the offenses were committed, had been courting Zosima Diagbel, a 20 year old student, for about a year. In fact the two had been sweethearts until Zosima told the accused-appellant that she did not wish to marry him because her parents did not want him to be Zosima's husband.

In the evening of June 10, 1969, accused-appellant went to the house of the Diagbels. He entered the house surreptitiously, but he was discovered or in his own words "I was noticed by the parents" whereupon he committed the crimes that led to the deaths of two persons and almost led to the death of the third victim. The accused-appellant wore a mask while committing the crimes.

The accused-appellant stated the following facts of the case in his brief:

"1. There is first the testimony of the accused himself after his plea of guilty. He stated that he and Zosima, a daughter of Nicolas Sr. and Anita, were sweethearts; that he wanted to marry her; had proposed marriage to her but her parents objected; that they then planned to elope but when he came to get her one night, he 'was noticed by the parents' and because of his 'fear', he, as the lower court put it, was overpowered by emotions and lost his reasoning power (pp. 5-7, tsn).

"2. The statement of Zosima herself (20 years old) to the police taken 3 days after the incident. She said she and the accused were sweethearts for almost one year but she had to break off relations because of her parents objections. Zosima witnessed the assault on her father, mother and brother and said they were hacked by the accused with a bolo. This bolo, Zosima said, belonged to their (Diagbel) family and not to the accused (pp. 6-8, rec.)

"3. The statement of Arsenio (age 13), another brother of Zosima, to the police also made 3 days afterwards. He said that that night the accused was in their sala walking up and down when he (the accused) picked up a bolo from a table and attacked and stabbed his brother and his father in the stomach (pp. 9-10, rec.).

"4. The report of the police investigator, Tertuliano Glorio, that the accused was armed with a revolver and a bolo, he found a .22 caliber bullet hole in one of the walls of the house, he recovered a bloodstained bolo in the premises but he was not able to recover the revolver (p. 11, rec.).

"5. The medical report on the victims that Nicolas Sr. had 3 wounds, 2 minor and 1 serious, the latter a stab wound, penetrating 3 inches below the nipple and requiring 2 weeks of medical attention (p. 12, rec.); that

Nicolas Jr. had one stab wound, penetrating, in the stomach (p. 13, rec.); and that Anita had 2 stab wounds, one in the right elbow joint and the other between the breasts, penetrating (p. 14, rec.).

"These facts are clear: the accused may have brought a gun with him but he did not use it on the victims, he used instead a bolo which he did not bring with him but which he only found in the Diagbels' house, the victims all suffered frontal stab wounds and they each suffered only one serious wound."

After the commission of the crimes, the accused-appellant went to Balagatasa, Maigo, Lanao del Norte. While in Lanao del Norte, he contacted a lawyer who sent a wire to the authorities of Lanao del Sur. Accused-appellant then surrendered to Sergeant Almazan of the Philippine Constabulary in Kinoskosan, Lanao del Sur. (t.s.n., p. 7, October 21, 1969).

On October 2, 1969, accused-appellant, in the presence of counsel de oficio, pleaded guilty to each of the informations, but claimed the mitigating circumstances of voluntary surrender, no intention to commit so grave a wrong, and the plea of guilt. Because these circumstances were not in the record, the accused testified to prove the same.

On the basis of the plea of guilt, the trial court in its decision of October 24, 1969, convicted the accused-appellant in the three criminal cases as follows:

"WHEREFORE, there being evidence in the record, aside from the plea of guilty, that the accused is guilty beyond reasonable doubt of the offenses charged, the Court hereby imposes upon Nonceto Gravino, alias Ceto, alias Nonoy, in Criminal Case No. 124-A an indeterminate penalty of six (6) years of prision correccional, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum, and sentences him in Criminal Case No. 124 to death and to indemnify the heirs of Nicolas Diagbel, Jr. the amount of P12,000.00, and in Criminal Case No. 124-B, also to death, and to indemnify the heirs of Anita Diagbel the sum of P12,000.00, without subsidiary imprisonment in case of insolvency. Accused will pay the costs. Nicolas Diagbel, Sr. is reserved the right to file a separate suit for damages arising from his injuries."

The trial court also added the following plea for mercy in its decision:

"Considering that the offense came from but one impulse generated, as already stated above, by the fact that the sincere offer of the accused to marry his sweetheart was spurned, and considering further the gesture of repentance shown by the accused when he surrendered, when he pleaded guilty, and when he appeared in Court in meekness and utter surrender, this Court humbly recommends that all mercy be granted him in the review of this decision and that, should the penalty of death be affirmed on review, that the President of the Philippines, with the kind leave of the Honorable Supreme Court, commute the same to life imprisonment."

Accused-appellant now alleges:

I

THE LOWER COURT ERRED IN APPLYING EVIDENT PREMEDITATION AS A QUALIFYING CIRCUMSTANCE.

II

THE LOWER COURT ERRED IN APPLYING TREACHERY AS AN AGGRAVATING CIRCUMSTANCE.

III

THE LOWER COURT ERRED IN NOT APPLYING PASSION AND OBFUSCATION AS A MITIGATING CIRCUMSTANCE.

IV

THE LOWER COURT ERRED IN NOT CONSIDERING REPENTANCE AND REMORSE AS A SIMILAR OR ANALOGOUS MITIGATING CIRCUMSTANCE.

V

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIMES OF MURDER AND IN NOT HOLDING THE CRIMES AS ONLY THAT OF HOMICIDE.

VI

THE LOWER COURT FINALLY ERRED IN IMPOSING CAPITAL PUNISHMENT.

With respect to the first and second assignments of error, accused-appellant argues that the information simply alleged "treachery and evident premeditation" but that there are no allegations of facts that could or would constitute these circumstances. The plea of not guilty therefore according to the accused-appellant should be interpreted as a plea only to the conclusion of evident premeditation and treachery but not to any actual facts or fact.

Accused-appellant argues that he did not obviously act with that deliberateness and planning that should characterize evident premeditation because (1) he used a bolo which he found lying on a table of the Diagbel house, (2) the victims all suffered frontal stab wounds, and (3) they each suffered only one serious wound. Accused-appellant maintains that he appeared more to have acted on sudden impulse.

It is a well established rule that a plea of guilty, besides being a mitigating circumstance, is a judicial confession of guilty – an admission of all the material facts alleged in the information, including the aggravating circumstances (*People v. Ariola*, 100 SCRA 523) and that such pleas are, as a rule, enough to sustain a conviction without the need for the introduction of further evidence (*People v. Pajarillo*, 94 SCRA 828 citing *People v. Parete, et al.*, L-15515, April 26, 1961.)

It is, however, also an established rule that a plea of guilty cannot be held to include treachery and evident premeditation where the evidence adduced does not adequately disclose the existence of these qualifying circumstances. (*People v. Ariola*, *supra*)

The records do not adequately support the existence of these qualifying circumstances.

To appreciate the circumstance of evident premeditation, it is necessary to establish the following: (1) the time when the offender determined to commit the crime, (2) act manifestly indicating that the culprit has clung to his determination, and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings. (*People v. Beralde*, 91 SCRA 125) In the instant case, these requisites were not proven.

There is no direct proof offered by the prosecution to show when the accused-appellant meditated and reflected upon his decision to kill the victims and the time that had elapsed before his plan was carried out. It is true that Zosima Diagbel, upon her parents prodding broke off her relationship with the accused-appellant several months before the killing but that fact by itself does not establish that during all this time he planned to wipe out not only the parents of his former girlfriend but also the brother.

There is also merit in defense counsel's second contention that treachery was not proved beyond reasonable doubt. Treachery cannot be presumed. It must be proved as thoroughly as the crime itself in order to aggravate the liability or penalty incurred by the culprit. (*People v. Martinez*, 96 SCRA 714) Although alleged in the

information, this circumstance is not borne out by the records. On the other hand, the records show that all the attacks were frontal. Two of the victims' fatal wounds were a wound each on the breast and the third had one serious wound in the stomach.

Furthermore, the prosecution did not present any direct and positive evidence as to the manner of attack employed by the accused. It is an elementary axiom that treachery cannot be appreciated in the absence of evidence of the mode of attack. (*People v. Lanza*, 94 SCRA 613) There is no showing whatsoever that the mode of attack employed by the accused-appellant was calculated to insure the commission of the crime without risk to himself arising from the defense that the victims may put up. In fact, the mode of attack employed by the accused-appellant is not known at all except that he used a bolo to kill the deceased victims and seriously wound the third. Where the manner of attack was not proved, the defendant should be given the benefit of the doubt and the crime should be considered homicide only. (*People v. Garcia y Cabarse*, 94 SCRA 14, citing *People v. Carpio*, 83 Phil. 509 and *People v. Amansec*, 80 Phil. 424).

While in *People v. Urminita* (94 SCRA 666) we held that, although the attack was frontal, if it was made suddenly and unexpectedly, there is treachery, here, there is no evidence presented by the prosecution to show that the attacks were made suddenly and unexpectedly. The mere fact that accused-appellant previously armed himself with a firearm and a bolo is not by itself proof that the attack was deliberately treacherous. Neither can we presume that the attacks were sudden and unexpected from the mere fact that the attacks were not preceded by any disputes.

Accused-appellant tried to justify his presence in the house of the Diagbels in the evening of June 10, 1969, by alleging that he went there to fetch Zosima who allegedly agreed to elope with him. This is, however, belied by the fact that Zosima herself did not want him to be her husband. Furthermore, one does not arm himself with a bolo and a firearm to effect an elopement agreed upon by the parties. And to start shooting and slashing at the family of the loved one.

We now consider the alleged mitigating circumstances.

Accused-appellant argues that he was in love with Zosima and that she reciprocated this love; that for almost a year, they were sweethearts; that he once asked her hand in marriage; that the refusal caused the tragedy and that this tragedy was the product of legitimate passion and obfuscation (Accused-appellant's Brief, p. 7).

There is no merit in this contention.

To appreciate the mitigating circumstance of passion and obfuscation, the following requisites must concur: (1) that there be an act both unlawful and sufficient to produce such condition of mind; and (2) that said act which produces the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity. (*People v. Alanguilang*, 52 Phil. 662; *People v. Guillano*, L-11904, February 29, 1960).

The only provocative act which the records reveal came from the parents of Zosima who did not approve of the accused-appellant's proposal to marry their daughter. Clearly, this act was not unlawful. Neither was it sufficient to sustain passion and obfuscation. Accused-appellant was actuated more by a spirit of lawlessness and revenge rather than any sudden and legitimate impulse of natural and uncontrollable fury.

Passion and obfuscation as affecting the mind and resulting in lack of reason and self-control must originate from lawful sentiments. (*People v. Reyes*, 100 SCRA 581).

The Solicitor-General also correctly observed that the said act of Anita Diagbel in refusing the proposal of the

accused-appellant to marry her daughter was far removed from the commission of the crimes. There was more than enough time for accused-appellant to have recovered his personal equanimity.

Accused-appellant further contends that the lower court erred in not considering repentance and remorse as a similar or analogous mitigating circumstance. We find no merit in this contention. As correctly observed by the Solicitor-General repentance is already one of the overriding considerations in appreciating the voluntary plea of guilt as a mitigating circumstance. Thus in *People v. De la Cruz* (63 Phil. 874) we held that a confession of guilt constitutes a cause for the mitigation of the penalty because it is an act of repentance and respect for the law. It indicates a moral disposition in the accused favorable to his reform.

Both the counsel de oficio and the Solicitor General did not discuss as to whether or not the accused-appellant made an improvident plea of guilty.

In capital offenses where the accused-appellant enters a plea of guilty, we have adhered to the rule that the trial court should still take testimony and receive evidence not only to satisfy the trial judge but to aid this Court in determining whether the accused truly understood and comprehended the meaning, full significance, and consequences of his pleas. (*People v. Baluyot*, 75 SCRA 148).

Indeed, in view of the grave consequences of a plea of guilt to a capital offense this Court felt constrained to issue certain guidelines to be observed by trial courts, not only to forestall improvident pleas of guilt but also to determine the precise degree of culpability of the accused.

" . . . First, where in the arraignment, the accused is represented by counsel de oficio (as in this case), it is incumbent upon the trial judge to accord such counsel the fullest opportunity not only to examine the records but also to acquire every relevant information on the matter. . . . Second, in the event of a plea of guilty, trial courts are enjoined from accepting with alacrity such plea. This the Court said in *People vs. Apduhan, Jr.*, supra. . . . Third, in capital offenses, despite the entry of a plea of guilty, the trial court in exercising its discretion should take or require the presentation of evidence. . . . Finally, in the latest case of *People vs. Mengote, et al.*, L-30343, July 25, 1975, this Court again emphasized the necessity for trial courts to ascertain 'beyond the pale of doubt whether the accused fully realized the consequence of their plea and imminence of a death sentence arising therefrom before accepting their plea and imposing upon them the supreme penalty of death.'"

In the instant case, there is no doubt as to the guilt of the accused and to the absence of an improvident plea because the trial court received evidence on the crimes while trying to ascertain the presence of the alleged mitigating circumstances. It was the prosecution which decided to rely mainly on the pleas of guilt to all three crimes and to forego presentation of evidence on the qualifying circumstances of evident premeditation and treachery. As a matter of fact, the extra-judicial statements which are not refuted were never offered as evidence during the trial.

We, therefore, agree with the accused-appellant that the crimes in two of the cases are not murder but only homicide and that the third offense is only frustrated homicide.

Since the penalty for homicide is an indeterminate sentence and considering the length of time that the accused-appellant has served in the penitentiary, we should mention for the information of the prison authorities and the Ministry of Justice that in a letter dated February 14, 1983 to Mr. Chief Justice Enrique M. Fernando, the accused-appellant manifested his religious conversion as follows:

.....

"Octubre 24, 1969 inilapat po ang hatol sa akin ng mababang Hukuman at Marso 2, 1970 ipinasok po ako dito sa pambansang piitan. Mula po noon naranasan ko na ang hindi pangkaraniwang hirap dito sa loob ng piitan,

ang ama ko ay matanda na at ang ina ko ay patay na. At, sa bandang huli tumanggap po ako ng turo buhat sa Banal na salita ng Dios ang Bibliya sa tulong ng mga maibigin at mapagmahal na mga taong galing sa malayang lipunan, kaya't unti-unti kong naunawaan ang kahalagahan ng buhay ng tao sapagkat Dios ang nagbigay po sa ating lahat (Gawa 17:25)

"Sa mahigit na labing tatlong taon na ipinagdusa ko po sa loob ng piitan, hindi lang po ako kundi pati rin ang mga mahal ko sa buhay ay labis ang pangungulila at pamimighati sa akin at sa aking kalagayan.

"Sa ganitong kalagayan nagmamakaawa po ako na kung maaari pakisuyo tulungan po ninyo ako na sanay maibaba na ng Kataas-taasang Hukuman ang ultimong hatol upang sa gayon makatulong ako at makapiling ko na rin po muli ang mga mahal ko sa buhay.

"Malugod ko pong pinahalagahan ang maunawaing tugon ninyo nitong mapakumbabang pakikingan.

"Salamat po."

For all the foregoing, we hereby affirm the three judgments of conviction, but modify the penalties imposed as follows:

(a) In Criminal Case No. 124, accused-appellant Nonceto Gravino is hereby pronounced guilty of Homicide, with two mitigating circumstances of plea of guilty and voluntary surrender and two aggravating circumstances of dwelling and disguise and to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum;

(b) In Criminal Case No. 124-A, accused-appellant Nonceto Gravino is hereby pronounced guilty of Frustrated Homicide, with the same two mitigating circumstances and the same two aggravating circumstances, and to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor, as maximum;

(c) In Criminal Case No. 124-B, accused-appellant Nonceto Gravino is hereby pronounced guilty of Homicide with the same two mitigating circumstances and the same two aggravating circumstances, and to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. It is further understood that failure to pay the indemnity in Criminal Case No. 124 because of insolvency will not also result in subsidiary imprisonment.

WHEREFORE, modified as above indicated, the judgments appealed from are **AFFIRMED** in all other respects.

SO ORDERED.

Teehankee (Acting C.J.), Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez and Relova, JJ., concur.

Aquino, J., took no part.

Fernando, C.J. and Melencio-Herrera, J., on leave.

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