

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELIAS LOVEDIORO Y CASTRO, DEFENDANT-APPELLANT.

G.R. No. 112235. November 29, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Off-duty policeman SPO3 Jesus Lucilo was walking along Burgos St., away from the Daraga, Albay Public Market when a man suddenly walked beside him, pulled a .45 caliber gun from his waist, aimed the gun at the policeman's right ear and fired. The man who shot Lucilo had three other companions with him, one of whom shot the fallen policeman four times as he lay on the ground. After taking the latter's gun, the man and his companions boarded a tricycle and fled.[1]

The incident was witnessed from a distance of about nine meters by Nestor Armenta, a 25 year old welder from Pilar, Sorsogon, who claimed that he knew both the victim and the man who fired the fatal shot. Armenta identified the man who fired at the deceased as Elias Lovedioro y Castro, his nephew (appellant's father was his first cousin) and alleged that he knew the victim from the fact that the latter was a resident of Bagumbayan.

Lucilo died on the same day of massive blood loss from multiple gunshot wounds on the face, the chest, and other parts of the body.[2] On autopsy, the municipal health officer established the cause of death as hypovolemic shock.[3]

As a result of the killing, the office of the provincial prosecutor of Albay, on November 6, 1992 filed an Information charging accused-appellant Elias Lovedioro y Castro of the crime of Murder under Article 248 of the Revised Penal Code. The Information reads:

That on or about the 27th day of July, 1992, at more or less 5:30 o'clock in the afternoon, at Burgos Street, Municipality of Daraga, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gilberto Longasa, who is already charged in Crim. Case No. 5931 before RTC, Branch I, and three (3) others whose true identities are at present unknown and remain at large, conniving, conspiring, confederating and helping one another for a common purpose, armed with firearms, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously fire and shoot one SPO3 JESUS LUCILO, a member of the Daraga Police Station, inflicting upon the latter multiple gunshot wounds causing his death, to the damage and prejudice of his legal heirs.

After trial, the court a quo found accused-appellant guilty beyond reasonable doubt of the crime of Murder. The dispositive portion of said decision, dated September 24, 1993 states:

WHEREFORE, in view of all the foregoing considerations, this Court finds the accused ELIAS LOVEDIORO guilty beyond reasonable doubt as principal, acting in conspiracy with his co-accused who are still at large, of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of Reclusion Perpetua with all the accessories provided by law; to pay the heirs of the deceased

SPO3 Jesus Lucilo through the widow, Mrs. Remeline Lucilo, the amount of Fifty Thousand (P50,000.00) Pesos representing the civil indemnity for death; to pay the said widow the sum of Thirty Thousand (P30,000.00) Pesos representing reasonable moral damages; and to pay the said widow the sum of Eighteen Thousand Five Hundred Eighty-Eight (P18,588.00) Pesos, representing actual damages, without subsidiary imprisonment however, in case of insolvency on the part of the said accused.

With costs against the accused.

SO ORDERED.

Hence, the instant appeal, in which the sole issue interposed is that portion of trial court decision finding him guilty of the crime of murder and not rebellion.

Appellant cites the testimony of the prosecution's principal witness, Nestor Armenta, as supporting his claim that he should have been charged with the crime of rebellion, not murder. In his Brief, he asseverates that Armenta, a police informer, identified him as a member of the New People's Army. Additionally, he contends that because the killing of Lucilo was "a means to or in furtherance of subversive ends,"[4] (said killing) should have been deemed absorbed in the crime of rebellion under Arts. 134 and 135 of the Revised Penal Code. Finally, claiming that he did not fire the fatal shot but merely acted as a look-out in the liquidation of Lucilo, he avers that he should have been charged merely as a participant in the commission of the crime of rebellion under paragraph 2 of Article 135 of the Revised Penal Code and should therefore have been meted only the penalty of prision mayor by the lower court.

Asserting that the trial court correctly convicted appellant of the crime of murder, the Solicitor General avers that the crime committed by appellant may be considered as rebellion only if the defense itself had conclusively proven that the motive or intent for the killing of the policeman was for "political and subversive ends." [5] Moreover, the Solicitor General contends that even if appellant were to be convicted of rebellion, and even if the trial court had found appellant guilty merely of being a participant in a rebellion, the proper imposable penalty is not prision mayor as appellant contends, but reclusion temporal, because Executive Order No. 187 as amended by Republic Act No. 6968, the Coup D 'etat Law, prescribes reclusion temporal as the penalty imposable for individuals found guilty as participants in a rebellion.

We agree with the Solicitor General that the crime committed was murder and not rebellion.

Under Art. 134 of the Revised Penal Code, as amended by Republic Act No. 6968, rebellion is committed in the following manner:

[B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.[6]

The gravamen of the crime of rebellion is an armed public uprising against the government.[7] By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined a priori within predetermined bounds.[8] One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character. This peculiarity was underscored in the case of *People v. Hernandez*,[9] thus:

In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually

regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance 'to the Government the territory of the Philippine Islands or any part thereof,' then it becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.

Divested of its common complexion therefore, any ordinary act, however grave, assumes a different color by being absorbed in the crime of rebellion, which carries a lighter penalty than the crime of murder. In deciding if the crime committed is rebellion, not murder, it becomes imperative for our courts to ascertain whether or not the act was done in furtherance of a political end. The political motive of the act should be conclusively demonstrated.

In such cases, the burden of demonstrating political motive falls on the defense, motive, being a state of mind which the accused, better than any individual, knows. Thus, in *People v. Gempes*,^[10] this court stressed that:

Since this is a matter that lies peculiarly with (the accused's) knowledge and since moreover this is an affirmative defense, the burden is on them to prove, or at least to state, which they could easily do personally or through witnesses, that they killed the deceased in furtherance of the resistance movement.

From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. Both purpose and overt acts are essential components of the crime. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime rebellion.^[11]

Clearly, political motive should be established before a person charged with a common crime — alleging rebellion in order to lessen the possible impossible penalty — could benefit from the law's relatively benign attitude towards political crimes. Instructive in this regard is the case of *Enrile v. Amin*,^[12] where the prosecution sought to charge Senator Juan Ponce Enrile with violation of P.D. No. 1829,^[13] for allegedly harboring or concealing in his home Col. Gregorio Honasan in spite of the senator's knowledge that Honasan might have committed a crime. This Court held, against the prosecution's contention, that rebellion and violation of P.D. 1829 could be tried separately^[14] (on the principle that rebellion is based on the Revised Penal Code while P.D. 1829 is a special law), that the act for which the senator was being charged, though punishable under a special law, was absorbed in the crime of rebellion being motivated by, and related to the acts for which he was charged in *Enrile vs. Salazar* (G.R. Nos. 92163 and 92164) a case decided on June 5, 1990. Ruling in favor of Senator Enrile and holding that the prosecution for violation of P.D. No. 1829 cannot prosper because a separate prosecution for rebellion had already been filed and in fact decided, the Court said:

The attendant circumstances in the instant case, however constrain us to rule that the theory of absorption in rebellion cases must not confine itself to common crimes but also to offenses under special laws which are perpetrated in furtherance of the political offense.^[15]

Noting the importance of purpose in cases of rebellion the court in *Enrile vs Amin* further underscored that:

[I]ntent or motive is a decisive factor. If Senator Ponce Enrile is not charged with rebellion and he harbored or concealed Colonel Honasan simply because the latter is a friend and former associate, the motive for the act is completely different. But if the act is committed with political or social motives, that is in furtherance of rebellion, then it should be deemed to form part of the crime of rebellion instead of being punished separately.

It follows, therefore, that if no political motive is established and proved, the accused should be convicted of the

common crime and not of rebellion. In cases of rebellion, motive relates to the act, and mere membership in an organization dedicated to the furtherance of rebellion would not, by and of itself, suffice.

The similarity of some of the factual circumstances of *People v. Ompad, Jr.*,^[16] to the instant case is striking. Two witnesses, both former NPA recruits identified the accused Ompad, alias "Commander Brando," a known hitman of the NPA, as having led three other members of the NPA in the liquidation of Dionilo Barlaan, a military informer, also in a rebel infested area. In spite of his notoriety as an NPA hitman, Ompad was merely charged with and convicted of murder, not rebellion because political motive was neither alleged nor proved.

As stated hereinabove, the burden of proof that the act committed was impelled by a political motive lies on the accused. Political motive must be alleged in the information.^[17] It must be established by clear and satisfactory evidence. In *People v. Paz and Tica* we held:

That the killing was in pursuance of the Huk rebellion is a matter of mitigation or defense that the accused has the burden of proving clearly and satisfactorily. The lone uncorroborated assertion of appellant that his superiors told him of Dayrit being an informer, and his suspicion that he was one such, is neither sufficient or adequate to establish that the motivation for the killing was political, considering appellant's obvious interest in testifying to that effect.^[18]

Similarly, in *People v. Buco*,^[19] the Court stressed that accused in that case failed to establish that the reason for the killing of their victim was to further or carry out rebellion. The evidence adduced by the defense therein simply showed that appellant Francisco Buco was ordered by Tomas Calma, alias "Commander Sol" to kill municipal mayor Conrado G. Dizon. However, the evidence likewise showed that Calma was induced by an acquaintance, a civilian, to order the killing on account of private differences over a ninety (90) hectare piece of land. The court attributed no political motive for the killing, though committed by known members of the Hukbalahap movement.^[20]

People v. Dasig^[21] has a factual milieu almost similar to the instant case. There, the Court held that "the act of killing a police officer, knowing too well that the victim is a person in authority is a mere component or ingredient of rebellion or an act done in furtherance of a rebellion." In *Dasig* the Court however noted that the accused, who was charged with murder, not only admitted his membership with the NPA but also executed an extrajudicial confession to the effect that he was a member of an NPA "sparrow unit," a fact to which even the Solicitor General, in his brief therein was in agreement. The Solicitor General's brief in *Dasig* which this Court favorably quoted, noted that:

[T]he sparrow unit is the liquidation squad of the New People's Army with the objective of overthrowing the duly constituted government. It is therefore not hard to comprehend that the killing of Pfc. Manatad was committed as a means top or in furtherance of the subversive ends of the NPA.^[22]

By contrast, the Solicitor General vigorously argues for a different result in the case at bench. He states that accused-appellant's belated claims to membership in the NPA were not only insubstantial but also self serving,^[23] an averment to which, given a thorough review of the circumstances of the case, we fully agree. He states:

[In the case cited] the appellants, admittedly members of the NPA, clearly overcame the burden of proving motive or intent. It was shown that the political motivation for the killing of the victim was the fact that Ragaul was suspected as an informer for the PC. The perpetrators even left a letter card, a drawing on the body of Ragaul as a warning to others not to follow his example. It is entirely different in the case at bar where the evidence for the appellant merely contains self-serving assertions and denials not substantial enough as an indicia of political

motivation in the killing of victim SPO3 Jesus Lucilo.[24]

In the case at bench, the appellant, assisted by counsel, admitted in his extrajudicial confession to having participated in the killing of Lucilo as follows:

Q:

What was that incident if any, please narrate?

A:

July 27, 1992 at more or less 12:00 noon. I am at home, three male person a certain alias ALWIN, ALIAS SAMUEL and the other one unknown to me, fetched me and told me to go with them, so I asked them where, Alwin handed me a hand gun and same he stopped/call a passenger jeepney and told me board on said jeepney. (sic)

Q:

Please continue.

A:

Upon reaching Daraga, Albay fronting Petron Gasoline Station, we alighted on said jeep, so we walk towards Daraga Bakery we stopped walking due to it is raining, when the rain stopped we continue walking by using the road near the bakery. (sic)

Q:

When you reached Daraga bakery, as you have said in Q. 7 you used the road near the bakery where did you proceed?

A:

I am not familiar with that place, but I and my companion continue walking, at more less 4:30 P.M. July 27, 1992 one of my companion told us as to quote in Bicol dialect, to wit: 'AMO NA YADI AN TINAMPO PALUWAS' (This is the place towards the poblacion), so, I placed myself just ahead of a small store, my three (3) companions continue walking towards poblacion, later on a policeman sporting white T-shirt and a khaki pant was walking towards me, while the said policeman is nearly approaching me, ALWIN shot the said policeman in front of the small store, when the said policeman fell on the asphalted road, ALWIN took the service firearm of the said policeman, then we ran towards the subdivision, then my two (2) companions commanded a tricycle then we fled until we reached a hill wherein there is a small bridge, thereafter Ka Samuel took the handgun that was handed to me by them at Pilar, Sorsogon. (sic)

Q:

Do you know the policeman that was killed by your companion?

A:

I just came to know his name when I reached home and heard it radio, that he is JESUS LUCILO. (sic)

Q:

What is your participation in the group?

A:

Look-out sir.

Q:

I have nothing more to asked you what else, if there is any? (sic)

A:

No more sir.[25]

It bears emphasis that nowhere in his entire extrajudicial confession did appellant ever mention that he was a member of the New People's Army. A thorough reading of the same reveals nothing which would suggest that the killing in which he was a participant was motivated by a political purpose. Moreover, the information filed against appellant, based on sworn statements, did not contain any mention or allusion as to the involvement of the NPA in the death of SPO3 Lucilo.[26] Even prosecution eyewitness Nestor Armenta did not mention the NPA in his sworn statement of October 19, 1992.[27]

As the record would show, allegations relating to appellant's membership in the NPA surfaced almost merely as an afterthought, something which the defense merely picked up and followed through upon prosecution eyewitness Armenta's testimony on cross-examination that he knew appellant to be a member of the NPA. Interestingly, however, in the same testimony, Armenta admitted that he was "forced" to pinpoint appellant as an NPA member.[28] The logical result, of course, was that the trial court did not give any weight and credence to said testimony. The trial court, after all, had the prerogative of rejecting only a part of a witness' testimony while upholding the rest of it.[29] While disbelieving the portion of Armenta's testimony on appellant's alleged membership in the NPA, the trial court correctly gave credence to his unflawed narration about how the crime was committed.[30] Such narration is even corroborated in its pertinent portions, except as to the identity of the gunwielder, by the testimony of the appellant himself.

In any case, appellant's claim regarding the political color attending the commission of the crime being a matter of defense, its viability depends on his sole and unsupported testimony. He testified that, upon the prodding of alias Alwin and alias Samuel, he joined the NPA because of the organization's goals.[31] He claimed that his two companions shot Lucilo because he "had offended our organization,"[32] without, however, specifying what the "offense" was. Appellant claimed that he had been a member of the NPA for five months before the shooting incident.[33]

As correctly observed by the Solicitor General, appellant's contentions are couched in terms so general and non-specific[34] that they offer no explanation as to what contribution the killing would have made towards the achievement of the NPA's subversive aims. SPO3 Jesus Lucilo, a mere policeman, was never alleged to be an informer. No acts of his were specifically shown to have offended the NPA. Against appellant's attempts to shade his participation in the killing with a political color, the evidence on record leaves the impression that appellant's bare allegations of membership in the NPA was conveniently infused to mitigate the penalty imposable upon him. It is of judicial notice that in many NPA infested areas, crimes have been all-too-quickly attributed to the furtherance of an ideology or under the cloak of political color for the purpose of mitigating the imposable penalty when in fact they are no more than ordinary crimes perpetrated by common criminals. In *Baylosis v. Chavez, Jr.*, Chief Justice Narvasa aptly observed:

The existence of rebellious groups in our society today, and of numerous bandits, or irresponsible or deranged individuals, is a reality that cannot be ignored or belittled. Their activities, the killings and acts of destruction and terrorism that they perpetrate, unfortunately continue unabated despite the best efforts that the Government authorities are exerting, although it may be true that the insurrectionist groups of the right or the left no longer pose a genuine threat to the security of the state. The need for more stringent laws and more rigorous law-enforcement, cannot be gainsaid.[35]

In the absence of clear and satisfactory evidence pointing to a political motive for the killing of SPO3 Jesus Lucilo, we are satisfied that the trial court correctly convicted appellant of the crime of murder.[36] It is of no moment that a single eyewitness, Nestor Armenta, sealed his fate, for it is settled that the testimony of one witness, if credible and positive, is sufficient to convict.[37] Against appellant's claims that he acted merely as a look-out, the testimony of one witness, his blood relative, free from any signs of impropriety or falsehood, was sufficient to convict the accused.[38] Moreover, neither may lack of motive be availing to exculpate the appellant. Lack or absence of motive for committing a crime does not preclude conviction, there being a reliable eyewitness who fully and satisfactorily identified appellant as the perpetrator of the felony.[39] In the case at bench, the strength of the prosecution's case was furthermore bolstered by accused-appellant's admission in open court that he and the eyewitness, his own uncle, bore no grudges against each other.[40]

Finally, treachery was adequately proved in the court below. The attack delivered by appellant was sudden, and without warning of any kind.[41] The killing having been qualified by treachery, the crime committed is murder under Art. 248 of the Revised Penal Code. In the absence of any mitigating and aggravating circumstances, the trial court was correct in imposing the penalty of reclusion perpetua together with all the accessories provided by law.

WHEREFORE, PREMISES CONSIDERED, the trial court's decision dated September 14, 1993, sentencing the accused of Murder is hereby AFFIRMED, in toto.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] TSN, May 18, 1993, p.7.

[2] Exhibit "A," p. 73, Records.

[3] Id., at 74.

[4] Rollo, p. 53.

[5] Rollo, p. 95.

[6] 86 O.G. 9865.

[7] AQUINO, II REVISED PENAL CODE, 91 (1987)

[8] *People v. Geronimo*, 100 Phil. 90, 96 (1956).

[9] 99 Phil. 515, 535-536 (1956).

[10] 83 Phil. 267,274 (1949).

[11] *People v. Geronimo*, supra note 8, at pp. 95 & 99.

[12] 189 SCRA 573 (1990).

[13] This decree penalizes persons who wilfully obstructs or impedes the apprehension of suspects and the investigation and prosecution of criminal cases "by harboring and concealing" such suspects.

[14] Supra, note 12, at 580.

[15] Id., at 581.

[16] 233 SCRA 62 (1994).

[17] People v. Hernandez, supra at pp. 536 and 551.

[18] 121 Phil. 918, 931 (1965).

[19] 21 SCRA 5 (1967).

[20] Id.

[21] 221 SCRA 549 (1993).

[22] Id., at 558.

[23] Rollo, p. 101.

[24] Id.

[25] Record, p. 2-3; Exh. "C" or "1".

[26] Record, pp. 6-10.

[27] Id., at pp. 6-7.

[28] TSN, May 3, 1993, pp. 15-16.

[29] People v. Flores, 239 SCRA 83 (1994).

[30] People v. Nitcha, 240 SCRA 283, 288-289 (1995).

[31] TSN, May 18, 1993, pp. 4-5.

[32] Id., p. 7.

[33] Id., pp. 12-14.

[34] Rollo, p. 99.

[35] 202 SCRA 405, 419 (1991).

[36] Although appellant stated in his extrajudicial confession that his companion also asported Lucilo's service firearm, a fact which Armenta corroborated in court, robbery was not alleged in the information.

[37] People v. Ompad, supra, note 16, at 67 People v. Mendoza, 233 SCRA 108 (1994); People v. Quetua, 222 SCRA 357 (1993).

[38] People v. Abapo, G.R. Nos. 93632-33, December 28, 1994, 239 SCRA 469, 479.

[39] People v. Gamiao, G.R. No. 91492, January 19, 1995, 240 SCRA 254, 264; People v. Layam, G.R. No. 102308, July 25, 1994, 234 424. 432.

[40] TSN, May 18, 1993, p. 20.

[41] TSN, May 3, 1993, p. 29, People v. Adonis, G.R. No. 98196, January 31, 1995, 240 SCRA 773, 774.

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