

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS PATROLLA, JR. Y VEGA, ACCUSED-APPELLANT.

G.R. No. 112445. March 07, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Appellant Carlos Patrolla, Jr. and his brother Alex were charged with murder with less serious physical injuries in the following amended information:

That on or about 5:40 in the afternoon of September 28, 1991 at Burgos Street, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, armed with bolos, with intent to kill, with treachery and evident premeditation, and with use of superior strength, did then and there, wilfully, unlawfully and feloniously, with the use of said weapons, attack, assault and use personal violence upon the persons of the spouses NIDO PANOGALINOG and BELINDA PANOGALINOG by striking and stabbing the former and the latter, thereby inflicting upon them physical injuries, described as follows:

UPON THE PERSON OF NIDO PANOGALINOG

- 1 inch incised wound (R) pariental;
- 3 inches incised wound (L) pariental;
- 2 inches incised wound inter pariental;
- 4 inches wound (L) lower jaw;
- 5 inches incised wound (R) lower jaw;
- 1 inch wound mid-anterior neck;
- 2 inches incised wound (L) hand palm;
- 1/2 inch stab wound 1 inch depth (L) chest areola;
- 1 inch stab wound 1 inch depth (R) upper chest anterior;
- 1 inch stab wound 1 1/2 inches depth (L) lower chest anterior;
- 2 inches stab wound (R) lower chest medial;
- 3 inches stab wound (R) lower chest medial;
- 2 inches stab wound (R) epigastric abdomen;
- 2 inches stab wound (R)upper addomen;
- 2 inches stab wound (R)upper addomen;

- 3 inches stab wound (R) upper abdomen;
- 1 inch stab wound (L) back chest lower medial;
- 1/2 inch stab wound (L) back chest lower lateral;
- 6 inches stab wound linear abrasion (R) back,

which injuries caused shock secondary to severe hemorrhage which resulted in the death of said NIDO PANOGALINOG;

UPON THE PERSON OF BELINDA PANOGALINOG

- 2 inches incised wound (L) hand dorsum,

and which injury requires a period of from ten (10) to fourteen (14) days, more or less of treatment and healing barring complication.[1]

Upon arraignment, both accused pleaded not guilty.[2]

At the pre-trial of the case on November 26, 1991, however, Alex Patrolla, assisted by counsel, pleaded guilty to homicide. Accordingly, the trial court rendered a decision finding Alex guilty of homicide with the mitigating circumstance of voluntary surrender, and sentencing him to an indeterminate sentence of twelve years and one day to fourteen years, to indemnify the heirs of Nido Panogalinog in the amount of P30,000.00 and to pay costs.[3]

Trial proceeded against appellant.

In a decision dated August 26, 1993, the trial court convicted appellant, the dispositive portion of which reads:

WHEREFORE, the accused CARLOS V. PATROLLA, JR., is hereby sentenced to suffer the penalty of RECLUSION PERPETUA in regard to his participation on the murder of the late Nido Panogalinog and suffer the penalty of ONE MONTH AND ONE (1) DAY OF ARRESTO MAYOR in its minimum period of said penalty for the Less Serious Physical Injuries he has inflicted upon the person of Mrs. Belinda Panogalinog. Said accused is likewise hereby sentenced and ordered to indemnify the heirs of the late Nido Panogalinog in the amount of FIFTY THOUSAND (P50,000.00) PESOS for the life of the victim, THIRTY THOUSAND (P30,000.00) PESOS by way of moral damages and TWENTY THOUSAND (20,000.00) PESOS by way of exemplary damages.[4]

The facts as found by the trial court may be summarized as follows:

At around 5:40 in the afternoon of September 28, 1991, spouses Nido and Belinda Panogalinog were tending their barbecue stand along Burgos Street in San Carlos City. Coming from Burgos Street Interior, appellant and his brother Alex approached the spouses. Each brother was armed with a sharp-pointed instrument locally known as "pinuti." [5]

Reaching the spouses, appellant stabbed Nido, and with the same blow, hit Belinda's palm.[6]

Nido shouted to Belinda to run, and she ran to the store of Angging Flores. From there she watched as the brothers continued to assault Nido.[7]

The brothers positioned themselves on each side of Nido, so that when Nido would run to either side, appellant or his brother would meet him with stabs. Nido fell to the ground and the brothers continued to stab him.[8]

Through with stabbing Nido, appellant loudly challenged anyone to defend the victim, stating: "Kinsa and isog

nga mulaban kang Nido." [9] The brothers then stayed at the scene to smoke.

After the appellants left, Belinda rushed to Nido and found him bloodied and lying on the ground still alive. Moments later, Nido died. A neighbor then took Belinda to the hospital where she was treated by Dr. Larry Yap. [10]

Dr. Yap later conducted a postmortem examination on Nido. He concluded that Nido died of "shock secondary to severe hemorrhage due to multiple stab wounds." [11]

In this appeal, appellant asserts that the trial court erred when it: 1) found him guilty beyond reasonable doubt of the crime of murder and less physical injuries; 2) held him guilty notwithstanding the assertion of Alex Patrolla, appellant's brother, that he alone killed Nido; and 3) failed to appreciate his defense of alibi. [12]

We first consider the effect on the culpability of appellant of Alex Patrolla's plea of guilt to and conviction of the crime of homicide. Appellant posits that Alex's plea was an admission that he alone committed the crime and that there was no conspiracy between him and appellant, and by such plea, appellant's criminal liability was extinguished. Corollarily, appellant argues that Alex Patrolla's conviction of homicide had the effect of "extinguishing" the qualifying circumstances of treachery.

We disagree. The plea was the result of bargaining, which involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge. [13]

Alex's plea of guilty to homicide did not carry with it an admission of sole authorship of the crime, so as to exonerate appellant from criminal liability. "To uphold the argument of appellant would leave at the hands of the one accused, who elects to plead guilty, the automatic exemption of his co-accused from all criminal responsibility. Plainly, this should not be allowed." [14]

In the instant case, the evidence for the prosecution clearly established that appellant and his brother conspired to commit the crime. Each brother performed specific acts - stabbing Nido and blocking his path to ensure no escape from their blows -with such closeness and coordination as to indicate beyond doubt a common purpose or design. [15] Both were thus principals in committing the crime charged.

Nor did Alex's plea of guilty to homicide mean that the killing of the victim was not attended by the circumstance of treachery. Treachery was not appreciated against Alex obviously as a result of plea bargaining, and not because the same was not proven to have attended the killing of the victim. This circumstance, alleged in the information as qualifying the killing to murder, as shall be discussed later, was duly proven by the prosecution in the trial against appellant.

We now consider appellant's defense of alibi. Appellant alleges that on the entire afternoon of September 28, 1991, he and his brother were at home with their parents. Appellant's alibi was corroborated by his father Carlos Patrolla, Sr.

We have consistently held that alibi is an inherently weak defense which cannot prevail over the positive identification of the accused. [16] The victim's widow positively identified appellant and Alex Patrolla as her and her husband's assailants.

Appellant was also positively identified by Charlie Segovia. Segovia testified that he was playing mahjong in the store of Sansing Gabison some 25 meters from the Panogalinog's barbecue stand, when he heard shouts. He rushed out of the store and saw Alex and appellant stabbing Nido. He also heard appellant challenge anyone to defend Nido. [17]

On the other hand, appellant's father could not strongly affirm that appellant was at home at the time the crime was committed. He admitted that while he knew appellant was sleeping in his room, he did not and could not actually see him.[18]

We now consider the modifying circumstances.

The trial court correctly appreciated treachery to qualify the killing to murder. Treachery is present "when the offender commits any of the crimes against the person, 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 may make." [19]

The treacherous manner by which the appellant and his brother perpetrated the crime is shown not only by the sudden and unexpected attack upon the unsuspecting Nido but also by the deliberate manner in which the attack was perpetrated. Appellant and his brother stood on each side of Nido, so that Nido could in no way defend himself and so that there could be no escape from the blows directed at him.

The commission of the crime was also attended by abuse of superior strength on account of the fact that appellant and his brother, both armed, purposely used force out of proportion to the means of defense available to the persons attacked. However, this circumstance is absorbed in treachery.[20]

Evident premeditation, which was alleged in the information, has not been proven by the prosecution. Evident premeditation may not be appreciated absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out.[21]

We agree with the observation of the Solicitor General that the trial court erred when it convicted appellant of two separate crimes, namely, murder and less serious physical injuries, and imposed two separate penalties. The Solicitor General stated thus:

It is observed that the killing of Nido Panogalinog and the wounding of his wife Belinda Panogalinog, arose from appellant's single act of hacking Nido Panogalinog (TSN, August 18, 1992, pp. 5-8). As such, not two (2) but one (1) complex crime of Murder with Less Serious Physical Injuries was committed. Verily, the penalty for Murder, the most serious crime, shall be imposed upon appellant, the same to be applied in its maximum period.[22]

Article 48 of the Revised Penal Code provides that "when a single act constitutes two or more grave or less grave felonies, x x x the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." As proven by the prosecution, appellant's initial blow hit Nido on the forehead and Belinda on her left palm.[23] Less serious physical injuries is a less grave felony, as it is punishable by *arresto mayor*, [24] a correctional penalty.[25]

Under Article 248 of the Revised Penal Code, murder is penalized by *reclusion temporal* maximum to death. Following Article 48, the penalty imposable is death, which is the maximum of the penalty for murder. However, at the time the crime was committed, the imposition of the death penalty was proscribed by the 1987 Constitution. Thus, the penalty imposable is *reclusion perpetua*.

Anent the trial court's award of moral and exemplary damages to the heirs of Nido Panogalinog, we find the same to be unwarranted.

Moral damages may be recovered in criminal offenses resulting in physical injuries,[26] but there must be a factual basis for the award. We have studied the records and find no factual basis for the award of moral damages.

Exemplary damages may be awarded in criminal cases where the crime was committed with one or more

aggravating circumstance.[27] No aggravating circumstance is present, other than treachery which qualified the killing to murder and abuse of superior strength which was however absorbed in treachery, to warrant the award of exemplary damages.

WHEREFORE, the appeal is DISMISSED and the assailed judgment modified as follows:

Accused-appellant Carlos Patrolla, Jr. is found GUILTY beyond reasonable doubt of the crime of Murder with Less Serious Physical Injuries, without any aggravating or mitigating circumstance. He is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the amount of P50,000.00 as civil indemnity for the death of Nido Panogalinog.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Hermosisima, Jr., concur.

[1] Records, pp. 1-2.

[2] Id., at 25.

[3] Id., at 26.

[4] Id., at 132.

[5] TSN, August 18, 1992, p. 5-6.

[6] Id., at 7.

[7] Id., at 8.

[8] Id., at 10.

[9] See note 1, supra., p. 8.

[10] See note 5., supra, pp. 11-12.

[11] See note 1, supra., p. 12.

[12] Rollo, p. 74.

[13] People v. Villarama, Jr., 210 SCRA 246(1992), citing Black's Law Dictionary, 5th ed., 1979, p. 1037.

[14] People v. Dela Merced, 7 SCRA 291 (1963); See also People v. Armada, Jr., 225 SCRA 644(1993).

[15] People v. Campa, 230 SCRA 431(1994).

[16] People v. Barlis, 231 SCRA 426 (1994).

[17] TSN, September 2, 1992, pp. 2-4.

[18] TSN, November 18, 1992, p. 19.

[19] Article 14, par. 16 Revised Penal Code.

[20] People v. Francisco, G.R. No. 990587, October 25, 1995; People v. Pangan, 231 SCRA 682(1994).

[21] People v. Penones, 200 SCRA 624(1991).

[22] See note 12 supra., p. 142.

[23] See for example *People v. Balotol*, 84 Phil. 289.

[24] Art. 265, Revised Penal Code.

[25] Art. 9, Id.

[26] Article 2219[1], Civil Code of the Philippines; See Article 2217, Civil Code of the Philippines; See *People v. Adviado*, G.R. No. 113782-84, August 14, 1995.

[27] Article 2230, Civil Code of the Philippines; *People v. Maguikay*, 237 SCRA 587 [1994]; *People v. Rabanes*, 208 SCRA 768(1992).

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