

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE TAMPARONG, JR., ALIAS “JIMMY,” ACCUSED-APPELLANT, ESTRELLA TAMPARONG, ALIAS “NENE” (AT LARGE), ACCUSED.

G.R. No. 112713. October 25, 1995

Ponente: PUNO, J.

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PUNO, J.:

Convicted of Murder for the death of his brother-in-law Emilio Aranas, accused-appellant JOSE TAMPARONG, JR., appeals to this Court insisting on his innocence.

Accused-appellant and his wife, ESTRELLA TAMPARONG, were charged in an information which reads:

"That on February 24, 1990 at more or less 2:30 o'clock in the afternoon, in Barangay Si-it, Siaton, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery, and confederating and helping one another, did then and there, wilfully, unlawfully and feloniously attack and stab one EMILIO ARANAS with the use of a kitchen knife and bamboo stick (lipak), with which the two accused were then respectively armed and provided, thereby hitting and inflicting upon said EMILIO ARANAS the following injuries, to wit:

- "1. Lacerated wound, approximately 1 inch in length, right cheek;
- "2. Lacerated wound, approximately 1 inch in length, at the level of the right cheekbone;
- "3. Lacerated wound, approximately 2 inches in length, midposterior right forearm;
- "4. Lacerated wound, approximately 1 inch in length, left midposterior chest;
- "5. Stab wound, approximately 2 inches in length, 4 inches in depth, right mid-latero posterior chest;

which injuries caused the death of EMILIO ARANAS soon thereafter.

"Contrary to Article 248 of the Revised Penal Code."[1]

Only accused-appellant was apprehended. His wife evaded arrest and has remained at large. Trial proceeded only against accused-appellant.

ERNITA ARANAS gave an eyewitness account of the incident. On February 24, 1990, at around 2:30 p.m., she and her husband, EMILIO ARANAS, went to the municipal market in Barrio Si-it, Siaton, Negros Oriental. When they arrived at the market, Emilio sat on a coconut husk near the volleyball court and agreed to wait while Ernita pays their debt to Angela Lagrama, a market vendor. Lagrama's stall was about six (6) meters from the volleyball court.[2]

After paying their debt, Ernita made her way back to the volleyball court. She saw her sister ESTRELLA

TAMPARONG and her husband, accused-appellant JOSE TAMPARONG, JR., ganging up on Emilio. Armed with a knife, accused-appellant came from behind Emilio and stabbed him at the back. Emilio was caught by surprise and could only jerk his right arm towards his back. Accused-appellant swung another stabbing blow on Emilio, hitting the latter on the right forearm. Emilio sagged and attempted to stand up but Estrella held his left hand to prevent him from putting up a fight. Accused-appellant again stabbed Emilio, the knife finding its mark on the middle portion of his back. While Estrella was holding Emilio with her right hand, Estrella's left hand had a sharp and pointed bamboo stick (lipak) which she repeatedly thrust at Emilio's face. Another stabbing blow from accused-appellant hit Emilio on the left middle portion of his back.[3]

Initially, shock gripped Ernita when she witnessed the stabbing incident. She tried to shout but no sound came out of her voice box. On instinct, she moved to stop the assault on her husband. She shouted at Estrella why they were ganging up on Emilio. Estrella raised her right hand, holding the bamboo stick, and warned her to stay away or she would also be harmed.[4]

The stabbing of Emilio done, accused-appellant and his wife left. Emilio fell on the ground, face up. Ernita sought help. People came, and then rushed her wounded husband to the provincial hospital.[5]

They arrived at the hospital at about 4:30 p.m. Dr. Clemente Hipe IV cleaned and sutured Emilio's wounds. After the operation, Emilio muttered to Ernita: "'Neng, I never expected that Nene and Jimmy (Tamparong) would do this to me because we have no quarrel or conflict at all. As a matter of fact, we even feed (sic) them and let them stay in our house.'"[6]

Emilio battled with death in the hospital. After three (3) hours, Emilio lost the fight. He died and became another crime statistic. The immediate cause of death was cardio-pulmonary arrest, secondary to multiple stab wounds on the chest and face.[7] His body was transferred to the Good Shepherd Funeral Parlor where a post-mortem examination[8] was conducted.[9]

On February 26, 1990, Ernita reported the incident to the Siaton police station. Only accused-appellant was arrested. His wife, Estrella, managed to evade arrest and has remained at large.[10]

Before the incident, accused-appellant and his wife had attempted to kill the victim. Ernita disclosed that on January 20, 1990, the two (2) accused went to their house armed with bolos. They looked for Emilio, threatening to kill him. She asked why for she did not know how her husband has wronged them. Unable to find Emilio who was out fishing, the two (2) accused left. Frightened, Ernita reported the matter to the barangay captain. However, there was no confrontation at the barangay level. The two (2) accused saw the barangay captain and informed him that the matter had already been settled amicably and there was no need to set a conciliation meeting. Thus, Ernita was unable to know what impelled the two (2) accused to kill her husband.[11]

For his part, accused-appellant acknowledged killing the victim but claimed it was done in self-defense. He testified that on said date and time, he was at the flea market to buy nails at a cooperative store. He went there alone as he left his wife Estrella and two (2) of his children at home.[12]

After buying nails, he walked to the stall of Paterna Elloren, a fish vendor, to buy fish. Hardly had he inquired about the price of the fish when Emilio approached him and asked what he was doing there. He gave a short reply and started to leave. However, Emilio held his shoulder and punched him on the face. He toppled on the ground. He managed to stand up and, in the process, asked Emilio: "Brod, what is my fault(?) xxx (Why did) you punch me?" Emilio did not bother to answer. Instead, Emilio drew a knife and tried to stab him twice. He avoided both thrusts.

Emilio continued with his attempts to stab accused-appellant. He failed to succeed. Accused-appellant was able to

grab and wrestle the knife from Emilio. He then stabbed Emilio seven (7) times, in quick succession. Emilio weakened and walked away. Accused-appellant let him go and left the marketplace.

Afraid of retaliation from Emilio's relatives, accused-appellant slipped to Dumaguete with the intention of seeking refuge in Mindanao. Unable to find a boat going to Mindanao, he passed the night at a resthouse in Dumaguete.

The following day, February 25, 1990, he was able to board a boat to Sikayab, Dipolog, in Mindanao. He then surrendered to PC Major Sulsulan at the PC headquarters and related the stabbing of Emilio. Major Sulsulan radioed the Siaton police station and informed them that Emilio was with him. Emilio stayed put at the Sikayab police headquarters while waiting for a response from Siaton.[13]

On March 31, 1990, Lt. Patayan, Chief of Police of the municipality of Siaton, directed two (2) of his men, PO3 Nestor Macayan and SPO1 Franco Rubio, to fetch accused-appellant at Camp Amac, Sikayab, Dipolog. The two arrived at Camp Amac on April 2, 1990 and showed Major Sulsulan the warrant for the arrest of accused-appellant which has been issued even before they received his radio message about the surrender of accused-appellant. Forthwith, Major Sulsulan informed them that accused-appellant was in Sibutad, Zamboanga del Norte.[14]

Police officers Macayan and Rubio proceeded to Sibutad and went directly to the police station. They were informed that accused-appellant was in a certain barangay in Sibutad. The officer-in-charge of the police station ordered his men to pick up accused-appellant. Macayan and Rubio waited at the station. After several hours, accused-appellant, escorted by the Sibutad police, arrived. PO3 Macayan handcuffed him and placed him under arrest. They brought him back to the Siaton police station.[15]

The prosecution presented PATERNA ELLOREN, the fish vendor, as its rebuttal witness. Elloren clarified that accused-appellant bought fish from her on that fateful day but the transaction happened at around 10 a.m., and not in the afternoon. She thus refuted accused-appellant's claim that the stabbing incident happened while accused-appellant was buying fish from her. She likewise disclaimed that she witnessed the crime.[16]

On October 11, 1993, the trial court rendered a Decision[17] finding accused-appellant guilty of Murder. The dispositive portion reads:

"WHEREFORE, accused Jose Tamparong (Jr.) is hereby sentenced to a penalty of Reclusion Perpetua and to indemnify the heirs of the victim in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency. Costs against accused.

"SO ORDERED."

Accused-appellant faults the trial court for giving credence to the prosecution's version. He justifies his act of stabbing the victim as self-defense.

In foisting self-defense, accused-appellant admits that he killed the victim. It becomes his burden then to prove that he killed the victim to save his life. Accused-appellant failed to discharge this burden.

Our examination of the records compels us to conclude that the trial court did not err in giving credence to the prosecution evidence. The detailed testimony of Ernita Aranas on the assault made by accused-appellant and his wife, especially the location of the wounds they inflicted on the victim, is affirmed by the medical findings contained in the death certificate and post-mortem examination of the victim. In contrast, accused-appellant's claim that he stabbed the victim on the chest and below the armpit[18] is belied by the medical findings of the medico-legal examiner who found the stab wounds located mainly on the victim's back. The victim also sustained no less than five (5) stab wounds, clearly negating accused-appellant's claim of self-defense.

Accused-appellant further argues that assuming the killing of the victim cannot be justified by self-defense, still, he should only be held liable for the crime of Homicide, the aggravating circumstances of evident premeditation and treachery not having been sufficiently proved by the prosecution.

For one, accused-appellant insists that evident premeditation was not proved for no evidence of the planning and preparation to kill the victim was adduced by the prosecution. Neither was treachery proved for there was no showing that he consciously and deliberately adopted means of execution of the crime to insure its impunity. He adds that the mere fact that the victim was initially stabbed at the back does not constitute treachery.

We agree in part. Evident premeditation cannot be appreciated against an accused where there is no showing that the killing was the result of calculation, meditation or resolution on his part. To be sure, there must be proof of: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and, (3) a sufficient lapse of time between the determination to commit the crime and the execution thereof, to allow the offender to reflect upon the consequences of his act.[19] In the case at bar, there is absolutely no proof of the planning and preparation to kill the victim. Thus, evident premeditation cannot be appreciated against accused-appellant.

Nonetheless, the crime is qualified by treachery. There is treachery 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 might make.[20] In the case at bar, accused-appellant and his wife acted in concert. They approached their unsuspecting victim, Emilio Aranas, from behind. Accused-appellant stabbed Emilio at the back while accused-appellant's wife was holding Emilio's left hand to prevent the latter from putting up a fight. The victim was thus rendered totally defenseless. In fact, while accused-appellant was delivering successive stabbing blows on the back of the victim, accused-appellant's wife was repeatedly thrusting a pointed bamboo stick at the victim's face. These circumstances show that accused-appellant consciously adopted means and methods to insure the execution of the crime without risk to himself arising from the defense which the victim would make.[21]

All told, we find accused-appellant guilty of Murder, qualified by treachery. The evidence also shows that accused-appellant surrendered voluntarily to the authorities. The mitigating circumstance of voluntary surrender must therefore be credited in favor of accused-appellant and his penalty adjusted downward.

Murder is penalized with reclusion temporal in its maximum period to death.[22] In view of the presence of the mitigating circumstance of voluntary surrender, with no aggravating circumstance to offset the same, accused-appellant should be meted the minimum period of the penalty, i.e., the maximum period of reclusion temporal. Applying the Indeterminate Sentence Law, accused-appellant may be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree and the maximum of which should be within the range of reclusion temporal maximum. Thus, he should be meted an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum.[23]

IN VIEW WHEREOF, the challenged Decision of the trial court convicting accused-appellant JOSE TAMPARONG, JR. of Murder is hereby AFFIRMED but with a modified penalty. He is sentenced to an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

- [1] Rollo, p. 5.
- [2] TSN, August 28, 1990, pp. 4-8.
- [3] Ibid., pp. 9-14.
- [4] Ibid., p. 15.
- [5] Ibid., p. 16.
- [6] Ibid., p. 17.
- [7] Death Certificate, Exhibit "B," Original Records, at p. 10.
- [8] Exhibit "A," Original Records, at p. 9.
- [9] TSN, August 28, 1990, pp. 18-19.
- [10] Ibid., pp. 26-27.
- [11] Ibid., pp. 29-30.
- [12] TSN, October 23, 1990, pp. 3-4.
- [13] Ibid., pp. 5-11.
- [14] TSN, December 1, 1992, pp. 8-11.
- [15] Ibid., pp. 24-36.
- [16] TSN, August 9, 1993, pp. 22 & 27.
- [17] Penned by Judge Alvin L. Tan, Regional Trial Court, Negros Oriental, 7th Judicial Region, Branch XLIV, Dumaguete City; Rollo, pp. 15-25.
- [18] TSN, October 23, 1990, pp. 39 & 47.
- [19] People v. Daquipil, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314; People v. Bongadillo, G.R. No. 96687, July 20, 1994, 234 SCRA 233; People v. Parangan, G.R. No. 99057, April 22, 1994, 231 SCRA 682.
- [20] Article 14, paragraph 16, Revised Penal Code.
- [21] People v. Muyano, G.R. No. 105621-23, August 5, 1994, 235 SCRA 184.
- [22] Article 248, Revised Penal Code. This penalty has been amended under R.A. 7659 to reclusion perpetua to death.
- [23] People v. Gomez, G.R. No. 109146, August 17, 1994, 235 SCRA 444.

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