

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS SALILING Y CHICA, ACCUSED-APPELLANT.

G.R. No. 117732. October 10, 1995

Ponente: MELO, J.

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MELO, J.:

Jesus Saliling was charged with murder in an Information reading:

That on or about the 10th day of March 1994 in Kalookan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously stab one GERALD CANAPI Y PAGULAYAN, hitting the latter on his left upper portion of his chest and on his right elbow, thereby inflicting serious physical injuries upon the said victim which caused his instantaneous death.

(p. 1, Rollo.)

After trial following a plea of not guilty, the trial court found accused guilty as charged in a decision dated October 25, 1994, and imposed on him the extreme penalty of death, aside from ordering him to pay civil indemnification, moral, and actual and compensatory damages. Disposed thus the trial court:

WHEREFORE, in view of the foregoing considerations, the Court finds accused, JESUS SALILING Y CHICA GUILTY beyond reasonable doubt of the crime of MURDER and sentences him to suffer the maximum penalty of DEATH; to pay the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS as actual and compensatory damages; to indemnify the heirs of the victim the sum of FIFTY THOUSAND (P50,000.00) PESOS and another sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages. With costs.

(p. 16, Rollo.)

Automatic as the review of said decision is as mandated by law, still, a notice of appeal was filed, and we now have accused-appellant maintaining that neither premeditation nor treachery was proved by the prosecution.

The background facts, as established by the evidence, were synthesized in the brief filed by Solicitor General Raul I. Goco, Assistant Solicitor General Antonio L. Villamor, and Solicitor Eviess J.S.A. Acorda in this wise:

At about 4:30 a.m. of March 10, 1994, Arsenio Pascua was conversing with Gerard Canapi in front of Ever Disco Pub located on M. H. del Pilar, 3rd Avenue, Kalookan City (tsn., p. 2, Pascua, October 11, 1994). They were waiting for their companions who were coming from nearby International Cabaret (ibid.).

Suddenly, appellant emerged behind both Pascua and Canapi and then sidled up to Canapi. Without any warning, he stabbed Canapi at least twice with a homemade knife, and then quickly ran away (tsn., p. 3, 11, Pascua, October 11, 1994). When Pascua saw what happened, he shouted at his companions who were about ten to fifteen meters away and told them to pursue appellant (ibid.).

Pascua hurriedly brought Canapi in a tricycle to the MCU Hospital for treatment but the latter was pronounced dead on arrival (tsn., p. 4, Pascua, October 11, 1994).

Appellant was thereafter arrested by operatives of the 6th Avenue Detachment of the Philippine National police and turned over to PO3 Feliciano Almojuela for investigation (tsn., p. 1, 2, Almojuela, October 12, 1994). On March 18, 1994, he was charged with Murder before the Regional Trial Court, National Capital Judicial Region, Kalookan City.

(pp. 3-4, Appellee's Brief; pp. 55-56, Rollo.)

In the present appeal, accused-appellant has abandoned the defense of denial and alibi he put up during the trial below and now admits the fact that he indeed stabbed Gerald Canapi. However, he contends that the killing of Canapi was not attended by treachery. He argues that judging by the location of the wounds inflicted on the victim, which were at the left side of the chest and at the left elbow of the victim, the attack was frontal and thus the "deceased must have been forewarned by the impending danger to his life", which circumstance, accused-appellant implies, must have afforded the victim the opportunity of protecting himself. The stark facts of the attack, as strikingly depicted by Arsenio Pascua, greatly militate against accused-appellant's argument. Even a frontal attack can be treacherous when it is sudden and unexpected and the victim was unarmed (*People vs. Abapo*, 239 SCRA 469 [1994]).

In flashback, at around 4 o'clock in the morning of March 10, 1994, we see Arsenio Pascua and Gerald Canapi waiting for a ride while conversing in front of the Ever Disco Pub located at M.H. del Pilar, 3rd Avenue, Caloocan City. They were likewise waiting for their companions who were at the nearby International Cabaret. While thus occupied, they were approached from behind by accused-appellant who then sidled up to Canapi and suddenly without warning stabbed Canapi twice with a knife, first at the left side of the chest and then at the left elbow. Accused-appellant then immediately thereafter scampered away. The stabbing happened in a split second (pp. 2-11, tsn., October 11, 1994). The foregoing circumstances manifestly disclose the treacherous nature of the attack upon the victim by accused-appellant.

Verily, 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 (2nd par., No. 16, Article 14, Revised Penal Code; *People vs. Parangan*, 231 SCRA 682 [1994]; *People vs. Pajares*, 232 SCRA 63 [1994]). In the case under review, the suddenness of the attack, without any provocation on the part of the victim, who was innocently conversing with Pascua and was thus totally unaware of the impending attack upon him, and the fact that the victim was unarmed demonstrate the treacherous nature of the attack.

There is treachery when the attack on the victim was sudden and unexpected and from behind and without warning, with the victim's back turned towards his assailant, or when the attack was so sudden and unexpected that the victim was unable to defend himself, thus ensuring the execution of the criminal act without risk to the assailant.

(*People vs. Boniao*, 217 SCRA 653, 671 [1993])

The conclusion, therefore, is unavoidable that the attack upon the victim was perpetrated with *alevosia*, thus, qualifying the killing to murder.

We, however, are in agreement with accused--appellant, in his submission that there is insufficient evidence to prove the existence of evident premeditation.

The following requisites must concur before evident premeditation may be appreciated: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to his determination; and (c) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences his act (*People vs. Rodriguez*, 193 SCRA 231 [1991]; *People vs. Boniao*, 217 SCRA 653 [1993]; *People vs. Estrella*, 221 SCRA 543 [1993]; *People vs. Rivera*, 221 SCRA 647 [1993]; *People vs. Cayetano*, 223 SCRA 770 [1993]). The prosecution omitted or failed to present any evidence to show (a) the time when accused-appellant made the determination to commit the crime, (b) any act to indicate that he persisted in his determination, or (c) sufficient lapse of time between the determination and execution.

We thus find that the killing although qualified by treachery was not attended by evident premeditation, or any other aggravating circumstance. Neither was there any mitigation thereof. In consequence, the penalty must be reduced to the indivisible penalty of reclusion perpetua in line with *People vs. Lucas* (240 SCRA 66 [1995]) where we had occasion to hold through Justice Davide:

Verily, if reclusion perpetua was reclassified as a divisible penalty, then Article 63 of the Revised Penal Code would lose its reason and basis for existence. To illustrate, the first paragraph of Section 20 of the amended R.A. No. 6425 provides for the penalty of reclusion perpetua to death whenever the dangerous drugs involved are of any of the quantities stated therein. If Article 63 of the Code were no longer applicable because reclusion perpetua is supposed to be a divisible penalty, then there would be no statutory rules for determining when either reclusion perpetua or death should be the imposable penalty. In fine, there would be no occasion for imposing reclusion perpetua as the penalty in drug cases, regardless of the attendant modifying circumstances.

This problem revolving around the non-applicability of the rules in Article 63 assumes serious proportions since it does not involve only drug cases, as aforesaid. Under the amendatory sections of R.A. No. 7659, the penalty of reclusion perpetua to death is also imposed on treason by a Filipino (Section 2), qualified piracy (Section 3), parricide (Section 5), murder (Section 6), kidnapping and serious illegal detention (Section 8), robbery with homicide (Section 9), destructive arson (Section 10), rape committed under certain circumstances (Section 11), and plunder (Section 12).

Now then, if Congress had intended to reclassify reclusion perpetua as a divisible penalty, then it should have amended Article 63 and Article 76 of the Revised Penal Code. The latter is the law on what are considered divisible penalties under the Code and what should be the duration of the periods thereof. There are, as well, other provisions of the Revised Penal Code involving reclusion perpetua, such as Article 41 on the accessory penalties thereof and paragraphs 2 and 3 of Article 61, which have not been touched by a corresponding amendment.

What then may be the reason for the amendment fixing the duration of reclusion perpetua? The deliberations in the Bicameral Conference Committee and in both Chambers of Congress do not enlighten us on this, except the cryptic statement of Senator Tolentino adverted to above on the elimination of the "new penalty" of life imprisonment by the Bicameral Conference Committee. It may, however, be pointed out that although the Revised Penal Code did not specify the maximum of reclusion perpetua, it is apparent that the maximum period for the service of this penalty shall not exceed forty (40) years. In *People vs. Reyes*, this Court, speaking through Mr. Justice Florenz D. Regalado, stated:

"We hold that there is legal basis, both in law and logic, for Presidential Decree No. 818 to declare that any penalty exceeding twenty (20) years, or the maximum duration of reclusion temporal, is within the range of reclusion perpetua.

It will be observed that Article 27 of the Code provides for the minimum and maximum ranges of all the penalties in the Code (except bond to keep the peace which shall be for such period of time as the court may

determine) from *arresto menor* to *reclusion temporal*, the latter being specifically from twelve years and one day to twenty years. For *reclusion perpetua*, however, there is no specification as to its minimum and maximum range, as the aforesaid article merely provides that '(any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon.'

The other applicable reference to *reclusion perpetua* is found in Article 70 of the code which, in laying down the rule on successive service of sentences where the culprit has to serve more than three penalties, provides that "the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him," and '(i)n applying the provisions of this rule the duration of perpetual penalties (*pena perpetua*) shall be computed at thirty years.'

The imputed duration of thirty (30) years for *reclusion perpetua*, therefore, is only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of multiple penalties. Since, however, in all the graduated scales of penalties in the Code, as set out in Article 25, 70 and 71, *reclusion perpetua* is the penalty immediately next higher to *reclusion temporal*, it follows by necessary implication that the minimum of *reclusion perpetua* is twenty (20) years and one (1) day with a maximum duration thereafter to last for the rest of the convict's natural life although, pursuant to Article 70, it appears that the maximum period for the service of penalties shall not exceed forty (40) years. It would be legally absurd and violative of the scales of penalties in the Code to reckon the minimum of *reclusion perpetua* at thirty (30) years since there would thereby be a resultant lacuna whenever the penalty exceeds the maximum twenty (20) years of *reclusion temporal* but is less than thirty (30) years."

WHEREFORE, the appealed decision is hereby **AFFIRMED** in all respects except for the modification that the penalty of death imposed by the trial court on accused-appellant is reduced to *reclusion perpetua*.

SO ORDERED.

Narvasa, C.J., Feliciano, Regalado, Davide, Jr., Romero, Bellosillo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Hermosissima, Jr., JJ., concur.

Padilla, J., dissenting opinion.

DISSENTING OPINION

PADILLA, J.:

I agree with the ponencia of Mr. Justice Jose A.R. Melo when it holds that the correct penalty for murder, without any aggravating or mitigating circumstance, is *reclusion perpetua* following Article 63 of the Revised Penal Code and our ruling in *People v. Lucas* (240 SCRA 66).

I likewise agree that treachery qualified the killing of the victim to murder.

However, unlike the majority opinion, I believe that the aggravating circumstance of evident premeditation also accompanied the commission of the offense and thus the trial court correctly imposed the penalty of death.

The aggravating circumstance of evident premeditation is primarily a state of mind of the accused, the presence or absence of which can only be determined by the accused's external or overt acts.

Jurisprudence is settled that the aggravating circumstance of evident premeditation is established only if the following elements are proven: a) the time when the offender determined to commit the crime, b) an act

manifestly indicating that the accused had clung to his determination, and c) a sufficient interval of time between the determination and the execution of the crime which allowed him to reflect upon the consequences of his act.

In *People v. Ompad* (26 SCRA 750), the Court ruled that the plan to commit the offense can be deduced from the outward circumstances.

In the present case, the following circumstances, in my view, clearly show that the killing of the victim was premeditated:

- 1) The stabbing took place at 4:30 in the morning and it is obvious that the accused was, like a wild beast stalking its prey, lying in wait for his victim.
- 2) The accused was armed with a homemade knife the possession of which, at such an early hour, can be reasonably concluded to be solely for the purpose of committing the offense.
- 3) The manner of commission of the attack shows careful planning by the accused. He (the accused) waited for his victim to pass by, he then approached from behind, sidled up to his victim and, without warning, delivered at least two (2) thrusts of his homemade knife directed at the victim's chest after which, he ran away.

Moreover, it should be noted that during the trial of the case, accused's defense was merely denial and alibi. It is apparent that his now admitting to killing the victim and alleging lack of treachery and evident premeditation is but an afterthought in the hope of getting a lesser penalty after the trial court sentenced him to death.

Based on the foregoing, it is my opinion that the decision of the trial court should be affirmed in toto. The penalty of death is serious. Its imposition should be carefully weighed and re-weighed and, if possible, tempered with compassion. But before anything else, including compassion, justice and fairness must be supreme. We cannot overlook the victim's loved ones who have been brutally and cruelly deprived of his love, attention and company. Society, besides, has been wronged and wronged grievously and irreparably by accused's senseless and completely unexplainable act of murdering the victim. Accused must suffer, in my view, the supreme penalty and the trial judge in this case should be commended for his fearless composure and objectivity.

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