

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO CABODOC Y ESTRADA, ACCUSED-APPELLANT.

G.R. No. 118320. October 15, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Rodolfo Cabodoc was tried for the crime of murder in Criminal Case No. 537-91 of the Regional Trial Court of Lipa City, Branch 12, under an information whose accusatory portion reads as follows:

That on or about the 28th day of May, 1991, at about 4:30 o'clock in the afternoon, at Sitio Mainit, Barangay Pulanbato, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife (balisong), with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon one Randy Pendel y Galang, suddenly and without warning, thereby inflicting upon the latter the following wounds, to wit: 1). 2.5 cm. incised penetrating wound 9th ICS mid-axillary line left directed upward 2). 5 cm. incised wound nipple line perforating the pericardium and left ventricle (6 cm. Length) perforating the left lungs (lower lobe 8 cm. Length), which directly caused his death.[1]

The accused filed a petition for bail and reinvestigation.[2] The motion for investigation was denied on 18 November 1991.[3]

At his arraignment on 20 February 1992, the accused entered a plea of not guilty, and the court forthwith set the case for pre-trial and hearing of the petition for bail.[4] At the hearing of the said petition, the prosecution presented as its witnesses Virgilio Galang; Danilo Matira; PO2 William Perez of the Philippine National Police of San Juan, Batangas; Alejandro Pendel; and Dr. Marilyn Tejada. The prosecution then rested its case for purposes of the petition for bail.

In its order of 31 January 1994,[5] the trial court denied the petition for bail, having found that the evidence of guilt against the accused was strong. At also denied on 7 March 1994[6] the accused's motion to reconsider[7] the order denying the petition for bail.

On 8 March 1994, the prosecution manifested that it would offer no further evidence and moved that it be allowed to adopt the evidence it had presented during the hearing of the petition for bail. Since the defense did not object, the trial court granted the motion. Upon the other hand, the accused, through his counsel de parte, Atty. Ernesto Maiquez, offered to change his plea of not guilty to the crime charged to that of guilty to the lesser offense of homicide. The prosecution objected, and the trial court denied the offer. Thereupon, Atty. Maiquez waived the presentation of evidence on behalf of the accused and rested the case for the defense.[8]

The facts narrated by the witnesses of the prosecution are concisely summarized in the Brief for the Appellee submitted by the Office of the Solicitor General as Follows:

On May 28, 1991, at about 5:00 a.m., Danilo Matira and victim Randy Pendel went to the house of Lucy Razon at Sitio Mainit, Barangay Pulangbato, San Juan, Batangas to attend a fiesta. There were many people at

that house. At about 12:00 noon, appellant arrived and ate at the house of Lucy (TSN, Mar. 8, 1993, pp. 22-25). At about 1:00 p.m., appellant opened his balisong and uttered the words "I will kill him (referring to Randy Pendel)." At that time, appellant was about two (2) arms stretch away from Pendel (TSN, Mar. 8, 1993, pp. 26-27). Matira took the balisong away from appellant. Later, Matira returned the balisong to appellant who then left the place (TSN, March 8, 1993, pp. 27-28).

At about 4:30 p.m. of the same day (i.e., May 28, 1991), Virgilio Galang was walking along the road at Sitio Mainit. Galang then saw Pendel walking inside the fence of the house of Renato Samarita. Galang called and invited Pendel to walk with him. At that point, Galang suddenly saw appellant coming from behind Pendel with an open balisong (TSN, Mar. 8, 1993, pp. 4-6). Pendel happened to turn and thus face appellant ("napaharap") (TSN, Mar. 8, 1993, 6, 18). Appellant suddenly stabbed Pendel with his balisong, hitting him (Pendel) on the left side of the chest (TSN, Mar. 8, 1993, p. 6). Pendel stepped backwards with his arms raised until he reached a "santol" tree. Appellant again stabbed Pendel with the balisong, hitting Pendel once more on the left side of the chest (TSN, Mar. 8, 1993, p. 7). As Pendel fell down near the "santol" tree, appellant tried to stab him for the third time. However, appellant's balisong hit the "santol" tree instead which caused it to break. Appellant then ran outside the fence of Samarita and fled to the south, taking with him the handle of his balisong the blade or pointed portion of appellant's balisong was left on the "santol" tree (TSN, Mar. 8, 1993, p. 8). The people on the vicinity shouted that help be extended to Pendel. Pendel was brought to San Juan Emergency Hospital for treatment (TSN, Mar. 8, 1993, p. 9). He was operated on but died during the operation (TSN, Nov. 16, 1993, p. 22).

Meanwhile, PO2 William Perez who was then in the house of his brother-in-law, which is about six (6) meters away from the place of the incident, heard the shouts of the people and went to the place of the incident (TSN, July 27, 1993, p. 7). When PO2 Perez reached the place of the incident, the people pointed to appellant who was then running as the one who stabbed the victim (ibid, p. 6). PO2 Perez arrested appellant. Matira arrived and handed to PO2 Perez a balisong (Exh. "C") and told him that "this is the balisong taken at the scene of the incident" (TSN, July 27, 1993, p. 4).

Dr. Marilyn M. Umali-Tejada of San Juan District Hospital, San Juan, Batangas, examined the cadaver of the victim and issued a Post-Mortem Examination, the pertinent portion of which reads:

Findings:

1. 2.5 cm. incised penetrating wound 9th ICS mid-axillary line left directed upward.
2. 5 cm. incised wound nipple line perforating the pericardium and left ventricle (6 cm. length) perforating the left lungs (lower lobe 8 cm. length).
3. Hemothorax 4 liters
4. (+) Alcoholic Breath

Cause of Death:

Cardio Respiratory Arrest Secondary to Fatal Stabbed [sic] Wound" (Exh. "H"; Record, p. 25).[9]

Mr. Alejandro Pendel, father of the victim, testified that in connection with the death of his son, he spent P46,000.00[10] for hospital expenses,[11] funeral and burial expenses, and expenses during the nine-day novena, the 40th day, and the one-year anniversary.[12]

On 14 July 1994, the trial court promulgated a decision dated 14 June 1994[13] whose disposition against the accused reads as follows:

WHEREFORE, the Court finds the accused, RODOLFO CABODOC y ESTRADA, guilty beyond reasonable doubt, as principal, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal

Code, with no aggravating nor mitigating circumstance, and sentenced [sic] him to suffer the penalty of RECLUSION PERPETUA and its accessory penalties, to indemnify the heirs of Randy Pendel in the amount of P50,000.00 for his death and to pay the amount of P46,00.00 as actual damages and the costs.

The trial court held that the killing was attended by the qualifying circumstance of treachery because the victim was unarmed and the attack was sudden, unexpected, without warning, and without provocation. It disregarded the qualifying circumstance of evident premeditation, which was also alleged in the information, because the prosecution "failed to show that the accused ha[d] a prior plan to kill Pendel." [14]

The accused in his brief submits the following assignment of errors:

A.

APPELLANT'S CONVICTION IS
NULL AND VOID FOR HAVING BEEN
RENDERED WITHOUT DUE PROCESS OF LAW

B.

THE LOWER COURT ERRED IN FINDING THAT
PROSECUTION SUCCEEDED IN PROVING
BEYOND REASONABLE DOUBT THAT
APPELLANT IS GUILTY OF THE
CRIME CHARGED

C.

ASSUMING THAT A CRIME WAS COMMITTED,
THE LOWER COURT ERRED IN FINDING
THAT THE SAME WAS AGGRAVATED
BY TREACHERY

I

The first assigned error is founded on the claim of the accused that he was not given an opportunity to be heard and to rebut the evidence for the prosecution, and that his previous counsel acted with impropriety when he arbitrarily waived the presentation of evidence for the defense. He then prays that he be granted a new trial to afford him his constitutional right to due process and to prevent a failure of justice.

The kernel issues thus raised are (a) whether the original counsel of the accused was incompetent or otherwise had committed gross negligence in waiving the presentation of the evidence for the defense, and (b) whether such incompetence of gross negligence can be a ground for new trial.

As to the first, the accused has no proof whatsoever of the incompetence of his previous counsel. The transcripts of the stenographic notes of the testimony of the prosecution witnesses show that the counsel for the accused lengthily cross-examined the witnesses to raise doubts on their credibility. As to gross negligence, all that the accused has against his former counsel is the following statement of the trial court in the decision:

[T]he defense waived the presentation of its evidence. It did not even bother to present and/or offer the exhibits it had marked during the trial and merely submitted its case for decision (page 4, Decision).

These so-called exhibits which the defense had caused to be marked as Exhibits "1," "2," "3," and "4" were Exhibits "A," "B," "E," and "F," respectively, [15] of the prosecution, which the trial court admitted. The defense had them marked as its own during the cross-examination of the witnesses who testified thereon. Therefore, their offer in evidence by the defense was not even necessary. No substantial right of the accused was affected thereby.

Presumably, his counsel had deliberately decided not to offer them in evidence as a matter of strategy to avoid being bound by all the contents therein which were in fact unfavorable to the accused, especially Exhibits "A" and "B," which were the sworn statements of witnesses Virgilio Galang and Danilo Matira, respectively, positively identifying the accused as the perpetrator of the crime.

The incompetence or gross negligence of the accused's original counsel cannot be deduced from the latter's decision not to present any evidence on behalf of the accused. In the absence of any evidence to support it, that deduction would be nothing more than an unadulterated speculation. In favor of the said counsel is the presumption that, as an officer of the court, he regularly performs the duties imposed upon him by his oath as a lawyer and by the Code of Professional Responsibility. It must be stressed in this connection that on 8 March 1994, after the prosecution had finally rested its case, the original counsel, without objection on the part of the accused, informed the trial court of the accused's desire to change his plea of not guilty to that of guilty to the lesser offense of homicide. The trial court promulgated its decision only on 14 July 1994. The accused had more than four months to rectify any perceived error of his counsel in waiving the presentation of evidence either by asking leave of court to withdraw the waiver or to secure the services of a new counsel who could take the appropriate action on the accused's behalf. The accused did not. Neither did he ask for a reconsideration of the judgment on ground of denial of due process.

The right to be heard by himself and counsel,[16] a personal right guaranteed by the Bill of Rights to an accused, just like any other personal right, may be waived.[17] The accused has not shown that the waiver of his right to present his evidence was improvident. It is even logical to conclude that the waiver was the product of a careful thought to obviate undue exposure of a weak case. Since he had solemnly announced through his counsel that he was willing to change his plea to that of guilty to the lesser crime of homicide, taking the witness stand in defense against the charge of murder in view of the rejection by the court of the offer might expose him to vigorous cross-examination, which might only enhance the evidence for the prosecution. His counsel might have thought that the evidence for the prosecution had only proved the crime of homicide, which, in fact, is the accused's thesis in the third assigned error.

It is, of course, to be conceded that if the accused had proved the gross incompetence or gross negligence of his original counsel, we would be prevailed to yield to his plea that he be granted a new trial under our pronouncement in *Jose vs. Court of Appeals*,[18] which the accused relies upon, to wit:

Petitioner asserts, and correctly so, that the authority of respondent appellate court over an appealed case is broad and ample enough to embrace situations as the instant case where the court may grant a new trial or a retrial for reasons other than that provided in Section 13 of [] Rule [124], or Section 2, Rule 121 of the Rules of Court. While Section 13, Rule 124, and Section 2, Rule 121, provide for specific grounds for a new trial, i.e., newly discovered evidence, and errors of law or irregularities committed during the trial, Section 11, Rule 124 quoted above does not so specify, thereby leaving to the sound discretion of the court the determination, on a case to case basis, of what would constitute meritorious circumstances warranting a new trial or retrial.

Surely, the Rules of Court were conceived and promulgate[d] to aid and not to obstruct the proper administration of justice, to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispense justice, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.

Thus, admittedly, courts may suspend its own rules or except a case from them for the purposes of justice, or, in a proper case, disregard them. In this jurisdiction, in not a few instances, this Court ordered a new trial in criminal cases on grounds not mentioned in the statute, viz: retraction of witness, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de officio to represent the accused in the trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution

and the defense.

Characteristically, a new trial has been described as a new invention to temper the severity of a judgment or prevent the failure of justice.

II

In the second assigned error, the accused assails the finding of the trial court that the evidence of the prosecution has not established his guilt beyond reasonable doubt. He injects doubts on such evidence by asserting that motive was not proved. Well-entrenched is the rule that the prosecution need not prove motive on the part of the accused when the latter has been positively identified as the author of the crime.[19] As this Court previously said, lack of motive for committing the crime does not preclude conviction, considering that, nowadays, it is a matter of judicial knowledge that persons have been killed or assaulted for no reason at all.[20]

The accused likewise submits that the prosecution failed to establish corpus delicti; there being no showing of any direct link between the accused and the weapon alleged to have been used in the crime in that none of its witnesses testified, much less identified, such weapon.

The argument does not persuade. If the counsel for the accused had spent a little more time on the transcripts of the stenographic notes of Matira's testimony, he would find that Matira did in fact testify on and identify the balisong; thus:

ADDITIONAL DIRECT EXAMINATION OF PROSECUTOR

Q

You said during your direct examination that [the] third stab blow delivered by the accused Rodolfo Cabodoc landed on the santol tree which caused the cutting of the said balisong, after the accused Rodolfo Cabodoc delivered stab blows which the same landed to the santol tree what happened next?

A

The balisong was thrown away, tumalsik.

x x x

Q

You stated that the knife you saw that it was thrown away, how far was the knife from the body of the victim when you said it was thrown away?

A

More or less two arms stretches.

Q

When you saw that this knife was thrown away what did you do?

A

I pick[ed] up the balisong.

Q

Then what did you do?

A

Then I gave the balisong to William Perez.

Q

Who is this William Perez?

A

The policeman, ma'am.

x x x

Prosecutor

We would like to make it of record that PO2 William Perez is present in Court. We would like to request for the order of this Court that the said fan knife in his possession be delivered to this representation.

Court

Do you have with you the fan knife?

Prosecutor

PO2 William Perez delivered and gave the said fan knife to this representation. We would also want to make it of record that the said fan knife be given to the trial prosecutor, it is wrapped in a white paper properly stapled with the writing suspect Rodolfo Cabodoc; victim Randy Pendel on or about 281630, May 1991 at Sitio Mainit, Brgy. Pulang Bato, San Juan, Batangas. May we be allowed to open this knife, -- We would like to make it of record that the trial prosecutor is already opening the white paper wrapping the fan knife.

Atty. Maiquez

We would like to manifest nothing has been said in his affidavit regarding the fan knife that he was the one who picked up.

Q

If this fan knife which you said you pick[ed] up and gave to PO2 William Perez will be shown to you, will you be able to recognize the same?

A

Yes ma'am.

Q

I am showing to you a fan knife, what relation has this to the fan knife you said you pick[ed] up to [sic] the scene of the incident and immediately delivered to PO2 William Perez?

A

This is the balisong ma'am.

Prosecutor

We would like to make it of record also your Honor, that the fan knife, part of the fan knife has been cut, your Honor.

Q

What relation has this to the fan knife you said you delivered to PO2 William Perez?

A

I gave the balisong because he is a policeman.

Q

Is this the fan knife that you delivered to PO2 William Perez which you pick[ed] up at the scene of the incident?

A

I pick[ed] that up after it was thrown away.

Prosecutor

For Purpose of identification we would like to request that this fan knife that a tag be put and the same be marked as Exhibit C, and the blade itself, you Honor, be marked also as Exhibit C-1.

Court

Mark it.[21]

While the accused has correctly restated the elements of corpus delicti, he entirely forgot that the prosecution need not even produce the weapon used in the commission of the crime to prove corpus delicti. Corpus delicti is the body (material substance) upon which a crime has been committed, e.g., the corpse of the murdered man or the charred remains of a house burned down. In a derivative sense, it means the substantial fact that a crime was committed. It is made up of two elements: (a) that a certain result has been proved, for example, a man has died or a building has been burned, and (b) that some person is criminally responsible for the act.[22]

For conviction of an accused in criminal cases, it is enough for the prosecution to establish by proof beyond reasonable doubt that a crime was committed and the accused is the author thereof. The production of the weapon used in the commission of the crime is not a condition sine qua non for the discharge of that burden, for the weapon may not have been recovered at all. If the rule were otherwise, many criminals would go scot-free because in many cases, for obvious reasons, these malefactors hide, tamper with, or destroy such weapons. The efforts then of our law enforcement authorities to rid our society of criminals and to maintain peace and order would be seriously hamstrung and impeded, and much injustice would be caused to the victims of crimes, their families, and society itself.[23]

III

The third assigned error is equally without merit.

The trial court correctly ruled that the killing was attended by the qualifying circumstance of treachery because the attack by the accused on the unarmed victim was sudden, unexpected, without warning, and without provocation. The victim was totally unprepared; he was unable to put up a defense. All that he was able to do after the first thrust of the balisong hit him on the left side of his chest was to move backwards with raised hands as if to plead to the accused to stop attacking him. Obviously, the accused employed means or methods in the execution of the crime which tended directly and specially to insure its execution without risk to himself arising from the defense which the victim might have made. All the elements then of treachery as defined in Article 14(16) of the Revised Penal Code were established beyond doubt.

Upon the other hand, the Office of the Solicitor General contends that the trial court erred in not appreciating the qualifying circumstance of evident premeditation, which was also alleged in the information. The following requisites must be proved before evident premeditation[24] may be appreciated: (a) the time when the accused

determined to commit the crime, (b) an act manifestly indicating that the accused has clung to his determination, and (c) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[25] To justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection, and sufficient time to allow the conscience of the actor to overcome the resolution of his will had he desired to hearken to its warning.[26] The Office of the Solicitor General then argues that the prosecution was able to prove these requisites of evident premeditation; thus:

First. It was established that at about 1:00 p.m. of May 28, 1991, at the house of Lucy Razon, appellant opened his balisong and uttered the words "I will kill him (referring to the victim)"; at that time, appellant was about (2) arms stretch away from the victim; appellant's attack on the victim was avoided because of Matira's intervention (TSN, Mar. 8, 1993, pp. 26-28). At that point in time, it was manifest that appellant was determined to kill the victim. Second. At about 4:30 p.m. of the same date (i.e., May 28, 1991), at the vicinity of the house of Renato Samarita, appellant stabbed the victim to death (TSN, May 8, 1993, pp. 4-8; 18). The stabbing of the victim by appellant is an act manifestly indicating that appellant had clung to his determination to kill the victim. Finally, there was sufficient lapse of time (3 ½ hours) between the determination (1:00 p.m. of May 28, 1991) and execution (4:30 p.m. of May 28, 1991) to allow appellant to reflect upon the consequences of his act (People vs. Mostoles, 85 Phil. 883). In fine, the circumstance of evident premeditation should be appreciated against appellant.[27]

We agree. There was, at the very least, three and a half (3 ½) hours that had lapsed from the moment the accused had indubitably demonstrated his determination to kill the victim, thereby manifesting a decision which could have been earlier or just then made. The sudden attack at 4:30 p.m. proved beyond cavil that the accused had clung to his decision to kill the victim. The 3 ½-hour period was sufficient to allow him to reflect upon the consequences of his act. In People vs. Mojica,[28] we ruled that the lapse of one hour and forty-five minutes (from 4:15 p.m. to 6:00 p.m.) from the inception of the plan to the execution of the crime satisfied the last requisite of evident premeditation.

Summing up, the qualifying circumstances of treachery and evident premeditation -- both alleged in the information -- attended the killing of Randy Pendel. Since treachery is enough to qualify the killing to murder,[29] evident premeditation should be considered only as a generic aggravating circumstance.[30]

The penalty for murder in Article 248 of the Revised Penal Code is reclusion perpetua to death. With the presence of the generic aggravating circumstance of evident premeditation, which was not offset by any mitigating circumstance, the penalty imposable pursuant to Article 63 of the Revised Penal Code is the greater penalty, which is death. However, since the accused committed the offense in question before the effectivity of R.A. No. 7659,[31] death penalty cannot be imposed in view of Section 19(1), Article III of the Constitution. The penalty next lower in degree, i.e., reclusion perpetua, should instead be imposed.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision dated 14 June 1994 of Branch 12 of the Regional Trial Court of Lipa City in Criminal Case No. 537-91 finding accused RODOLFO CABODOC y ESTRADA guilty beyond reasonable doubt, as principal, of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and its accessory penalties; to indemnify the heirs of Randy Pendel in the amount of P50,000.00; and to pay the amount of P46,000.00 for actual damages and the costs is AFFIRMED, except as to that part stating that no aggravating circumstance was proven, which is hereby deleted.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. 537-91, 1; Rollo, 7.

[2] OR, 35.

[3] Id., 38.

[4] Id., 52.

[5] OR, 143.

[6] Id., 157.

[7] Id., 144 et seq.

[8] Id., 158. The second sentence of Section 5, Rule 114, Rules of Court provides that "[t]he evidence presented during the bail hearings shall be considered automatically reproduced at the trial "."

[9] Brief for the Appellee, 4-7.

[10] TSN, 22 September 1993, 3.

[11] Exhibit "F"; OR, 136.

[12] Exhibit "G"; Id., 137; TSN, 23 November 1993, 2.

[13] OR, 162-166; Rollo, 14-18. Per Judge Vicente F. Landicho.

[14] Id., 166; Id., 18.

[15] OR, 15-17; 128; 136.

[16] Section 14(2), Article III, Constitution.

[17] Abriol vs. Homeres, 84 Phil. 525, 534 [1949]; People vs. Dichoso, 96 SCRA 957, 961-962 [1980]; People vs. Donato, 198 SCRA 130, 154-155 [1991].

[18] 70 SCRA 257, 264-265 [1976], citing authorities.

[19] People vs. Devaras, 205 SCRA 676, 693 [1992]; People vs. Canceran, 229 SCRA 581, 587 [1994]; People vs. Campa, 230 SCRA 431, 443 [1994].

[20] People vs. Mandapat, 196 SCRA 157, 165 [1991]; People vs. Ilaoa, 233 SCRA 231, 236 [1994].

[21] TSN, 19 April 1993, 4-8.

[22] People vs. Barlis, 231 SCRA 426, 442 [1994]; People vs. Lorenzo, 240 SCRA 624, 637 [1995].

[23] People vs. Florida, 214 SCRA 227, 240 [1992]; People vs. Jumamoy, 221 SCRA 333, 345 [1993].

[24] Article 14(13), Revised Penal Code.

[25] People vs. Narit, 197 SCRA 334, 349 [1991]; People vs. Castor, 216 SCRA 410, 421 [1992].

[26] U.S. vs. Gil, 13 Phil. 530, 547 [1909]; People vs. Narit, supra note 25, at 348; People vs. Barba, 203 SCRA

436, 458 [1991].

[27] Brief for the Appellee, 16-17.

[28] 10 SCRA 515, 519 [1964].

[29] Article 248, Revised Penal Code.

[30] People vs. Diaz, 55 SCRA 178, 188 [1974]; People vs. Boniao, 217 SCRA 653, 673 [1993].

[31] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes "" It took effect on 31 December 1993 (People vs. Simon, 234 SCRA 555 [1994]).

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