

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAGDALENA MAGNO, ACCUSED-APPELLANT.

G.R. No. 119309. August 01, 1996

Ponente: MELO, J.

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MELO, J.:

Before us on automatic review is the decision of Branch 43 of the Regional Trial Court of the 5th Judicial Region stationed in Virac, Catanduanes, in its Criminal Case No. 2052, finding accused-appellant Magdalena Magno guilty of the crime of murder and imposing on her the extreme penalty of death.

In an Information filed on February 24, 1994, by the Second Assistant Provincial Fiscal of Virac, Catanduanes, Magdalena Magno was charged with murder, allegedly attended by treachery and evident premeditation.

After trial, following a plea of not guilty, the trial court, disbelieving and rejecting the defense of the accused, convicted her in its decision dated December 19, 1994, disposing as follows:

WHEREFORE, in view of the foregoing, the prosecution having proved the guilt of the accused, Magdalena Magno of the crime of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7639, she is hereby sentenced to suffer the penalty of death, to indemnify the heirs of the victim the amount of P50,000.00 and to pay the costs.

(pp. 13-14, Rollo.)

Hence, the instant mandatory review.

The facts established by the prosecution woven together mainly from the testimony of prosecution witnesses Judy Beraquit, Dr. Antonio Romano, and Ariel Oliveros, are as follows:

On January 22, 1994, at around 8:30 in the evening, accused-appellant went to the house of her cousin, Judy Beraquit at Mayngaway, San Andres, Catanduanes and asked to be accompanied to buy cornicks (yanyan) from a nearby store owned by one Miguel Huit, and together, they did go to the store. On their way home, Beraquit and accused-appellant saw the victim Wilma Oliveros walking ahead of them, some 8 meters away. Accused-appellant upon seeing the victim suddenly ran towards her and stabbed her at the back with an ice pick. The victim was taken aback by the sudden attack and started to run but accused-appellant pursued her. Beraquit, who was left behind then proceeded home. On reaching the vicinity of the church, Beraquit saw the victim lying on the ground, and accused-appellant was standing beside her. She then asked accused-appellant why she stabbed the victim. Accused-appellant answered that she did it in retaliation because the victim stabbed accused-appellant on November 25, 1993.

In the meanwhile, Ariel Oliveros, the victim's brother was informed by one Oscar Monjardin that his sister, was found dead behind the church of Mayngaway. Ariel Oliveros immediately went to the place, and rushed the victim to the hospital where she was declared dead on arrival.

The medico legal certificate (Exhibit A) as well as the death certificate (Exhibit B) issued by Dr. Antonio Romano, who examined the cadaver of the victim, show that the victim suffered a "stabbed wound, scapular region, right." Dr. Romano also pointed to the Court, the wound on the right portion of the back.

In her defense, accused-appellant claims she stabbed the victim in self-defense. Her version is that on the date and time indicated in the Information, while she and Judy Beraquit were going home after buying cornicks from Huit's store, they met the victim, Wilma Oliveros, who berated her. She answered back and a heated argument between them followed. Beraquit pacified them but when accused-appellant turned her back, the victim boxed her. She turned to face the victim and the latter boxed her again, hitting her on the face. She embraced the victim and they grappled at each other. She fell to the ground face up. At this point, the victim choked her with both hands. She tried to free herself and as she struggled she felt some thing tucked in the victim's waist. She pulled it out and stabbed the victim at the back.

Accused-appellant further declared that prior to January 22, 1994, she bore a grudge against the victim because the latter stabbed her sometime in November 1993.

The principal issues for consideration before us are:

1. Whether treachery and evident premeditation attended the offense and were duly proved; and
2. Whether the death penalty was correctly imposed on accused-appellant.

Accused-appellant contends that the killing of Wilma Oliveros was not qualified by treachery. She claims that she and the victim fought each other, face to face, both equipped or armed with ice picks and that she stabbed the victim while the latter was choking her.

The evidence, however, unquestionably supports the findings of the trial court that treachery undoubtedly attended the killing of Oliveros.

Treachery exists 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 the execution without risk to himself arising from the defense which the offended party might make. (2nd par. No. 16, Art. 14, Revised Penal Code; *People vs. Tamparong, Jr.*, 249 SCRA 584 [1995]; *People vs. de Leon*, 248 SCRA 609 [1995])

In the case under review, it is clear from the testimony of eyewitness Judy Beraquit, that when she and accused-appellant saw the victim walking about 8 meters away, the accused-appellant ran towards the victim from behind and without the slightest warning or without uttering any word, stabbed the victim at the back and pursued the victim when the latter tried to ran away (TSN, pp. 6-9, Hearing of August 9, 1994).

This is confirmed by the findings of Dr. Antonio Romano, in the medical and death certificates of the victim he issued that the wound sustained by the victim was located on the right portion of the back.

The sudden, unexpected, synchroal attack of the victim from behind by accused-appellant, without the slightest warning, taking the victim completely by surprise, defenseless, and helpless, could but disclose the treacherous nature of the attack upon the victim by accused-appellant.

There is treachery when the attack on the victim was sudden and unexpected and from behind and without warning, with the victim's back towards his assailant as when the attack was so sudden and unexpected that the victim was unable to defend herself, thus insuring the execution of the criminal act without risk to the assailant. (*People vs. Boniao*, 217 SCRA 653, 671 [1993].)

The conclusion, therefore, is unescapable that the attack on the victim was perpetrated with alevosia, thus

qualifying the killing to murder.

We, however, agree with the Solicitor General that the killing was not attended by evident premeditation or, for that matter, by any other aggravating or any mitigating circumstances.

The case at bar is similar to the case of *People vs. Saliling* (G.R. 117732, October 10, 1995), where we observed:

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 of 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 Articles 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."

Consequently, the trial court erroneously imposed the death penalty on accused-appellant.

In view of the absence of any mitigating or aggravating circumstance, the proper imposable penalty is reclusion perpetua under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659.

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

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, JJ., concur.

Bellosillo, J., on leave.

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