

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO GERMINA Y MALDO, ACCUSED-APPELLANT.

G.R. No. 120881. May 19, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Charged with, tried for and thereafter convicted of murder under an information reading:

“That on or about the 9th day of November, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery, evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack and shot (sic) with a handgun one RAYMUNDO ANGELES Y VILLAMOR hitting him on the back of his body thereby inflicting upon said victim serious physical injuries which directly caused his death.

Contrary to law.”[1]

herein accused-appellant Elpidio Germina y Maldo was sentenced by the Regional Trial Court, Branch 171, of Valenzuela, Metro Manila to suffer the penalty of Reclusion Perpetua and to pay the victim’s heirs P50,000.00 as indemnity, funeral expenses amounting to P51,700.00 and costs.[2]

The prosecution, based on eyewitness accounts of Marcelino Almazan,[3] Gaudencio Angeles[4] and Ramil Regencia[5] (victim’s brother-in-law, father and neighbor, respectively), detailed a treacherous killing of Reymundo Angeles (hereafter, Raymund.). Culled from their individual testimonies, it appears that at around 7:30 o’clock in the evening of November 9, 1994, appellant, armed with a revolver, arrived at the Angeles residence at Engracia Street, Bahay Pare, Marulas, Valenzuela looking for Raymund who was not there at that time. A heated conversation took place between Raymund’s relatives (parents, brothers and sisters) and appellant concerning a quarrel that transpired earlier between appellant’s brother and Raymund. Moments later, Raymund arrived. Appellant, upon spotting him, drew his gun which prompted Raymund and his relatives to scamper for safety. Hardly had Raymund gained momentum in his retreat when he stumbled on a street hump and fell on the ground face down. Appellant easily caught up with and then fired at his defenselessly positioned prey - the single bullet finding its mark on the back of Raymund’s neck. Raymund was rushed to the Santisimo Rosario General Hospital for medical treatment as soon as appellant darted away from the crime scene, but to no avail.

The autopsy report[6] and testimony[7] of prosecution witness Dr. Valentin Bernales of the NBI revealed that Raymund succumbed to a gunshot wound found at the back right side of his buttock measuring 0.8 x 0.7 cms., without any exit wound. Dr. Bernales clarified that as the death bullet has a downward trajectory, the victim must have been in a lying, face-down position when fired upon by the assailant.

Raymund’s mother, Nenita Angeles, testified that the family spent P 51,700.00 for her son’s funeral.[8]

Appellant, for his part, did not deny having shot Raymund, but his story,[9] corroborated by his wife Nida Germina,[10] painted a picture of self-defense. Appellant’s story is that he sought Raymund on the night of

November 9, 1994 to verify news that the latter mauled and stabbed his mentally retarded brother, Rafael. At the Angeles residence, appellant, together with his wife Nida and Rafael, talked to Raymund's relatives about the mauling/stabbing incident. Shortly thereafter, Raymund appeared, joined the group and with a double-bladed weapon in his right hand, cursed appellant: "Putang ina mo, papatayin ko kayo!" (You son of a bitch, I will kill you all!) The relatives of Raymund tried to hold him at bay but to no avail. Appellant then attempted to run away but as he found himself cornered against a wall and when Raymund was about to strike him with the bladed weapon, he fired at Raymund. Appellant left the place immediately thereafter and voluntarily gave himself up to SPO2 Henry Marteja.

The trial court was of the impression that the prosecution's story and witnesses were more credible than those of the defense. It struck down appellant's tale of self-defense - particularly of a frontal encounter with Raymund - in the face of the fact, as duly established by testimonial evidence and the autopsy report, that Raymund was shot at the back while lying face down on the ground. Treachery qualified Raymund's killing to murder for it is apparent, said the court, that appellant took advantage of the helpless condition of Raymund to insure its execution without risk to himself. Reclusion Perpetua, and not death,[11] was the penalty meted appellant due to the mitigating circumstances of voluntary surrender and passion which the trial court appreciated in this wise:

"The accused voluntarily giving up himself to the police authorities immediately after the commission of the offense to which the prosecution did not refute, shows act of repentance, respect for the law and his willingness to suffer and pay for the consequences of his criminal acts and a clear indication of his moral disposition favorable to his reform. The lack of proof of previous conviction or having (sic) charged of similar or of any felony, lead to the conclusion that the accused is not beyond correction or reformation. Not to mention the fact that he committed the serious crime due to the maltreatment/physical injuries inflicted by the victim on his mentally retarded brother, that triggered his anger which diminish (sic)/weaken (sic) the exercise of his will power, persuaded the Court to believe that the imposition of the penalty next lower to death is reasonable and justified." [12]

Appellant comes to us praying, not for his acquittal, but that he be convicted of homicide only and thus be made to suffer a reduced penalty corresponding thereto. He claims that there is no treachery even if it be conceded that he gunned down Raymund from behind.

There is merit in appellant's plea.

It is true that in a host of cases, this Court has found fatal assaults from behind as earmarks of treachery, among which are "People vs. Muyano" [13] and "People vs. Apolonia" [14] cited by the Solicitor General in the appellee's brief. This should not be mistaken, however, as a hard and fast rule. The peculiarities of each case must be taken into account, carefully calibrated, and the cases of "People vs. Flores" [15] relied upon by appellant and "People vs. Nemeria" [16] are illuminative examples of a contrary finding.

In "Flores," the victim Edwin and his companion Demetrio were innocently passing by a bed factory when the accused, a security guard of said establishment, apparently drunk, emerged therefrom and fired at them. Sensing danger, Edwin and Demetrio ran for their lives but accused gave chase. Accused fired another round, this time hitting Edwin at the back. This Court, in negating the existence of treachery, made this clarification:

"The mere fact that the victim was shot at the back while attempting to run away from his assailant would not per se qualify the crime to murder. x x x [w] ith the first gunshot, the victim has been placed on guard and has, in fact, attempted to flee. There could thus be no treachery since, prior to the attack, the victim has been forewarned of the danger to his life and has even attempted, albeit unsuccessfully, to escape. Moreover, there was absolutely no evidence to show that accused-appellant consciously and deliberately employed a specific form of attack which would specially and directly ensure its commission without impunity." (italics ours)

Accused therein was thus found guilty of homicide and not murder.

The “Nemeria” case is no less enlightening. Accused therein attacked the victim from behind with a bolo in the presence of at least five (5) persons all situated at the same portion of the feeder road where the assault took place. This Court ruled that the killing was not qualified by treachery, saying, *inter alia*, that the accused “has perpetuated the crime in the presence of other people in the area who, if willing, could have lent support.” As in “Flores”, the accused was convicted only of homicide.

This case cannot be treated differently from “Flores” and “Nemeria.” Raymund was well-aware of the danger to his life since he even managed to run away - without success, however - before appellant shot him to death. Moreover, in the immediate vicinity of the crime scene, the front gate of the house of the victim, were his relatives who certainly were in a position to give the latter moral and physical support.

If murder was his bent, appellant would not have gone to the house of the victim. Moreover, if appellant had in mind a way to attack the victim to insure his death without risk arising from the latter, why would he engage his (victim) relatives in heated argument? If his intention was ambush, he could have just kept his silence and waited for the proper time. Engaging the relatives in a useless debate would only put the victim on his guard.

What appears to be the coup de grace to a finding of treachery in this case is the appreciation by the trial court of the mitigating circumstance of passion. Passion cannot co-exist with treachery because in passion, the offender loses his control and reason while in treachery the means employed are consciously adopted. One who loses his reason and self-control could not deliberately employ a particular means, method or form of attack in the execution of the crime.[17]

We end the discussion on treachery by emphasizing that its presence under the attendant facts has not been proven as fully and convincingly as the crime itself. The doubt must, therefore, be resolved in favor of appellant.[18] But while the trial court may have erred on this issue, its findings as to the presence of the mitigating circumstances of voluntary surrender and passion, nonetheless, deserve affirmance. Voluntary surrender was correctly appreciated because it appeared spontaneous and unconditional,[19] as appellant’s claim that he voluntarily gave himself up to SPO2 Marteja right after shooting Raymund remains undisputed. Passion also existed as it clearly arose from lawful sentiments or legitimate feelings.[20] The trial court’s observation on this point is worth reiterating:

“ x x x he [appellant] committed the serious crime due to the maltreatment/physical injuries inflicted by the victim on his mentally retarded brother, that triggered his anger which diminish (sic)/ weaken (sic) the exercise of his power, x x x.”

All told, appellant should be convicted of the lesser crime of Homicide which, under Article 249 of the Revised Penal Code, carries with it the penalty of reclusion temporal. Considering the presence of two (2) mitigating circumstances and the absence of any aggravating circumstance, the imposable penalty is prision mayor.[21] Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence to be meted appellant should be within the range of prision correccional, and the maximum thereof, within the range of prision mayor.

WHEREFORE, premises considered, accused-appellant ELPIDIO GERMINA y MALDO is hereby found guilty beyond reasonable doubt of homicide and is thus sentenced to suffer the indeterminate penalty of six (6) years of prision correccional maximum as minimum, to ten (10) years of prision mayor medium as maximum. The Fifty Thousand Pesos (P50,000.00) indemnity and the Fifty One Thousand Seven Hundred Pesos (P51,700.00) funeral expenses awarded to the victim’s heirs by the trial court are AFFIRMED. No costs.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Mendoza, JJ., concur.

[1] Records, p. 1.

[2] RTC Decision dated June 23, 1995, penned by Presiding Judge Adriano R. Osorio.

[3] TSN of November 28, 1994, pp. 4-12.

[4] TSN of January 23, 1995, pp. 3-10.

[5] TSN of January 16, 1995, pp. 3-12.

[6] Records, p. 59.

[7] TSN of February 13, 1995, pp. 3-8.

[8] TSN of January 20, 1995, pp. 2-4.

[9] TSN of March 3, 1995, pp. 4-48.

[10] TSN of March 24, 1995, pp. 3-21.

[11] R.A. 7659, which re-imposed the death penalty for certain heinous crimes, was already in effect at the time the crime involved herein took place.

[12] RTC Decision, p. 9.

[13] 235 SCRA 184.

[14] 235 SCRA 124.

[15] 237 SCRA 653.

[16] 242 SCRA 448.

[17] Gregorio, Fundamentals of Criminal Law Review, 1988 Edition p. 81 citing People v. Wong, 70 O.G. 4844.

[18] People vs. Ballabare, 264 SCRA 350.

[19] People vs. Isleta 264 SCRA 374.

[20] People vs. Echaluze, 66 SCRA 221 citing US vs. Hicks, 14 Phil. 217.

[21] Art. 64, Revised Penal Code.

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