

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONEL MEREN Y MAIQUE, ACCUSED-APPELLANT.

G.R. No. 120998. July 26, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Dionel Meren was convicted of the crime of murder by the Regional Trial Court of Manila on June 26, 1995. The dispositive part of the decision states:

"WHEREFORE, the accused, Dionel Meren y Maigue is hereby found guilty beyond reasonable doubt of the crime of MURDER as charged. The Court hereby sentences him to suffer the penalty of death considering the qualifying aggravating circumstances of alevosia and the generic aggravating circumstance of night-time and to indemnify the heirs of the deceased the sum of P34,000 as and for funeral and burial expenses and the further sum of P50,000 for the death of the victim.

Costs against the accused.

SO ORDERED."[1]

Because the sentence imposed was death, the case is now before the Court on automatic review.

The facts, as presented by the prosecution, are as follows:

On May 29, 1994, between 11:00 p.m. and midnight, the victim Jessie Villaresco was asleep inside a jeepney parked at the corner of Del Pan and Lavezares Streets, Manila. With him were Gerry Padilla, Egardo Valderama, Rolando Zolondro and Romulo Relajo.

Accused-appellant suddenly came out of nowhere and without warning stabbed the victim, who was fast asleep, in the abdomen, head, back and other parts of his body. After the attack, accused-appellant quickly fled the scene. The victim's companions, who had witnessed the entire incident, brought him to the house of the Barangay Captain where he expired.

Accused-appellant was arrested and brought to the police station. There, he was positively identified as the attacker by Gerry Padilla, one of the witnesses in the jeep with the victim.

On June 6, 1994, an information was filed with the Regional Trial Court of Manila, Branch 43, charging appellant with the crime of murder committed[2] as follows:

"That on or about May 29, 1994, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one JESSIE VILLARESCO, by then and there stabbing him several times on the different parts of his body, thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW."[3]

After trial, the court convicted accused-appellant and sentenced him to death.

In his brief, accused-appellant before us, argues that:

- (1) the trial court erred in giving weight and credence to the testimonies of the prosecution's witnesses and in disregarding accused-appellant's defense of alibi; and
- (2) the trial court erred in convicting accused-appellant of murder as the prosecution failed to prove the qualifying aggravating circumstance of treachery and the generic aggravating circumstance of nighttime.

Accused-appellant's brief states:

"The court a quo, instead of rejecting the defense alibi by the accused, should have been more suspicious in appreciating the testimonies of the two prosecution witnesses, namely: Jerry Padilla and Edgardo Valderama, it appearing that they have been coached and that they two have been a willing pupils (sic) diligently instructed by interested parties to make their testimonies fit in with each other so as to give united support to their case, to convict the accused herein. Records show that the two witness (sic) almost agreed as to every details of the occurrence of the event, they have the same words even to the minutes (sic) details."

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To constitute the aggravating circumstance of treachery or alevosia, two conditions must be present, namely, (1) employment of means of execution that gives no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or conspicuously adopted (People v. Ocana, 229 SCRA 341).

The mere fact that the victim was stabbed from behind does not necessarily establish treachery where it does not appear that the accused purposely chose to employ such means or mode of attack. The circumstances qualifying or aggravating the act of killing a human being must be proven in an evident and incontestable manner, mere presumption or deduction hypothetical facts not being sufficient to consider them justified (People v. Almario, 171 SCRA 291).

Further, the fact that the attack was sudden per se does not bespeak the circumstance of alevosia. (People v. Decina, 235 SCRA 67). The mere suddenness of an attack is not enough to constitute treachery when the means adopted does not positively tend to prove that the assailant thereby knowingly intended to insure the accomplishment of his purpose without risk to himself arising from the defense which his victim might offer. (People v. Cabiling, 74 SCRA 285).

The prosecution failed in this respect. Nowhere in the records tend to show that accused-appellant sought treachery or alevosia in committing the crime.

On the other hand, for nighttime to be appreciated as an aggravating circumstance, there must be a convincing showing that the accused had purposely sought nighttime in order to facilitate the commission of the crime or to prevent its discovery or to evade the culprits capture (People v. Salvador, 224 SCRA 819).

Again, the prosecution failed to prove that the accused had taken advantage of nighttime to facilitate the crime. In fact, the scene of the incident as narrated by the prosecution witnesses was well illuminated by the lights of two Meralco post that any person therein is clearly visible and can easily be recognized by people nearby.

Therefore, for want of the essential elements of the crime of murder, accused-appellant should be acquitted of the crime charged."^[4]

Regarding the first assignment of error, we are not convinced by appellant's arguments.

There is nothing to show from the records of this case that the prosecution witnesses were coached. During the trial, two of the victim's companions, Gerry Padilla and Edgardo Valderama, testified that it was appellant who killed the victim. Considering that they were all together at the time of incident, it is not surprising that the two

testimonies would be nearly identical. As the Solicitor General stated in their brief:

"The prosecution eyewitnesses were both in a position to identify appellant as the assailant. As testified to several times, the crime scene was well-lighted.

Q: Would you know of the reason why the accused stabbed the victim?

A: No sir.

Q: Was it lighted in the vicinity at that time when the incident happened?

A: Lighted, sir.

Q: Why was the scene of the crime then lighted?

A: Because of the post of the Meralco.

Q: How did you come to identify the accused as the assailant?

A: Because of Illumination

(tsn, p. 8, Padilla, July 15, 1994)

x x x x x x x x

Atty. Macabaya

How did you come to identify the accused when according to you, you do not know the accused?

Witness:

Because the place was lighted by a street light and I was able to recognize the accused.

Also, because of good lighting, a prosecution witness, Valderama, saw clearly details in appellant's face, thus:

Q: Could you tell us the distinct mark? Why do you say that the accused was the person who stabbed when it was, the incident occurred at night time ?

A: Because his face is coarse and his hair is spiky on the top and normal at the back.

(tsn, p. 9, Balderama, August 19, 1994)."[5]

As for accused-appellant's weak defense of alibi, we have reiterated in innumerable cases that the same cannot prevail over the positive identification by accused-appellant of eyewitnesses.[6] Furthermore, if it was true that he

was with someone else during the commission of the crime, that person should have been presented during the trial to corroborate his statement. Since no such person testified on his behalf, the veracity of his defense of alibi is questionable. It seems a mere fabrication to avoid liability for his criminal act.

We also find unmeritorious accused-appellant's contention that the trial court erred in finding that treachery attended the killing. In a case involving similar circumstances, we have said that treachery exists "when the attack was so sudden and unexpected that the victim was unable to defend himself, thus insuring the execution of the crime without risk to the accused-appellant. As a matter of fact, the victim was absolutely defenseless as he was then asleep. Treachery is present when the offender commits any of the crimes against persons, employing means, methods or foams 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." [7]

Again, in another similar case, we said:

"We consider, however, that there is no further proof required in the instant case to show that treachery had attended the commission of the offense. The mode of attack described by Juliana Flores indicates that it was made suddenly and unexpected (sic), rendering the victim helpless and without opportunity to defend himself. As correctly observed by the trial court, the victim was then unarmed and oblivious of the possibility of a deadly attack as he slept on the driver's seat of a passenger jeepney. There was no confrontation or altercation that preceded the attack. Appellant Gonzales chose that particular time to attack the victim when retaliation or defense was not possible. That is the very essence of treachery as a criminal law concept." [8] (Underscoring supplied)

However, we believe that the trial court erred in finding that the killing was attended by the aggravating circumstance of nighttime. We agree with the Solicitor General who opined that :

"First, there was no evidence on record that appellant deliberately sought nighttime and took advantage thereof to facilitate the perpetration of the crime or insure its commission (People v. Bato, 21 SCRA 1445, 1448; People v. Toring, 191 SCRA 38, 47, 48; People v. Rosario, 246 SCRA 658, 670). As held by this Honorable Court in People v. Boyles, 11 SCRA 88, 94:

By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture (People v. Alcala, 46 Phil. 739; People v. Matbagon, 60 Phil. 887; People v. Pardo, 79 Phil. 658). Stated differently, in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.

Secondly, as held by this Honorable Court in People v. Necerio, 211 SCRA 415, 422, 'nighttime should not have been considered a separate aggravating circumstance as this was absorbed by alevosia (People v. Espiritu, G.R. No. 80406, November 20, 1990, 191 SCRA 503; People v. Bueza, G.r. No. 79616, August 20, 1990, 188 SCRA 683; People v. Tasarra, et al., G.R. No. 85531, December 10, 1990, 192 SCRA 266.' In the present case, the trial court erred in considering nighttime as a generic aggravating circumstance distinct from treachery.

Thirdly, it is beyond question that the crime took place in a well-lighted area which consequently enabled prosecution witnesses to identify appellant as the killer. As held by this Honorable Court in several cases, nocturnity is not aggravating where the place of the commission of the crime was well-illuminated (People v. Rosario, 246 SCRA 658, 670; and People v. Bato, 21 SCRA 1445, 1448)." [9]

Therefore, since treachery already qualified the killing to murder and no other aggravating circumstance was proved in its commission, the penalty imposed should have been reclusion perpetua and not the supreme penalty

of death.

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 43, convicting accused-appellant of the crime of murder is AFFIRMED, with the MODIFICATION that the death penalty imposed is reduced to reclusion perpetua.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J. on leave.

[1] Rollo, p. 28.

[2] TSN, July 15, 1994, pp. 3-5.

[3] Rollo, p. 73.

[4] Id., pp. 52, 54-56.

[5] Id., pp. 78-79.

[6] People v. Manuel, 160 SCRA 257 (1988); People v. Obando, 182 SCRA 95 (1990); People v. Arceo, 187 SCRA 265 (1990); People v. Baring, 187 SCRA 629 (1990); People v. Peñaranda, 107 SCRA 686 (1981).

[7] People v. Kyamko, 222 SCRA 183 (1993).

[8] People v. Gonzales, 210 SCRA 44 (1992).

[9] Rollo, pp. 84-85.

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