

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGON MANES AND RAMIL MANES, ACCUSED-APPELLANTS.

G.R. No. 122737. February 17, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal taken by accused Sergon Manes and Ramil Manes from the judgment[1] of the Regional Trial Court, Branch 25,[2] Iloilo City, convicting them of murder and sentencing them to each "suffer the penalty of reclusion perpetua with the accessory penalties as provided in Article 41 of the Revised Penal Code" and "to indemnify the family of their victim in the amount of P50,000.00 plus P21,250.00 as expenses for the burial, wake and other related matter and to pay the costs."

We affirm the conviction.

On July 12, 1991, the Provincial Prosecutor of Iloilo Province filed with the Regional Trial Court, Iloilo City, an information charging the accused with murder, as follows:

"x x x

"That on or about the 23rd of June, 1991, in the Municipality of Badiangan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose armed with a knife and a .38 caliber revolver respectively, with treachery and/or evident premeditation, did then and there wilfully, unlawfully, and feloniously assault, attack, stab and shot Nicanor Tamorite with the knife and .38 caliber revolver with which they were then provided, inflicting upon the said Nicanor Tamorite stab wounds and gun shot wounds on the different parts of his body which caused his death immediately thereafter."[3]

The prosecution recommended no bail for the provisional liberty of the accused.

On July 22, 1991, the trial court issued a warrant of arrest against the accused. On October 18, 1991, the trial court ordered the case archived for failure to locate the two accused.

On June 24, 1992, or about a year after, accused Sergon and Ramil Manes were arrested in Romblon, Romblon. On July 6, 1992, they were brought to Iloilo City.

Upon arraignment on September 17, 1992, both accused pleaded not guilty to the information, and, thereafter, the court proceeded to try the case.

Meantime, on August 25, 1992, the accused filed a petition for bail, which was opposed by the prosecution. The trial court, however, did not hear the petition for bail. Neither did the accused invoke the right to bail at any stage of the trial.

The prosecution presented six witnesses,[4] two of whom were eyewitnesses to the crime, while the defense presented three,[5] two of whom were the accused themselves.

On January 13, 1995, the trial court rendered judgment convicting the accused of murder, the dispositive portion of which reads as follows:

"x x x

"Accordingly, finding the accused, Ramil Manes and Sergon Manes, guilty of murder beyond reasonable doubt, they are therefore sentenced to each suffer the penalty of Reclusion Perpetua with the accessory penalties provided in Article 41 of the Revised Penal Code and they are also ordered to indemnify the family of the victim the amount of P50,000.00 plus P21,250.00 as expenses for the burial, wake and other related matter and to pay the costs."[6]

On February 10, 1995, both accused appealed to this Court.[7]

In the appeal, accused questioned the trial court's failure (a) to hear the petition for bail; (b) to consider defense of relative in favor of Ramil Manes; and (c) to take note that Sergon Manes was a mere victim of Tamorite's unlawful aggression.

The antecedent facts are as follows:

(a) According to the prosecution

On June 23, 1991, at about 5:00 in the afternoon, Alan Catequista together with Nicanor Tamorite and Jose Cubita, went to see a basketball game at the barangay plaza. When the game was over, Allan approached and invited Nicanor Tamorite to go home; at the time, he was still seated. Accused Ramil Manes approached Nicanor Tamorite and pointed a .38 caliber revolver at him, saying "It is a bad luck you did not kill me during the fiesta in Barangay Cabayugan. Now I will be the one to kill you." Nicanor Tamorite ran to Allan Catequista and used him as a shield from Ramil.[8] At that point, Alan Catequista heard a thud and as he looked back, he saw accused Sergon Manes with a gory knife and he also saw Nicanor Tamorite running away, with blood on his back. Ramil Manes pursued Nicanor Tamorite and shot him hitting him at the back, just above the waistline. Both accused continued to chase Nicanor Tamorite who ran towards the premises of the house of Ading Ablado. Ramil Manes fired two more shots. It could not be determined whether those shots hit Nicanor Tamorite as he and the accused were already inside the premises of the fence of Ading Ablado.[9] Jose Cubita who was near Nicanor Tamorite when the two accused chased him did not render assistance to him.[10] After Alan Catequista heard the two shots, he and Jose Cubita ran home. Alan Catequista told his father and uncle that Sergon Manes stabbed Nicanor Tamorite and that Ramil Manes shot him. Alan Catequista, his father, uncle, Jose Cubita and the mother of Nicanor Tamorite then went to where the body of Nicanor was in the downhill portion of the premises of the house of Ading Ablado. Nicanor was lying on his back with two (2) wounds on the breast, one (1) gunshot wound and one (1) stab wound.[11]

(b) According to the accused

According to accused Ramil Manes, in the afternoon of June 23, 1991, he was at home cooking. At around 5:00 to 5:30, he heard shouts coming from the direction of the barangay basketball court, which was about ten (10) meters away from his house. He went to the window to check what it was. He saw his younger brother Sergon Manes lying on the concrete pavement and several persons were ganging up on him, three of whom he identified as Nicanor Tamorite, Alan Catequista and Jose Cubita. They kept on boxing and kicking his brother prompting him to come to the latter's aid. On his way out, he saw a gun on top of the table and brought it with him to the basketball court.

While on his way to the basketball court, Ramil fired a warning shot to prevent Nicanor Tamorite from stabbing his brother, Sergon. Nicanor persisted in his pursuit of Sergon, with a knife in his hand. Sergon was about three meters ahead of Nicanor who was about ten meters ahead of the pursuing Ramil. Ramil fired another shot which

hit Nicanor who fell to the ground. Meanwhile, Sergon managed to flee. Ramil also fled to the direction of the sugarcane field as soon as he fired the second shot because he saw the group of Alan Catequista approaching, armed with guns.[12] Ramil and his brother Sergon went into hiding and only surfaced a year later when they were arrested in Romblon.

We find the facts as those established by the prosecution's evidence.

The appeal has no merit. The trial court did not err in finding the appellants guilty of murder.

Appellants contend that the trial court committed a serious error of law when it went on with the trial of the case without hearing the petition for bail that was set for hearing several times.

Under the law,[13] in offenses punishable by reclusion perpetua, life imprisonment or death, the accused has no right to bail when evidence of guilt is strong. The court must hear a petition for bail to determine whether the evidence of guilt is strong before deciding to grant or deny bail to the accused.[14]

While the accused can apply for bail and have the court hear his application summarily and promptly, such right may be waived expressly or impliedly.[15]

In this case, the trial court proceeded to try the case without resolving the petition for bail that appellants filed. However, the latter did not call the attention of the trial court to their unresolved application for bail. It was only in the appeal that they raise this issue. Thus, for failure to bring to the attention of the trial court at the earliest opportune time, appellants are deemed to have waived their right to bail.

What is more, the issue has been rendered academic by the conviction of the accused. When an accused is charged with a capital offense, or an offense punishable by reclusion perpetua, or life imprisonment or death, and evidence of guilt is strong, bail must be denied, as it is neither a matter of right nor of discretion.[16]

To exculpate himself, appellant Ramil claims defense of relative. This must likewise fail. Article 11 of the Revised Penal Code provides the requisites of defense of relative.

The most essential of these elements is unlawful aggression. Ramil Manes contends that he came to the defense of his younger brother, Sergon, who was being attacked by Nicanor Tamorite, Alan Catequista and Jose Cubita, together with several others. He claimed that these persons boxed and kicked his brother in different parts of the body.

If, indeed, more than three persons attacked Sergon Manes, he would have suffered injuries or even a scratch on his body. But there was none. In fact, prosecution witness Alan Catequista testified that in no instance did he, Nicanor Tamorite and Jose Cubita attack Sergon Manes.

The truth of the matter is that it was Ramil Manes who approached the victim, pointed a .38 caliber revolver at him and said "It is bad luck that you did not kill me during the fiesta in Barangay Cabayugan. Now, I will be the one to kill you." While Nicanor Tamorite tried to hide from Ramil, Sergon suddenly appeared from behind and stabbed Nicanor Tamorite at the back using a fan knife. Unlawful aggression clearly came from accused-appellants, not from the victim Nicanor Tamorite.

Jose Cubita, another companion of the victim who witnessed what transpired that fateful afternoon of June 23, 1991, corroborated the testimony of Alan Catequista that the accused-appellants were the aggressors. Despite the fact that Nicanor Tamorite was unarmed and outnumbered, the brothers Ramil and Sergon Manes persisted in executing their plan to the point of chasing the fleeing victim.

Ramil Manes testified that while chasing Nicanor Tamorite who was about ten meters away from him, he fired

only two shots; one in the air as warning shot and another in the direction of Nicanor. The second shot hit the victim who fell to the ground. Ramil fled the scene right after the second shot. The autopsy report revealed, however, that Nicanor Tamorite sustained not only one but three gunshot wounds. There were also stab wounds, one at the right side of the chest and another at the upper left back of the victim.[17]

Assuming for the sake of argument that Nicanor Tamorite was carrying a knife while pursuing Sergon, who was allegedly unarmed, it is highly questionable how the victim sustained those stab wounds considering their location. The accused Ramil himself testified that no one approached Nicanor Tamorite as soon as he fell to the ground so as to account for the presence of the stab wounds. Neither did the accused adduce evidence to explain how the victim could have sustained those stab wounds.

The behavior of accused Ramil Manes subsequent to the killing further negates his claim of defense of relative. If indeed he acted in defense of his younger brother Sergon who was then under attack, he would not harbor any fear in presenting himself to the proper authorities. Instead, he made no such report. Persons who act in legitimate defense of their persons or rights invariably surrender themselves to the authorities and describe fully and in all candor all that has happened with a view to justify their acts. They lose no time in going to the punong barangay, the municipal mayor or the police and lay before them all the facts.[18]

As regards Sergon Manes, he claims that he should not have been convicted of murder because he was an innocent victim of the unlawful aggression of the deceased. He denies that he stabbed the latter. This denial must fail in light of the positive identification and testimony of prosecution witnesses, Alan Catequista and Jose Cubita, that the unlawful aggression came from accused appellants. Moreover, the autopsy report conducted by Dr. Leticia Austria-Tobias on June 24, 1991 supports the prosecution's theory that accused shot and stabbed the victim.

We need not tackle the remaining assignments of error which obviously must fail in light of the foregoing discussion.

However, as pointed out by the solicitor general, the prosecution failed to prove the aggravating circumstance of evident premeditation. Evident premeditation exists when the following requisites are present:

- The time when the offender determined to commit the crime;
- An act manifestly indicating that the culprit has clung to his determination; and
- A sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.[19]

Evident premeditation, like other circumstances that would qualify the killing to murder, must be established by clear and positive evidence. Mere presumptions and inferences are insufficient no matter how logical and probable they may be.[20] The prosecution failed to satisfactorily establish the existence of the requisites of evident premeditation. No direct evidence was presented regarding the time the accused planned to kill the victim. It was not established that the appellants persistently and continuously clung to this resolution despite the lapse of sufficient time for them to clear their minds and overcome their determination to commit the same.

The trial court correctly considered treachery as qualifying the killing of the victim to murder.

Treachery exists "when the offender commits any of the crimes against 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 any defense which the offended party might make." [21] Where the victim was totally unprepared for the unexpected attack from behind and had no weapon to resist it, the stabbing could not but be considered as

treacherous.[22] In the instant case, Nicanor Tamorite was seated when Ramil Manes approached him with a .38 caliber revolver in his hand. Sergon Manes took advantage of this preoccupation of the victim with Ramil Manes by surreptitiously attacking and stabbing him at the back, while he was not in a position to defend himself against his aggressors.

The manner by which Nicanor Tamorite was assaulted reveals a concerted action towards the accomplishment of a single criminal intent. Conspiracy may be inferred from the acts of the appellants before, during and after the crime which are indicative of a joint purpose, concerted action and concurrence of sentiments.[23]

On the other hand, the trial court must not have appreciated the aggravating circumstances of abuse of superior strength and aid of armed men because these are absorbed in treachery.[24]

Consequently, we sustain the trial court's conviction of the accused, including the civil liability imposed against them. However, the aggravating circumstances of evident premeditation and abuse of superior strength and aid of armed men are not to be appreciated.

WHEREFORE, we AFFIRM the judgment of the trial court convicting accused-appellants Sergon Manes and Ramil Manes of murder and sentencing each of them to suffer the penalty of reclusion perpetua with the accessory penalties of the law and to indemnify the heirs of the deceased Nicanor Tamorite in the amount of P50,000.00, plus P21,250.00, as actual damages.

Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., Melo, and Kapunan, JJ., concur.

[1]dated January 13, 1995, Rollo, pp. 18-27.

[2]Judge Bartolome M. Fanuñal, presiding.

[3]Rollo, p. 8.

[4]Alan Catequista and Jose Cubita, the two eye-witnesses; Dr. Leticia Tobias- Austria, the rural health physician who conducted the autopsy; SPO1 Nicanor Adorable and SPO3 Ramon Porras, members of Badiangan police who went to Romblon to fetch the two accused; and Rosa Tamorite, the mother of the victim.

[5]Ramil Manes and Sergon Manes, the accused-appellants; and Teodolfo Vasquez, a neighbor of the two accused at Barangay Linaywan, Badiangan, Iloilo.

[6]Rollo, p. 27.

[7]Rollo, p. 28.

[8] TSN, March 12, 1993, pp. 4-6.

[9] TSN, *ibid.*, pp. 8-11.

[10] TSN, *ibid.*, p. 13.

[11] Rollo, pp. 18-19.

[12] Rollo, pp. 22-24.

[13]Art. III, Section 13, 1987 Constitution; Rule 114, Rules on Criminal Procedure.

[14]Tabao vs. Espina, 257 SCRA 298.

[15]Muñoz vs. Rilloraza, 83 Phil. 609; People vs. Donato, 198 SCRA 130.

[16] Robin Padilla vs. Court of Appeals, 260 SCRA 155; Obosa vs. Court of Appeals, 266 SCRA 281.

[17]Records (Crim. Case No. 36399), p. 14.

[18]People vs. Espidol, CA 40 O.G. 3690; People vs. Alfredo Lacson, 83 Phil. 574; People vs. Pulido, 85 Phil. 695; People vs. Pelago, 24 SCRA 1027.

[19]People vs. Bongadillo, 234 SCRA 233.

[20]People vs. Pastoral, 226 SCRA 219.

[21]Article 14 (16), Revised Penal Code of the Philippines.

[22]People vs. San Gabriel, 253 SCRA 84.

[23]People vs. Parungao, 265 SCRA 140.

[24] People vs. Torrefiel, 256 SCRA 369.

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