PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERONICO M. LOBINO ALIAS “HAPON”, ACCUSED-APPELLANT.

G.R. No. 123071. October 28, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is an appeal from the decision of Branch 13 of the Regional Trial Court, Oroquieta City, in Criminal Case No. 1250, finding appellant Jeronico M. Lobino alias “Hapon” guilty of murder for the killing of his common law wife Pacita Abajar and sentencing him to Death.

Filed on June 24, 1994 by 2nd Assistant Provincial Prosecutor Franklin E. Omandam, the Information indicting appellant of Murder alleges:

> “That on or about the 28th day of April, 1994 at about 8:00 o’clock in the morning, more or less, at barangay Southern Looc, municipality of Plaridel, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab PATRICIA ABAJAR with the use of a hunting knife, in a sudden and unexpected manner while the latter was unaware and defenseless, thereby inflicting upon the body of said Patricia Abajar several stab wounds which caused her immediate death.
>
> CONTRARY TO LAW, with the presence of the qualifying circumstance of treachery and the aggravating circumstance of superior strength, the victim being a woman.”[1]

With the appellant entering a negative plea upon arraignment on August 23, 1994, trial ensued with the prosecution presenting Artemio Nisnisan, Julie Lobino, Alberto Abajar and Dr. Israelson Taclob as its witnesses. Appellant took the stand as lone witness for his defense.

Appellant Jeronico Lobino and the victim, Patricia Abajar, lived together as husband and wife for twenty years. They have four children, one of whom was prosecution witness Julie Lobino. Alberto Abajar, another prosecution witness, is the victim’s son by a previous marriage.

On April 28, 1994, at about 8 o’clock in the morning, prosecution witness Artemio Nisnisan was at the seashore of Southern Looc, Plaridel, Misamis Occidental. He was then fishing with the use of a “baling” (fishnet) for an hour. There were eighteen (18) persons thereat including the appellant, Jeronico Lobino, the victim, Patricia Abajar; and their daughter, Julie Lobino. While said fishermen were dividing their catch, Artemio Nisnisan, from a distance of one fathom, saw appellant stab Patricia Abajar. The victim ran but was overtaken by appellant who stabbed her twice. Julie Lobino shouted for help but it was only after appellant had stabbed the victim thrice that Nisnisan and other people were able to apprehend the former and take him to the police station. The victim was brought to the provincial hospital where she died two days later. The hunting knife used by appellant was not recovered.[2]

On cross examination, Nisnisan stated that he usually went fishing at about 7 o’clock in the morning; that he had

observed no altercation between the appellant and the victim prior to the stabbing incident; that he was not paying particular attention to appellant and the victim then; that at the time she was stabbed, the victim was in a stooping position with appellant in front of her; that the first thrust hit the right side of the victim's stomach; that the victim ran in a staggered manner enabling appellant to catch up with her; that the appellant made two more thrusts to the victim who thereafter slumped to the ground unconscious.[3]

Julie Lobino narrated as follows: on that fateful day, her mother, Patricia Abajar, and her father (herein appellant) and she were at the seashore, catching fish using the fishnet of Artemio Nisnisan. While her mother was getting her share of the fish, appellant, using a stainless knife, stabbed Patricia, first at the right side. She was one fathom away from the place where her mother was stabbed. She "admonished" her father but fearing he might also attack her, she ran for help. The second thrust hit her mother's lower right armpit while the third thrust hit her lower right arm. The people helped in bringing her mother to the hospital. Her father ran amuck and the knife he used was never recovered. Her mother had been confined at the hospital for two days, before she died on April 30, 1994. She was buried at the Lao cemetery,[4] recounted Julie Lobino, who further disclosed that she was the second of four children and she does not know whether her parents were legally married; that she was not aware of any quarrel in the family; that she did not observe any altercation between her parents on that particular day; that she was surprised by the suddenness of her father's attack; and only after appellant had stabbed her mother three times were the people able to bring her mother to the hospital.[5]

Alberto Abajar was also out fishing on that day. When he reached the shore, he was informed by several people that his mother, Patricia Abajar, was stabbed by the appellant. His mother was brought to the provincial hospital where she died two days after. He spent a total of P5,000.00 for medical and funeral expenses. A medico-legal certificate was issued.[6]

On cross-examination, witness testified that his mother and the appellant started living together in 1974, and he never noticed any quarrel between them.[7]

Dr. Israelson Taclob, who has been connected with the Misamis Occidental Provincial Hospital in Oroquieta City since 1993, narrated that on April 28, 1994, he examined Patricia Abajar who did not survive. The cause of death was a "stab wound at the right upper quadrant abdomen penetrating perforating with severe hemorrhage." He issued the medico-legal certificate[8] and certificate of death of the deceased.[9]

As the lone witness for the defense, appellant testified that he and the victim were not legally married but had lived together for twenty years. They were blessed with four children. Prior to the April 28, 1994 incident, they had several misunderstandings. They often quarreled because the victim would often come home late at night and when confronted, the victim answered "why do you ask, you can't refrain me." The victim was not in their house to take care of him when he was sick on April 5. On that fateful day, he stabbed the victim because he could no longer "swallow" what was happening and he lost control of himself. He only remembered stabbing the victim once and before the incident, he did not plan to kill her. He stayed at the beach until he was brought by a neighbor to the municipal building.[10]

On cross-examination, he stated that on that morning of April 28, 1994, they were at the seashore using the fishnet of Artemio Nisnisan. He stabbed the victim while she was picking up her share of the fish; and when he lost control of himself, he again stabbed the victim two times.[11]

On October 9, 1995, the trial court decided the case, disposing thus

> "WHEREFORE, premises considered, accused Jeronico M. Lobino is hereby found guilty beyond reasonable doubt for the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, and he is hereby sentenced to DEATH.

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With costs de oficio."

Now, before the Court on automatic review, appellant contends, by way of assignment of errors, that:

I

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONY OF THE ACCUSED JERONICO LOBINO.

II

THE TRIAL COURT ERRED IN FINDING THAT THE KILLING OF PATRICIA ABAJAR IS QUALIFIED BY TREACHERY AND AGGRAVATED BY SUPERIOR STRENGTH.

III

THE TRIAL COURT ERRED IN NOT APPRECIATING IN FAVOR OF THE ACCUSED THE MITIGATING CIRCUMSTANCE OF PASSION AND OBFUSCATION.

Appellant theorizes that the trial court erred in not giving credence to his assertion that he killed the victim because she provoked him, and that mere suddenness of the attack did not mean that treachery attended the killing. The fact that the victim was in a stooping position was purely incidental and was not deliberately sought by him; otherwise, the victim would not have been able to run after she was first stabbed. Neither could the prosecution witnesses, Artemio Nisnisan and Julie Lobino, see the victim in the alleged stooping position as they were one fathom away; appellant argued.

It is appellant's submission that he would not stab his common law wife without any apparent reason. He attacked her because he could no longer stand her going home late at night and her sarcastic remarks whenever her attention was called to what she was doing. The trial court should have credited him with the mitigating circumstance of passion and obfuscation, appellant maintains.

Finally, appellant contends that the trial court should not have considered abuse of superior strength as a qualifying circumstance, and should have only found him guilty of homicide and not murder.

Anent the issue that the trial court erred in not considering appellant's testimony, oft-repeated is the rule that "the evaluation by the trial judge of the credibility of the witnesses and the ascribing of the evidentiary weight to their testimony is well-nigh conclusive on an appellate court, barring patent arbitrariness in arriving at his conclusions. This court has consistently, on the basis of reason and experience, sustained the factual findings of the trial court considering that the court was in a better position to assess the evidence before it and to view the witnesses as they gave their testimony."[12] Here, the trial court evidently found the version of the prosecution witnesses more credible.

According to appellant, he could not have killed his common law wife without a reason. He asserts that because of her provocation, he lost control of himself, and therefore, the charge should be reduced to homicide only.

The Court disagrees. The requisites of passion and obfuscation are:

1. that there be an act, both unlawful and sufficient to produce such a condition of mind; and

2. that said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time during which the perpetrator might recover his normal equanimity.[13]

It has been held that "[T]here is passional obfuscation when the crime was committed due to an uncontrollable

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burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason."[14]

"The obfuscation must originate from lawful feelings. The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control, because the cause of this condition of mind must necessarily have preceded the commission of the offense."[15]

Moreover, "the act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have recovered his normal equanimity."[16]

Here, there is no evidence to support appellant's theory that he and the victim quarreled. Julie Lobino, who lived with her parents, testified that she knew of no quarrel or altercation between them. None of the prosecution witnesses testified that a quarrel preceded the attack. Appellant alleges that the victim did not take care of him when he was ill on April 5, 1994, but the said date was far removed from the time appellant committed the crime on April 28, 1994. Such length of time would have been sufficient to enable the appellant to recover his equanimity. As succinctly put by the Solicitor General:

> "Appellant's insinuations regarding his common-law wife's late night trysts, or her lack of concern for a sick husband are not cogent enough to drive anyone to passion or obfuscation and commit the crime at the spur of the moment. Besides being vague and generic, the alleged provocative acts do not even proximately precede the time of the commission of the crime. If at all, such allegations proved instead that appellant harbored certain ill-feelings against his common-law wife. As the unfolding of the events mirrored, disdain and contempt were all that appellant evoked. In a spirit of lawlessness, therefore, absent any passion or obfuscation to arouse his pent-up feelings, appellant unremorsefully stabbed to death his common-law wife."[17]

Did treachery attend the crime so as to qualify it to murder?

Enlightening is the following ruling in People of the Philippines vs. Ramy Valles, supra, to wit:

> "Under the Revised Penal Code, there is treachery 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 its execution, without risk to himself arising from the defense which the offended party might make. Thus, for treachery to be present, two conditions must concur, namely: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted. x x x In People vs. Estrellanes, we declared in no uncertain terms that `the mere fact that the victim had no weapon with which he could have defended himself is not sufficient to prove the existence of the first element of treachery, for settled is the rule that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.' Furthermore, there must be some evidence, none of which, however, obtains in the instant case, showing that this mode of assault is deliberately or consciously adopted to insure the execution of the crime without risk to the offender. Accordingly, if the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocation on the part of the victim, then no treachery attended the commission of the crime. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked. x x x."[18]

In the case under scrutiny, appellant stabbed the victim as she was kneeling to get her share of the fish. Obviously, in that position, the victim was not in a position to defend herself. She had no inkling of what appellant was about to do. A sudden attack against an unarmed victim constitutes treachery. The fact that the victim was still able to run after the first strike would not negate the fact that appellant adopted such approach to prevent any defense on the part of the victim. Thus, with the presence of the qualifying circumstance of treachery, murder was perpetrated

by the appellant.

The Court finds merit in the submission of the Solicitor General that the trial court erred in considering insult or disregard of respect due to the offended party as an aggravating circumstance to justify the imposition of the death penalty.

"It is necessary to prove the specific fact or circumstance, other than that the victim is a woman, (or an old man or one of high rank) showing insult or disregard of sex (age or rank) in order that it may be considered as aggravating circumstance (People vs. Valencia, C.A., 43 O.G. 3740). There must be evidence that in the commission of the crime, the accused deliberately intended to offend or insult the sex or age of the offended party. (People vs. Mangsant, 65 Phil. 548, 550-551)"[19] Absent any proof that appellant attacked the victim with the intention to add insult to her, there is no basis for reckoning the said aggravating circumstance.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. In accordance with Article 63, supra, there being no mitigating or aggravating circumstance, the lesser penalty should be imposed. Conformably, as recommended by counsel for the People, appellant should be sentenced only to reclusion perpetua and not death.

In line with the current policy of the Court, appellant should be held liable to pay the heirs of the deceased the sum of P50,000.00 as civil indemnity.

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that the appellant Jeronico Lobino is sentenced to suffer only reclusion perpetua and to pay the heirs of the late Patricia Abajar the sum of Fifty Thousand (P50,000.00) Pesos as indemnity. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Melo, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, and De Leon, JJ., concur.

Bellosillo, Puno, Quisumbing, and Ynares-Santiago, JJ., on official leave.

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[1] Original Record, p. 1.

[2] TSN, pp. 2-5, September 19, 1994.

[3] Ibid, pp. 6-7.

[4] TSN, pp. 2-5, September 20, 1994.

[5] Cross-examination, ibid, pp. 5-7.

[6] TSN, pp. 2-4; September 26, 1994.

[7] Ibid, p. 4.

[8] Exhibit "A", Original Record, p. 3.

[9] Exhibit "B", ibid, p. 45.

[10] TSN, pp. 2-7, December 5, 1994.

[11] Ibid, pp. 7-8.

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[12]] People of the Philippines vs. Modesto de Roxas y Razon @ “Mody,” et al., G.R. No. 106783, February 15, 1995, 241 SCRA 369, 375

[13] Reyes, Revised Penal Code, Vol. I, Fourteenth Ed., 1998, p. 272, citing People vs. Alanguilang, 52 Phil. 663, 665 citing earlier cases; People vs. Ulita, 108 Phil. 730, 743; People vs. Gravino, 122 SCRA 123, 134.

[14] People of the Philippines vs. Ramy Valles, G.R. No. 110564, January 28, 1997, 267 SCRA 103, 116.

[15] People of the Philippines vs. Wilfredo Bautista y Niales, G.R. No. 109800, March 12, 1996, 254 SCRA 621, 629.

[16] Reyes, supra, p. 274.

[17] Appellee’s Brief, p. 13, Rollo.

[18] 267 SCRA 103, pp. 114-115.

[19] Reyes, supra, p. 328.

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