

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. HERACLEO MONTE alias “RAKLING” AND DOMINGO ALBAO, DOMINGO ALBAO, accused- appellant.

G.R. No. 125332. March 30, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused-appellant Domingo Albao together with accused Heracleo Monte were charged with the crime of murder before Branch 9 of the Regional Trial Court[1] of Tacloban City for the death of Domingo Dayola. The Information[2] against the two accused reads:

"That on or about the 13th day of March, 1994, in the Municipality of Tanauan, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in concert with each other, with deliberate intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one DOMINGO DAYOLA with bladed weapons commonly known as "pisao" with which said accused had purposely provided themselves, thereby causing and inflicting upon the said Domingo Dayola wounds in his body which caused his death shortly thereafter."

Both accused were arraigned on June 9, 1994 and they both pleaded not guilty to the offense charged.[3]

The prosecution presented Samuel Pedrosa, an alleged eyewitness to the stabbing incident, who testified that he knew the victim, Domingo Dayola, as they both lived in San Joaquin, Leyte.[4] At around 5:00 in the afternoon of March 13, 1994, Pedrosa together with Dayola went to the Tanauan Gallera (cockpit) Tanauan, Leyte to attend a cockfight. Suddenly, Dayola had a dispute with Heracleo Monte over a bet and Dayola and Monte fought with each other;[5] while the two were grappling with each other and Dayola's back was towards accused Domingo Albao, the latter, who was then in an elevated place, delivered a stabbing blow at the back of Dayola.[6] Dayola fell to the ground and was brought to the hospital where he was pronounced dead on arrival.[7] Albao and Monte were immediately apprehended by the police.[8] Witness Pedrosa saw the stabbing incident because he was very close to Dayola, Monte and Albao when it happened.[9] Pedrosa did not know accused Albao and Monte prior to the incident but came to know them only at the Tanauan police department.[10]

The post mortem report issued by the medico-legal officer of the Provincial Health Office, Dr. Josenilo E. Bunado, indicated that the deceased victim Domingo Dayola sustained the following injuries, to wit: 1) Stab wound at the back left side, at the medial scapular area, at the level of 5th ICS, 2 cm in length, 1 cm in width, 18 cm in depth, penetrating thoracic cavity, penetrating the middle lobe of the left lung, penetrating the posterior pericardium of the heart, directed anterior, lateral and downward; 2) Abrasion at the upper portion of the right shoulder, posterior area; 3) Incise wound at the right hand, at the last finger, lateral aspect, basal area 1 cm in length, 0.6 in width, 1 cm in depth; 4) Incise wound at the left side of the nose on the nasal area to the root of the nose, 6 cm in length 0.5 cm in width, 1 cm in depth.[11]

The certificate of death issued by the same medico-legal officer showed that the cause of death of the victim was due to severe hemorrhage due to stab wound.[12]

Brena Dayola, widow of victim Domingo Dayola, testified that the untimely death of her husband on March 13, 1994 left her with four children and caused her sorrow and suffering; she asked for P50,000.00 moral damages.[13]

Accused Albao did not deny that he stabbed Dayola. To prove that the crime committed was not murder but homicide and to show the presence of the mitigating circumstances of provocation on the part of victim Dayola and obfuscation, Alba narrated that on March 13, 1994 at around 5:00 o'clock in the afternoon, he was at the gallera (cockfighting arena) of Tanauan, Leyte. He knew his co-accused Heracleo Monte who was also one of the bettors in the game. Domingo Dayola was also present and he was about two armslength away from him.[14] In one of the games wherein Dayola bet with Monte, the latter won but the former refused to pay and instead wanted to have a fight with Monte.[15] He (Albao) heard a commotion and then approached Dayola and Monte to ask what happened and learned that defeated bettor Dayola did not want to pay his bet. For trying to intervene, he was boxed by Dayola on the left side of his chest.[16] He (Albao) just stood and Monte drew his knife, known as "pisao", Dayola also drew his "pisao", and thrust it towards him (Albao) but he (Albao) was able to evade the thrust of the victim, so he (Albao) then also drew his knife and hit Dayola once. He did not remember at what part of the body he hit Dayola because he felt dizzy.[17] He hit Dayola because he was the first to box him.[18] He was not able to notice the presence of prosecution witness Samuel Pedrosa.[19]

After trial, the Court rendered its decision dated September 5, 1995, the dispositive portion of which provides:[20]

"WHEREFORE, premises considered, judgment is hereby rendered acquitting accused Heracleo Monte for failure of the prosecution to prove his guilt beyond reasonable doubt.

Upon the other hand, the Court finds accused Domingo Albao guilty of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code. There being no mitigating nor aggravating circumstance to offset the same, the Court hereby imposes upon said accused the penalty of reclusion perpetua and to suffer the accessory penalties thereof, and to indemnify the heirs of the victim Domingo Dayola the sum of P50,000.00 and to pay the cost.

Accused Heracleo Monte is hereby ordered released immediately from the custody of the law unless he should be further detained for other offenses he is facing."

A motion for reconsideration was filed by accused Albao alleging that the proper conviction should be for homicide and that the mitigating circumstances of provocation, passion and obfuscation should be appreciated in his favor. The trial court denied the motion in an Order dated November 13, 1995 stating that the basis in finding Albao guilty of murder was that the victim was stabbed at the back and that victim Dayola did not provoke the accused prior to the stabbing incident because the prosecution witness admitted that the stabbing incident was precipitated by a dispute over a cockfighting bet between Dayola and Monte.[21]

Hence, Albao appealed the decision to this Court contending that the trial court erred: (1) in finding that the killing of Dayola was qualified by treachery and evident premeditation; and (2) in not finding that he is entitled to the mitigating circumstance of provocation.[22]

In his brief, accused appellant Albao does not deny having killed Dayola but submits that the trial court erred in finding that treachery and evident premeditation attended the killing of Dayola which qualified the crime to murder as charged in the information. He claims that the stabbing incident happened unexpectedly and was just a result of a dispute over a bet between the victim and Heracleo Monte, thus, it was not a result of calculation, meditation and reflection on his part as he did not even know the victim before the incident. Accordingly, there

could have been no evident premeditation. He also maintains that the incident happened in the presence of many people which could have stopped him (Albao) from stabbing the victim. The mere fact that the victim was hit at the back does not mean that treachery is present to qualify the crime to murder. He contends that the qualifying circumstances were not clearly established, thus the crime should only be homicide.

We sustain the accused-appellant's contention that the crime committed is homicide.

There is treachery when the offender commits any of the crimes against persons, 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.[23] Jurisprudence, however, has required that treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself. For treachery to be appreciated as a qualifying circumstance, two conditions must concur, viz.: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) that said means of execution be deliberately and consciously adopted.[24] Its essence lies in the adoption of ways that minimize or neutralize any resistance which may be put up by the offended party.[25]

As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was coolly and deliberately adopted by him,[26] with the purpose of depriving the victim of a chance to either fight or retreat.[27] The rule does not apply, however, where the sudden attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim,[28] or where their meeting was purely accidental.[29]

We cannot agree with the conclusion of the trial court that treachery attended the killing of Dayola merely because Dayola was stabbed at the back by accused-appellant Albao. The trial court concluded that the killing was treacherous based on the post mortem report that the fatal wound sustained by the victim was a stab wound at the back left side which caused the death of the victim. However, the mere fact that the victim was stabbed in the back did not necessarily make the attack treacherous[30] and the circumstance that the fatal wound was at the back of the deceased does not by itself, compel a finding of treachery.[31]

We entertain serious doubts under the facts established by both witnesses for the prosecution and the defense as to whether accused-appellant acted with alevosia when he attacked the victim. The fight over a cockfighting bet was between victim Dayola and Monte and accused-appellant was not a participant in the betting. The testimony of prosecution witness Samuel Pedrosa revealed that it was when Domingo Dayola and Heracleo Monte were grappling with each other when accused Albao, who was in an elevated place, suddenly delivered a stabbing blow on victim Dayola. The attack was made so suddenly and in such a short interval of time that it cannot be said that the accused assailant had sufficient time to consciously adopt the mode of attack in killing the victim which would ensure its commission without risk to himself. The court notes that the accused-appellant did not know the victim prior to the incident and there was nothing that transpired between accused-appellant and the victim as to provoke the attack or provide a reason for the killing. The decision of accused-appellant to stab the victim would appear to be the result of a rash and impetuous impulse of the moment to intervene in the fight between the victim and Monte, rather from a deliberate act of the accused-appellant to stab the victim in a manner calculated to facilitate the killing without risk to himself. We are inclined to rule that the position of both the victim and the accused was merely accidental.[32] As held in the case of *People vs. Nitcha*, a killing done at the spur of the moment is not treacherous:[33]

We are, however, not convinced that the qualifying circumstance of treachery was attendant in the killing. It must be recalled that Doro Nitcha, the brother of accused-appellant, was in a fight with one Jojo Belmonte and was forcibly dragged away from the fight and brought home by his sister, Victoria Corpus. Upon seeing his injured brother, accused-appellant became enraged and immediately dashed off to the scene of the fight. Per

testimony of Joselito Sibayan, the husband of the victim, only 4 to 5 minutes had elapsed from the time Doro was dragged away to the time that accused-appellant arrived at the scene of the fight (pp. 6-7, t.s.n., February 2, 1993). Thus, at such a short interval, accused-appellant did not have sufficient time to consciously adopt the mode of attack. To establish treachery, the evidence must show that the accused made some preparation to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. A killing done at the spur of the moment is not treacherous.

However, we do not agree with the trial court that the crime committed was murder. The qualifying circumstance of treachery can not logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of Article 13, Sub-section 16 of the Revised Penal Code, when the culprit employs means, methods or forms of execution which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his own person from a defense which the other party might offer. In *United States vs. Namit*, 38 Phil. 926, it was held that the circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself. In the present case, the circumstances negate the hypothesis that the defendant reflected on the means, method and form of killing the offended party. There was absolutely nothing personal between the accused and Basas. He was, so he thought, erroneously, protecting the property which he was detailed to watch by killing the stranger. His purpose was to kill, the decision was sudden, and the position of the stranger was accidental and did not matter. In fact, in the nature of things, to give the other man an opportunity to defend himself or to return the attack would have been a contradiction. (*People vs. Tumaob*, 83 Phil. 738; 742 [1949]).

The herein appellant has, no doubt, liquidated Maximino Cabuenos. However, we do not believe that the killing was accomplished with treachery. It does not appear that the shooting was premeditated nor that the accused had consciously chosen that method of attack directly and specially to facilitate the perpetration of the homicide without risk to himself. His decision to shoot Cabuenos seemed to be sudden, in view of the latter's fight, and the position of both the victim and the killer was entirely accidental. Therefore treachery may not be imputed to him. (*People vs. Abalos*, 84 Phil. 771; 773 [1949]).

We hold that treachery cannot be appreciated in order to qualify the crime to murder.

Anent the second assigned error, accused-appellant claims that he should be given the benefit of the mitigating circumstance of provocation since he merely tried to settle the dispute between the victim and Heracleo Monte but for no apparent reason at all victim Dayola boxed him, drew his knife and thrust it towards him.

The accused-appellant's version is not believable. It must be noted that the fight over the bet was only between victim Dayola and Monte; thus there was no reason at all for Dayola to box or assault or otherwise provoke accused-appellant. As correctly observed by the trial court:

A cursory review of the evidence adduced by both accused Domingo Albao and Heracleo Monte cannot support and sustain the allegation that it was the victim who first assaulted the accused. In point of fact there was no reason at all for the deceased victim to box the accused Domingo Albao when the latter tried to intervene in the dispute between the deceased victim and Heracleo Monte. The court is not disposed to believe defendant's allegation that the victim immediately stabbed accused Albao without any reason except for the fact that accused Albao tried to intervene in the dispute between Heracleo Monte and the deceased victim.

The evidence for the prosecution has established beyond reasonable doubt the guilt of the accused for the crime of homicide only, not murder. The penalty imposed for homicide in Article 249 of the Revised Penal Code is *reclusion temporal*.

Considering the absence of any aggravating or mitigating circumstances and applying in is favor the Indeterminate Sentence Law, the sentence should be an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, a minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law.[34]

In conformity with the prevailing jurisprudence, the trial court correctly awarded the amount of P50,000.00 as death indemnity to the heirs of the deceased.[35] Anent moral damages, the victim's widow testified that the death of her husband caused her sorrow and suffering and left her with four children to support. Moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries or the victim's death, as in this case,[36] and the Court considers the award of moral damages in the amount of P50,000.00 to Brena, the wife of Domingo Dayola as reasonable and justified.

WHEREFORE, the appealed decision of the Regional Trial Court is hereby MODIFIED, and the accused-appellant is found GUILTY OF HOMICIDE, and hereby sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is further ordered to pay the heirs of the victim death indemnity of P50,000.00, and moral damages of P50,000.00.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Criminal Case No. 94-05-263; Penned by Judge Walerico B. Butalid.

[2] Records, p. 1; Rollo, p. 4.

[3] Records, p. 18.

[4] TSN, September 14, 1994, p. 6.

[5] Ibid.

[6] Ibid, p. 4.

[7] Ibid, pp. 5-6.

[8] Ibid.

[9] Ibid, p. 5.

[10] Ibid, p. 3.

[11] Records, p. 32.

[12] Records, p. 33.

[13] TSN, September 6, 1994, pp. 2-3.

[14] TSN, November 17, 1994, p. 2.

[15] Ibid, p. 3.

[16] Ibid, p. 4.

[17] Ibid.

[18] Ibid, p. 5.

[19] Ibid.

[20] Rollo, pp. 13-18.

[21] Rollo, pp. 19-20.

[22] Rollo, p. 41.

[23] Article 14, par. 16, Revised Penal Code.

[24] People vs. Porras, 255 SCRA 514 (1996).

- [25] *People vs. Ganzagan, Jr.*, 247 SCRA 220 (1995).
- [26] *People vs. Aguiluz*, 207 SCRA 187, citing *People vs. Young*, 83 Phil. 702; *People vs. Resurreccion, et al.*, 94 SCRA 96; *People vs. Ruiz*, 110 SCRA 155.
- [27] *People vs. Lanseta*, 95 SCRA 166; *People vs. Talay*.
- [28] *People vs. Real*, 242 SCRA 671 (1995), citing *People vs. Aguiluz*, 207 SCRA 187 (1992).
- [29] *People vs. Aguiluz*, *supra*, citing *People vs. Berna*, 128 SCRA 606l.
- [30] *People vs. Adriano*, 226 SCRA 131; *People vs. Jajarit*, 214 SCRA 678.
- [31] *People vs. Ablao*, 183 SCRA 658.
- [32] *People vs. Tugbo, Jr.*, 196 SCRA 133; *People vs. Real*, *supra*.
- [33] *People vs. Salvador*, 279 SCRA 164; *People vs. Nitcha*, 240 SCRA 283.
- [34] *People vs. Rodrigo Mangahas*, G.R. No. 118777, July 28, 1999, citing *People vs. Albao*, 287 SCRA 129.
- [35] *People vs. Espanola*, 271 SCRA 689.
- [36] *People vs. Salcedo*, 273 SCRA 473.

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