PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO AQUINO Y PUMAWAN @ “EDDIE AQUINO,” ACCUSED-APPELLANT.

G.R. No. 128887. January 20, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Accused-appellant Edgardo Aquino y Pumawan (hereafter EDGARDO) prays for the reversal of his conviction for murder decreed by the Regional Trial Court, Branch 75, Olongapo City, in its decision[1] of 30 January 1997 in Criminal Case No.56-96.

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the Appellee's Brief; thus:

> On January 19, 1996, Roselyn Lampera, daughter of Valerio and Esmeralda Lampera was in their house, together with her mother, younger brother Daniel and younger sister (tsn, July 31, 1996, p. 3). Their house is like a small cubicle without any partitions, elevated from the ground by about 2 1/2 feet (Ibid., pp. 3-4).
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> In the morning of that fateful day, Roselyn's mother, Esmeralda, was in their house taking care of Roselyn's younger sister who was sick at the time (Ibid., p. 3). Her younger brother, on the other hand, was playing on the ground near their house (Ibid., p. 4). Appellant Edgardo Aquino (who was their neighbor) arrived, looking for their father. Both Roselyn and her mother informed Edgardo that Valerio, Roselyn's father, was in Olongapo (Ibid., p. 5).
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> Unsatisfied with their answer, Edgardo (who was near the door at the time) peeped in their house and when he did not see Valerio, pulled out his knife. Initially, he tried to stab Roselyn's younger brother. When Roselyn and her mother saw this, they rushed towards the younger boy in an attempt to protect him (Ibid.). When Edgardo saw their reaction, Edgardo stepped inside their house, eager to vent his ire on Roselyn, intending to stab her. Roselyn's mother pulled her aside, shouting. Edgardo went for her mother who tried valiantly to evade his thrust as she was then carrying Roselyn's sick younger sister. Roselyn saw Edgardo repeatedly stab her mother in the latter's stomach and chest areas.... Out of fear, Roselyn managed to destroy their nipa wall and jumped out of their house. Despite her shouts for help, no help came (Ibid., pp. 6-7).
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> At about the same time also, Benjamin Costimiano, a purok leader, was in his house when he heard some kind of shouting or commotion. Being a purok leader, he went to the place of incident and saw the victim (tsn, August 15, 1996, p. 15). He heard the people there say that the culprit was Edgardo Aquino (Ibid.). He went after Edgardo and was able to catch up with him in the house of one Francisco Franco. Benjamin asked Edgardo (who was still armed with a knife at that time) to put down the knife and the latter gave him the knife (Ibid., pp. 16-17). Benjamin described the knife used as a double-bladed one, and when it was handed to him, the handle still had some blood on it (Ibid., p. 19).
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> Dr[]. Nancy Valdez, Medico-legal Officer III of the San Marcelino District Hospital, testified that she was the one who conducted the autopsy on the cadaver of the victim. She noted four (4) stab wounds at the xiphoid

> processes/chest area, two (2) of which were fatal as they penetrated the thoracic cavity, causing lacerations on the anterior portion of the superior lobe of the left lung (tsn, August 29, 1996, pp. 8-10).

Valerio Lampera, Esmeralda's husband, declared that the untimely death of Esmeralda caused him pain and compelled the family to incur expenses in the amount of P2,500.[2] Daniel Isaac, Esmeralda's 8-year-old son, was likewise psychologically and emotionally affected by the unexpected demise of his mother.[3] He cried on the witness stand when asked of the whereabouts of his mother.

EDGARDO had another story to tell. According to him, Esmeralda's husband was his business partner in the sale of fish. In the evening of 19 January 1996, he went to the house of the Lamperas to get his capital for the business. He saw Roselyn standing by the stairs of the house and asked her about the whereabouts of her father Valerio. When she informed him that Valerio was not there, he left for the store of Francisco Franco. On his way to the store, he heard shouts coming from the Lampera's house, which he mistook to be just another ordinary fight. He proceeded to Franco's store. Then Benjamin Costimiano, a purok leader, arrived at the store, carrying with him a knife which, according to him, was recovered from inside Esmeralda's house. Benjamin invited EDGARDO to go with him to the Police Department of Subic, Zambales. Upon arrival thereat Costimiano ordered the detention of EDGARDO allegedly because the latter was a suspect in the killing of Esmeralda. EDGARDO was detained for two months but was not investigated by the police. He could not remember having been brought to the office of the Provincial Prosecutor and having given a statement thereat. He insisted that he did not kill Esmeralda and that the knife presented by the prosecution was not taken from him. Besides, he had no reason to kill the wife of his business partner.[4]

The trial court gave credence to the version of the prosecution. It thus found EDGARDO guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No.7659. It held that the killing was attended by the qualifying circumstance of treachery, since the deceased was carrying a sick child when suddenly attacked. It appreciated in his favor the mitigating circumstance of intoxication based on the testimony of EDGARDO that he drank liquor on that fateful day while fishing at sea, which was corroborated by Roselyn's testimony that EDGARDO had red eyes. This circumstance was, however, offset by the aggravating circumstance of dwelling. Since there was no other modifying circumstance established, the trial court sentenced EDGARDO to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the amounts of P50,000 as indemnity; P50,000 as moral damages; P30,000 as exemplary damages; and P2,500 as actual damages.

EDGARDO seasonably appealed to us. In his Appellant's Brief, he contends that the trial court erred in (a) considering treachery when the same was inexistent and (b) convicting him of murder qualified by treachery; and that it also overlooked material facts of substance which if considered would be sufficient to acquit him of the crime charged.

EDGARDO argues that no treachery was proved. First, the victim was already forewarned of the danger that would befall her, since EDGARDO initially pointed a knife at her young son, then tried to stab her daughter but missed. Besides, the attack was frontal and expected. Treachery did not automatically attach just because the victim was a woman and was holding a child. Second, one of the requisites of treachery, namely that "the means of execution was deliberately and consciously adopted," was absent because the stabbing spree was made at the spur of the moment when EDGARDO was enraged with passion and obfuscation or was under the influence of a sudden attack of "temporary insanity." Third, to appreciate treachery, the accused must be shown to have made some preparations to kill the victim. EDGARDO was in the victim's house with a legitimate purpose, i.e., to collect his share of the proceeds of the sale of the night's catch of fish in the amount of P640; there was no murder in his heart at the precise moment.

Further, EDGARDO claims that from his warrantless arrest to the custodial interrogation, he was denied his

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constitutional rights to remain silent and to have an effective counsel.

In the Appellee's Brief, the OSG recommends that the judgment appealed from be affirmed in toto. It agrees with the trial court that there was treachery in view of the sudden and unexpected attack upon the unarmed victim, who had not committed the slightest provocation and who was totally unaware of EDGARDO's murderous designs. Neither the victim nor her children anticipated the attack. EDGARDO did not give any warning that he was about to start a stabbing spree. The victim, then carrying a sick child, never had the chance to defend herself or to retaliate. All that she managed to do was to try to evade EDGARDO's knife blows.

Anent the third assigned error, the OSG argues that "temporary insanity" is not recognized in this jurisdiction and that mere abnormality of the mental faculties will not exclude imputability.[5] In any case, EDGARDO had the burden of proving his alleged "temporary insanity," as it is a basic principle in our rules on evidence that he who alleges a fact must prove the truth thereof. However, he did not raise this argument below, and it is only now that he belatedly raises it.

In light of the positive identification by a credible eyewitness of EDGARDO as the perpetrator of the crime, his self-serving denial is worthless. There is no shred of doubt as to his culpability for the death of Esmeralda.

We do not, however, agree with the trial court that treachery attended the commission of the crime. For treachery to qualify the killing to murder, the following requisites must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[6]

In this case, the victim, Esmeralda, was forewarned of the impending attack on her, since it was preceded by EDGARDO's attempts to attack her son and daughter. It cannot be said that she was in no position to defend herself; for, in fact, she succeeded in repelling appellant's aggression against her children. When EDGARDO turned to her, she "tried to evade the thrust" causing her 6-year-old child whom she was carrying to be thrown away.[7] Furthermore, there is no sufficient evidence that the appellant deliberately and consciously adopted the means of execution employed by him. What is apparent is that the killing was done impulsively or on the spur of the moment.

Anent EDGARDO's claim of the mitigating circumstance of passion or obfuscation, the same is bereft of merit because his acts did not result from an impulse arising from lawful sentiments but from a spirit of lawlessness.[8]

Neither are we persuaded by EDGARDO's plea of "temporary insanity." As the OSG aptly stated, "temporary insanity" is not recognized in this jurisdiction. Insanity, under Article 12 of the Revised Penal Code, connotes that the accused must have been deprived completely of reason and freedom of the will at the time of the commission of the crime,[9] or that he must have acted without the least discernment. Mere abnormality of the accused' mental faculties does not exclude imputability.[10] Moreover, EDGARDO was unable to substantiate his claim. The law presumes every man to be sane. If the accused interposes the defense of mental incapacity, the burden of establishing such fact rests upon him.[11] Insanity must be proved by clear and positive evidence.[12] Finally, EDGARDO did not raise this argument below, but only now, obviously as a delayed afterthought.

We disagree with the trial court in appreciating in appellant's favor the mitigating circumstance of intoxication. EDGARDO declared that he drank liquor on the day of the incident in question,[13] and the trial court held that his intoxication was corroborated by Roselyn's testimony that EDGARDO's eyes were "red" when she saw him. For intoxication to be mitigating, the following conditions must be present: (1) the same is not habitual or is not subsequent to the plan of the commission of a felony; otherwise, it is aggravating if it is habitual and intentional; and (2) the consumption of alcoholic drinks was in such quantity as to blur the accused's reason and deprive him

of a certain degree of control.[14] In this case, EDGARDO was unable to prove both requisites.

Nevertheless, we appreciate in EDGARDO's favor the mitigating circumstance of voluntary surrender. Immediately after the incident, when purok leader Benjamin Costimiano followed him in the house of Francisco Franco, EDGARDO voluntarily gave the knife to Franco and went with the latter to the Police Headquarters where he was forthwith detained. The information against him was filed much later.

The trial court correctly considered the existence of the generic aggravating circumstance of dwelling, since the crime was committed inside the house of the victim, who had not given any provocation.[15]

We do not find merit in EDGARDO's claim that he was arrested without a warrant, was subjected to custodial interrogation without the assistance of a counsel, and was denied his right to remain silent and to have an effective counsel. In the first place, there is no clear evidence that he was arrested. On the contrary, he voluntarily turned over his knife to purok leader Costimiano and went with the latter to the Police Department, for which reason we even appreciate in his favor the mitigating circumstance of voluntary surrender. Second, the records do not disclose that a custodial interrogation of EDGARDO was made, although a preliminary investigation was conducted by Prosecutor Floresta.[16]

Accordingly, since the killing was not attended by treachery or any other qualifying circumstance, EDGARDO should be held guilty of homicide only, which is punishable by reclusion temporal under Article 249 of the Revised Penal Code. The generic aggravating circumstance of dwelling having been offset by the mitigating circumstance of voluntary surrender and there being no other modifying circumstance, the imposable penalty is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, EDGARDO should be sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as minimum.

The awards of P50,000 as moral damages and P2,500 as actual damages for burial expenses incurred by the family of the victim are proper, as they were duly proved.[17] So is the award of exemplary damages, the crime having been committed with one aggravating circumstance.[18]

WHEREFORE, the challenged decision of Branch 75 of the Regional Trial Court of Olongapo City in Criminal Case No. 56-96 is MODIFIED. As modified, accused-appellant EDGARDO AQUINO y PUMAWAN is found guilty beyond reasonable doubt, as principal, of the crime of homicide, defined and penalized under Article 249 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. The awards of P50,000 as indemnity, P50,000 as moral damages, P30,000 as exemplary damages, and P2,500 as actual damages stand.

Costs against accused-appellant.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record, 134-145; Rollo, 19-30. Per Judge Leopoldo T. Calderon, Jr.

[2] TSN, 19 June 1996, 8.

[3] TSN, 3 December 1996, 3-4.

[4] TSN, 24 September 1996, 3-13.

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[5] Citing People v. Austria, 260 SCRA 106 (1996)

[6] People v. Hubilla, 252 SCRA 471, 481 (1996); People v. Realin, G.R. No.126051, 21 January 1999.

[7] TSN, 31 July 1996, 5-6.

[8] People v. Laspardas, 93 SCRA 638 (1979); People v. Rabanillo, G.R. No.130010, 26 May 1999.

[9] People v. Manalang, 123 SCRA 583, 601 (1983)

[10] People v. Cruz, 109 Phil, 288, 292 (1960); People v. Renegado, 57 SCRA 275, 286 (1974)

[11] People v. Bascos, 44 Phil. 204 (1922); People v. Morales, 121 SCRA 426, 436 (1983)

[12] People v. Mengote, G.R. No. 130491, 25 March 1999.

[13] TSN, 24 September 1996, 12.

[14] People vs. Rabanillo, supra note 8.

[15] People v. Caisip, 290 SCRA 451 (1998)

[16] See TSN, 15 August 1996, 21.

[17] TSN, 19 June 1996, 8; See People vs. Felix, 297 SCRA 12 (1998), where this Court sustained the award of actual damages representing burial expenses on the basis of the testimony thereof.

[18] Article 2230, Civil Code.

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