

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE MENDOZA Y PASAG, ACCUSED-APPELLANT.*G.R. No. 128890. May 31, 2000*

Ponente: BELLOSILLO, J.

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EDDIE MENDOZA and JOHNNY SANCHEZ stand charged with having conspired to kill one Maximo Abellera on 16 February 1996 in Pozorrubio, Pangasinan, the killing being qualified by treachery, evident premeditation and abuse of superior strength. However, only Eddie Mendoza was arrested, tried and convicted by the trial court. Accused, Johnny Sanchez has never been arrested and remains at large.

The parties would vary the facts. According to prosecution witness Francisco Ignacio, a tricycle driver and resident of Barangay Buneg, at around three o'clock in the afternoon of 16 February 1996 he, together with Maximo Abellera, Virgilio Padilla and Junior Cortado, was playing mahjong in Purok VI, Barangay Buneg, Pozorrubio, Pangasinan. While playing, Eddie Mendoza suddenly appeared from behind and without any warning hacked Maximo Abellera several times with a one and half (1½)-foot long bolo hitting him on the left side of his head. The assailant is Ignacio's second cousin. Quite instinctively the victim stood up but collapsed soon enough. Johnny Sanchez, who had been standing behind Virgilio Padilla for almost thirty (30) minutes, followed next and stabbed the victim several times hitting him at the back with a weapon slightly longer than a fan knife.[1] Practically stunned by the startling occurrence, Ignacio ran away. Mendoza chased him but he outran his pursuer and reached the house of Maximo Abellera safely. There he informed Roger Abellera and Boy Abellera, Maximo's cousin and brother, respectively, about what happened to Maximo. While curious onlookers milled around the crime scene, according to Ignacio, he returned there upon the proddings of the police investigators. It was only then that he learned that Maximo Abellera had died.[2]

The testimony of Ignacio was corroborated by Maximo's father, Patrocinio Abellera Sr., who narrated that the accused Eddie Mendoza was a neighbor who was infamous for killing his own brothers before he murdered Maximo. Abellera, Sr. also said that he was not aware of any dispute between his son Maximo and the accused Mendoza. He also said that upon being informed by Ignacio about the fate of Maximo, he immediately went with his brother to the crime scene where he found the deceased with multiple hack and stab wounds. Shocked at the sight of his son's mutilated form, he could do nothing but cry for about ten (10) minutes. Then he left for home. The Araos Funeral Homes took care of the deceased and brought it home.[3]

Dr. Francisco L. Llamas, Chief Physician of the Pozorrubio Community Hospital, testified that the deceased sustained fourteen (14) hack wounds on his body, most of which were contributory to his death. Dr. Llamas concluded that a sharp-bladed instrument was used in the killing with the possibility that there were two (2) or more assailants. He asserted that wound No. 1, which he considered the most serious since the brain tissue was already exposed, could by itself have caused the death of Maximo Abellera.[4]

Police investigator Maximiano Balelo told the court that Eddie Mendoza and Johnny Sanchez went into hiding

immediately after the murder until Eddie was arrested in his hideout about three (3) months after the killing.[5]

To debunk the evidence of the prosecution, the defense presented Antonio Farnacio, a resident of Barangay Rosario in Pozorrubio and a brother-in-law of Mendoza. Farnacio testified that on 16 February 1996 he drove a tricycle and brought home a passenger to Barangay Buneg after which he went to the house of the accused to buy ducks from him. Since Mendoza was not home, Farnacio walked back to the road where he met someone who informed him that Mendoza was in the mahjong joint. According to Farnacio, he sought Mendoza out and found him there. They walked away for some fifty (50) meters and agreed on the purchase of some ducks from Mendoza. Although Mendoza was not playing, he nonetheless urged Farnacio to allow him (Mendoza) to finish the game he was watching. Just when Farnacio and Mendoza were about to leave for the latter's house, Mendoza stumbled on a stone and tripped, hitting the mahjong table. This angered the deceased prompting him to rise and draw a knife despite the apologies of Mendoza. The other accused, Johnny Sanchez, allegedly tried to pacify the deceased but was warned not to meddle. It was at this point when Sanchez allegedly hacked the deceased on the left side of his face using a wide-bladed bolo.[6]

Farnacio further testified that during the commotion everyone scampered. Mendoza dashed to an unspecified direction while he (Farnacio) boarded his tricycle for home. Farnacio admitted however that since then he had not been called by the police nor by any person to testify or take his testimony. He claimed that he did not report the matter to the authorities because of fear aside from the fact that he did not know them as he was residing in another barangay. He further asserted that he neither saw nor intended to see Mendoza after the incident.[7]

The accused Mendoza corroborated the testimony of his witness Farnacio. Mendoza admitted personally knowing the deceased as well as his co-accused Johnny Sanchez, and averred that when he arrived at the mahjong parlor the deceased was already fighting with somebody as the former was mumbling angry words against Johnny Sanchez.[8]

Mendoza further testified that he had not been investigated although he found out later that he was being implicated in the crime. He confirmed that he did not voluntarily surrender to the authorities but was apprehended instead. He categorically denied that he hacked the deceased and that he went into hiding afterwards.[9]

The trial court found the accused Eddie Mendoza y Pasag GUILTY of MURDER defined and penalized under RA 7659 qualified by treachery and aggravated by the circumstance of abuse of superior strength. He was ordered to pay the heirs of the deceased Maximo Abellera P50,000.00 as civil indemnity, P30,000.00 as actual damages and P200,000.00 as moral damages, plus the costs.

The case against Johnny Sanchez was ordered archived until the trial court could acquire jurisdiction over his person by his arrest.[10] The trial court relied heavily on the eyewitness account of Francisco Ignacio and concluded that the witness had no improper motive to testify against accused Eddie Mendoza who is also a close relative.[11]

This case is now before us on automatic review. The accused argues in his brief that the trial court erred in not considering that there was an altercation between the deceased and accused Johnny Sanchez prior to the hacking which should effectively rebut the testimony of the lone prosecution witness that the killing was sudden and the killer came from behind. He also claims that treachery was not present as the means employed did not ensure the commission of the crime without risk to the perpetrator against any defense or retaliation from the deceased. He insists that even granting that the attack was sudden, mere suddenness does not by itself establish treachery, and without treachery he should only be convicted of homicide and not murder.[12]

We uphold the conviction of the accused since the defense failed to impugn the credibility of prosecution witness

Francisco Ignacio. In the absence of proof to the contrary, Ignacio's testimony could be motivated by none other than the genuine quest for truth and justice. He is bound to the accused by blood and the intimacy that permeates the Filipino family is legendary. To hear about a crime is hair-raising enough; to witness it could do no less than jolt oneself and embolden him to reveal the perpetrator thereof. For what advantage could impel Ignacio to ignore familial ties and the threats to his life by the relatives of the accused should Ignacio testify against him? Granting *arguendo* that the threat is only imagined, the defense still failed to ascribe to Ignacio any evil motive sufficient to debunk his revelation as a creditable witness to the crime. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such improper motive exists and his testimony is thus worthy of full faith and credit.[13]

On the other hand, the conduct of the accused after the perpetration of the crime fails to support his denial of any participation in its commission, and is too unconvincing to lend credence to his assertion that it was Johnny Sanchez who hacked the deceased. The accused admits knowing both Johnny Sanchez and Maximo Abellera personally and that the reason for the hacking was that Sanchez was told by the deceased not to meddle in the fight between him and the accused. We can only surmise then from the accused's narration that Sanchez was doing him a favor and it would have been more in keeping with human nature if he who was the proximate cause of it all exerted effort to shed light on the events leading to the commission as well as the commission itself of the crime instead of quietly disappearing in the midst of the investigation without offering any explanation therefor. Quite perplexing too is the fact that while the accused has pointed to Sanchez as the perpetrator of the crime, yet, after the killing the accused simply disappeared from his residence.[14] Flight betrays a guilty conscience;[15] it is silent yet a loud admission of guilt.

We reject the accused's contention that the fact of altercation between the deceased and Sanchez was adequately established and thus seriously taints the testimony of the lone prosecution eyewitness. The testimony of the physician jives well with that of Francisco Ignacio that the assailant came from behind the victim; that a bladed instrument was used for the killing; and, that the possibility of more than one (1) assailant cannot be discounted. In contrast, the accused in unabashed witlessness urges the Court to believe that Sanchez was trying to act as the peacemaker between him and the deceased Abellera and when the latter refused to listen, Sanchez himself turned from benignant to indignant and forthwith hacked Abellera to death.

The trial court observed the demeanor of the witnesses for the prosecution and for the defense, and believed the former whose testimonies were candid, straightforward and bore the earmarks of truth while characterizing the latter as preposterous and unbelievable.[16] In criminal jurisprudence, when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court[17] and the Court will respect these findings considering that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[18] Of course, the rule admits of certain exceptions: (a) when patent inconsistencies in the statement of witnesses are ignored by the trial court, or (b) when the conclusions arrived at are clearly unsupported by the evidence.[19] But in this case, neither exception can be found, and the Court is not precluded from making its own assessment of the probative value of the testimony of the witnesses on the basis of the transcript of stenographic notes thereof.[20] We have carefully reviewed the records and found no reason to deviate from the conclusions drawn by the trial court; hence, they must prevail.

As to treachery, we affirm the finding of the trial court as these elements were present: (a) the employment of means, method or manner of execution to ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given the latter to defend or retaliate; and, (b) the deliberate or conscious adoption of such means, method, or manner of execution.[21]

In his brief, the accused attempts to exculpate himself by citing *People v. Magsombol*[22] where the Court held that no treachery attended the commission of the crime without submission of evidence that the accused consciously and deliberately adopted his mode of attack to insure execution without risk to himself. He argues that the mere suddenness of an attack would not by itself constitute treachery, hence, for failure to prove such qualifying circumstance the crime committed should only be homicide.

But reliance on *People v. Magsombol* is misplaced. The facts therein would show that the attack by the accused was frontal and his victim managed thereafter to run for about fifteen (15) meters, while the accused did not bother to pursue him but fled instead to the opposite direction. It befits logic to presume that accused therein, although momentarily enraged, was still uncertain whether he had already killed the victim or simply wounded him. If the accused was truly bent on killing the victim, the former would have finished him off instead of merely fleeing to the opposite direction. In contrast, the accused herein came from behind his unsuspecting victim who did not have the slightest inkling that he would be attacked that afternoon in the presence of mahjong players and spectators and their kibitzers. As the victim was totally unprepared for the unexpected attack from behind with no weapon to resist it, the stabbing could only be described as treacherous.[23] As the attack was synchronal, sudden and unexpected, treachery was evident.[24]

Moreover, even as the victim already lay helpless on the ground Mendoza's cohort, Johnny Sanchez, ruthlessly continued to stab the victim until he died. Thus, it can be gleaned from the circumstances surrounding the perpetration of the crime that the accused and Sanchez conspired to bring about the gory end of their victim. Conspiracy may be inferred from the acts of the accused before, during, and after the crime, which are indicative of a common design, concerted action and concurrence of sentiments.[25] And once conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the conspirators, and the precise extent or modality of participation of each of them becomes secondary.[26] The act of Sanchez in stabbing the victim while the latter was already prostrate on the ground was by itself treacherous since the victim could no longer put up any defense against the attack. As a conspirator Mendoza should also be responsible for the treacherous act.

Although evident premeditation is alleged in the Information as an aggravating circumstance, the trial court correctly disregarded it considering that the prosecution did not prove the concurrence of these elements: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination to commit the crime; and, (c) a sufficient lapse of time between such determination and its execution to allow him to reflect upon the consequences of his act.[27] Evident premeditation must be proved as clearly as the crime itself and may not be deduced merely from conclusions and inferences.[28]

But the trial court erred in appreciating the aggravating circumstance of abuse of superior strength since this is deemed absorbed in treachery.[29]

The penalty for murder under Art. 248 of the Revised Penal Code is reclusion perpetua to death. Corollarily, Art. 63, second paragraph, provides that "[i]n all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be applied x x x 2. [w]hen there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied." Thus, the imposable penalty being composed of two (2) indivisible penalties, in the absence of any modifying circumstance, the lesser penalty of reclusion perpetua shall be imposed on the accused for the killing of Maximo Abellera.

WHEREFORE, the judgment of the trial court convicting the accused EDDIE MENDOZA Y PASAG of MURDER qualified by treachery is AFFIRMED. However, the penalty of death is REDUCED to reclusion perpetua in the absence of any established modifying circumstance. The accused is ORDERED to pay the heirs of

the victim Maximo Abellera the amount of P50,000.00 as civil indemnity, P30,000.00 as actual damages and P200,000.00 as moral damages, and to pay the costs.

SO ORDERED.

Melo, Puno, Vitug, Kapunan, Mendoza, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

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

Panganiban, Quisumbing, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

[1] TSN, 9 October 1996, pp. 2-20

[2] Ibid.

[3] TSN, 17 September 1996, pp. 3-11.

[4] TSN, 25 September 1996, pp. 2-10.

[5] Id., pp. 13-21.

[6] TSN, 15 November 1996, pp. 2-17.

[7] TSN, 15 November 1996, pp. 2-17.

[8] TSN, 20 November 1996, pp. 3-24.

[9] Ibid.

[10] Decision penned by Judge Joven F. Costales, RTC-Br. 45, Urdaneta, Pangasinan.

[11] Ibid.

[12] Rollo, pp. 52-61.

[13] *People v. Acaya*, G.R. No. 108381, 7 March 2000, citing *People v. Rada*, G.R. No. 128181, 10 June 1999, p. 15 and *People v. Aguinas*, G.R. No. 121993, 12 September 1997, 279 SCRA 52, 65.

[14] See Note 11, p. 17.

[15] Ibid., citing *People v. Abalos*, G.R. No. 88189, 9 July 1996, 258 SCRA 523 and *People v. Aliviado*, G.R. Nos. 113782-84, 14 August 1995, 247 SCRA 300

[16] See Note 15.

[17] *People v. Llaguno*, G.R. No. 91262, 28 January 1998, 285 SCRA 124.

[18] *People v. Aquino*, G.R. No. 125906, 16 January 1998, 284 SCRA 369.

[19] *People v. Malimit*, G.R. No. 109775, 14 November 1996, 264 SCRA 167, 175.

[20] *People v. Badon*, G. R. No. 126143, 10 June 1999, p. 11; *People v. Compedio Jr.*, G.R. No. 114002, 5 July 1996, 258 SCRA 254, 262.

[21] *People v. Gatchalian*, G.R. No. 90301, 10 December 1998, 300 SCRA 1.

[22] G.R. No. 98197, 24 January 1996, 252 SCRA 187.

[23] People v. Manes, G. R. No. 122737, 17 February 1999, citing People v. San Gabriel, G.R. No. 107735, 1 February 1996, 253 SCRA 84.

[24] People v. Serdan, G.R. No. 87318, 2 September 1992, 213 SCRA 329.

[25] People v. Parungao, G.R. No. 125812, 28 November 1996, 265 SCRA 140.

[26] People v. De Los Reyes, G.R. No. 44112, 22 October 1992, 215 SCRA 63.

[27] People v. Galano, et. al., G.R. No.111806, 9 March 2000, citing People v. Pallarco, G.R. No. 119971, 26 March 1998, 288 SCRA 151, 169-170.

[28] People v. Buka, G.R. Nos. 68311-13, 30 January 1992, 205 SCRA 567.

[29] People v. Manes, G. R. No. 122737, 17 February 1999, citing People v. Torrefiel, G.R. No. 115431, 18 April 1996, 256 SCRA 369.

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