

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE RABANILLO Y MAGALONG, ACCUSED-APPELLANT.

G.R. No. 130010. May 26, 1999

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DAVIDE, JR., C.J.,

Accused-appellant Vicente Rabanillo (hereafter RABANILLO) was charged before the Regional Trial Court of Dagupan City, Branch 43, with the crime of murder in an information[1] whose accusatory portion reads:

That on or about August 9, 1996, at 5:00 o'clock in the afternoon at barangay Amansabina, municipality of Mangaldan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed samurai, with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously hack RAUL MORALES y Visperas, thereby causing his death thereafter due to:

INTRA THORA-ABDOMINAL HEMORRHAGE, sec. to open wound of the back

THORA HEPATIC HEMORRHAGE, sec. to incised wounds

as per Medico-Legal Report issued by Dr. Reynaldo C. Gabriel, M.D., RHU of Mapandan [sic], Pangasinan, to the damage and prejudice of the heirs of Raul Morales y Visperas.

CONTRARY to Art 248 of the Revised Penal Code, as amended by R.A. [No.] 7659.

Later, RABANILLO filed a motion denominated "Plea Bargaining Offer"[2] stating his willingness to enter a plea of "guilty" to the crime of homicide. This motion was met with vehement objection[3] from the prosecution and was eventually denied[4] by the trial court. Upon arraignment, the appellate entered a plea of "not guilty"[5] to the charge of murder.

The undisputed facts[6] are as follows:

In the afternoon of 9 August 1996, appellant RABANILLO; the victim Raul Morales (hereafter MORALES); prosecution witnesses Perfecto Suarez, Samuel Magalong, and Ramil Morales; and several other persons were having a drinking spree at the store of Narcisa Morales, mother of MORALES, at Barangay Amansabina, Mangaldan, Pangasinan. At about 5:00 p.m., a certain Willy Vito, one of the participants in the drinking session, took a bath at the artesian well nearby and jokingly doused Suarez with water. The latter tied to retaliate but failed; he thus ran after the others and splashed them with water.

RABANILLO joined the game. He filled with water and tried to pour its content at someone, but drenched MORALES instead. The latter reprimanded the former because water got into his ear. A heated argument between the two ensued and culminated into a fistfight. The two were eventually pacified by cooler heads and were ushered to their respective houses, which were just about 15 meters apart. The others milled around by the road.

As to what transpired next, the prosecution and the defense had different versions.

The evidence for the prosecution reveals that half an hour after the fisticuff while MORALES, Suarez, and one Mauro Pascua were having a conversation in the terrace of the house of MORALES, RABANILLO went out of his house wielding a one-meter samurai. RABANILLO went straight to MORALES and hacked him. Instinctively, the latter parried the blow, but he was hit on his right hand. When he attempted to run away, he tripped and fell down to the ground. At this point, RABANILLO hacked him two times more, hitting at his back and left shoulder. That same day, MORALES drew his last breath.[7]

On the other hand, the defense presented the following version:

A while later appellant heard Raul Morales, then in the terrace of their house that is beside appellant's house, shouting and challenging him to come out. Forthwith, appellant, irked by the challenged, emerged from his house with a bolo on hand and attacked Raul Morales and killed him in the process. Thereafter, accompanied by the barangay captain, he went to the Town hall of Mangaldan, Pangasinan, and surrendered.[8]

In its decision[9] of 14 July 1997, the trial Court noted that when RABANILLO took the witness stand, he offered his testimony to prove the mitigating circumstances of passion and obfuscation, drunkenness, and voluntary surrender and that he was not, therefore, denying having killed MORALES. It then limited the issues to the presence of such mitigating circumstances, as well as of the aggravating circumstances of treachery, evident premeditation, and abuse of superior strength.

The trial court ruled out treachery, reasoning that the victim had been forewarned of the evil intention of RABANILLO when the latter went out of his house armed with a samurai bolo; besides, the initial attack was frontal. It, however, appreciated evident premeditation as a qualifying circumstance because the period of 45 minutes which elapsed between the time the fight was broken up and the time RABANILLO decided to kill MORALES was "sufficient period of time to ponder with cold neutrality on what to do in the premises, whether to do a righteous act or to pursue a criminal overt act despite knowledge of its evil consequences." After the lapse of that period, RABANILLO still clung to his evil intention and hacked MORALES to death. The trial court also appreciated the aggravating circumstance of abuse of superior strength because, aside from the fact that RABANILLO had a "bulkier and strong[er] body physique... as compared to victim's slimmer/thinner body," he still armed himself with a samurai bolo to insure the preparation of his evil intention.

RABANILLO's claim of the attenuating circumstance of passion and obfuscation was not considered. The trial court was not convinced that MORALES had inflicted bodily injury against RABANILLO; if ever the latter sustained injuries, they were incurred when MORALES and RABANILLO were engaged in a fisticuff. It noted that the fight was ignited by RABANILLO when he poured water into the ear of MORALES. The trial court also debunked RABANILLO's claim of intoxication for lack of evidence. It likewise refused to give the benefit of the mitigating circumstance of voluntary surrender, holding that RABANILLO's own testimony that it was the barangay captain who went to RABANILLO's house and brought him to the police station belied his claim that he voluntarily surrendered.

Accordingly, the trial court convicted RABANILLO for the crime of murder and decreed as follows:

WHEREFORE, the Court finds accused Vicente Rabanillo y Magalong GUILTY beyond reasonable doubt of the felony of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659, attended by the qualifying aggravating circumstance of evident premeditation and generic aggravating circumstance of taking advantage of superior strength and conformably to law, the Court sentences him to suffer the capital penalty of reclusion perpetua to DEATH.

Further, the COURT orders the accused to pay Narcisa Morales (mother of Raul Morales) the following, to wit:

- 1) P50,000.00 as indemnity;
- 2) P30,000.00 as moral damages;
- 3) P20,000.00 as exemplary damages;
- 4) P41,024.70 representing actual and compensatory damages;
- 5) P10,000.00 as attorney's fees;
- 6) And costs.

The Provincial Warden of Pangasinan is ordered to commit the person of accused VICENTE M. RABANILLO to the National Penitentiary in Muntinlupa, Metro Manila, immediately without any unnecessary delay.

SO ORDERED.

Hence, RABANILLO appealed the decision to this Court contending that the trial court erred (1) in finding that the killing of MORALES was qualified by evident premeditation; and (2) in not finding that he is entitled to the mitigating circumstance of passion and obfuscation, intoxication, and voluntary surrender.

Anent the first assigned error, RABANILLO maintains that it was only when MORALES and his friends started taunting him, "You come out, Tanod Commander," that he, in a fit of anger, emerged from his house and attacked MORALES. The killing was not planned, and there was no sufficient time for meditation and reflection on the nature and consequence of his act.

As to the second assigned error, RABANILLO asseverates that he should be given the benefit of the mitigating circumstances of passion and obfuscation, drunkenness, and voluntary surrender. The words "You come out, Tanod Commander" are "enough to make one, especially a barangay folk who is characteristically sensitive, blinded by passion." Moreover, having imbibed liquor from 2:00 to 5:00 p.m., he must have been surely drunk to be so sensitive to accept the victim's challenge. After killing the victim, he voluntarily went with the Barangay Captain to the police station to surrender and willingly obliged to be committed in jail even without a warrant of arrest or an information against him.

In its Brief, the Office of the Solicitor General (OSG) recommends that RABANILLO be convicted to homicide only, not murder, in that the qualifying circumstance of evident premeditation was not present and that the aggravating circumstance of abuse of superior strength, which was correctly appreciated by the trial court, was not alleged in the information. It agrees with the trial court in all other respects.

We agree with the trial court in ruling out treachery. The evidence shows that MORALES was facing towards the direction where RABANILLO came from.[10] He must then have caught sight of the latter, who was approaching him with a samurai in his hands. Considering that a fight between them had just taken place, MORALES knew or must have known that he would be the target of RABANILLO's attack. Since he was still about 10 meters[11] away from RABANILLO, he had an opportunity to escape or avoid the assault. Hence, it cannot be said that treachery attended the commission of the crime.

However, we are of one mind with the OSG and RABANILLO that evident premeditation was wanting in the commission of the crime. For evident premeditation to be considered, the following elements must be established: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender has clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender time to reflect upon the consequences of his act.[12] The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a span of time sufficient to arrive at a calm judgment.[13]

In the present case, there is no showing as to the time RABANILLO decided to commit the crime. Even assuming that it was right after he was escorted to his house that he conceived the idea of killing the victim, evident

premeditation cannot be appreciated. Only 30 minutes^[14] intervened between that time and the time he went out of his house to attack MORALES. It has been held that the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act.^[15] Additionally, as aptly observed by the OSG, the attending circumstances of the killing and the external acts of the appellant negate the existence of evident premeditation; thus:

When accused-appellant rushed out from his house, it was just 5:30 in the afternoon. (TSN, April 11, 1997, p. 10) Following Philippine norm, it would still be daylight or at least there would still be sufficient light to easily see people or happenings. The persons who were previously drinking were just milling around by the road. (TSN, November 7, 1996, p. 21) Accused-appellant did not even wait until Raul Morales was alone; he came out of his house with the samurai parallel to his head and directly went straight to the victim at the time when the latter was conversing with two of his friends. Also, accused-appellant did not even attempt to disguise his intention by camouflaging his weapon. He raised it high for all to see. Cool thought and calm judgment, there was none in this case.^[16]

Since the qualifying circumstances of treachery and evident premeditation are not present in this case, RABANILLO can be convicted of homicide only.

We do not agree with the trial court on its finding of the aggravating circumstance of abuse of superior strength. It appreciated such circumstance because RABANILLO had a "bulkier and strong[er] body physique ... as compared to victim's slimmer/thinner body," and despite thereof he armed himself with a samurai bolo.

There is abuse of superior strength if, as expressly provided by law, the assailant take advantage of his superior strength. It must then be established that not only did the assailant enjoy superior strength over the victim, but that he took advantage thereof in the commission of the crime. That MORALES was "slimmer/thinner" while Rabanillo was "bulkier and strong[er]" was not enough proof that the latter superior strength. There should have been proof that, indeed, RABANILLO's bulkier physique provided him physical strength to that of MORALES. It may further be stressed that a man of "slimmer/thinner body" need not necessarily be physically weak; he could even be physically stronger than a bulkier person. Moreover, even granting for the sake of argument that RABANILLO was physically stronger than MORALES, the circumstances in this case fail to convince us that RABANILLO took advantage of his superior strength.

Now on the mitigating circumstances invoked by RABANILLO.

To prove passion and obfuscation, RABANILLO testified that the group of MORALES shouted at him: "You come out, Tanod Commander." Thereupon, one Meljhones Soriano approached him and held his hands. At this point, MORALES boxed him on different parts of his body and threw bottles at him. Not contented, the group resumed shouting at him. He was so "blinded by their shoutings" that he did not know anymore what happened next.^[17]

In his Brief, however, RABANILLO abandoned these allegations that MORALES boxed him and threw bottles at him. He merely stated that the obfuscation on his part was generated by the victim's words, "You come out, Tanod Commander," which he considered a challenge against his person and honor as the chief tanod of the Barangay.

We are not persuaded. Prosecution witnesses Perfecto Suarez and Samuel Magalong were one in saying that MORALES was just having a conversation with his friends when RABANILLO came out of his house ready to attack. It is significant to note that RABANILLO himself testified that Samuel Magalong is the son of RABANILLO's first cousin,^[18] and he did not deny Suarez's testimony that he, RABANILLO, is Suarez's grandfather.^[19] Since Magalona and Suarez are RABANILLO's nephew and grandson, respectively, they would unlikely omit anything in their testimony that would mitigate the liability of RABANILLO. But, despite their

relationship with RABANILLO, they agreed to tell nothing but the truth and helped in giving justice to MORALES, who was merely a friend and a barriomate.

Suarez and Magalong testified that before the hacking incident, MORALES reprimanded RABANILLO in front of their drinking mates for dousing him with water, which entered into his ear. RABANILLO resented it and felt humiliated. Hence, a fistfight ensued, but was eventually broken up. The event must have continued to dominate RABANILLO's thought that he decided to strike back at the victim by hacking him to death. Clearly, the assault was made in a fit of anger.

For passion and obfuscation to be mitigating, the same must originate from lawful feelings.[20] The turmoil and unreason that 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[21]. The excitement which is inherent in all persons who quarrel and come to blows does not constitute obfuscation.[22]

Moreover, the act producing obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have regained his normal equanimity.[23] Thus, it has been held that where at least half an hour elapsed between the previous fight and the killing, the accused cannot be given the benefit of the attenuating circumstance of obfuscation.[24]

In this case, 30 minutes intervened between the fistfight and the killing of MORALES by RABANILLO. The attack cannot, therefore, be said to be the result of a sudden impulse of natural and uncontrollable fury. Having been actuated more by the spirit of revenge or by anger and resentment for having been publicly berated by MORALES, RABANILLO cannot be credited with the extenuating circumstance of passion and obfuscation.

Neither can be appreciate in favor of RABANILLO the alternative circumstances of intoxication. To be mitigating, the accused's state of intoxication should be proved or established by sufficient evidence.[25] It should be such an intoxication that would diminish or impair the exercise of his willpower or the capacity to know the injustice of his act.[26] The accused must then show that (1) at the time of the commission of the criminal act, he has taken such quantity of alcoholic drinks as to blur his reason and deprive him of a certain degree of self-control; and (2) such intoxication is not habitual or subsequent to the plan to commit the felony.[27]

It is worthy to note that while RABANILLO was presented to prove drunkenness among other extenuating circumstances, he merely stated in his testimony that he joined his friends Domingo de Guzman and Elde Soriano in a drinking session, but only for a short time. His friends started their drinking spree at about 11:00 a.m. of that fateful day, and he was the one serving their "pulutan." It was about 12:00 noon that he joined them. At past 12:00 noon, he helped his daughter-in-law in selling cooked foods. From 3:00 to 5:00 p.m., he was cleaning his house.[28] The fact that he was able to resume his routine work belies his claim that he was heavily drunk at the time he attacked the victim.

The testimony of his daughter-in-law that RABANILLO had been drinking 4 x 4 Ginebra San Miguel from 10:30 a.m. to 5:00 p.m.[29] is not sufficient to establish drunkenness. The remains no proof that RABANILLO had taken such quantity of liquor as to impair his mental faculties. His own witness testified that he would drink liquor twice a week.[30] As pointed out by the OSG, this regularity of RABANILLO's intake must have increased his tolerance for alcohol to such an extent that he could not easily get drunk.

As to his claim of voluntary surrender, RABANILLO testified that a few minutes after the hacking incident, the barangay captain came to his house and told him that they would go to the Municipal Hall. He agreed. At the time, he had mental blackout, which was why he failed to tell the barangay captain that he was the one who killed MORALES. At the Municipal Hall, he reported that "there was trouble in Amansabina." [31]

For voluntary surrender to be considered, the following requisites must concur: (1) the offender was not actually arrested; (2) he surrendered to a person in authority or to an agent of a person in authority; and (3) his surrender was voluntary.[32] A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities either because (a) he acknowledges his guilt or (b) he wishes to save them the trouble and expense necessarily incurred in his search and capture.[33]

That RABANILLO submitted himself to the custody of law even though there was yet no warrant of arrest or information against him is of no moment. The barangay captain had to go to the house of RABANILLO to take the latter to the police station. The latter did not present himself voluntarily to the former, who is a person in authority pursuant to Article 152 of the Revised Penal Code, as amended; neither did he ask the former to fetch him at his house so he could surrender.[34] The fact alone that he did not resist but went peacefully with the barangay captain does not mean that he voluntarily surrendered.[35] Besides, voluntary surrender presupposes repentance[36]; this condition could not have existed because at the moment he was brought to the police station, he had "mental blackout." Moreover, he merely reported to the police that "there was trouble in Amansabina." Hence, the mitigating circumstance of voluntary surrender cannot be appreciated in favor of RABANILLO.

There being neither mitigating nor aggravating circumstance established in this case, the penalty that may be meted out to RABANILLO is the medium period of that prescribed by law for the offense.[37] The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. Applying the Indeterminate Sentence Law, an indeterminate penalty whose minimum should be within the range of the penalty next lower in degree, i.e., prision mayor, and whose maximum should be that of reclusion temporal in its medium period, may be imposed on RABANILLO. Concretely, such indeterminate penalty should be TEN (10) years of prision mayor, in its medium period as minimum to SEVENTEEN (17) years and FOUR (4) months of reclusion temporal in its medium period as maximum.

Before we close this case, two matters deserve a few words. First, the trial court imposed the penalty of reclusion perpetua to DEATH. This is clearly erroneous, even if it be conceded arguendo that the crime committed was murder. While Article 248 of the Revised Penal Code punishes murder with "reclusion perpetua to death," it does not follow that courts should impose these two indivisible penalties. What should be imposed is one or the other depending on the presence of modifying circumstances. Article 63 of the Revised Penal Code expressly provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof, to wit:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Second, in the body of the decision there is no specific finding on the issue of damages, yet, in the dispositive portion, there are awards of damages. RABANILLO, however, did not question these awards. Nonetheless, since an appeal in a criminal case throws the whole case open for review, we shall determine whether the awards are warranted.

As to actual damages, the sister of MORALES testified that as a result of the death of MORALES, her family spent P41,024.70[38] for the funeral services, food served during the wake, coffin, tomb, masses and novena. However, on cross examination, she admitted the existence of contributions in the amount of P15,000.00.[39] The award of P41,024.70 should, therefore, be reduced to P26,024.70.

We sustain the award of moral damages in favor of Narcisa Morales, mother of MORALES, who testified on her suffering brought about by the untimely death of her son. In view, however, of our finding that no aggravating circumstance attended the commission of the crime, no exemplary damages may be awarded.[40] The award of attorney's fees may be allowed under circumstance (11) of Article 2208 of the Civil Code. However, the awards of civil indemnity, actual damages, and attorney's fees should be payable not only to the mother but also to the other heirs of MORALES.

WHEREFORE, the appealed decision is AFFIRMED with the following modifications: Accused-appellant VICENTE RABANILLO is found guilty beyond reasonable doubt, as principal, of the crime of homicide, and not murder; and, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty ranging from TEN (10) years of prision mayor as minimum to SEVENTEEN (17) years and FOUR (4) months of reclusion temporal as maximum with all the accessories thereof, and to pay (a) the heirs of the victim Raul Morales the sums of P50,000 as indemnity for the death of said victim: P26,024.70 as actual damages; and P10,000.00 as attorney's fees, and (b) Narcisa Morales, mother of the victim, P30,000.00 as moral damages.

Costs de officio.

SO ORDERED.

Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Santiago, JJ., concur.

[1] Original Record (OR), 37; Rollo, 6.

[2] OR, 76.

[3] Id., 80.

[4] Id., 81.

[5] Id., 83.

[6] See Brief for Plaintiff-Appellee, 2-4; Brief for Appellant, 2-4.

[7] TSN 7 November 1996, 20-24; 17 December 1996, 9-18.

[8] Brief for Appellant, 4.

[9] OR, 212, 227; Rollo, 18-33. Per Judge Silverio Q. Castillo.

[10] TSN, 17 December 1996, 10-11, 14-15.

[11] TSN, 7 November 1996, 21.

[12] *People v. Cruz*, 262 SCRA 237, 243-244 [1996]; *People v. Tabag*, 268 SCRA 115, 131-132[1997]; *People v. Bibat*, G.R. No. 124319, 13 May 1998.

[13] *People v. Villanueva*, 265 SCRA 216, 226 [1996]; *People v. Bibat*, *supra* note 12.

[14] TSN, 21 November 1996, 17-18; 17 December 1996, 26-27.

[15] *People v. Pantoja*, 25 SCRA 468, 471 [1968]; *People v. Eribal*, G.R. No. 127662, 25 March 1999, citing *People v. Garachico*, 113 SCRA 131, 145 [1982] and *People v. Batas*, 176 SCRA 46, 55-56 [1989].

[16] Brief for Plaintiff-Appellee, 11.

[17] TSN, 21 April 1997, 10-11.

[18] TSN, 21 April 1997, 20.

[19] TSN, 7 November 1996, 5.

[20] *People v. Bautista*, 254 SCRA 621, 629 [1996], citing *People v. Cruz*, 53 Phil. 635 [1929].

[21] *Id.*, citing *People v. Giner*, 6 Phil. 406 [1906].

[22] *U.S. v. Herrera*, 13 Phil. 583, 585 [1909].

[23] *People v. Layson*, 30 SCRA 92, 95-96 [1969].

[24] *People v. Matbagon*, 60 Phil. 887, 890 [1934].

[25] *People v. Apduhan*, 24 SCRA 798, 813 [1968].

[26] *People v. Ruiz*, 93 SCRA 739, 760-761 [1979].

[27] *People v. Boduso*, 60 SCRA 60, 70-71 [1974].

[28] TSN, 21 April 1997, 14-16.

[29] TSN, 1 April 1997, 7.

[30] *Id.*, 24.

[31] TSN, 21 April 1997, 12-13, 31.

[32] *People v. Rapanut*, 263 SCRA 515, 529-530 [1996]; *People v. Medina*, 44, 62 [1998].

[33] *People v. Lee*, 204 SCRA 900, 911 [1991]; *People v. Tismo*, 204 SCRA 535, 558-559 [1991]; *People v. Camahalan*, 241 SCRA 558, 572 [1995].

[34] *People v. Ramilla*, 227 SCRA 583, 590 [1993].

[35] *People v. Camahalan*, *supra* note 33, at 572-573 [1995]; *People v. Deopante*, 263 SCRA 691, 703 [1996.]

[36] *People v. Marasigan*, 70 Phil. 583 [1940].

[37] Article 64(1), Revised Penal Code.

[38] Exhibits "F," "G," and "H,"; OR, 136-139.

[39] TSN, 24 February 1997, 8.

[40] Civil Code of the Philippines, Article 2230.

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