PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO CONDINO Y PEREZ, ACCUSED-APPELLANT.

G.R. No. 130945. November 19, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court, Fourth Judicial Region, Branch 58, Lucena City in Criminal Case No. 90-361 finding the accused-appellant guilty of the crime of Murder.

The Information filed on June 5, 1990 reads as follows:

> That on or about the 29[th] day of December 1989, at Barangay Canda, Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a piece of stone and pointed weapon, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and hit with said piece of stone one Alejandro Magadia and thereafter stab with the said pointed weapon said Alejandro Magadia while lying prostrate on the ground, thereby inflicting upon the latter various wounds on the different parts of his body which directly caused his death.
>
> Contrary to law.[1]

Arraignment was scheduled on July 5, 1990 which was however postponed to July 12, 1990.[2] Upon a Manifestation and Motion dated July 10, 1990[3], counsel for the accused-appellant from the Public Attorney's Office (PAO) moved that the arraignment of accused-appellant be deferred considering that the latter appeared to be out of his mind when he appeared for the July 5, 1990 arraignment. Counsel, thus requested that the accused-appellant be submitted for mental examination in order to determine whether he is fit for trial.

As prayed for, the accused-appellant was transferred from the Quezon Provincial Jail to the National Center for Mental Health, Mandaluyong City for the purpose of examining the accused-appellant's mental condition.[4] In a Report dated August 30, 1990 submitted to the trial court, Resident Physician Dr. Edgardo I. Canlas found Alberto Condino "to be suffering from a mental illness called Psychosis or Insanity classified under Schizophrenic Disorder." He was deemed incompetent to withstand the rigors of court trial and recommended for further treatment and confinement.[5] The proceedings was thereby suspended and the case ordered archived until such time that the accused-appellant shall have recovered from his insanity and shall stand the rigors of court trial.[6]

On March 6, 1992, the Chief of the National Center for Mental Health filed a "Petition for Release" of Alberto Condino from its care and custody after finding that said accused-appellant's mental condition has considerably improved to stand the rigors of court trial.[7] Thus, in an Order dated March 25, 1992, accused-appellant was transferred from the National Center for Mental Health to the Quezon Provincial Jail. Consequently, the case was ordered reinstated and set for arraignment.

On June 9, 1992, accused-appellant was arraigned where he, assisted by counsel de oficio, Atty. Reverito P.

Carurucan of the PAO, pleaded not guilty to the crime charged in the Information.

Trial thereby ensued. The prosecution presented three (3) witnesses: Dr. Cecilio R. Macaraeg, Jr., Felipe Mojica and Marcelino Cabutihan. The defense, on the other hand, presented two (2) witnesses: Florentina Portugal and the accused himself.

The facts as found by the trial court are as follows:

> After evaluating the evidence submitted by both the prosecution and the defense, the Court finds that on December 29, 1989 at 1:30 o'clock in the afternoon at Barangay Canda, Sariaya, Quezon, while Alejandro Magadia, the herein victim, together with Rustico Lontoc, Marcelino Pulugin and Felipe Mojica were playing basketball, accused Alberto Condino, who was then under the influence of liquor, armed with a "gulukan", arrived and challenged Alejandro Magadia in a one on one basketball game which Alejandro Magadia acceded. After making a shot, Alejandro Magadia gave the ball to Alberto Condino but instead of shooting the ball, he threw it to a place, drew his "gulukan" and chased Alejandro Magadia who ran away but he was not able to catch up.
>
> At 5:30 o'clock in the afternoon of the same day, while the group of Alejandro Magadia was walking towards the direction of Barangay Limbon, Sariaya, Quezon to attend a dance party, accused Alberto Condino was seen on the left side of the road, waiting for the said group and when Alejandro Magadia, who was walking ahead of the group, passed in front of Alberto Condino, accused suddenly stoned Alejandro Magadia which hit his left head and when he fell down to the ground, lying flat, accused Alberto Condino stabbed Alejandro Magadia for three (3) times hitting his left side of the back, face and other parts of the body. As the attack was sudden, Alejandro Magadia was not able to defend himself. Thereafter, Alberto Condino left the place of the incident. Alejandro Magadia was boarded on a trolley to be brought to the hospital and on the way to the hospital, he passed away.
>
> The Post-Mortem Examination conducted on the cadaver of Alejandro Magadia (Exhibit "A" and "A-1"), issued by Dr. Cecilio R. Macaraeg, Jr., M.C. (sic), Municipal Health Officer of Sariaya, Quezon, would reveal the following:
>
> "1.
>
> Lacerated wound. 3.5 cm in length, 1.5 cm wide, 1 cm deep, at the mid portion of the left parietal region. Underlying wound seen from the outside with a crack and a circular depression (compound fracture).
>
> 2.
>
> Stab wound. 1 cm long, .5 cm wide, 1 cm deep, located at the left lower mandibular region.
>
> 3.
>
> Stab wound, 2.5 cm long, 1 cm wide, 6 cm deep, located at medial aspect of the mid portion of the left side of the back, 5 cm to the left of the mid spinal line.
>
> 4.
>
> Stab wound, 2.5 cm long, 1.5 cm wide, and 8 cm deep, mid portion of the left side of the back, 8 cm left to the mid spinal line.
>
> Cause of Death:
>
> Shock, Massive hemorrhage due to: Compound fracture on the left parietal region. Stab wounds on the left side of the back.

A Certificate of Death was likewise issued by Dr. Cecilio R. Macaraeg, Jr., M.D. (Exhibits "B" and "B-1")."[8]

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The version of the accused-appellant, meanwhile, is as follows:

> The accused anchored his defense on self defense. He claimed that on December 29, 1989 at 5:30 o'clock in the afternoon, he was beside the house of Filomena Portugal located along the railroad truck at Barangay Canda, Sariaya, Quezon waiting for a transportation bound to Antipolo, Rizal. While waiting for a ride, seven (7) persons, namely: Alejandro Magadia, Marcelino Cabutihan, Felipe Mojica, Jr., Rustico Lontoc, Ernesto Resurreccion, Jr., Marcelino Querubin and Marcelino Acinas, each carrying bladed weapons, arrived. On the right hand of Alejandro Magadia was a "gulukan" while on the left hand was an icepick. When Alejandro Magadia attacked him at a distance of 1-1/2 meters, he picked-up a stone and threw it to Alejandro Magadia which hit Magadia's chin and made him unconscious. Accused further claimed that when he retreated from the place of the incident, Alejandro Magadia continued to attack him. Thereafter, accused grabbed the right hand of Alejandro Magadia and they struggled for the possession of the "gulukan". The icepick which Alejandro Magadia was holding in his left hand fell to the ground. While the accused and the victim were grappling for the possession of the "gulukan", the said "gulukan" hit the abdomen of Alejandro Magadia, through and through. Accused suddenly rose up and went to the town proper of Sariaya, Quezon and at the Municipal Building of Sariaya, Quezon, he reported the incident to the Station Commander, as a result of which, accused was put in jail.[9]

On March 21, 1997, a decision was rendered with the following dispositive portion:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused ALBERTO CONDINO Y PEREZ guilty beyond reasonable doubt, as principal, of the crime of Murder, defined and punished under Article 248 of the Revised Penal Code and, in the absence of any aggravating and mitigating circumstances, said accused is hereby sentenced to suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua, and to pay the heirs of the victim, Alejandro Magadia, the amount of P50,000.00 as indemnity and to pay the costs.
>
> SO ORDERED.[10]

In the instant appeal, the accused-appellant raised the following assignment of errors:

> I
>
> THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER CONSIDERING THAT THE LATTER IS EXEMPTED FROM CRIMINAL LIABILITY, BEING INSANE AT THE TIME OF THE COMMISSION OF THE FELONY.
>
> II
>
> NOTWITHSTANDING THIS, THE COURT A QUO COMMITTED REVERSIBLE ERROR IN ACCORDING WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES, FELIPE MOJICA AND MARCELINO CABUTIHAN, DESPITE THEIR LACK OF CREDIBILITY.
>
> III
>
> THE DECISION RENDERED BY THE COURT A QUO IS QUESTIONABLE IN THE LIGHT OF THE FACT THAT ALTHOUGH THE PONENTE, THE HON. ISMAEL B. SANCHEZ, OPENLY ADMITTED THAT HE WAS NOT ABLE TO ASSESS THE EVIDENCE ADDUCED BY BOTH PARTIES FOR HIMSELF, HE MADE IT APPEAR THAT HE WAS THE ONE WHO CALIBRATED THE CREDIBILITIES OF THE SAME.
>
> IV
>
> IN THE EVENT THAT THE ACCUSED-APPELLANT'S GUILT IS AFFIRMED, THE COURT A QUO ERRED WHEN IT FAILED TO TAKE INTO CONSIDERATION THE MITIGATING CIRCUMSTANCES

> OF VOLUNTARY SURRENDER AND ILLNESS AS WOULD DIMINISH THE WILL-POWER OF THE ACCUSED-APPELLANT WITHOUT ALTOGETHER DEPRIVING HIM OF CONSCIOUSNESS OF HIS ACTS.[11]

Counsel for the accused-appellant asserts that his client was insane at the time of the commission of the felony and is, therefore, entitled to the exempting circumstance enumerated under Article 12 of the RPC which states:

> ART. 12. Circumstances which exempt from criminal liability.-The following are exempt from criminal liability:
>
> - An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> x x x

Considering that there is no dispute that the accused-appellant was confined at the National Center for Mental Health and was found to be psychotic and out of his mind, it is contended that the accused-appellant's mental illness was already existing at that time the accused-appellant killed the victim. Since in criminal cases, every doubt is resolved in favor of the accused, this circumstance favoring the innocence of the accused-appellant must be considered. Accused-appellant should, therefore, be exempt from criminal liability.

The contention is untenable.

For the exempting circumstance of insanity to be taken into account, there must be complete deprivation of intelligence at that time of the commission of the crime. In People v. Austria,[12] it was explained that:

> We have stated that when insanity of the defendant is alleged as a ground of defense or reason for his exemption from responsibility, the evidence on this point must refer to the time preceding the act under prosecution or at the very moment of its execution. In such case, it is incumbent upon defendant's counsel to prove that his client was not in his right mind or that he acted under the influence of a sudden attack of insanity or that he was generally regarded as insane when he executed the act attributed to him. In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of his mental condition during a reasonable period before and after. Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. A person's mind can only be plumbed or fathomed by external acts. Thereby his thoughts, motives and emotions may be evaluated to determine whether his external acts conform to those of people of sound mind. To prove insanity, clear and convincing circumstantial evidence would suffice.

The law presumes every man to be sane. A person accused of a crime who pleads the exempting circumstance of insanity has necessarily the consequent burden of proving it.[13] While he was observed to be out of his mind during the scheduled arraignment on July 5, 1990 and subsequently confined at the National Center for Mental Health for treatment, it does not necessarily follow that the accused-appellant was already suffering from psychosis at that time of the commission of the crime. Well-settled is the rule that an inquiry into the mental state of the accused-appellant should relate to the period immediately before or at the very moment the act was committed.[14] Unfortunately, no evidence was presented by the defense to show that the accused-appellant was insane before or at that time he inflicted the fatal wounds on the victim. The medical records do not even show that the accused-appellant had a history of any aberrant behavior. On the other hand, the prosecution presented convincing evidence that the accused-appellant treacherously waited for the victim at the dance party and killed him. He was even sane enough to flee from the scene and go to the police to report the incident.[15]

There is sufficient proof that the accused-appellant killed the victim based on the positive identification of the prosecution witnesses.

Felipe Mojica testified, to wit:

Q

On December 29, 1989 at 1:30 o'clock in the afternoon, do you remember where you were?

A

I was at Brgy. Canda, Sariaya, Quezon, sir.

Q

What were you doing then on said date and time?

A

We were playing basketball, sir.

Q

Who were your companions on said date and time in playing basketball?

A

Alejandro Magadia; Rustico Lontoc; and Marcelino Dolugin, sir.

Q

While you were playing basketball with the persons you mentioned, do you know of any unusual incident that happened?

A

There was, sir.

Q

What was that?

A

Alberto Condino arrived drank, sir.

Q

When Alberto Condino arrived while you were playing basketball, what did he do if he did any?

A

He challenged Alejandro Magadia on one on one basketball game, sir.

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Q

And what did Alejandro Magadia say with the offer of accused Alberto Condino?

A

He accepted the challenge and made a shot and after making the shot he gave the ball to Condino, sir.

Q

After Alejandro Magadia gave the basketball to Alberto Condino, what did Condino do?

A

Instead of throwing the ball to the goal he threw the said ball to a place and after that he drew a "gulukan" and chased Alejandro Magadia, sir.

Q

What did Alejandro Magadia do after he was chased by Alberto Condino with a gulukan?

A

He ran away, sir.

Q

What about you?

A

I took cover because I was afraid as he was holding a weapon, sir.

COURT

Wait. I thought you said gulukan. What is true, balisong or gulukan?

A

Gulukan, your Honor.

PROSECUTOR BUSTONERA

Q

Was Alberto Condino able to caught (sic) up Alejandro Magadia when he ran away?

A

No, sir. Alberto Condino was under the influence of liquor.

Q

At around 5:30 o'clock in the afternoon of December 29, 1989 where were you then if you can recall?

A

We were on the same barangay at Canda, sir.

Q

Who were your companions, if any?

A

The same persons I have mentioned before, sir.

Q

And while you were on said date and time on the said barangay, to what direction were you heading for?

A

We were going to a party at Brgy. Limbon, Sariaya, sir.

Q

While you were walking in Brgy. Limbon, Sariaya, Quezon, do you recall if any unusual incident occurred?

A

There was, sir.

Q

What was that unusual incident?

A

While we were walking towards the direction of Limbon, Condino was waiting for us and when Alejandro Magadia passed by, Condino stoned him hitting him on the left head.

Q

What happened to Alejandro Magadia after he was hit by Alberto Condino on the left of his head?

A

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He fell to the ground, sir.

Q

Meaning he lay flat to the ground?

A

With his face on the ground, sir.

Q

What happened next after Alejandro Magadia lay flat to the ground?

A

Condino immediately approached him and stabbed Magadia for 3 times, sir.

Q

In what part of his body was Alejandro Magadia hit by the stab made by Alberto Condino?

A

On the upper back and lower and left face, sir.

Q

How did it happen that Alejandro Magadia as you said was stabbed on the left face by Alberto Condino?

A

During his first stabbed thrust, Magadia was not hit. For the second thrust, Magadia fell to the ground but Magadia's face was turned upward that is why he was hit.

PROSECUTOR BUSTONERA

We will object to the interpretation. Hindi mabunot duon sa pagkasaksak sa likod.

Actg. Interpreter

When Alejandro Magadia was first hit on his back, the second hit, the gulukan penetrated at his back and when

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Condino was trying to pull up the gulukan, Magadia has moved his face a little backwards that is why he was hit on his lower face.

Q

Now, what was the condition of Alejandro Magadia when he was stabbed for 3 times by Alberto Condino?

A

He lay prostrate unconscious, sir.

Q

Was he able to defend back?

A

No, sir.

Q

Was he able to parry the attack of Condino?

A

No, sir.

Q

What about you, what did you do if you did any when Alejandro Magadia was being stabbed by Condino for 3 times?

A

I took cover because he was holding a gulukan.

Q

After Alberto Condino stabbed Alberto Magadia for the third time, what did he do next if he did any?

A

He was shouting, challenging anybody for a fight, sir.

Q

And after that, what did he do, if any?

A

He left the place, sir.

Q

And when Alberto Condino stabbed Alejandro Magadia for several times or rather for 3 times, how far were you?

A

Three (3) armstretches, more or less.

Q

How about Marcelino Dolugin and Rustico Lontoc how far were these persons from Alejandro Magadia while he was being stabbed by Condino?

A

3 armstretches, more or less, sir.

Q

And this Alberto Condino who stabbed Alejandro Magadia, is he inside the courtroom today?

A

Yes, sir.

Q

Please point to him?

A

(Witness pointed to the accused Alberto Condino).

Q

Prior to December 29, 1989, for how long have you known Alberto Condino?

A

For a long time because we are "barkada" or friends.

Q

Now, after Alberto Condino had left the place after shouting "sino pa", what did you do with the victim

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Alejandro Magadia?

A

We board (sic) him on a trolley and brought him to the hospital, sir.

Q

What happened to Alejandro Magadia?

A

He died before we reached the hospital but we still brought him to the hospital, sir.

Q

Prior to December 29, 1989, was there any altercation between you and Alberto Condino?

A

None, sir.

Q

You are not harboring any ill-feeling to Alberto Condino?

A

No, sir.

Q

Do you recall if you have executed a sworn statement in connection with this case?

A

Yes, sir.

Q

Where?

A

At the municipal hall of Sariaya, Quezon, sir.

Q

When did you execute this sworn statement in connection with the stabbing of Alejandro Magadia by Alberto Condino?

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A

That same day, December 29, 1989, ion the evening, sir.[16]

The other prosecution witness, Marcelino Cabutihan had this to say:

Q

Mr. Witness on December 29, 1989 at 5:30 o'clock, do you recall where you were?

A

In Canda, Sariaya, sir.

Q

Who were your companions, if any?

A

Marcelino Dulugin (sic), Alejandro Magadia, Felipe Mojica, Rustico Lontoc, sir.

FISCAL BUSTONERA

Q

Where were you going then at the said time and place?

A

We were going to a dancing party, sir.

Q

Where is that dancing party held on that said date and time?

A

Castanas, Sariaya, sir.

Q

Now while you were at Brgy. Canda on your way to Brgy. Castanas to attend to a dancing party, do you recall of any unusual incident that happened?

A

There was, sir.

Q

What was that unusual incident that happened that you are referring to that happened while you were on your way to the dancing party?

A

Alberto Condino immediately blocked our way and stoned the victim and while he was still lying on the ground he stabbed the victim, sir.

FISCAL BUSTONERA

Q

In what part of the body was Alejandro Magadia hit by that stoning by Alberto Condino that caused him to fell down?

A

At the head, sir.

What happened to Alejandro Magadia after he was hit by the stoning by Alberto Condino?

A

He fell to the ground with his face down, sir.

Q

What happen(ed) next after Alejandro Magadia fell to the ground lying flat with (sic) his face?

A

Alberto Condino stabbed Alejandro Magadia, sir.

Q

In what part of the body was Alejandro Magadia hit by Alberto Condino?

A

At the back, sir.

Q

How many times did Alberto Condino stabbed Alejandro Magadia?

A

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Two times, sir.

Q

What instrument was used by Alberto Condino in stabbing Alejandro Magadia for two times at the back?

A

A "gulukan", sir.

Q

Now how far were you from the two when you said you witnesses (sic) that Alberto Condino stabbed Alejandro Magadia at the back for two times with a "gulukan"?

A

More or less 20 meters, Sir.

Q

And what did Alberto Condino do if he did anything after he stabbed Alejandro Magadia?

A

He stood and challenged us to a fight, sir.

Q

And what was the response of your companions (and) of the companions of Alejandro Magadia?

A

We ran away, sir.

Q

Now after that what did you do next?

A

I stopped the trolley to board Alejandro Magadia and bring him to the hospital, sir.

Q

Were you able to stop the trolley and brought (sic) Alejandro Magadia to the hospital?

A

Yes, sir.

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Q

What happen(ed) to Alejandro Magadia?

A

Dead already, sir.[17]

The defense harps on the inconsistencies in the testimonies of the two eyewitnesses. Their testimonies allegedly contradict as to the number of wounds inflicted on the victim and the place of the dance party. Furthermore, witness Felipe Mojica did not mention that Marcelino Cabutihan was also with the group when the incident happened. To the defense, these inconsistencies are so material and sufficient to shatter the credibility of the two eyewitnesses.

We are not convinced. The Court has held that inconsistencies in the testimony of a witness with respect to minor details and collateral matters do not affect the substance, veracity, or weight of the witness's declarations.[18] The alleged inconsistencies pointed out by the defense are minor details which are not enough to negate the fact that the accused-appellant killed the victim on that fateful afternoon in a dance party.

Anent the charge that it was error for the ponente, Judge Ismael Sanchez, to give weight to the testimony of the prosecution witnesses as he was not the presiding judge at that time the prosecution and the defense adduced their evidence, this contention deserves scant consideration.

While it is true that Judge Ismael B. Sanchez acted on the case only in the last stage of the proceedings where the prosecution rested its case and waived its right to present additional rebuttal evidence,[19] such fact does not render his decision erroneous or irregular. It is axiomatic that a judge who did not hear a case may write the decision therein based on the records thereof.[20] As held in People v. Gecomo:[21]

> In these cases, the transcripts of the stenographic notes taken during the trial were complete and can be assumed to have been studied and examined by Judge Fortun, before he rendered his decision, under the presumption of regularity in the performance of official functions by public officers. Of course, the well-settled general rule that the trial court's findings as to the credibility of witnesses deserves respect from the appellate courts cannot be unqualifiedly applied. This is because, not having heard the testimonies himself, the judge is in no better position than the appellate courts to make such determination.

After a thorough evaluation of the evidence, the records of the case and the transcript of records, we find ourselves in accord with the findings of Judge Sanchez and give our stamp of approval in giving credence to the testimonies of the prosecution witnesses. On the other hand, the version of the accused-appellant that he killed the victim in self-defense is quite difficult to accept. As the trial court found:

> If it is true that accused merely acted in self-defense, from his own story, self-defense is negated by the fact that he was already safe when he left the place where the basketball game is being held. When he waited for four (4) hours and positioned himself to a place not known to the offended party and his companions, when the offended party passed by the place where he was, he threw a stone at the offended party which made him fell to the ground, lying prostrate and unconscious and thereafter stabbed the offended party at his back and different parts of the body. These facts cannot be an act of self-defense but, an act dictated by a determined intention to kill his victim. If the accused was really attacked by the victim, he must have sustained wounds caused by the offended party. And if the companions of Alejandro Magadia were really armed with deadly weapon or "gulukan" and he was attacked by the victim, Alejandro Magadia, victim's companions will surely join Alejandro Magadia in attacking the accused and he must have sustained wounds or die on this incident. This claim of the accused that Alejandro Magadia continued to attack him proved otherwise because Alejandro Magadia was already lying down, prostrate and unconscious.[22]

This finding of the trial court is supported by the testimony of Dr. Cecilio Macaraeg with regards to the wounds sustained by the victim. He explained, to wit:

Q

Dr. Macaraeg, the accused Alberto Condino testified during the trial that on March 3, 1995 that the victim Alejandro Magadia sustained the stab wound at the left abdomen as a result of the struggling while the accused and the victim allegedly fought on the ground while struggling for the bolo, what can you say to that?

A

My record on my findings still shows that the stab wounds was sustained. I have four (4) wounds that was recorded in my personal record, my log book, and the wounds sustained were four (4); 2, 3 and 4 were stab wounds; No. 2 wound was the stab wound, 1 cm long, 5 cm wide, 1 cm deep located at the left lower mandibular region; No. 3, is the stab wound, 2.5 cm. Long, 1 cm wide, 6 cm deep located at the medial aspect of the mid-portion of the left side, 3 cm to the left of the mid spinal line; No. 4 is the stab wound, 2.5 cm long, 1.5 cm wide, 8 cm deep, mid portion of the left side of the back, 8 cm to the left of the mid spinal line. There is no record in my medical certificate that show wounds in the abdomen, sir.

FISCAL BUSTONERA:

Q

And in the course of your medical assistance to the body of the victim did you see the stab wound at the left abdomen?

A

None, sir.

Q

Now, accused Alberto Condino likewise testified that he and the victim were struggling allegedly for a bolo and in the course of your examination on the cadaver of the victim, did you see any struggling sign on the cadaver of the victim?

A

When we say, if we mean the struggling sign of that it may be sustained in the arms or other parts of the body he don't have any, sir.

Q

You mean you did not see any struggling sign in the hands or body of the victim Alejandro Magadia?

A

I did not see any wounds in the upper extremities and other parts of the body only these 4 wounds, sir.

Q

Likewise Alberto Condino testified that when he saw the victim Alejandro Magadia he picked up a stone and throw (sic) it to the victim and hit him at the chin, now my question is, The wound was indicated at the left chin was it a wound or not?

A

It is a wound, sir, caused by sharp bladed instrument.

Q

So, you mean to say that the wound which you saw at the chin of the victim was not caused by a throwing of a stone but rather by a sharp pointed instrument like a bolo or gulukan?

A

Yes, sir.

Q

Now, that wound that you saw, Wound No. 1 which in your post mortem examination is a lacerated would (sic) could it becaused by a sharp pointed or a (sic) object like of a stone thrown at the victim?

A

It is hard object, sir, that has come into contact forcibly with the paretal (sic) region of the head, sir.

Q

You mean this wound was caused by the assailant while the victim was at the back of the assailant?

xxx

Witness:

A

It is possible, sir.

Q

Now, also doctor, this wound could you tell the relative position of the assailant to the victim while wounds 2, 3 and 4 were inflicted?

A

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Wound No. 2, stab wound, 1 cm long, 5 cm wide, 1 cm deep, located at the left lower mandibular region, most possible position is that the victim is in front of the assailant because it is located here, sir. Wound No. 3, stab wound, 2.5 cm long, 1 cm wide, 6 cm deep located at the medial aspect of the mid-portion of the left side 3 cm to the left of the mid spinal line, the most possible position is that the victim is in front of the assailant but the position of the victim is at the back; Wound No. 4, stab wound, 2.5 cm. Long, 1.5 cm. Wide, 8 cm deep, mid portion of the left side of the back, 8 cm to the left of the mid spinal line. This is located at the back of the victim, so the most possible position is that the victim is not facing the assailant, so that the assailant is at the back of the victim, sir.

FISCAL BUSTONERA:

Q

Now doctor, these Wounds 2, 3 and 4 are these entry wound or exit wounds?

A

Entrance wounds, entry wounds, sir.

Q

So, the accused here testified that the bolo hit the body of the victim and these wounds hit his body through and through, what can you say to that doctor?

A

My record shows that there were no wounds in the abdomen, sir.

Q

So all the wounds at the back are all entry wounds not exit wounds?

A

Yes, sir.[23]

There is no evidence to support the claim that the accused-appellant acted in self-defense. The wounds sustained by the victim clearly show that it was the victim who was helpless when the accused-appellant attacked him. The testimonies of the two eyewitnesses and that of Dr. Macaraeg morally convince us that the accused-appellant is indeed guilty beyond reasonable doubt of the crime as charged.

We, however, note that the mitigating circumstance of voluntary surrender was not appreciated by the trial court. From the evidence gathered, the accused-appellant reported the incident to the police immediately after the killing. Thus, a modification of the penalty imposed by the trial court is warranted.

The penalty for Murder under Article 248 of the RPC is reclusion temporal maximun to death. At that time the crime was committed in 1989, the death penalty was suspended; hence, the maximum period for the crime of Murder was reclusion perpetua. Considering the mitigating circumstance of voluntary surrender, the accused-appellant should therefore be meted the indeterminate penalty ranging from seventeen (17) years and four

(4) months of reclusion temporal in its medium period as the minimum, to twenty (20) years of reclusion temporal in its maximum period as the maximum.

WHEREFORE, the Court AFFIRMS with MODIFICATION the decision of the trial court in Criminal Case No. 90-361, convicting the accused-appellant Alberto Condino of murder and sentencing him to suffer the penalty of seventeen (17) years and four (4) months of reclusion temporal in its medium period as the minimum, to twenty (20) years of reclusion temporal in its maximum period as the maximum.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, p. 6-7.

[2] Records, p. 9.

[3] Id, at 19-20.

[4] Id., at 26.

[5] Id., at 29-31.

[6] Order dated September 18, 1990, Records, p. 34.

[7] Records, p.38.

[8] Decision, pp. 7-9, Rollo, pp. 24-26.

[9] Id., at 26-27.

[10] Id., at 36.

[11] Id., at 68-69.

[12] 260 SCRA 106 (1996).

[13] People v. Tabugoca, 285 SCRA 312 (1998).

[14] People v. So, 247 SCRA 708 (1995).

[15] TSN, March 3, 1995, p.8.

[16] TSN, February 4, 1993, pp. 3-10.

[17] TSN, August 10, 1993, pp. 4-8 (Underlining supplied).

[18] People v. Tulop, 289 SCRA 316 (1998).

[19] Decision, p. 7.

[20] People v. Gecomo, 254 SCRA 82 (1996).

[21] Supra, p. 94.

[22] Decision, Rollo, p. 15.

[23] TSN, January 10, 1996, pp. 3-9.

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