PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DOMINADOR PADAMA, JR. Y ALEJANDRO AND JOSEPH POLLANTE, ACCUSED, DOMINADOR PADAMA, JR., ACCUSED-APPELLANT.

G.R. No. 132137. October 01, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On June 12, 1997, at about 7:30 in the morning, Gerry Gatchalian left his store at the public supermarket in Cabanatuan City to take breakfast at a nearby canteen. He was chased by two men, each armed with a knife, and stabbed simultaneously several times. He eventually died of severe blood loss.

Dominador Padama, Jr. and Joseph Pollante were charged with murder on June 30, 1997. The amended information reads:

> "That on or about the 12th day of June, 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually aiding and abetting with one another, with intent to kill, with treachery evident premeditation and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one JERRY GATCHALIAN Y PINEDA, by stabbing the latter at different parts of the body thereby inflicting upon him mortal wounds which instantaneously caused his death.
>
> CONTRARY TO LAW."[1]

Upon arraignment, Dominador Padama, Jr. y Alejandro pleaded not guilty Joseph Pollante is still at large.

The prosecution presented three eyewitnesses: Julie Ann Seroriales, a saleslady in the grocery store of the victim Gerry Gatchalian, who was in front of the store putting goods on display; Fernando Mariano, a restaurant owner at the Supermarket who was buying fruits from a vendor when the incident happened; and Dominic Menao, a helper in the Gatchalian's store, who witnessed the stabbing eight steps away from where it happened.

Gerry Gatchalian sustained at least 13 lacerated wounds, including a fatal wound on the chest. The autopsy report (Exhibit "G" to "G-4") which was interpreted by witness Dr. Jun Concepcion of the City Health Office of Cabanatuan, revealed the following:

> "GENERAL DATA:
>
> GERRY P. GATCHALIAN, 37 years, male, married from Melencio Extension, Kapt. Pepe Subd., Cabanatuan City was a victim of hacking and stabbing incident which occurred at around 7:30 A. M. of June 12, 1997.

FINDINGS:

> Length : 180 CM

Head :

- Hacking wound #1-12-15 cm long and 3-4 cm deep along zygomatic area stretching down to the angle of the left mandible.

- Lacerated wound #1-2-3 cm. long; 2-3 cm. deep over eyebrow, left.

- Linear abrasion, 6-8 cm over left cheek.

- Confluent abrasion, zygomatic area and upper lid, right.

Chest:

Lacerated wound, 3-4 cm long and 4-5 cm deep midclavicular line, left; penetrating, the above mention injury caused a 2-3 cm laceration of the left upper lobe of the lung; 4-5 cm deep; blood of about one liter (1 li.) accumulates on the left pleural cavity.

- the rest of the internal structures in the chest are not affected.

- Lacerated wound; 2-3 cm. long and 1-2 cm deep, chest, left non-penetrating.

- Lacerated wound 2-3 cm midaxillary line, left.

- Lacerated wound 3-4 cm; 4-5 cm deep, suprascapular region, left.

Abdomen:

- Lacerated wound 3-4 cm; 2-3 cm deep just above the umbilicess.

- Gaping lacerated wound; 4-5 cm deep flank, left.

- Lacerated wound, 2-3 cm; 1-2 deltoid area, left.

- Lacerated wound 4-5 cm; 5-6 cm deep over lateral aspect distal 3rd arm, right.

- Lacerated wound, 2-3 cm –3-4 cm deep, prox 3rd forearm, right.

- Lacerated wound, 3-4 cm-5 cm. deep lateral aspect middle 3rd FA, right.

CAUSE OF DEATH:

FATAL STAB WOUND INVOLVING CHEST WITH SUBSEQUENT HYPOVOLEMIC SHOCK."[2]

The accused Padama, Jr. was arrested in Barangay San Antonio, Municipality of Muñoz, Nueva Ecija. The owner of the house, Nestor Ramos, where Padama, Jr. was arrested, surrendered a kitchen knife.[3]

Padama, Jr. denied the charge. He testified that when he heard that Gerry Gatchalian was stabbed by his friend Pollante he went to the place of the incident to prevent the latter from further stabbing the victim. He ran away out of fear when he heard the warning shots.[4]

The trial court found Padama, Jr. guilty. The dispositive portion of the decision reads as follows:

"WHEREFORE, premises considered, the Court finds, and so holds, the accused Dominador Padama, Jr. y Alejandro, guilty beyond reasonable doubt of the crime of Murder, and hereby sentences him to DEATH; he is likewise ordered to indemnify the heirs of the victim the sum of P50,000.00 and the sum of P210,000.00 representing burial expenses.

No moral damages are awarded as the same is subsumed in the civil indemnity for death (People vs. Daen, G. R. No. 112015, May 26, 1995)."[5]

The case is now before us on automatic review. Accused-appellant Padama, Jr. raises the following assignment of

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errors in his brief:

I

THE TRIAL COURT ERRED IN REJECTING THE ACCUSED DEFENSE OF DENIAL.

II

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE SAME.

III

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY UPON THE ACCUSED-APPELLANT.

Accused-appellant claims that the trial court's rejection of his defense of denial "sounds judgmental contrary to the accused's constitutional presumption of innocence." Under the second and third assignment of errors, which were discussed jointly, the appellant assails the court's finding of evident premeditation, which was allegedly not supported by any direct evidence, as there is nothing in the records to show that the killing was planned in advance.

After a careful examination of the evidence of record, we resolve to affirm the judgment of conviction and to modify the penalty to reclusion perpetua.

The evidence of the prosecution convincingly established the complicity of the accused-appellant. There were witnesses to the stabbing incident, which occurred early in the morning at 7:30 when it was already "very bright".[6]

The testimonies of the three witnesses were summarized by the trial court as follows:

> "Julie Ann Seroriales testified that she was a saleslady in the grocery store of the spouses Gerry Gatchalian y Pineda (the deceased victim) and Andrelina Gatachalian -situated at the Cabanatuan City supermarket. She came to know the two accused-namely, Dominador Padama, Jr. y Alejandro and Joseph Pollante during her seven-month stint at the store; in fact, she said, "they became friends."
>
> At about 7:20 o'clock in the morning of 12 June 1997, Gerry Gatchalian left his store to have breakfast an eatery nearby, Lovy's. While seated at the store where she worked, she saw the two accused, each wielding a knife-chasing her employer, Jerry Gatchalian (sic). When the two caught up with Gerry Gatchalian, accused Joseph Collante (sic) staffed the former, who, after being thus stabbed ran away. When Gerry Gatchalian fell down on the pavement, the two accused pounced on him simultaneously stabbing him. She could not definitely state the number of times the victim was stabbed but that there were many. The stabbing incident which occurred fast, happened about 10 to 15 paces from where she was seated at the store.
>
> When a gunshot rang out, the two accused simultaneously ran away in one direction. The victim still managed to run towards the store of his sister.
>
> She executed an affidavit (Exhibit A and A-1) on 23 June 1997 where she detailed what she saw.
>
> This witness identified the person of the accused inside the courtroom.
>
> Fernando P. Mariano, a restaurant operator inside the Cabanatuan City supermarket, happened to be in the vicinity-buying fruits from the stall of a friend-where the incident in question took place. He saw the actual stabbing incident, about two to three meters away from where he was- which took place at about 7:30 o'clock in the morning of 12 June 1997. He saw two man with bladed weapons in their hand chasing a man, who he

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later on came to know to be Gerry, the deceased victim therein.

When Gerry was about two to three meters away from where he stood, he (Gerry) fell down sidewise ("nakatagilid") on the pavement. For emphasis the following testimony of the witness Fernando Mariano is hereto reproduced:

'FISCAL MACARAIG:

Q: Who among the two men caught the victim and who first stabbed Gerry?

A: When Gerry fell down I saw Dominador Padama stabbed Gerry, sir.

Q: And what about this Joseph what did he do?

A: It was when Dominador Padama caught up with the victim who was then lying on the ground that Dominador Padama sat on top of Gerry and it was at that time when the victim was struggling with his feet it was the other accused Joseph who took hold of both feet and stabbed the victim for two consecutive times.

Q: Can you calculate how many times did these two accused stab simultaneously the victim?

A: There were man times, sir, I believe it could be 14 to 17 times, sir.

Q: What were the instruments that were used by the two accused in stabbing the victim?

A: One is a kitchen knife which is about 4 inches, more or less, and the other one is the one being used in slaughtering pigs called colonial which is about 6 inches.

Q: Do you have knowledge as to whether these particular instruments where recovered at the crime scene?

A: The one used by Joseph Pollante was recovered while the other one was carried by Dominador Padama, Jr.

[TSN 14 Aug. 1997, p.5]

FISCAL MACARAIG:

Q: While these two accused were simultaneously stabbing the victim will you please tell us if the victim was in a position to defend himself at that time?

ATTY. MAGBITANG:

The question is very leading.

COURT:

May answer.

A: He was lying flat on the ground with his hands trying to parry the stabbing, sir.'

The two accused ceased their stabbing frenzy only when this witness fired a warning shot in the air. The accused fled together in on direction.

Dominic Menao, is a helper at the store of the spouses Gerry (the deceased victim) and Andrelina Gatchalian.

At around 7:30 a. m., 12 June 1997, inside their grocery store at the Cabanatuan City supermarket, he heard a commotion outside their store; people were shouting. He was about eight (8) paces from where he saw his manager the victim Gerry Gatchalian, being stabbed by the two accused Dominador Padama, Jr. and Joseph Collantes. He identified the accused Padama inside the courtroom. He said the two accused held knives ("kutsilyo" in the vernacular) in their hands. At one specific time, he saw Joseph Collantes stab the victim in the abdomen, while Padama stabbed the victim in the chest. He could not, however ascertain the exact number

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> of times his employer was stabbed.
>
> The stabbing stopped only when a gunshot rang out wherein after the two accused fled together in one direction."[7]

The accused were both known to prosecution witnesses Seroriales and Menao as they were helpers in the store across the Gatchalian's store[8] and were identified in court. The accused-appellant himself could not offer any reason why the three eyewitnesses would testify against him.[9]

We find that the trial court did not err in ruling that the defense of denial is "overwhelmed by the convincing, straight-forward and probable testimonies of the prosecution witnesses" whose testimonies "to a man, xxx point to accused Padama as one of the perpetrators of the crime." The trial court also correctly held that the flight of the accused is an indication of his guilt or of a guilty mind. As correctly noted by the court, his flight "hardly speaks well of his supposedly honorable intention of stopping his co-accused Pollante from his plan to inflict harm" upon the victim.

The conclusion that the killing was attended with treachery or taking advantage of superior strength, as the two accused "each armed with bladed weapons and continuously attacking and raining knife thrusts upon the unarmed and unsuspecting victim which caused his eventual death" is also not to be disturbed. The evidence shows that the two accused took turns in stabbing the victim while the latter had already fallen down on the pavement.[10]

The crime of murder is committed where the killing is attended by among others "treachery, taking advantage of superior strength, with the aid of armed men, or employing means or persons to ensure or afford impunity"[11] and is punishable by reclusion perpetua to death.

However, we are unable to agree with the trial court's finding that the commission of the crime was aggravated by evident premeditation. Evident premeditation cannot be appreciated where there is no evidence of record of planning and preparation made by the accused to commit the crime.[12] Evident premeditation must be evident; not merely suspected, indicating deliberate planning.[13]

The requisites of evident premeditation are: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[14]

There is nothing on the records to show that accused-appellant and Joseph Pollante planned in advance the killing of Gerry Gatchalian. There was no evidence how and when the killing of Gerry Gatchalian was planned in advance.

The Solicitor General posits that the evidence shows that:

> "At about 11:00 o'clock in the evening of June 11, 1997, appellant learned from his co-accused Joseph Pollante and other persons that there was a quarrel between the victim and Pollante wherein the victim uttered to Pollante that he 'will be shot and his life is only worth P10,000.00'. (p. 8, tsn, September 30, 1997). Upon learning this, appellant confided to his co-accused Pollante that the victim had made a similar threat to him. Appellant claims that the victim was angry at him for courting their store helper, Julie Anne Seriorales, and that the victim suspected him of stealing shampoo from his store. The prosecution was able to elicit from appellant that before the stabbing incident, Pollante had made a resolution to kill the victim:
>
> 'Q May we know the reason why you tried to prevent Joseph Pollante from stabbing the victim?
>
> A Because I already thought that if he can kill the victim he will be pitiful and if he is killed, he will be the one to suffer, sir.

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Q Was there an occasion that you actually told this to Joseph Pollante? Before the incident occurred?

A I was able to inform him. Sir.

Q What was the reaction of Joseph Pollante?

A None, sir, he told me 'bahala na'

(p. 7, tsn, September 30, 1997)

The victim's wife, prosecution witness Andrelina Gatchalian, confirmed the animosity between appellant and the victim but for a different reason. According to Gatchalian, she was present when the victim confronted appellant and Pollante during the last week of March 1997 regarding the plan of the two accused to steal from their store which plan was uncovered when one of their store helpers informed the victim about it. Gatchalian recalled that when the victim confronted and warned the two accused not to repeat such a plan, the two accused stared at the victim with dagger looks (pp. 2-4, 7-8, tsn, September 11, 1997)."[15]

We are unable to sustain the contention that on the eve of the incident in question, Joseph Pollante had already resolved to avenge the victim's insults, a sentiment shared by appellant who also resolved a grudge or resentment against the victim of a similar insult and threat. Proof of the alleged resentment does not constitute conclusive proof of evident premeditation. An expression of hatred does not necessarily imply a resolution to commit a crime; there must be a demonstration of outward acts of a criminal intent that is notorious and manifest.[16]

Evident premeditation cannot be appreciated where there is no direct proof showing when accused-appellant conceived the plan to kill the deceased. That he clung to his determination to kill the deceased, and that sufficient time had elapsed between the determinate execution of the crime to allow his conscience to overcome the resolution of his will.[17] A finding of evident premeditation cannot be based on mere lapse of time, and must be clearly shown just as the crime itself.

We accordingly hold that the aggravating circumstance of evident premeditation cannot be appreciated to justify the imposition of the death penalty. In the absence of this aggravating circumstance, the penalty should be reclusion perpetua.[18]

As regards the actual expenses incurred for burial, the same was the subject of documentary[19] and testimonial evidence.[20]

WHEREFORE, the judgment of the court a quo finding Dominador Padama, Jr. y Alejandro guilty beyond reasonable doubt of the crime of murder directing him to indemnify the heirs of the victim the sum of P50,000.00 as indemnity for death, and the sum of P210,000.00 representing burial expenses; is hereby AFFIRMED; however the penalty imposed upon accused-appellant is reduced to reclusion perpetua.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Ynares-Santiago, JJ., concur.

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[1] Rollo, p. 10-A.

[2] Rollo, pp. 25-26.

[3] Exhibit "C"; Tsn, August 26, 1997, pp. 3-8.

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[4] Tsn, September 30, 1997, pp. 1-4.

[5] Rollo, p. 43.

[6] Tsn, August 20, 1997, at p. 13; Tsn, August 14, 1997 at p. 4.

[7] Rollo, pp. 22-24.

[8] Tsn, August 6, 1997, pp. 5-6; Tsn, August 20, 1997, p. 11.

[9] Tsn, September 30, 1997, p. 5.

[10] People vs. Tabasco, 270 SCRA 32; People vs. Gose, 247 SCRA 780; People vs. Alitao, 194 SCRA 120.

[11] Art. 248, par. 1.11

[12] People vs. Magsombol, 252 SCRA 187.

[13] Tsn, September 11, 1997, pp. 4-5.

[14] People vs. Belza, 258 SCRA 583; People vs. Magno, 260 SCRA 300; People vs. Juan, 254 SCRA 478.

[15] Appellee's Brief, pp. 10-12.

[16] People vs. Torejas, 43 SCRA 158; People vs. Magsombol, 252 SCRA 187; People vs. Salvador, 279 SCRA 164.

[17] People vs. Piamonte, prom. February 25, 1999.

[18] Art. 63, par. 2, Revised Penal Code.

[19] Exh. "I" and "J".

[20] Tsn, September 11, 1997, pp. 4-5.

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