PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO GABALLO, ACCUSED-APPELLANT.

G.R. No. 133993. October 13, 1999

Ponente: MELO, Acting C.J.

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MELO, Acting C.J.:

Before us on automatic review is the decision of the Regional Trial Court of the Seventh Judicial Region stationed in Dumaguete City (Branch 34) in its Criminal Case No. 13341 finding accused-appellant guilty of murder and sentencing him to suffer the supreme penalty of death. Disposed thus the trial court:

> WHEREFORE, accused ANTONIO GABALLO is hereby found guilty beyond reasonable doubt of the crime of MURDER, attended by the qualifying aggravating circumstances of treachery and abuse of superior strength, though the latter is absorbed by treachery pursuant to existing jurisprudence, and the presence of a generic aggravating circumstance which is his being "high" on drugs when he mercilessly and brutally stabbed to death the defenseless 14-year old unarmed female victim. The court finds no mitigating circumstances which may be appreciated in favor of the accused. Considering the senseless brutal killing of victim Amelita Cueco, taking into account the actuation of the accused during the incident and his demeanor during the trial where he seemed to be unrepentant and instead appeared to enjoy and relish the thought of having killed his hapless victim, the court is constrained to impose upon him the capital punishment of DEATH as provided for under the amendatory provisions of Section 6 of Republic Act No. 7659.
>
> Accused Antonio Gaballo is likewise hereby ordered to indemnify the family of the victim the sum of FIFTY THOUSAND PESOS (P50,000.00).
>
> The City Warden of the Dumaguete City Jail is hereby directed to immediately transmit the living body of accused Antonio Gaballo to the National Penitentiary in Muntinglupa, Metro Manila, where he will remain detained in its maximum security cell until the execution of the final judgment of the court.
>
> SO ORDERED.
>
> Promulgated this 30th day of April 1998 at Dumaguete City, Philippines.
>
> (Sgd.) ROSENDO B. BANDAL, JR.
>
> Judge
>
> (p. 45, Rollo)

A concise and accurate narration of the undisputed facts are summarized in the appellee's brief as follows:

> The students of Dumaguete Science High School usually pass an uninhabited shortcut road in going to said school. The shortcut is a pathway formed by the continuous passage of students and where thick shrubs of talahib and ipil trees were abundant on both sides of the road (TSN, Feb. 17, 1998, pp. 4-5).
>
> At around 6:30 a.m. of January 20, 1998, two construction workers, Matias Cañete, Jr. and Jimmy Ganaganag, heard a girl scream from a distance. Cañete then saw a girl being hugged and pulled by a man towards the ipil

trees (TSN, Feb. 19, 1998, pp. 5-6).

The two workers immediately ran towards the place where they heard the girl's scream. When they reached the place, Cañete stopped to observe the surrounding as there was silence. Ganaganag proceeded inside the bushes where he saw a girl in school uniform lying face down. Ganaganag also saw a man sitting down beside the girl. At that time, he was about three (3) armslength from the man (Ibid., pp. 14-16).

The man immediately ran away and while Ganaganag was running after him, he again saw the man's face as the latter looked back. Unfortunately, Ganaganag was not able to apprehend the then unidentified man (Ibid., p. 17).

Vice-Governor George P. Arnaiz, who resided near the Dumaguete Science High School, was summoned by his driver who reported the tragic incident to him. Arnaiz brought the young girl to the hospital where she was pronounced dead twenty minutes later. It was only in the hospital where Arnaiz learned that the young girl's name was Amelita Cueco (TSN, Feb. 17, 1998, pp. 7-8; 12).

Captain Petronillo Baldebrin directed PO2 Nathaniel Rubia to conduct a follow-up investigation into the killing of Amelita Cueco. During said investigation, Jose Percival Millan, a teacher at the Dumaguete Science High School, led the police investigator to the place where he had found the murder weapon—a Rambo-type knife, and a multi-colored bag with several items inside, which knife and bag he had earlier given to the police (TSN, Feb. 11, 1998, pp. 36, 52-55).

On the same day of January 20, 1998, a policeman brought Magdaleno Hinautan, appellant's barriomate who stayed with appellant at the Palace of Justice construction bunkhouse from November 25, 1997 to January 19, 1998, to the police station. At the station, Hinautan readily identified the bag and the knife as belonging to appellant (TSN, Feb. 10, 1998, pp. 54-66).

At around 10:00 p.m. of January 20, 1998, PO2 Rubia, accompanied by Magdaleno Hinautan, was able to trace appellant aboard the vessel GOERICH bound for Cebu City. PO2 Rubia invited appellant to the police station for further investigation. At the station, some of Rubia's police companions invited witnesses who were able to identify appellant as the one who killed Amelita Cueco (TSN, Feb. 11, 1998, pp. 56; 59-60).

Appellant assails his conviction and seeks reversal, arguing that he was not positively identified by prosecution's witnesses as the assailant, and that his guilt has not been shown beyond reasonable doubt.

From the records of the proceedings before the trial court, it appears that although accused-appellant pleaded not guilty to the crime as charged in the Information, he nevertheless admitted having stabbed and killed the victim in this case, to wit:

Clerk of Court: (Calling the case) Appearances?

PROSECUTOR DAVID B. MOLINA: The same appearance for the public prosecution, Your Honor.

ATTY. SALETO J. ERAMES: The same appearance for the private prosecution, Your Honor.

ATTY. CARLITO H. VAILOCES: Public Attorney's Office, Your Honor, for the defense.

COURT: Are you ready for arraignment?

ATTY. VAILOCES: We are ready for arraignment, Your Honor.

COURT INTERPRETER: (Translating the Information into the Cebuano dialect.)

ATTY. VAILOCES: Your Honor please, we pray that the designation of the offense as Murder be translated only to that of "pagpatay sa lipot".

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COURT:

Q. — Did you understand the Information filed against you?

ACCUSED:

A. — I understand, Your Honor.

Q. — Did you commit the crime filed against you?

A. — I did not commit the crime of murder with treachery.

ATTY. VAILOCES: Your Honor please, the accused understood the crime of murder as "pagpatay sa lipot", Your Honor, so he is in no position to understand the other qualifying circumstances, Your Honor, because earlier we made a manifestation that the designation of the offense as murder be translated only to that of "pagpatay sa lipot". So, that's the way he understood the designation of the offense, Your Honor.

COURT: The information does not only mention the qualifying aggravating circumstance of treachery. Embodied in the Information is also the allegation of abuse of superior strength as well as cruelty, and evident premeditation, on top of the allegation of treachery. So you have not apprised him about the other aggravating circumstances.

ATTY. VAILOCES: Your Honor, please, normally Your Honor, the crime of murder is always translated as "pagpatay sa lipot" , your Honor, normally. So, generally speaking, the crime of murder is translated as "pagpatay sa lipot". That already embraces all the qualifying circumstances, Your Honor, because abuse of superior strength is still "lipot", taking advantage, Your Honor. That's how the accused understood it, Your Honor, because that is the way it was explained to him, that all the qualifying circumstances constitute "pagpatay sa lipot".

COURT: You explain to him carefully because what is alleged in the Information is not only treachery. There are also allegations in the Information wherein the killing was attended by the qualifying aggravating circumstances of evident premeditation and cruelty, aside from treachery. If that is the case, we will have a short recess again so that you can confer with your client.

(tsn, Feb. 3, 1998, pp. 2-4)

Upon resumption of the arraignment proceedings, the following transpired:

THE COURT RESUMES SESSION:

COURT: Are you ready for the arraignment?

ATTY. CARLITO VAILOCES: Yes, Your Honor.

COURT INTERPRETER: (Translating the Information again into the Cebuano dialect.)

COURT:

Q. — Did you understand the Information filed against you?

ACCUSED:

A. — Yes, Your Honor.

Q. — Did you commit the crime filed against you?

A. — I am not guilty, Your Honor. I did not commit the crime with treachery, abuse of superior strength and cruelty, Your Honor.

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Q. — Are you responsible for the death of victim Amelita Cueco?

A. — Yes, Your Honor.

Q. — Are you the one who inflicted the mortal wounds on Amelita Cueco in the morning of January 20, 1998 in the City of Dumaguete?

A. — Based on my knowledge, Your Honor, I was able to stab once. I threw the knife for the second time, and it hit her body. Then I ran away.

ATTY. VAILOCES: Your Honor please, the accused already pleaded not guilty against the charge, Your Honor. We beg the indulgence of the Honorable Court, Your Honor, that it is enough that he has been confronted or he has been informed of the nature of the accusation against him. So we wish, Your Honor please, that whatever the prosecution has to prove his guilt, it must be proven during the trial, Your Honor.

COURT: The Court understands that. But from the tenor of the answer of the accused, he was trying to qualify the act of killing. And because of that the Court went further.

ATTY. VAILOCES: Your Honor please, it would be, with the permission of the Honorable Court, it would be easier for the accused if he will be asked what the crime then that he intends to plead. We cannot allow the accused to describe how he committed the offense, Your Honor. It is proper only during the trial, Your Honor, but not in this proceeding wherein he is to be arraigned. So, it would be easier, fair for the accused if he will be asked what crime then has to be committed, if any, because he pleaded not guilty to the offense as charged which is Murder.

COURT: From the tenor of the answer of the witness, it could be deduced that he would like to admit the killing of Amelita Cueco, but he is not amenable to the addition of the qualifying circumstances. So, in view of this, because of his answer which would qualify as to his plea, a plea of not guilty is being entered in his favor. Are you availing of the pre-trial conference?

ATTY. VAILOCES: We will avail, Your Honor please.

(tsn, Feb. 3, 1998, pp. 2-6)

Although it was clear that the trial court entered a plea of not guilty in favor of accused-appellant, this Court is still of the impression that the foregoing admission by accused-appellant somehow influenced the trial court as indicated in the following statements in its decision:

With the open court admission of accused Antonio Gaballo that he was responsible for inflicting the mortal stab wounds on victim Amelita Cueco which immediately resulted to her death in the morning of January 20, 1998, it would appear that the only issues to be resolved are 1) Whether the killing was attended with the qualifying aggravating circumstances of evident premeditation, treachery, abuse of superior strength and cruelty; 2) Whether generic aggravating circumstances were also present in the commission of the crime; 3) Whether or not there are mitigating circumstances that may be accorded to the accused; and 4) to what extent is the accused civilly liable?

(Rollo, p. 28)

It must be stressed that under Section 3, Rule 116 of the 1985 Rules of Criminal Procedure, even upon a plea of guilty to a capital offense, as what accused-appellant was charged with in the court below, evidence should be adduced before the trial court can impose the corresponding punishment for the offense upon which that plea was predicated (People vs. Albert, 251 SCRA 136 [1995]). The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form—death—for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty

(Ibid.). In keeping with its spirit, this rule should likewise extend to any incriminating admissions made by the accused during the arraignment. The evil sought to be avoided by an improvident plea of guilty to a capital offense is equally extant in case the accused improvidently admits having authored the act constituting elements of the crime such as killing the victim, for instance.

In the case at bar, there are no indications whatsoever that the trial court exerted efforts to apprise accused-appellant of the consequences of his admission of having killed Amelita Cueco. The trial court conducted no searching inquiry into the voluntariness and full comprehension of the consequences thereof. Neither was accused-appellant reminded of his constitutional right against self-incrimination. In view of Section 3, Rule 116 of the Rules of Court, an open court admission improvidently made by an accused during arraignment which may result in conviction of a capital offense is inadmissible evidence, in much the same way as a plea of guilty to a capital offense where the trial court inadequately discharged the duty of conducting a searching inquiry is null and void (People vs. Alicando, 251 SCRA 293[1995]). The bottomline of the rule embodied in Section 3, Rule 116 of the Rules of Court is that the plea of guilty must be based on a free and informed judgment (Ibid.) and this should also apply to incriminating admissions during arraignment. Conviction, should there be any, must be on the basis of the evidence presented by the prosecution and not upon improvident admissions of the accused during arraignment.

In the present review, the Court's concern should, therefore, be whether there is sufficient evidence to hold accused-appellant guilty of murder even after disregarding the admissions he made during the arraignment. After perusing the record, the Court is constrained to rule in the affirmative.

It is settled jurisprudence, as expressed in a fairly recent case, People vs. Monsayac (G.R. No. 126787, May 24, 1999), that:

> . . . even in the absence of direct evidence, conviction can be had if the established circumstances constitute an unbroken chain, consistent with each other and with the hypothesis that the accused is guilty, to the exclusion of all other hypothesis that he is not. The following requisites must be met before circumstantial evidence can sustain a conviction, to wit: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.
>
> (p. 9)

The plain and straightforward testimony of eyewitness Jimmy Ganaganag positively point to accused-appellant as the person he saw sitting right beside the victim who was then lying face down, motionless, except for some involuntary spasms of her feet (tsn, Feb. 19, 1998, pp. 15-16). The witness testified how accused-appellant, upon noticing his presence, immediately fled from the scene of the crime. Witness Ganaganag and another eyewitness further positively identified the long-sleeve shirt (Exhibit "M") worn by accused-appellant when they saw him at the scene of the crime, sitting beside the dying victim and later fleeing therefrom. Personal effects of accused-appellant consisting of a multi-colored and a rambo-type knife (Exhibit "C"), blue sweater (Exhibit "M") stained with blood; a white bag (Exhibit "G") containing personal belongings, one white towel, one colored towel (Exhibit "I"), gray short pants (Exhibit "J"); a plastic bag (Exhibit "K") containing underwear briefs and T-shirts (Exhibit "N"), and the school ID card of victim Amelita Cueco; and the plastic bag (Exhibit "O") containing rugby cement and several empty deodorants, and an empty bottle of mineral water, were also found at the scene of the crime. All of these items were duly identified by Magdaleno Hinautan, with whom accused-appellant stayed for several days at the bunk house at the construction site of the Hall of Justice (TSN, Feb. 10, 1998, pp. 52-54), as accused-appellant's belongings. Accused-appellant's biodata (Exhibit "HH") was also among the contents of the bag.

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Although nobody may have seen accused-appellant in the act of inflicting the mortal stab wounds on the victim, the unrebutted testimony of the witnesses for the prosecution point to him as the only person who may have been responsible for the commission of the crime to the exclusion of any other person. He was seen hugging and dragging the victim to the ipil-ipil trees. He was found sitting right beside the body of the dying victim. When he noticed the presence of one of the witnesses, he immediately fled. His personal effects, including the murder weapon, were found within the vicinity of the scene of the crime, including the blood-stained blue long-sleeve shirt he wore when he committed the crime. All these circumstances put together constitute an unbroken chain, consistent with each other and with the hypothesis that accused-appellant authored the crime charged to the exclusion of all other hypotheses that he is innocent. Moreover, these remained unrebutted evidence because accused-appellant although afforded ample opportunity to take the witness stand to oppose the same chose not to present any evidence to the contrary and we find nothing on record to discredit these evidence against him.

This Court has already ruled time and again that flight of an accused from the scene of the crime removes any remaining shred of doubt on his guilt (People vs. Cahindo, 266 SCRA 554 [1997]). We, therefore, have no misgivings that accused-appellant may be held criminally liable for the death of Amelita Cueco.

The trial court correctly ruled that the killing of Amelita Cueco was attended by the qualifying aggravating circumstance of treachery. Treachery is appreciated when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from any defense which the offended party might make (People vs. Tañedo, 266 SCRA 34 [1997]). For treachery to be present, two conditions must concur, namely: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted (People vs. Valles, 267 SCRA 103 [1997]). When the victim involved is a helpless child, these requisites are conclusively deemed present. Thus, in People vs. Bacalto (277 252 [1997]), we ruled that the killing of children, who by reason of their tender years cannot be expected to put up a defense, is considered attended with treachery even if the manner of attack is not precisely shown.

We, therefore, agree with the trial court that murder was committed in this case. Among the qualifying circumstances enumerated in the Information, only treachery may be correctly appreciated. Abuse of superior strength is necessarily absorbed therein. There are no other attendant aggravating circumstances. The trial court, therefore, erred when it appreciated the aggravating circumstance of the crime having been committed under the influence of dangerous drugs under Section 17 of Batas Pambansa Blg. 179, resulting in the imposition of the maximum penalty of death under Republic Act No. 7659.

Modification of the penalty is thus called for.

From a reading of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, the term “Dangerous Drugs” refers to either:

> (1) ”Prohibited drug” which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine, hallucinogenic drugs, such as mescaline, lysergic acid diethylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs and chemical preparations, whether natural or synthetic, with the physiological effects of a narcotic or a hallucinogenic drug; or
>
> (2) “Regulated drug” which include self-inducing sedatives, such as secobarbital, phenobarbital, pentobarbital, barbita, amobarbital and any other drug which contains a salt or a derivative of a salt or barbituric acid; and salt, isomer or salt of an isomer, of amphetamine, such as bensedrine or dexedrine, or any drug which produces

> a physiological action similar to amphetamine; and hypnotic drugs, such as methaquoalone, nitrasepam or any other compound producing similar physiological effects.
>
> (Paragraph (e), Section 2, R.A. No. 6425)

The trial court referred to the supposed admission of accused-appellant that he sniffed "rugby" when the crime was allegedly committed as its basis for appreciating the aggravating circumstance. The prosecution, however, failed to establish that "rugby" is a substance which falls within the definition of a dangerous drug under Republic Act No. 6425. Considering the highly technical nature of the issue of what constitutes "other drugs and chemical preparations, whether natural or synthetic, with the physiological effects of a narcotic or a hallucinogenic drug" as prohibited drugs, or "any other compound producing similar physiological effects" as regulated drugs, one cannot conclusively consider "rugby" as falling under any of these without any competent expert testimony to establish the same. This Court cannot, in conscience, take the life of a convict, on the basis of a mere presumption that "rugby" might fall under any of these definitions of what constitutes dangerous drugs. There has to be sufficient evidence which will constitute proof beyond reasonable doubt that "rugby" is a dangerous drug within the definition of the law. Absent such proof, we cannot consider the crime of murder to be aggravated by Section 17 of Batas Pambansa Blg. 179.

There being neither aggravating nor mitigating circumstances attendant in the crime committed, only the lower indivisible penalty of reclusion perpetua as provided in Republic Act No. 7659 may be imposed.

WHEREFORE, accused-appellant is found guilty beyond reasonable doubt of murder and the penalty of reclusion perpetua is hereby imposed. The award of civil indemnity in the amount of P50,000.00 in favor of the heirs of Amelita Cueco is affirmed. No pronouncement as to costs.

SO ORDERED.

Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., Bellosillo, and Kapunan, JJ., on leave on official business.

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