

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMELITO SITCHON Y TAYAG, ACCUSED-APPELLANT.

G.R. No. 134362. February 27, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

For beating to death the two-year old son of his common-law wife, accused-appellant Emelito Sitchon y Tayag was convicted of murder and sentenced to death by the Regional Trial Court of Manila. His case is now before this Court on automatic review.

Appellant was charged in an information stating:

That on or about June 12, 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one MARK ANTHONY FERNANDEZ y TABORA a minor, 2 ½ years old, by then and there mauling and clubbing him on the different parts of his body with the use of a steel hammer and a wooden stick, approximately 18 inches long, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[1]

Appellant pleaded not guilty to the above charge.[2] However, before testifying in his own defense on June 4, 1998, appellant admitted that he killed the victim and changed his plea to guilty.[3]

Five witnesses testified for the prosecution, namely, Lilia Garcia, a neighbor; the victim's eight-year old brother Roberto; the investigating officer, PO3 Paul Dennis Javier; Dr. Manuel Lagonera, medico-legal officer of the National Bureau of Investigation (NBI); and Felicisima Francisco, a forensic chemist of the same agency.

Appellant lived in the second floor of a three-square meter house located at 2001 Batangas Street, Tondo, Manila. His neighbor of two months, Lilia Garcia, resided in the first floor of the same house.

At about 10:00 in the morning of June 12, 1996, Lilia was in front of the house attending to her children when she heard the sound of a boy crying. Curious, Lilia went up the stairway, her children in tow. The open door of the upper floor allowed Lilia to witness appellant beating two-year old Mark Anthony Fernandez. From a distance of less than three arms' length, Lilia saw appellant hit various parts of the boy's body with a piece of wood, about 14 ½ inches in length and 2 ½ inches in diameter. Appellant also banged the head of the boy against the wooden wall.

The beating went on for about one hour. Lilia then saw appellant carry the boy down the house to bring him to the hospital. The two-year old was "already black" and no longer moving.[4]

Eight-year old Roberto Fernandez is the elder brother of the victim, also known as Macky. According to Roberto, Macky had scattered his feces all over the house. Appellant, whom Roberto called Kuya Chito, thus beat Macky

with a belt, a hammer and a “2x2” piece of wood. Roberto could not do anything to help his brother because he was afraid Kuya Chito might also beat him up. When Kuya Chito brought Macky to the hospital, his little brother, who could barely talk, was not crying anymore.[5]

Roberto identified the two pieces of wood[6] that appellant allegedly used in beating the victim. He also identified the T-shirt[7] that Macky wore when he died.

A certain Alice Valerio from the Galang Medical Hospital informed PO3 Paul Dennis Javier that a boy had been admitted there. When PO3 Javier went to the hospital, he found the boy already dead. He observed that the child had wounds on the left middle finger, the right index finger and both feet. The child also had lacerations in the upper lip and contusions all over his head and body.

PO3 Javier proceeded to appellant’s house at No. 2001, Batangas Ext., Tondo, Manila. Human feces and fresh blood splattered on the floor. PO3 Javier recovered from the house the broken wooden sticks, the steel hammer,[8] which were allegedly used to beat up the boy, as well as a bloodstained white T-shirt.

PO3 Javier then went to the house of appellant’s sister in Del Fierro St., Tondo, who informed him of matters relative to appellant’s identification. Thereafter, the police conducted a search operation in Cavite where appellant’s mother lived but they did not find him there. Later that afternoon, PO3 Javier learned that appellant had surrendered to Station 3 of their district.

The following day, a staff member of the television program Magandang Gabi Bayan turned over to PO3 Javier a brown belt which appellant allegedly also used in beating the victim. Roberto Fernandez, the victim’s brother, had given the belt to the staff member.[9]

Dr. Manuel Lagonera, medico-legal officer of the NBI, conducted the postmortem examination of the victim’s body on June 12, 1996 at 4:40 p.m. He found that the boy had suffered many injuries, including three wounds at the head and the anterior chest, which could have been inflicted with the use of blunt objects such as a piece of wood or a fist. The child could have been dead three to four hours, or not more than eight hours, prior to the postmortem examination. Dr. Lagonera concluded that the victim died of “bilateral pneumonia secondary to multiple blunt traversal injuries” or complication of the lungs due to said injuries.[10] The autopsy report of Dr. Lagonera shows that Mark Anthony Fernandez sustained the following injuries:

EXTERNAL FINDINGS:

- Multiple old scars, forehead.
- Healing lacerated wound, left forehead.
- Healed lacerated wound, above the left eyebrow, measuring 1.2x0.2 cm.
- Healed linear abrasions, left cheek.
- Lacerated wound, extending up to the mucous membrane of the upper lip, measuring 2 x0.3 cm.
- Contusion (sic), left temporo-parietal region, measuring 6x5 cms.
- Healing lacerated wound, left zygomatic region, measuring 0.5x0.3 cm.
- Contusion (sic), left jaw, measuring 1.5x1 cm.
- Contusion (sic), right anterior thorax, measuring 17x12 cms.
- Contusion (sic), right anterior forearm.

- Lacerated wound, tip of the forefinger, right.
- Old scar, upper 3rd , right anterior thigh.
- Contusion (sic), right lower leg, above and below the knee measuring 9x5 cms.
- Contusion (sic), left lower leg, above and below the knee, measuring 13x6 cms.
- Hematoma, big toe, under the nail bed, right.
- Contusion-abrasion, dorsum of the left foot, measuring 6x2 cms.
- Contusion (sic), left posterior thorax, measuring 17x6 cms.
- Contusion (sic), right postero-lateral thorax, extending up to the right lumbar region, measuring 13x6 cms.
- Contusion (sic), right posterior forearm, measuring 24x8 cms.
- Contusion (sic), left posterior forearm, measuring 22x7 cms.
- Healing abrasion, right buttocks, measuring 2x0.5 cm.
- Plucked finger nail, left middle finger, with hematoma of the nail bed.
- Posterior hand, both swollen.

INTERNAL FINDINGS:

- Presence of left sub-aponeurotic hematoma, temporo-parietal region and over the mid-occipital region.
- Hematoma over the sternum and pectoralis muscles.
- Both lungs showed patchy and confluent consolidations.
- Small amount of rice porridge was recovered from the stomach.[11]

Felicisima M. Francisco, NBI forensic chemist, conducted an examination to determine the presence and “grouping” of human blood found on the steel hammer, the wooden sticks, and the T-shirt that were sent to his office by P/Sr. Inspector Pedro Ramos Angulo, Jr. of the Western Police District in Manila.[12] She prepared Report No. B-96-941 stating that Specimen No. 1 or the steel hammer, was positive for human blood “but insufficient for blood group.” Specimen Nos. 2 (the broken wooden sticks) and 3 (the white T-shirt) were also positive for human blood “showing reactions of Group A.”[13]

Only appellant, 40, a sidewalk vendor, testified for the defense. As stated earlier, appellant admitted killing the two-year old victim, the son of his “live-in” partner. He and the boy’s mother had lived together for two years before the incident, starting when the boy was about a year old. He claimed he enjoyed a harmonious relationship with his partner and that he killed the boy only because he was under the influence of shabu, marijuana and Valium 10 at that time. Appellant professed that he began using drugs in 1974 and that he had also taken drugs two weeks before the incident.

On June 12, 1996, appellant came upon Macky playing with his feces, scattering them all over the pillow, the bed sheets and the curtains. Appellant scolded the boy, “Putang-ina ka Macky! Bakit mo ikinalat ng ganyan ang tae mo? Halika, dadalhin kita sa baba para hugasan!” Appellant got hold of Macky but the boy struggled to free himself from appellant’s grasp. Appellant, still reeling from the Valium 10 he had just taken, became so angry that he picked up a broom with a wooden handle, and hit the boy. Appellant did not realize that he had hit Macky hard until he saw the boy sprawled on the floor, breathing with difficulty. He dressed Macky and brought him to

the Galang Medical Center at the corner of Abad Santos Avenue and Tayabas Street, Manila. He prayed to God that nothing serious would happen to the boy.

A lady doctor immediately attended to Macky. Appellant pleaded to the lady doctor to do all she can to save the child; otherwise, he would be in serious trouble. After examining the child, the doctor told appellant that she could not do anything more – Macky was dead. The same day, appellant surrendered to the police. He was brought to the Homicide Section at 3:00 p.m.

Explaining his change of plea, appellant clarified that the killing of the boy was "accidental." He reiterated that he was under the influence of drugs, which he had taken one after the other. He was a drug dependent and, in fact, had been confined at the Tagaytay Rehabilitation Center. He said he was conscious when the incident happened but he simply did not realize that he had hit the child hard with the broom's wooden handle. He denied having hit the boy with a hammer or having banged his head against the wall. He hoped the trial court would be lenient with him because of his voluntary surrender. He prayed that the court would not impose upon him the death penalty.[14]

Nevertheless, on July 3, 1998, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused, Emelito Sitchon y Tayag, guilty beyond reasonable doubt of the crime of murder and is sentenced to suffer the death penalty and to pay the costs. The accused is further ordered to pay the mother of the victim Christina Tabora, moral and nominal damages in the respective sums of P100,000.00 and P50,000.00, plus death compensation in the sum of P50,000.00, with interest thereon at the legal rate from this date until fully paid.

SO ORDERED.[15]

The Court entertains little doubt that appellant is guilty of the killing of Mark Anthony Fernandez. Appellant's guilt was adequately established by the testimonies of Lilia Garcia and Roberto Fernandez, who both saw appellant beat Macky. These testimonies were further corroborated by those of PO3 Paul Dennis Javier, Dr. Manuel Lagonera and Felicisima Francisco, as well as the various pieces of object evidence. Indeed, appellant in open court admitted beating the poor child, which beating resulted in the latter's death.

That appellant purportedly did not intend to kill the toddler would not exculpate him from liability. Article 4(1) of the Revised Penal Code provides that criminal liability shall be incurred by any "person committing a felony (delito) although the wrongful act done be different from that which he intended." The rationale of the rule is found in the doctrine that "el que es causa de la causa es causa del mal causado" (he who is the cause of the cause is the cause of the evil caused).[16]

Thus, where the accused violently kicked the sleeping victim in vital parts of the latter's body, the accused is liable for the supervening death as a consequence of the injuries.[17] Assuming, therefore, that appellant merely intended to inflict physical injuries upon the boy, he is nevertheless liable for the death of the victim caused by such injuries.

The killing in this case was attended by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution without risk to himself arising from the defense which the offended party might make.[18] It is beyond dispute that the killing of minor children who, by reason of their tender years, could not be expected to put up a defense, is treacherous.[19]

Evident premeditation is absent. For the court to appreciate evident premeditation, the prosecution must prove: (a) the time the accused decided to commit the crime; (b) an overt act manifestly indicating that he clung to his

determination; and (c) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequence of his act.[20] The prosecution failed to establish any of these requisites.

The trial court incorrectly appreciated cruelty against the accused. The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission, or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse.[21] The nature of cruelty lies in the fact that the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him moral and physical pain which is unnecessary for the consummation of the criminal act which he intended to commit.[22] The sheer number of wounds, however, is not a test for determining whether cruelty attended the commission of a crime.[23]

The prosecution did not show that appellant enjoyed inflicting injuries upon the victim. The inordinate force employed by appellant appears to have been caused not by any sadistic bend but rather by the drugs that diminished his capacity.

The trial court also considered intoxication as an aggravating circumstance. The Solicitor General defends this ruling, contending that appellant's habitual drug addiction is an alternative circumstance analogous to habitual intoxication under Article 15 of the Revised Penal Code:

Intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

The Court does not agree. Article 13 of the Revised Penal Code provides a list of mitigating circumstances, which work to reduce the accused's penalty. Article 13(10) allows courts to consider "any other circumstance of a similar nature and analogous to those" mentioned therein. Neither Article 14 of the same Code on aggravating circumstances[24] nor Article 15 on alternative circumstances,[25] however, contain a provision similar to Article 13(10). Accordingly, the Court cannot consider appellant's drug addiction as an aggravating circumstance. Criminal statutes are to be strictly construed and no person should be brought within their terms who is not clearly within them.[26]

Appellant maintains that his plea of guilt mitigates his criminal liability. On this matter, this Court said in *People v. Ramos*: [27]

To effectively alleviate the criminal liability of an accused, a plea of guilt must be made at the first opportunity, indicating repentance on the part of the accused. In determining the timeliness of a plea of guilty, nothing could be more explicit than the provisions of the Revised Penal Code requiring that the offender voluntarily confess his guilt before the court prior to the presentation of the evidence for the prosecution. It is well-settled that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance.

As appellant changed his plea only after the prosecution had rested its case and just when he was just about to testify, said mitigating circumstance is unavailing.

The trial court credited appellant with the mitigating circumstance of voluntary surrender. For voluntary surrender to be appreciated, these elements must be established: (1) the offender has not been actually arrested; (2) he surrendered himself to a person in authority or an agent of a person in authority; and (3) his surrender was voluntary.[28] It is sufficient that the surrender be "spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense which will necessarily be incurred in searching for and capturing him.[29]

Appellant has failed to adequately prove voluntary surrender. While he claimed that he “surrendered” to the police on the same day that the victim was killed, he did not detail the circumstances like the time and place of such surrender. Neither did appellant state to whom he surrendered. He did not indicate if the person was a person in authority or an agent of the latter. PO3 Javier’s testimony that he “learned” of appellant’s alleged surrender is hearsay and does not serve to corroborate appellant’s claim.

The Court, however, discerns no intention on the part of appellant to commit so grave a wrong against his victim. Appellant’s intention was merely to maltreat the victim, not to kill him. When appellant realized the horrible consequences of his felonious act, he immediately brought the victim to the hospital.[30] Sadly, his efforts were for naught.

In view of the attendance of the aggravating circumstance of treachery, the killing of the victim is qualified to murder, punishable under Article 248 of the Revised Penal Code by reclusion perpetua to death. The murder was attended by the mitigating circumstance of lack of intention to commit so grave a wrong and there is no aggravating circumstance. Hence, the lesser penalty of reclusion perpetua must be imposed upon appellant.[31]

Appellant is liable for civil indemnity of P50,000.00 without proof of damages.[32] Moral damages that are recoverable for the mental anguish or emotional distress suffered by the heirs of the victim cannot be awarded here as the prosecution did not present any evidence to justify its award.[33]

WHEREFORE, accused-appellant Emelito Sitchon y Tayag is found GUILTY beyond reasonable doubt of Murder, as defined and punished by Article 248 of the Revised Penal Code, and is sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay the heirs of Mark Anthony Fernandez civil indemnity in the amount of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Records, p. 1.

[2] Id., at 17.

[3] TSN, June 4, 1998, p. 3.

[4] TSN, October 15, 1996, pp. 2-11.

[5] TSN, October 29, 1996, pp. 14-19.

[6] Exhs. “F” and “F-1.”

[7] Exh. “H.”

[8] Exh. “G.”

[9] TSN, October 29, 1996, pp. 3-11.

[10] TSN, November 12, 1996, pp. 2-5.

[11] Exh. “K.”

[12] Exh. “I.”

[13] Exh. "N."

[14] TSN, June 4, 1998, pp. 4-9.

[15] Records, p. 111.

[16] People vs. Ural, 56 SCRA 138 (1974).

[17] People vs. Flores, 252 SCRA 31 (1996).

[18] REVISED PENAL CODE, ARTICLE 14 (16).

[19] People vs. Palomar, 278 SCRA 114 (1997); People vs. Gonzales, 311 SCRA 547 (1999).

[20] People v. Biñas, 320 SCRA 22 (1999).

[21] People v. Iligan, 369 Phil. 1005 (1999).

[22] People v. Tazon, 320 SCRA 762 (1999).

[23] People vs. Panida, 310 SCRA 66 (1999).

[24] ART. 14. Aggravating circumstances. – The following are aggravating circumstances:

- That advantage be taken by the offender of his public position.
- That the crime be committed in contempt of or with insult to the public authorities.
- That the act be committed with insult or in disregard of the respect due to the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.
- That the act be committed with abuse of confidence or obvious ungratefulness.
- That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.
- That the crime be committed in the nighttime, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.

- That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune.
- That the crime be committed with the aid of armed men or persons who insure or afford impunity.
- That the accused is a recidivist.

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

- That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.
- That the crime be committed in consideration of a price, reward, or promise.

- That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.
- That the act be committed with evident premeditation.
- That craft, fraud, or disguise be employed.
- That advantage be taken of superior strength, or means be employed to weaken the defense.
- That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

- That means be employed or circumstances brought about which add ignominy to the natural effects of the act.
- That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance is effected by a way not intended for the purpose.

- That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.
- That the crime be committed with the aid of a persons under fifteen years of age or by means of motor vehicles, motorized watercraft, airships, or other similar means.
- That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

[25] ART. 15. The concept. – Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

[26] United States vs. Abad Santos, 36 Phil. 243 (1917).

[27] 296 SCRA 559 (1998).

[28] People v. Aquino, 314 SCRA 543 (1999).

[29] People v. Sambulan, 289 SCRA 500 (1998); People v. Ramos, supra.

[30] People vs. Ural, supra.

[31] REVISED PENAL CODE, ARTICLE 63(3).

[32] People v. Borreros, 306 SCRA 680 (1999).

[33] People v. Langres, 316 SCRA 769 (1999).

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