

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO BAGANO[] ALIAS PUGOT A.K.A. REYNALDO FRIOLO, AND PABLITO CAÑETE, ACCUSED-APPELLANTS.*G.R. No. 139531. January 31, 2002*

Ponente: BELLOSILLO, J.

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This is an appeal from the Decision[1] of the Regional Trial Court of Cebu City, Crim. Case No. CBU-39045, finding Reynaldo Bagano alias Pugot and Pablito Cañete guilty of murder.

Reynaldo Bagano alias Pugot a.k.a. Reynaldo Friolo and Pablito Cañete were charged with murder qualified by conspiracy and aggravated by treachery and evident premeditation in an Information dated 3 July 1995.[2] Upon arraignment, Reynaldo Bagano and Pablito Cañete pleaded "not guilty." On 15 October 1997 the trial court convicted both accused of murder for the killing of Jeremias Montecino and sentenced Reynaldo Bagano alias Pugot, a recidivist, to reclusion perpetua, and Pablito Cañete to seventeen (17) years, four (4) months and one (1) day of reclusion temporal to reclusion perpetua. They were further ordered solidarily to pay the heirs of Jeremias Montecino P50,000.00 as death compensation and P4,660.00 for burial expenses.

The court a quo rejected the defense of alibi and denial raised by accused Bagano and Cañete on the basis of the following findings: On 23 May 1995, about 3:00 o'clock in the morning, Jeremias Montecino and his wife Merlinda Montecino were sleeping in their home in Sitio Wangyu, Alaska, Barangay Mambaling, Cebu City, when they were awakened by someone repeatedly calling Jeremias' name. The call came from outside. Jeremias went to the window to see who it was and thereafter left their room to go outside. Merlinda remained in their room, but peering through the window she saw Pablito Canete suddenly embrace Jeremias as the latter was opening the gate. Thereupon, Reynaldo Bagano with ice pick in hand stabbed Jeremias on the chest. Jeremias struggled to free himself from Pablito Cañete's clasp and ran, but Reynaldo Bagano gave chase. Upon hearing Merlinda's screams for help[3] Reynaldo withdrew and fled with Pablito Canete following him. Merlinda rushed Jeremias to the Cebu City Medical Center but he succumbed to severe hemorrhage secondary to the stab wound on the left side of his chest. He died upon arrival at the hospital.

Accused-appellants Bagano and Cañete now argue that their conviction was erroneous as the prosecution failed to prove their guilt beyond reasonable doubt, grounded as it was on the testimony of Merlinda Montecino which they claim was unreliable and incredible. They question her claim to have vividly seen the stabbing incident when she admitted that the attack occurred at 3:00 o'clock in the morning when it was still dark. Assuming that they were indeed guilty of the killing of the victim, accused-appellants argue that they should only be convicted of homicide as the killing was not attended by treachery that would qualify the offense to murder.

The arguments of the defense are bereft of merit. Without falter or vacillation, Merlinda Montecino narrated in open court how accused-appellants attacked her husband; thus we have no reason to disbelieve her. Indeed, she admitted that at 3:00 o'clock in the morning darkness enshrouded the vicinity; nonetheless their front yard was

well-lit by a mercury bulb on a lamp post across their house which adequately illumined the place that enabled her to clearly identify the assailants,[4] particularly so that they were not strangers to Merlinda as they were friends of her husband who frequented their home.[5] They were therefore easily recognizable to her even in shadows.

As the widow of the victim and lone witness to the crime, Merlinda Montecino would not impute the killing of her husband on accused-appellants if she was not certain that they were his tormentors. She had no reason to. A witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in establishing the crime to accuse somebody other than the real culprit.[6]

Contrary to the claim of accused-appellants, treachery attended the killing of the victim. However, it is not because the attack was made at an unholy hour, or the victim was roused from his sleep, or that accused-appellants were known to the victim,[7] that we affirm the lower court's finding of treachery, but rather for the suddenness of the attack and the fact that the victim was unarmed with no opportunity to defend himself from the aggression.

Section 16, Art. 14, of The Revised Penal Code provides that there is treachery when the offender commits any of the crimes against 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. The elements of treachery are: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and, (b) the deliberate and conscious adoption of the means of execution. The law therefore stresses the manner of performance or accomplishment of the crime than any other factor. Circumstances of time and relationship will not be of relative importance unless they aided or made easy the execution of the crime and thus denied the victim the chance to defend himself. The fact that the attack was made at dawn and the victim who was the friend of the malefactors had just awakened may have facilitated the commission of the crime although the crime nonetheless may have been committed even without those circumstances. Treachery here was extant from the act of accused-appellant Pablito Cañete in locking the victim in a sudden embrace and giving his co-accused-appellant Reynaldo Bagano full opportunity to stab their victim on his left chest. The suddenness and the method employed by Cañete completely deprived Jeremias of any chance to defend himself.

As observed by Dr. Jesus Cerna, Police Medico-Legal Officer who conducted the autopsy[8] on the victim, the latter did not sustain any defensive wound, which meant that it was possible that he was not able to defend himself because somebody was holding his hands[9] or that the attack was so sudden. For this reason, we sustain the finding of treachery by the trial court.

From the records it is clear that treachery attended the commission of the crime, but this alone should be appreciated against accused-appellants. The aggravating circumstance of recidivism cannot be held against Balano as it was not alleged in the Information.[10] Be that as it may, treachery can only be considered as a qualifying circumstance that would affect the nature of the crime and not as a generic aggravating circumstance that would raise the penalty to death.

Conspiracy is attendant in the commission of the crime. For conspiracy to exist, it is sufficient that at the time of the commission of the offense the accused had the same purpose and were united in its execution.[11] Proof of an actual planning of the perpetuation of the crime is not a condition precedent. From the mode and manner in which the offense was perpetrated, and as can be inferred from their acts, it is evident that Bagano and Cañete were one in their intention to kill Jeremias Montecino. Hence, in accordance with the principle that in conspiracy the act of one is the act of all, the fact that it was Bagano who delivered the fatal blow on Montecino and Cañete's

participation was limited to a mere embrace is immaterial. Conspiracy bestows upon them equal liability; hence, they shall suffer the same fate for their acts.

Article 248 of The Revised Penal Code prescribes the penalty of reclusion perpetua to death for the crime of murder. Absent any mitigating or aggravating circumstance in the commission of the crime, the lower penalty of reclusion perpetua shall be imposed.

WHEREFORE, the Decision of the court a quo of 15 October 1997 in Crim. Case No. CBU-39045, finding accused-appellants Reynaldo Bagano alias Pugot a.k.a. Reynaldo Friolo and Pablito Cañete guilty of murder is **AFFIRMED** with the **MODICATION** that both accused-appellants shall suffer the penalty of reclusion perpetua. They are also ordered, in addition to P50,000.00 as indemnity for death and P4,660.00 for burial expenses awarded by the trial court, to pay jointly and severally the heirs of Jeremias Montecino P50,000.00 more for moral damages. Costs against both accused-appellants.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[*] Accused-appellant Reynaldo Bagano alias Pugot claims that he is also known as Reynaldo Friolo.

[1] Decision penned by Judge Antonio T. Echavez, RTC-Br. 8, Cebu City.

[2] Rollo, p. 9.

[3] Merlinda shouted “Tabang!” which meant “Help!” in Cebuano; TSN, 23 August 1996, p. 9.

[4] TSN, 23 August 1996, pp. 2-4.

[5] Id., pp. 8-9.

[6] *People v. Villanueva*, G.R. No. 122746, 29 January 1999, 302 SCRA 380.

[7] Brief for the Appellee, p. 16; Rollo, p. 107.

[8] Necropsy Report No. N-94-061.

[9] TSN, 26 September 1996, p. 4.

[10] Reynaldo Bagano was previously convicted of frustrated homicide in Criminal Case No. CBU-21056 while Pablito Cañete was convicted of theft in Criminal Case No. CBU-26907 (TSN, 25 January 1996, p. 6); see Note 2.

[11] *People v. Botona*, G.R. No. 115693, 17 March 1999, 304 SCRA 712.

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