

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TRIZON REMOLLINO, ALIAS EMING, DEFENDANT AND APPELLANT.

*G.R. No. 14008. September 30, 1960*

Ponente: PAREDES, J.

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### PAREDES, J.:

Trizon Remollino alias Eming was prosecuted for the crime of multiple murder under the following information:

"The undersigned accuses Trizon Remollino, alias 'Eming' of the crime of Multiple Murder, committed as follows:

"That on or about the 13th day of March, 1958 in the evening, in barrio Bacag, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill and armed with a carbine, Serial No. 6791173, did, then and there wilfully and feloniously fire at and shoot successively and at short intervals Isabelo Nozuelo, Carlos Nozuelo, Francisco Sepnio, Jacinto Sepnio, Santos Moreno and Epifanio Bascos, thereby inflicting mortal wounds on the different parts of the bodies of his victims causing their death as a consequence."

Before arraignment, the accused, through counsel, offered to enter a plea of guilty to the lesser offense of multiple homicide. The trial court allowed the accused to plead guilty to multiple homicide on the basis of which the said court rendered judgment, as follows:

"Wherefore, this Court finds the accused Trizon Remollino alias Eming, guilty beyond reasonable doubt of the crime of sextuple homicide, and hereby imposes upon said accused to suffer the penalty of not less than eight (8) years of prision mayor to not more than fourteen (14) years, eight (8) months of reclusion temporal in each and everyone of the three (3) homicidal acts, but in no case shall the accused suffer more than the maximum total penalty of forty (40) years under par. 4, Art-70 of the Revised Penal Code; and to indemnify the heirs of each of the deceased Isabelo Nozuelo, Carlos Nozuelo, Francisco Sepnio, Jacinto Sepnio, Santos Moreno and Epifanio Bascos, in the sum of P4,000.00 with costs against the accused.

This Court refrains from imposing further penalties for the three (3) other deceased in view of the prohibition contained in par. 4, Art. 70 of the Revised Penal Code."

Under the belief, however, that the penalty imposed is not correct, the said accused appealed directly to this Court alleging that the trial court erred: (1) In imposing upon him three separate penalties for the several homicides charged in the above information; and (2) In refusing to apply the provisions of Article 48 and paragraph 5 of Article 64 of the Revised Penal Code.

In other words, appellant contends that Article 48 of the Revised Penal Code on penalty for complex crimes which provides: "When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period" (As amended by Act No. 4000), should have been imposed. The display of

erudition by counsel as to the philosophy and spirit which animate the penal provision in question, fails, however, to convince us that Article 48 is applicable to the present case. From the allegations of the information, which appellant admitted with his plea of guilty, there can be no doubt that he shot six persons successively and at short intervals and that the deaths of said persons were the result of six separate acts. It can not be contended with any degree of plausibility that only one shot or single act had killed the six victims. Our jurisprudence is replete with precedents sustaining that acts, such as the one before us, should constitute separate crimes.

"But when the acts are wholly different, not only to themselves, but also because they were directed against two different persons, as when one fires his revolver twice in succession, killing one person and wounding another (U.S. vs. Ferrer, 1 Phil., 56), or when two persons are killed one after the other, by different acts, although those killings were the result of a single criminal impulse (People vs. Alfinado, 47 Phil., 1), the different acts must be considered as distinct crimes. So also, raping a girl and killing her afterwards constitute two distinct offenses which must be punished separately (People vs. Matela, 58 Phil., 718; 1 Reyes, L.B. Criminal Law, p. 382)".

In the case of *People vs. Jose Pardo, et al.*, 79 Phil., 568, the Supreme Court held:

"But the trial court erred in holding that the offenses in question constitute a complex crime. The two murders were not the result of a single act. The death of Captain Burchfield was produced by a shot different from that which killed Francisco Cañete. It will be recalled that two shots were fired, and this made additionally clear by the other fact that two holes were found in the wall, about a foot apart, and that a slug lodged in the left leg of Burchfield while another bullet was found not far from the prostrate body of Francisco Cañete .

In *People vs. Layos*, 60 Phil., 232, this Court said:

"It is noted, however, the trial court did not consider such findings strictly in conformity with the law inasmuch as it considered the act committed by the appellant as merely constituting the complex crime of double homicide when such is not the case, taking into consideration the spirit and text of Art. 48 of the Rev. Penal Code. According to said Article in order that the crime may be considered double homicide it is necessary that it be the result of a single act, as in the case of killing two persons at the same moment with the single stroke of the bolo or with a single shot.

"Our conclusion is that the defendant-appellant is guilty of two separate crimes of murder. (*People vs. Mabugat*, 51 Phil., 967)"

In the case of *People vs. Meliton Buyco*, 80 Phil., 58, this Court said:

"\* \* \* The Supreme Court of Spain held in its judgment of January 27, 1876, that one who, after a dispute, discharges four shots from a pistol, mortally wounding with the first one of the combatants and inflicting with the second physical injuries upon another, should be punished for the said crimes separately in accordance with Art. 88 of the Spanish Penal Code upon the ground that, although the shots were fired successively, they did not constitute one single but two diverse acts, for the two different persons at whom they were directed (*II Viada*, 5th ed. pp. 633-634). The same Tribunal in its judgment of Feb. 7, 1879, held that a person who, posting himself in front of four individuals, fires four shots with a pistol saying: 'toma tu, toma tu,' wounding two of them, is guilty of four different crimes of discharge of firearm against a determinate person, two complexed with that of physical injuries, since the four shots were produced by four distinct acts (*II Viada*, 5th ed. p. 636)."

"Where an accused began firing with his .45 caliber automatic pistol at a crowd gathered in front of a church, and when the crowd rushed inside the church the accused followed and continued firing at random until he was seized and overpowered, and disarmed by an Army sergeant who happened to be there, as a result of which firing two persons died and one seriously wounded who, however recovered due to medical aid, three separate crimes were committed. (*People vs. Basarain*, G.R. No. L-6690, May 24, 1955).

"Accused was prosecuted for killing two persons. Sixteen wounds were inflicted on one and five wounds on the other. Held: In order that a crime may be considered double homicide, in accordance with the provisions of Art. 48 of the Rev. Penal Code, it is necessary that it be the result of a single act, as in the case of killing two persons at the same moment with a single stroke of the bolo or with a single shot. The homicide perpetrated by the herein defendant on a woman and on another person did not constitute a single act but two distinct acts committed at different times. The former's death was the result of sixteen wounds inflicted upon her by the appellant and that of the latter was likewise the result of the five wounds which he inflicted upon her immediately afterwards. (People vs. Layos, 60 Phil., 224)." (Crim. Procedure, Padilla, p. 107, 1959 Ed.)

"The evidence presented by the prosecution in this case was strong enough to convict the accused who shot to death two brothers. One of the questions raised in the appeal was the lower court's decision in convicting the accused for the crime of double murder and not for complex crime. Held: A complex crime is committed when two persons are killed as a result of the same murderous act of the accused. When each one of the two deceased was killed by different and separate sets of shots fired, respectively, through two independent sets of acts of the accused, each one aimed exclusively at a victim, for each victim killed there is a separate and independent crime of murder. (People vs. Ordonio, 82 Phil. 324)." (Crim. Procedure, Padilla, p. 107, 1959 Ed.)

Of course, appellant cited the case of People vs. Lawas, G. R. Nos. L-7618-7620, in support of his cause. We are of the opinion, however, that the ruling in said case is predicated upon the peculiar circumstances surrounding the same, and it should not be applicable to the one at bar. Verily, the Lawas doctrine is more of an exception than the general rule. In the Lawas case we held each of the appellants guilty only of the complex crime of homicide, notwithstanding the fact that about fifty persons were killed. The evidence in said case revealed that the killings were the result of a single impulse, in obedience to the order of the appellants' leader to fire, which ceased only when the said leader gave an order to stop firing. There was no evidence at all to show the number of persons killed by each appellant. It was not possible to hold each appellant responsible for each death he actually caused, because there was no way to determine who were the particular persons killed by each appellant. That is why this Court in said case commented: "So even if we were induced to hold each appellant responsible for each and every death caused by him, it is impossible to ascertain the individual death caused by each and everyone. We are, therefore, forced to find the appellants guilty of only one offense, that of multiple homicide, for which the penalty to be imposed should be in the maximum". In the case at bar, the appellant alone killed all the six victims, one after the other, with one shot each.

Counsel submits that had the trial court appreciated the mitigating circumstances of plea of guilty and obfuscation, the penalty should have been reduced by one degree. Since the maximum penalty of 14 years and 8 months of reclusion temporal was imposed upon appellant for each homicide and the same is within the minimum of the penalty fixed for the crime, there being no aggravating circumstance to consider, it is logical to conclude that the trial court appreciated the mitigating circumstance of plea of guilty. As to obfuscation, it appears that appellant had not offered evidence to prove any other mitigating circumstance than the plea of guilty.

It is to be noted that the trial court sentenced the appellant in each of three (3) homicidal acts, without specifying for which of the six (6) homicides they were intended. Appellant should be sentenced, as we do hereby sentence him, to suffer the same penalty in each of the other three (3) crimes he had committed, and to pay an indemnity to the heirs of each of the six cases, in the sum of P6,000.00.

Holding, therefore, that the appellant Trizon Remollino alias Eming is guilty beyond reasonable doubt of six separate homicides, and modified in the sense just indicated, the judgment appealed from is affirmed in all other respects, with costs against the appellant.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, JJ., concur.

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