

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MONDIJAR Y GALLARES, ACCUSED-APPELLANT.

G.R. No. 141914. November 21, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Cataingan, Masbate, Branch 49, dated March 17, 1999, in Criminal Case No. 812, finding appellant Pedro Mondijar y Gallares guilty of the murder of Pamfilo Aplacador[2] and imposing upon him the penalty of death. Because appellant was more than seventy-nine (79) years old at the time of the commission of the offense, the sentence was commuted to reclusion perpetua, pursuant to Article 47[3] of the Revised Penal Code, as amended by Republic Act No. 7659.

Appellant and the victim were neighbors in Cataingan, Masbate. Although appellant was the father-in-law of the victim, apparently, there was bad blood between them. In a previous incident, the son-in-law (Aplacador) had stabbed appellant.[4] Whatever their quarrel, it was never patched up. A month later, the ill feelings erupted anew with fatal results for Aplacador.

In an information dated June 16, 1994 appellant was charged with murder committed as follows:

That sometime on February 26, 1994 at about 6:30 o'clock in the evening more or less, at Barangay Domorog, Municipality of Cataingan, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, above-named accused with intent to kill, evident premeditation, treachery, did there and then wilfully, unlawfully and feloniously, attack, assault, stab, hack, with the use of a sharp and pointed bolo, one PAMFILO APLACADOR hitting him at the different parts of his body which was the direct and the logical cause of his instantaneous death.

CONTRARY TO LAW.[5]

Upon arraignment, accused pleaded not guilty. Trial then ensued.

The Office of the Solicitor General (OSG) summed up the prosecution's version in its brief, as follows:

Around six o'clock in the evening of February 26, 1994, while prosecution witness Josephine Lebuga was at the back of her house located at Sitio Mangga, Domorog, Cataingan, Masbate feeding her pigs, she heard a commotion and shouting at the house of her neighbor appellant Pedro Mondijar. Appellant's house is about fifteen (15) meters away from Lebuga's house, thus, the sound coming from appellant's house was audible to Lebuga from where she was standing. Lebuga heard the voice of appellant's son-in-law, the deceased Panfilo Aplacador begging appellant "Pay, don't kill me because I am your son." Then she heard appellant reply, "Okay let's go to your house." After feeding her pigs, Lebuga went inside her house (citation omitted).

Around six thirty in the evening of the same day, prosecution witness Rogelio Booc was walking along Mangga Street, Cataingan, Masbate, on his way home. While working (sic), he saw his neighbor, herein appellant, on the road about fifty (50) meters away, walking behind Aplacador and holding a long bolo about thirty (30) inches in length. Appellant hit Aplacador on the neck with the bolo, thereby decapitating him. When

Aplacador fell down, appellant picked up the detached head and threw it about five armslength away from its body. Afraid of what he saw, Booc ran towards his house which is about two hundred meters away from the scene of the incident. Booc informed his wife about the incident and they closed all the windows of their house because they feared for their lives (citation omitted).

The following morning, February 27, 1994, instead of reporting the incident to the police, Booc went to appellant's house and told appellant that he saw a dead body lying along Mangga Street which looked like appellant's son-in-law. He told appellant to proceed to Domorog to seek the help of barangay councilor in getting Aplacador's body. Afraid that he might be killed, appellant did not heed Booc's advise but instead went to Burias Island, Masbate (citation omitted).

On that same day, prosecution witness Lilia Condrillon learned about the tragic death of her brother. She proceeded to the Philippine National Police Station of Cataingan, Masbate and filed a Complaint for the death of Aplacador with policeman Romy Meliton (citation omitted). Appellant was subsequently arrested by the police (citation omitted). An autopsy conducted on the remains of Aplacador revealed that he sustained the following mortal wounds:

1. 12 cm. Hacking wound right auricular[6] area reaching the brain stem;
2. 12 cm. Hacking wound right zygomatic area reaching the brain stem;
3. 10 cm. hacking wound right lower mandible;
4. multiple hacking wounds neck through and through.[7]

Dr. Allen Ching, who conducted the post-mortem examination of Aplacador's remains, testified that the victim died of cardio-respiratory arrest due to multiple stab wounds in the neck.[8]

For his part, appellant admitted killing the victim, but claimed that he only acted in self-defense. He testified that on February 26, 1994 at about 6:30 in the evening, he and his wife were in their house when Aplacador arrived as if looking for trouble. When appellant asked what Aplacador wanted, he did not reply but gritted his teeth. Appellant then told Aplacador to go home so there would be no trouble. Appellant proposed that he would accompany Aplacador on his way home. Appellant then got his bolo (minasbad), so he would use it to cut coconut leaves, which he would burn as a torch to light his way back home. When the two were about 50 meters from appellant's house, Aplacador, who was walking ahead of appellant, faced the latter and said, "I will stab you now." Aplacador then tried to stab him with his knife, but appellant parried the blow. Aplacador lunged again with his knife at appellant but missed because the latter was able to move backward. Thereafter, appellant hacked Aplacador twice, but was not sure whether he hit him for by then it was already dark. Appellant then went home and slept with his wife. The following day, he went to Burias Island. He also declared that a month before the incident, Aplacador stabbed him on the knee, thereby causing him to limp.[9] He claimed, however, that he did not bear a grudge against Aplacador. He likewise denied hacking the victim for being a wife-beater. Appellant insisted that he killed Aplacador because the latter tried to kill him.[10]

The trial court found the prosecution's version credible and convicted appellant. Its judgment reads:

ACCORDINGLY, the court finds the accused Pedro Mondijar guilty beyond reasonable doubt of the crime of MURDER and hereby imposes upon him the penalty of DEATH and shall indemnify the legal heirs the amount of P50,000 for the death of Pamfilo Aplacador, P30,000 for moral damages and P20,000 for exemplary damages.

Considering the age of the accused (over 70 years), pursuant to Sec. 25 of R.A. 7659, he is therefore entitled to a suspension of the execution of his death sentence (in case the herein death sentence is affirmed by the Honorable Supreme Court), thus, the death sentence shall be commuted to the penalty of reclusion perpetua

with all the accessory penalties under the code.

With costs de officio.[11]

Hence, this appeal assigning the following as errors:

I

THE LOWER COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF TREACHERY, ABUSE OF SUPERIOR STRENGTH AND EVIDENT PREMEDITATION AGAINST THE ACCUSED WHICH WERE NOT PROVEN BY THE PROSECUTION.

II

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PENALIZED UNDER ART. 248 OF THE REVISED PENAL CODE AS AMENDED BY RA 7659 INSTEAD OF PLAIN HOMICIDE.[12]

Considering the aforecited errors, we find that the issues before us pertain to: (1) the propriety of appellant's conviction for the offense charged; and (2) the presence of treachery, abuse of superior strength, and evident premeditation as qualifying circumstances.

On the first issue, appellant merely insists that prosecution witnesses did not prove his guilt beyond reasonable doubt. However, he does not cite any particulars for our consideration to support his contention.

For the appellee, the OSG counters that by claiming self-defense, appellant admitted killing the victim. Hence, the burden of proof was shifted to appellant to show that the killing was justified.

The OSG points out that appellant failed to establish unlawful aggression on the part of the victim, one of the elements necessary for self-defense to be sustained. Aplacador's "gritting of his teeth" hardly constituted unlawful aggression, says the OSG, adding that appellant's act of continuously hacking the victim after the latter fell down and was disarmed is unjustified because the supposed aggression had already ceased. According to the OSG, appellant exceeded the limits of necessity to suppress an alleged attack, and the number and location of the hacking wounds sustained by the deceased belied appellant's claim of self-defense.

The OSG's contentions are well-taken. When an accused invokes self-defense, he effectively admits the killing, and the onus probandi shifts upon him to show clearly and convincingly that the killing is justified and that no criminal liability is incurred.[13] For self-defense to prosper, the accused must satisfy the following requisites: (a) unlawful aggression by the victim, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the accused.[14] The accused must rely upon his own evidence and not on the weakness of the prosecution[15] in order to establish self-defense.

Assuming arguendo that the victim, Aplacador, did try to stab appellant, we agree with the OSG that appellant went beyond reasonable necessity in trying to prevent or repel the assault. The victim was not only disabled by multiple hack wounds; he was in fact decapitated. The nature and number of wounds inflicted upon the victim show that appellant's intentions went beyond trying to protect his person but sought to deliver serious harm, thus rendering self-defense unavailing in this case.[16] Appellant's claim of self-defense is, in our view, dubious. A plea of self-defense cannot be appreciated where it is not only uncorroborated by independent and competent evidence but is extremely doubtful by itself.[17]

On the second issue, appellant first argues that the trial court erred in appreciating alevosia as attending the killing of Aplacador. According to appellant, treachery was not proven because the prosecution failed to show how the

killing commenced or how the act unfolded. For treachery to exist, the mode of attack must be thought of by the offender, and not spring from the unexpected turn of events. Further, appellant states that the prior stabbing incident between him and the victim should have forewarned the latter of the possibility of an impending attack. In other words, appellant avers there was no sudden and unexpected attack on the victim.

For the appellee, the OSG contends that treachery was established beyond reasonable doubt. According to the OSG, when Aplacador pleaded with appellant not to kill him, and appellant told him to go home and that appellant would accompany him in going home, the victim was lulled into complacency. Hence, appellant's attack was completely unanticipated by the victim. That the victim was decapitated shows the severity and suddenness of appellant's blow, argues the OSG.

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 ensure its execution, without risk to himself arising from the defense which the offended party might make.[18] For treachery to qualify the act of killing to murder, two elements must concur: (1) the culprit employed means, methods, and forms of execution which tended directly and specially to insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity was given the latter to do so; and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him.[19] The essence of treachery is a swift and unexpected attack on the unarmed victim without the slightest provocation on the part of the victim.[20] Treachery is never presumed but must be proven with moral certainty like the offense itself.[21]

In that light, we find the prosecution's evidence insufficient to sustain a finding that alevosia qualified the killing to murder. The prosecution's sole eyewitness, Rogelio Booc, merely testified that appellant hacked the victim. There is no showing from his bare testimony as to how the hacking incident commenced. When the evidence does not establish how the assault started, treachery cannot be appreciated.[22] Moreover, no evidence was adduced to show that appellant consciously adopted the means he employed to ensure the victim's death without risk unto himself. That appellant offered to accompany the victim home does not suffice to show that the offer was deliberately adopted by appellant as means to deceive the victim, much less lull him into lowering his defenses. Significantly, the relations between appellant and the victim were marred by ill feelings. A month before the incident, Aplacador had stabbed and wounded appellant. Clearly, appellant and the victim had no love lost between them. They did not trust each other. Recurrence of violent quarrel between them was not out of the question. Otherwise put, the victim could not discount the possibility that appellant might retaliate for the previous stabbing, or otherwise seek to cause the victim bodily harm once an opportunity offered itself. Where an argument or quarrel preceded a killing, treachery cannot be appreciated since the victim could be said to have been forewarned and could anticipate aggression from the assailant.[23]

Appellant next contends that it was error for the trial court to find that abuse of superior strength characterized the killing, as it is highly improbable for a man of more than 70 years to be superior in strength to a man much younger. In addition, both the victim and the appellant were armed with bolos, adds appellant, so they were equally situated and there was no inequality of forces between them.

The OSG stresses, however, that appellant took advantage of superior strength as his bolo was bigger than that of the victim. This advantage in weapons allowed appellant to hack the victim with impunity. The OSG further points out the fact that appellant was not wounded, even superficially, despite his claim that the victim had tried to stab him, validating an indicium of inequality in their weapons and strength.

As previously held, there is abuse of superior strength if the assailant purposely used excessive force out of proportion to the means of defense available to the person attacked.[24] In the instant case it is not disputed that

both appellant and the victim were armed. That appellant's bolo is much longer than that of the victim would not show that appellant purposely used a greater force to his advantage. At the time of the incident, appellant was already seventy-nine (79) years old, while the victim was much younger. A month before the incident, appellant was stabbed on the knee, thereby causing him to limp. This handicap would indicate in terms of health, strength, agility, and superiority actually lies with the victim. Hence, we agree with appellant that there was no abuse of superior strength in this case.

Lastly, appellant argues that a close scrutiny of the prosecution's evidence clearly shows its failure to prove evident premeditation. The prosecution, according to appellant, failed to show that he had conceived a plan to kill his son-in-law. Appellant insists that the incident happened so fast there was no sufficient time for him to hatch a deliberate plan of attack. Instead, he merely relied upon and acted on the basis of man's natural instinct of self-preservation.

For the circumstance of evident premeditation to be appreciated, the prosecution must present clear and positive evidence of the planning and preparation undertaken by the offender prior to the commission of the crime.[25] Settled is the rule that evident premeditation, like any other circumstance that qualifies a killing to murder, must be established beyond reasonable doubt as conclusively and indubitably as the killing itself.[26] To consider evident premeditation, it is necessary that the following requisites be met: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow him to reflect upon the consequences of his act.[27] In the present case, no evidence was presented by the prosecution as to when and how appellant planned and prepared for the killing of the victim. There is no showing of any notorious act evidencing a determination to commit the crime which could prove appellant's criminal intent. Hence, we cannot agree that there was evident premeditation here, on appellant's part.

Further, the OSG submits that appellant's act of nonchalantly picking up the victim's head, and throwing it about five arms' length away, constitutes scoffing at the body of the deceased. However, since this was not alleged in the information, this cannot be appreciated as a qualifying circumstance. While appellant's act is condemnable, it cannot be considered here to qualify or aggravate the offense. For the 2000 Revised Rules of Criminal Procedure requires that the qualifying and aggravating circumstances must be specifically alleged in the information.[28] Although said Rules took effect only on December 1, 2000, well after the killing of Aplacador, it is a rule favorable to the appellant. Thus, it should be given retrospective application in his favor. Inasmuch as the circumstance of scoffing at the victim's corpse was not alleged in the information, it may not be considered to qualify or aggravate the offense.

For failure of the prosecution to properly prove the qualifying circumstances of treachery, abuse of superior strength, and evident premeditation, we conclude that appellant could only be declared guilty of homicide.

Coming now to the proper penalty to be imposed, Article 249 of the Revised Penal Code[29] provides that the penalty for homicide is reclusion temporal. The special mitigating circumstance that the offender is more than 70 years old having been established in this case,[30] the penalty of reclusion temporal ought to be imposed in its minimum period.[31] Applying the Indeterminate Sentence Law, appellant could only be penalized with an indeterminate penalty ranging from 6 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum.[32]

As to damages, the trial court properly imposed the amount of P50,000 as civil indemnity and P30,000 as moral damages for the pain, grief and shock suffered by the heirs of Pamfilo Aplacador. However, since there is no aggravating circumstance present in this case, the award of exemplary damages is not called for.[33]

WHEREFORE, the decision of the Regional Trial Court of Cataingan, Masbate, Branch 49, in Criminal Case No. 812 finding appellant PEDRO MONDIJAR Y GALLARES, guilty beyond reasonable doubt of the crime of murder is MODIFIED. Appellant is declared guilty of HOMICIDE only, and he is hereby sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum. He is also ordered to pay the heirs of the victim, Pamfilo Aplacador, the sum of P50,000.00 as civil indemnity and P30,000.00 as moral damages. Costs de oficio.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., on leave.

[1] Rollo, pp. 10-15.

[2] Also referred to as “Amplacador” or “Aplacado” in the records.

[3] ART. 47. In what cases the death penalty shall not be imposed; Automatic Review of Death Penalty Cases. – The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy (70) years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.

In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

[4] TSN, February 19, 1997, p. 6.

[5] Records, p. 1.

[6] TSN, December 6, 1995, p. 3.

[7] Rollo, pp. 69-71.

[8] TSN, December 6, 1995, p. 7.

[9] TSN, July 22, 1998, pp. 2-5.

[10] Id. at 12-13.

[11] Rollo, pp. 14-15.

[12] Id. at 31.

[13] People vs. Ignacio, 270 SCRA 445, 450 (1997).

[14] People vs. Amion, 353 SCRA 410, 420 (2001).

[15] Del Rosario vs. People, 356 SCRA 627, 632 (2001).

[16] Id. at 634.

[17] *People vs. Janairo*, 311 SCRA 58, 74 (1999).

[18] *People vs. Rivera*, G.R. No. 125895, July 4, 2002, p. 15.

[19] *People vs. Catian*, G.R. No. 139693, January 24, 2002, p. 10.

[20] *People vs. Garcia*, 357 SCRA 151, 167 (2001).

[21] *People vs. Domingo*, 312 SCRA 487, 501 (1999).

[22] *People vs. Ayupan*, G.R. No. 140550, February 13, 2002, p. 1.

[23] *People vs. Buluran*, 325 SCRA 476, 487 (2000).

[24] *People vs. Ellasos*, 358 SCRA 516, 533 (2001).

[25] *People vs. Flores*, 356 SCRA 332, 346 (2001).

[26] *People vs. Tabones*, 304 SCRA 781, 793 (1999).

[27] *People vs. Umayam*, G.R. No. 134572, April 18, 2002, p. 11, citing *People vs. Platilla*, 304 SCRA 339, 354 (1999).

[28] Rule 110. SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[29] ART. 249. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[30] REV. PENAL CODE. Art. 13. Mitigating circumstances. – The following are mitigating circumstances:

xxx xxx xxx

2. That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80.

[31] REV. PENAL CODE. Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

xxx xxx xxx

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

[32] See *People vs. Consejero*, 352 SCRA 276, 293 (2001).

[33] *People vs. Gutierrez*, 339 SCRA 452, 463-464 (2000).

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