

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. EDGAR DAWATON, ACCUSED.*G.R. No. 146247. September 17, 2002*

Ponente: BELLOSILLO, J.

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EDGAR DAWATON was found by the trial court guilty of murder qualified by treachery and sentenced to death, ordered to indemnify the heirs of the victim P50,000.00 plus the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency, and to pay the costs of suit.[1]

An Information[2] for murder qualified by treachery and evident premeditation was filed against Edgar Dawaton on 11 March 1999. When first arraigned he pleaded not guilty,[3] but during the pre-trial on 7 May 1999, he offered to plead guilty to the lesser offense of homicide but was rejected by the prosecution, hence, the case proceeded to trial.

The prosecution presented as witnesses the very persons who were with the accused and the victim during the incident, namely, Domingo Reyes and Esmeraldo Cortez. The prosecution also presented Generosa Tupaz, the mother of the victim, to prove the civil liability of the accused.

The evidence for the prosecution: On 20 September 1998 Esmeraldo Cortez was entertaining visitors in his house in Sitio Garden, Brgy. Paltic, Dingalan, Aurora. His brother-in-law Edgar Dawaton and kumpadre Leonides Lavares dropped by at about 12:00 o'clock noon followed by Domingo Reyes shortly after. All three (3) guests of Esmeraldo were residents of Sitio Garden. They started drinking soon after. At about 3:00 o'clock in the afternoon and after having consumed four (4) bottles of gin, they went to the house of Amado Dawaton, Edgar's uncle, located about twenty (20) meters away from Esmeraldo's house. They stayed at the balcony of the house and continued drinking. Amado Dawaton was not in.

Already drunk, Leonides decided to sleep on a papag or wooden bench, lying down on his right side facing Domingo and Edgar using his right hand for a pillow. Edgar, Domingo and Esmeraldo continued drinking until they finished another bottle of gin.

At about 3:30 in the afternoon, twenty (20) minutes after Leonides had gone to sleep, Edgar stood up and left for his house. When he returned he brought with him a stainless knife with a blade 2 to 3 inches long. Without a word, he approached Leonides who was sleeping and stabbed him near the base of his neck.[4] Awakened and surprised, Leonides got up and blurted: "Bakit Pare, bakit?"[5] Instead of answering, Edgar again stabbed Leonides on the upper part of his neck, spilling blood on Leonides' arm.

Leonides attempted to flee but Edgar who was much bigger grabbed the collar of his shirt and thus effectively prevented him from running away. Edgar then repeatedly stabbed Leonides who, despite Edgar's firm hold on him, was still able to move about twenty (20) meters away from the house of Amado Dawaton before he fell to the ground at the back of Esmeraldo's house. But even then, Edgar still continued to stab him. Edgar only stopped

stabbing Leonides when the latter already expired. Edgar then ran away towards the house of his uncle Carlito Baras situated behind the cockpit.

Domingo and Esmeraldo were positioned a few meters away from where Leonides was sleeping when he was initially assaulted by Edgar. They were shocked by what happened but other than pleading for Edgar to stop they were unable to help Leonides.

Domingo left for his house soon after the stabbing started as he did not want to get involved. Nonetheless he felt pity for Leonides so he returned a few minutes later.

By then, Leonides was already dead and people had already gathered at the site. The mayor who was in a nearby cement factory arrived and instructed them not to go near the body. They pointed to the direction where Edgar fled. Edgar was later arrested at the house of his uncle, Carlito Baras, at Sitio Aves, Brgy. Paltic, Dingalan.

Accused-appellant Edgar Dawaton was the sole witness for the defense. He did not deny that he stabbed Leonides Lavares but insisted that he was provoked into stabbing him. Edgar claimed that the night prior to the stabbing incident, or on 19 September 1998, his uncle Armando Ramirez went to his house to welcome his return from Cavite where he worked as a carpenter. They started drinking gin at about 7:00 o'clock in the evening and ended at 3:00 o'clock in the morning of the following day. He slept and woke up at 6:00 o'clock in the morning of 20 September 1998.

Apparently, he did not have enough of the prior evening's drinking orgy. He went to his uncle's house early that morning and after his uncle bought two (2) bottles of gin they started drinking again. Domingo Reyes arrived at around 7:30 in the morning and joined them. Esmeraldo Cortez joined them about 12:00 o'clock noon and bought two (2) more bottles of gin. Later, the group with the exception of Armando Ramirez transferred to the house of Esmeraldo upon the latter's invitation and drank two (2) more bottles of gin.

In Edgar's version of the stabbing incident, a drunk and angry Leonides arrived at about 2:30 in the afternoon and demanded that they - he and Edgar - return candles (magbalikan [tayo] ng kandila).[6] Leonides was godfather of a son of Edgar. Leonides also cursed and threatened to hang a grenade on Edgar (P - t - ng ina mo. Hintayin mo ako. Kukuha ako ng granada at sasabitan kita!).[7]

According to Edgar, he tried to calm down Leonides but the latter insisted on going home purportedly to get a grenade. Alarmed because he knew Leonides had a grenade, Edgar went home to look for a bladed weapon. He already had a knife with him but he thought it was short. Not finding another weapon, he returned to Esmeraldo's house.

When he returned, Leonides was still in Esmeraldo's house and had joined in the drinking. He sat opposite Leonides who resumed his tirades against him.

Again Leonides started to leave for his house purportedly to get a grenade. Afraid that Leonides would make good his threat, Edgar held on to him and stabbed him. He did not know where and exactly how many times he struck Leonides but he recalled doing it three (3) times before his mind went blank (nablangko).[8] Edgar also claimed that he was in this mental condition when he left Leonides and ran to the house of Carlito Baras. He did not know that he had already killed Leonides, only that he stabbed him thrice. He regained his senses only when he reached his uncle Carlito's house.

Edgar further said that he sought his uncle's help so he could surrender but he was told to wait because his uncle was then taking a bath. It was while waiting for his uncle when the policemen arrived to arrest him. He maintained that he voluntarily went with them.

The medico-legal certificate dated 24 September 1998 issued by Dr. Ernesto C. del Rosario[9] showed that the victim sustained a stab wound at the back and ten (10) stab wounds in front. He also had slash wounds on his left hand and his tongue was cut off. The immediate cause of death was determined to be "Hypovolemic Shock due to hemorrhage, multiple stabbed (sic) wounds." [10]

On 20 October 1999 the parties entered into several stipulations which were embodied in an Order.[11] Specifically, they admitted the veracity of the Sinumpaang Salaysay dated 21 September 1998 executed by SPO2 Ramil D. Gamboa and PO3 Gerry M. Fabros,[12] the police officers who arrested the accused; the genuineness and due execution of the medico-legal certificate issued by Dr. Ernesto C. del Rosario; and, the authenticity of the certificate of death[13] also issued by Dr. del Rosario. Thus, the presentation of the arresting officers and Dr. del Rosario as witnesses was dispensed with.

On 20 November 1999 the trial court convicted Edgar Dawaton of murder qualified by treachery and sentenced him to death.

We affirm the conviction of accused-appellant; we however modify the penalty imposed on him.

The conclusion that accused-appellant murdered Leonides Lavares was sufficiently proved by the testimonies of prosecution witnesses Domingo Reyes and Esmeraldo Cortez who both witnessed the fatal stabbing. This was not refuted by the accused himself who admitted that he stabbed the victim three (3) times before his mind went blank and could no longer recall what he did after that.

Treachery clearly attended the killing. The accused attacked the victim while the latter was in deep slumber owing to the excessive amount of alcohol he imbibed. We are not persuaded by the version of the accused that the victim threatened to harm him with a grenade and that it was only to prevent this from happening that he was forced to stab Leonides. We defer instead to the judgment of the trial court which gave more credence to the version of the prosecution witnesses inasmuch as it was in a better position to decide on the question of credibility, having heard the witnesses themselves and observed their deportment during trial.

According to the prosecution witnesses, the victim had no chance to defend himself as he was dead drunk and fast asleep. He had no inkling at all of what was going to happen to him since there was no prior argument or untoward incident between him and the accused. From all indications they were on friendly terms; as in fact they were even kumpadres. No one knew nor expected that when the accused momentarily excused himself, it was for the purpose of looking for a knife, and without any warning, stabbing the victim who was sleeping.

There is treachery when the attack is upon an unconscious victim who could not have put up any defense whatsoever,[14] or a person who was dead drunk and sleeping on a bench and had no chance to defend himself.[15] Clearly, the attack was not only sudden but also deliberately adopted by the accused to ensure its execution without risk to himself.

The accused argues that trial court erred in imposing the death penalty despite the attendance of mitigating and alternative circumstances in his favor.[16] He avers that he is entitled to the mitigating circumstance of plea of guilty. We disagree. While the accused offered to plead guilty to the lesser offense of homicide, he was charged with murder for which he had already entered a plea of not guilty. We have ruled that an offer to enter a plea of guilty to a lesser offense cannot be considered as an attenuating circumstance under the provisions of Art. 13 of The Revised Penal Code because to be voluntary the plea of guilty must be to the offense charged.[17]

Furthermore, Sec. 2, Rule 116, of the Revised Rules of Criminal Procedure requires the consent of the offended party and the prosecutor before an accused may be allowed to plead guilty to a lesser offense necessarily included in the offense charged. We note that the prosecution rejected the offer of the accused.

Nor can the accused avail of the mitigating circumstance of voluntary surrender as he himself admitted that he was arrested at his uncle's residence.[18] The following elements must be present for voluntary surrender to be appreciated: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority, and, (c) the surrender must be voluntary.[19]

Resorting to sophistry, the accused argues that he was not arrested but "fetched" as he voluntarily went with the policemen when they came for him. This attempt at semantics is futile and absurd. That he did not try to escape or resist arrest after he was taken into custody by the authorities did not amount to voluntary surrender. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily included in his search and capture.[20] It is also settled that voluntary surrender cannot be appreciated where the evidence adduced shows that it was the authorities who came looking for the accused.[21]

Moreover, the evidence submitted by the prosecution belies the claim of the accused that he intended to submit himself to the authorities. The joint affidavit of the arresting officers, the veracity of which was admitted by the parties and evidenced by a 20 October 1999 Order of the trial court, revealed that they chanced upon the accused trying to escape from the rear of the cockpit building when they came looking for him.[22]

Similarly, there is no factual basis to credit the accused with the mitigating circumstance of outraged feeling analogous or similar[23] to passion and obfuscation.[24] Other than his self-serving allegations, there was no evidence that the victim threatened him with a grenade. Domingo Reyes and Esmeraldo Cortez testified that there was no prior altercation or disagreement between Edgar and Leonides during the drinking spree, and they did not know of any reason for Edgar's hostility and violence. On the contrary, Esmeraldo Cortez even recalled seeing the two (2) in a playful banter (*lambingan*) during the course of their drinking[25] indicating that the attack on the accused was completely unexpected.

The accused would want us to reconsider the penalty imposed on him on account of his not being a recidivist. He contends that an appreciation of this factor calls for a reduction of the penalty.

We are not persuaded. Recidivism is an aggravating circumstance the presence of which increases the penalty. The converse however, that is, non-recidivism, is not a mitigating circumstance which will necessarily reduce the penalty. Nonetheless, we hold that the trial court erred in not appreciating the alternative circumstance of intoxication in favor of the accused. Under Art. 15 of The Revised Penal Code, intoxication of the offender shall be considered as a mitigating circumstance when the offender commits a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony. Otherwise, when habitual or intentional, it shall be considered as an aggravating circumstance.

The allegation that the accused was drunk when he committed the crime was corroborated by the prosecution witnesses. The accused and his drinking companions had consumed four (4) bottles of gin at the house of Esmeraldo Cortez, each one drinking at least a bottle.[26] It was also attested that while the four (4) shared another bottle of gin at the house of Amado Dawaton, it was the accused who drank most of its contents.[27] In addition, Esmeraldo testified that when Edgar and Leonides arrived at his house that noon, they were already intoxicated.[28] There being no indication that the accused was a habitual drunkard or that his alcoholic intake was intended to fortify his resolve to commit the crime, the circumstance of intoxication should be credited in his favor.

Consequently, we find that the trial court erroneously imposed the penalty of death. The accused was charged with murder for which the law provides a penalty of reclusion perpetua to death. Under Art. 63, par. 3, of The Revised Penal Code, in all cases in which the law prescribes a penalty composed of two (2) indivisible penalties,

such as in this case, when the commission of the act is attended by a mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. Since no aggravating circumstance attended the killing but there existed the mitigating circumstance of intoxication, the accused should be sentenced only to the lesser penalty of reclusion perpetua.

The trial court correctly ordered the accused to pay civil indemnity in the amount of P50,000.00 to the heirs of the victim without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor.[29] The heirs are also entitled to moral damages pursuant to Art. 2206 of the New Civil Code on account of the mental anguish which they suffered, and the amount of P50,000.00 is considered reasonable according to existing jurisprudence.[30]

WHEREFORE, the assailed Decision of the court a quo finding the accused EDGAR DAWATON guilty of MURDER qualified by treachery is AFFIRMED with the modification that the penalty is reduced from death to reclusion perpetua. The accused is ordered to pay the heirs of Leonides Lavares P50,000.00 in civil indemnity and P50,000.00 in moral damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Morales, and Callejo, Sr., JJ., concur.

[1] Decision penned by Judge Rebecca R. Mariano, RTC Br. – 96, Baler, Aurora; Records, p. 129.

[2] Records, p. 1.

[3] *Id.*, p. 19.

[4] TSN, 9 September 1999, p. 3; Esmeraldo Cortez testified that Leonides Lebares was first stabbed on his upper left shoulder, TSN, 21 October 1999, p. 3.

[5] TSN, 21 October 1999, p. 3.

[6] TSN, 19 July 2000, p. 7.

[7] *Ibid.*

[8] TSN, 19 July 2000, p. 8.

[9] Records, p. 8.

[10] *Ibid.*

[11] Records, p. 60.

[12] *Id.*, p. 11.

[13] *Id.*, p. 9.

[14] *People v. Flores*, G.R. No. 116524, 18 January 1996, 252 SCRA 31.

[15] *People v. de Guia*, G.R. No. 123172, 2 October 1997, 280 SCRA 141.

[16] Appellant's Brief, p. 5; Rollo, p. 45.

[17] *People v. Noble*, 77 Phil 93 (1946).

[18] TSN, 19 July 2000, p. 10.

[19] *People v. Nanas*, G.R. No. 137299, 21 August 2001.

[20] *Ibid.*

[21] *People v. Sumalpong*, G.R. No. 124705, 20 January 20 1998, 284 SCRA 464, citing *People v. Flores*, G.R. Nos. 103801-02, 19 October 1994, 237 SCRA 653.

[22] Par. 5 of the Sinumpaang Salaysay of the arresting officers states, to wit:

“Na, inabutan namin siya (Dawaton) na papatakas na sa likod ng Sabungan ng Dingalan ng Sitio Aves, Brgy. Paltic, Dingalan, Aurora at malapit na kami sa kanya (Dawaton) ay bigla siyang may ibinalibag na patalim sa sukalan bago humarap sa amin.”

[23] Art. 13(10), The Revised Penal Code.

[24] Art. 13 (6), *id.*

[25] TSN, 21 October 1999, p. 3.

[26] TSN, 9 September 1999, p. 8.

[27] TSN, 21 October 1999, p. 7.

[28] *Id.*, p. 6.

[29] *People v. Garcia*, G.R. No. 135666, 20 July 2001.

[30] *People v. Hapa*, G.R. No. 125698, 19 July 2001.

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