

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS AQUINO Y DIMACALI, APPELLANT.

G.R. No. 147220. June 09, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Caloocan City, Branch 129, finding the appellant Jesus Aquino y Dimacali guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua.

An Information charging Jesus Aquino y Dimacali with murder was filed on November 17, 1999.[2] The accusatory portion reads:

That on or about the 13th day of November, 1999 in Caloocan City and within the jurisdiction of this Honorable Court, the above-named accused without any justifiable cause and with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously stab with a double-bladed dagger one FILIPINA DE LEON y VILLA, hitting her on the different parts of the body, thereby inflicting upon the latter serious physical injuries, which injuries caused her instantaneous death.[3]

The appellant was arraigned on December 16, 1999, assisted by counsel, and entered a plea of not guilty.[4]

The Facts

The appellant Jesus Aquino and his live-in partner, Filipina “Sweet” de Leon, lived at No. 115 Libis, Talisay, Dulo, Caloocan City.[5] However, when Sweet got pregnant, her parents, who lived at No. 73 Kapak St., Libis, Dulo, Caloocan City,[6] took her away.[7]

In the afternoon of November 13, 1999, three months after she had given birth, Sweet, with her baby, went to the house of her sister, Helen Grace de Leon-de Ocera.[8] Momentarily, Leslie, the appellant’s daughter by another woman, went to Helen’s house to fetch Sweet, and told the latter that a male person was in their house waiting for her. Sweet told Leslie that she would just follow later.[9] Thereafter, Sweet, with her three-month-old son, arrived at the appellant’s house.[10]

When the appellant saw Sweet, he asked her what she was doing in the house of his friend Jun-Jun. Sweet did not answer. He forced Sweet to admit that she was having an affair with his friend Jun-Jun. Sweet raised her voice, prompting the appellant to slap her.[11] Sweet then saw the knife placed on top of the television and was poised to stab the appellant with it, but the latter grabbed possession of the knife. Sweet slapped the appellant in the process.[12] The appellant then lost control of himself, and stabbed Sweet eleven times. When he regained his senses and saw Sweet sprawled on the floor, bloodied all over, he fled to the cemetery and slept there.[13] At 6:00 a.m., he surrendered to Barangay Captain Conrado “Bebot” Cruz, who brought him to the police station.

A post-mortem examination of the victim’s cadaver was conducted by Dr. Ludivino J. Lagat. He found that Sweet died of multiple stab wounds. She sustained a total of eleven stab wounds, nine of which were at the

back.[14]

On November 16, 1999, the appellant executed a sworn statement[15] after being apprised of his rights under the Constitution, in which he admitted killing Sweet.

During the trial, the appellant admitted having executed his sworn statement in the police station and the truth of the contents thereof.

On February 19, 2001, the trial court promulgated a decision finding the appellant guilty beyond reasonable doubt of murder qualified by treachery, the dispositive portion of which is herein quoted:

WHEREFORE, premises considered, this Court finds the accused guilty beyond reasonable doubt as principal of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659. Accordingly, he shall serve the penalty of reclusion perpetua with all the accessory penalties under the law, and shall pay the costs.

The accused shall be credited with the period of his preventive detention.

By way of civil liabilities, the accused shall pay the following amounts to the victim's heirs, without subsidiary imprisonment in case of insolvency:

P80,000.00 – for funeral services;
P59,270.00 – for burial expenses;
P100,000.00 – for the victim's father's travel expenses; and
P50,000.00 – for attorney's fees to Atty. Arnel Magcalas

The Branch Clerk of this Court shall now issue the corresponding Commitment Order for the accused's confinement at the Bureau of Corrections, Muntinlupa City.[16]

The trial court appreciated in favor of the appellant the mitigating circumstance of voluntary surrender.

The Present Appeal

The appellant now appeals the decision, contending that the trial court erred in convicting him of murder, absent proof of treachery attendant to the crime.

The appellant avers that the stabbing incident was the offshoot of a quarrel. He asserts that the prosecution failed to prove that he killed the victim with treachery, and that while the victim sustained stab wounds at the back, the same does not constitute proof of such qualifying circumstance.

The Ruling of the Court

We agree with the appellant that he is guilty only of homicide. The qualifying circumstance of treachery was not sufficiently established by the prosecution. To prove treachery, the evidence must show that the accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself.[17] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation.[18]

Treachery must be proven as clearly and as cogently as the crime itself.[19] It is herein noted that the prosecution witnesses did not see the actual stabbing of the victim. As such, there is no way of determining how the attack was initiated, in the same way that no testimony would prove that the appellant contemplated upon the mode to insure the killing.[20] Absent any particulars as to the manner in which the aggression commenced, treachery cannot be appreciated against the appellant.[21]

What is clear after our review of the records is that the appellant and the victim were engaged in a quarrel, a heated argument which culminated in the appellant's stabbing the victim in the heat of anger. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim.[22]

Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. However, as the trial court found, the appellant voluntarily surrendered to Barangay Captain Conrado Cruz the day after the crime was committed. To be entitled to the mitigating circumstance of voluntary surrender, the same must be shown to have been spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense that will be incurred in his search and capture.[23]

The surrender of the appellant to Barangay Captain Conrado Cruz was reflective of such intent. Thus, the trial court correctly appreciated the mitigating circumstance in his favor. Since the appellant is entitled to such mitigating circumstance of voluntary surrender, and there is no aggravating circumstance to offset it, the maximum of the penalty should be imposed in its minimum period, pursuant to Article 64(1) of the Revised Penal Code. Applying the Indeterminate Sentence Law, the appellant may, thus, be sentenced to an indeterminate penalty, the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, which is prision mayor, and the maximum of which should be within the range of reclusion temporal in its minimum period. Thus, the appellant may be sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of prision mayor in its minimum period, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as maximum.[24]

Consistent with the prevailing jurisprudence, civil indemnity in the amount of P50,000 should be awarded without need of further proof.[25]

WHEREFORE, the decision appealed from finding Jesus Aquino y Dimacali guilty beyond reasonable doubt of murder is MODIFIED. The Court finds the appellant GUILTY beyond reasonable doubt of homicide punishable by reclusion temporal under Article 249 of the Revised Penal Code. Appreciating the mitigating circumstance of voluntary surrender in favor of the appellant, he is sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of prision mayor in its minimum period, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as maximum.

The appellant is further ORDERED to pay the heirs of the victim Filipina Villa de Leon the sum of P50,000 as civil indemnity and P50,000 as moral damages.

The award of P80,000 for funeral services,[26] P59,720 for burial expenses,[27] and P100,000 for the plane fare of the father of the victim from the United States[28] to the Philippines to attend the wake and funeral services of the victim are AFFIRMED. The award of P50,000 for attorney's fees is DELETED. No costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Bayani S. Rivera.

[2] Rollo, p. 4.

[3] Ibid.

[4] Records, p. 12.

[5] TSN, 26 October 2000, p. 5.

- [6] TSN, 10 March 2000, p. 3.
- [7] TSN, 26 October 2000, p. 5.
- [8] TSN, 24 January 2000, p. 6.
- [9] Ibid.
- [10] Id.
- [11] TSN, 26 October 2000, p. 13.
- [12] Id. at 7-9.
- [13] Id. at 15.
- [14] Exhibit “B,” Records, p. 57.
- [15] Exhibit “1-B,” Id. at 2.
- [16] Records, pp. 117-118.
- [17] *People v. Antonio*, 335 SCRA 646 (2000).
- [18] *People v. Dela Cruz*, G.R. No. 152176, October 1, 2003.
- [19] *People v. Real*, 308 SCRA 244 (1999).
- [20] *People v. Dela Cruz*, *supra*.
- [21] *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003.
- [22] *People v. Perez*, G.R. No. 134485, October 23, 2003.
- [23] *People v. Flores*, *supra*.
- [24] *People v. Eribal*, 305 SCRA 341 (1999).
- [25] *People v. Delim*, 396 SCRA 386 (2003).
- [26] Exhibit “S,” Records, p. 74.
- [27] Exhibit “S-1,” Id. at 75.
- [28] Exhibit “T,” Id. at 76.

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