

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PRIMO PARANA, DEFENDANT AND APPELLANT.

G. R. No. 45373. March 31, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

The accused Primo Parana appeals from the judgment of the Court of First Instance of Occidental Negros sentencing him, for the crime of murder committed on the person of Manuel Montinola, to the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the sum of P1,000, with the costs.

On the morning of May 19, 1936, in the municipality of Silay, Occidental Negros, the deceased, who was taking part in a game of monte in the house of Jose Lapuos, was informed by the chauffeur Valentin Poblacion that his brother Glicerio Montinola's car, which he had ordered for his trip to the municipality of Cadiz, was ready to start. Five minutes later the deceased came downstairs and upon reaching the street, he turned towards the car which was waiting for him. At that moment the chauffeur Poblacion, who saw the appellant behind the deceased in the attitude of stabbing him with a dagger, shouted to warn him of the danger, and the deceased, looking behind, really saw the appellant about to stab him. The deceased, defending himself, retreated until he fell on his back into a ditch two meters wide and 1.7 meters deep. Without lessening the aggression the appellant mounted astride of the deceased and continued to stab him with the dagger. As the chauffeur Poblacion had been making an alarm from the beginning, Liboro Montelibano, who was in a nearby drug store, about fifty meters away, went to said place and found the appellant astride of the deceased who was defending himself with his hands and feet from the blows the appellant gave him with the dagger. Montelibano wrested the dagger from the hands of the appellant who, finding himself disarmed, seized the revolver which the deceased carried in his belt and tried to fire at the latter without succeeding in his attempt because Montelibano likewise wrested said weapon from him. After the appellant and the deceased had been separated, the former still asked Montelibano for the weapon taken from him, but at that moment a policeman arrived and the appellant was placed under arrest. When the deceased was later removed from the ditch into which he had fallen, he was found wounded and was taken to the municipal building. He was later transferred to the provincial hospital where he was treated by Dr. Ochoa, expiring six days later, as a result of general peritonitis produced by one of his wounds.

The preceding night, at about 11 o'clock, monte had also been played in the house of Glicerio Montinola, brother of the deceased. The deceased took part in said game where the appellant was designated to attend to the players. One Lamay, who was also taking part in the game, gave the appellant the sum of P2 to buy beer. For failure of the appellant to immediately comply with this request, a discussion ensued between him and Lamay and, as both raised their voices, they were admonished by the deceased. As the appellant disregarded said admonition, the deceased slapped him and ordered him to leave the house. The appellant left and went to Lapuos' house where he lived, where the deceased took part in another game on the following day, and where said deceased came from when he was attacked.

At about 7 o'clock in the morning of the crime, the appellant purchased from the store of the Japanese Matzu

Akisama a hunting knife (Exhibit F), which is the same knife used by him in attacking the deceased.

On that same morning, at about seven thirty, the appellant went to the house of Crispin Espacio for whom he used to work, to ask to be excused from work that day as he intended to wreak vengeance on somebody. Espacio advised him against it as he might again go to Bilibid prison, inasmuch as he had already served a term for the crime of homicide.

These are the facts found by this court to have been established in this case, proving beyond all doubt that it was the intention of the appellant to kill the deceased, judging not only from the condition of the weapon with which he provided himself but also by the manner and circumstances under which he committed the aggression.

The appellant's testimony is the only evidence in his defense. According to him, on the morning of the crime he saw the deceased taking part in the game in Lapuos' house where he lived. The deceased then uttered threatening words to him, which he disregarded, leaving the house and going to a nearby Chinese store. Sometime, later, as he was on his way to Lapuos' house, he saw the deceased coming down and, approaching the latter, he spoke to him about the incident of the previous night and of their meeting a few minutes before, asking said deceased to forgive and not wreak vengeance on him. The deceased, by way of an answer, drew the revolver which he carried in his belt, and the appellant, in the face of such attitude, attempted to wrest the weapon from him. In the struggle the deceased fell on his back into a ditch and the appellant mounted astride of him, tried to wrest the revolver from him, and at the same time drew the knife which he carried, attacking the deceased therewith. When the appellant had succeeded in taking possession of the revolver, the deceased got up and walked towards the car. At that moment Liboro Mptelibano appeared and the appellant turned over the knife and the revolver to him.

This version of the incident given by the appellant in his testimony, without any corroboration, is contradicted by the testimony of the chauffeur Poblacion and of Liboro Montelibano. Furthermore it is improbable, taking into consideration the fact that he was the offended party, suffering from the injustice of the offense received, provided himself with a lethal weapon and approached the deceased, which circumstances do not agree with his attitude, according to his testimony.

The court correctly found that the qualifying circumstance of treachery was present in the commission of the crime.

The appellant, in spite of having seen the deceased in the upper story of Lapuos' house, did not wish to attack the latter there undoubtedly to avoid his being defended by the many players who were with him. Instead, he waited for the deceased at a nearby store until the latter came down, and attacked him while he had his back turned and could not see the appellant. All these, which were the beginning of the execution of the appellant's design to kill the deceased, constitute treachery inasmuch as they tended to avoid every risk to himself arising from the defense which the deceased might make (U. S. vs. McMann, 4 Phil, 561; U. S. vs. Pendleton, 7 Phil., 457; U. S. vs. Mercoleta, 17 Phil., 317; U. S. vs. Cabanog, 34 Phil., 620). It matters not that the deceased accidentally turned around upon hearing Poblacion's warning and was able to defend himself from the blow which, at that moment, the appellant was about to give him with a dagger, because the treacherous character of a means employed in the aggression does not depend upon the result thereof but upon the means itself, in connection with the aggressor's purpose in employing it. Otherwise the crime of attempted or frustrated murder would not be punishable (People vs. Reyes, 47 Phil., 635). For this reason the law does not require that the treacherous means insure the execution of the aggression, without risk to the person of the aggressor arising from the defense which the offended party might make, it being sufficient that it tend to this end.

However, even considering the incident at the moment the deceased turned around and saw the appellant in the attitude of stabbing him, this court also finds therein the elements of treachery inasmuch as the aggression, under

the circumstances, was so sudden that the deceased, who carried a revolver in his belt, had no chance to defend himself with it.

Considering the incident at the moment the appellant mounted astride of the deceased, who defended himself only with his feet and hands without having been able to use the revolver carried by him in his belt, when said appellant, in such situation, inflicted the wound which caused the death of the deceased, he likewise acted with treachery on the ground that, under the circumstances, he was not running, as in fact he did not run, any risk arising from the defense which the deceased might make.

And so, whether the beginning and the end of the aggression be considered singly, or the development thereof be considered as a whole, it is evident that the aggravating circumstance of treachery was present.

The aggravating circumstance that the appellant is a recidivist must be taken into consideration. The mitigating circumstance that he had acted in the immediate vindication of a grave offense committed against him a few hours before, when he was slapped by the deceased in the presence of many persons, must likewise be taken into consideration. Although this offense, which engenders perturbation of mind, was not so immediate, this court is of the opinion that the influence thereof, by reason of its gravity and the circumstances under which it was inflicted, lasted until the moment the crime was committed. Lastly, the other mitigating circumstance that the appellant had voluntarily surrendered himself to the agents of the authorities must be considered.

For the foregoing considerations, this court finds the appellant guilty of the crime of murder qualified by treachery, and, taking into consideration the presence of one aggravating and two mitigating circumstances in the commission of the crime, and applying the Indeterminate Sentence Law, Act No. 4103, he is sentenced to the penalty of from ten years of prison mayor, as the minimum, to seventeen years, four, months and one day of reclusion temporal, as the maximum, affirming the appealed sentence in all other respects, with the costs. So ordered.

Abad Santos, Imperial, and Diaz, JJ., concur.

DISSENTING

VILLA-REAL, J.,

I regret to have to dissent, from the worthy opinion of the majority in so far as it finds the circumstance of treachery established and takes it into consideration in order to qualify as murder the crime committed by the herein accused-appellant Primo Parana.

The accused-appellant, testifying on the aggression, said : "And when I went home, it was the precise moment when Manuel Montinola was coming down and we met on the way. I then called him saying: Please, I have to tell you something. I approached him and said: Maning, last night you slapped me and you still continue to talk against me; you do not pity me. It was you who took me to serve in that gambling house; if you take revenge upon me I shall lose the job and there is no other person to whom I can apply for help. I would die of hunger. Have compassion on me because I have not offended you. I have done nothing wrong against you and if I have committed an offense please forgive me. You used to give me something when you won in the game. By way of an answer he said to me: Go away, you are a fool, and immediately drew his revolver from his pocket. When I saw him take his revolver from his pocket, I held him by the wrist and he persisted in his efforts. I then jerked his hand and in the struggle he retreated until he fell into the ditch. I released him because he slipped from my grasp. He then pulled his revolver out of his pocket and I jumped into the ditch and seized his hand holding the revolver,

pressing it against his breast. With my left hand I took the revolver and with my right I unsheated the hunting knife, which I carried in my belt. I warned him saying: Do not fire your revolver seizing the barrel of the revolver with my left hand, twisting it with my right hand which carried the hunting knife. We struggled for the possession of the revolver and I succeeded in taking it away. I then left him and withdrew to a distance of about one braza from him while he got up and ran towards the car. Then Benito Abellar arrived and said to me: Give me your hunting knife and the revolver. Liboro Montelibano later arrived and said to me: Primo, do you know me? I answered: Yes, I know you. You are one of my friends. He told me: Turn over to me the revolver and the hunting knife."

Valentin Poblacion, a witness for the prosecution, testifying on the aggression stated briefly as follows:

As the deceased Manuel Montinola had borrowed his brother Glicerio Montinola's car, which was being driven by the witness as Glicerio Montinola's chauffeur, he (Poblacion) brought it at 10 o'clock in the morning of the day of the crime to the house of Jose Lapuos, where said Manuel Montinola was playing monte. The accused-appellant Primo Parana was also in said house playing monte. The witness left the car parked in front of Jose Lapuos' house and went up to notify Manuel Montinola. As Manuel Montinola told him to wait, the witness left the house and went to the car to do as he was told. About five minutes after he had left, he saw the deceased Manuel Montinola also coming downstairs. The Jatter told him to wait because he had yet to go to his house. The witness had hardly turned when, upon looking back, he saw the accused Primo Parana behind the deceased in the attitude of stabbing the latter in the back. The witness then called out to Manuel Montinola, saying: "Maning, Maning, Primo is going to stab you." Upon hearing this, Manuel Montinola turned around and, seeing the accused in the attitude of stabbing him, retreated defending himself. He fell on his back in the street near a ditch and in this position he continued to defend himself with his feet and hands until he finally fell into the ditch, which was a braza wide and threefourths of a meter deep, without ceasing to defend himself. This struggle lasted only about two minutes, in the course of which, the accused succeeded in inflicting a slight wound in the left side of Manuel Montinola's breast. Liboro Montelibano then came and, seizing the accused by his left side, wrested from him the dagger, Exhibit P, with which he stabbed the deceased,' and took the accused to the municipal building. The witness saw no revolver on the person of the deceased.

It will be noted that between the testimony of the accused-appellant and that of Valentin Poblacion, there is a discrepancy as to the commencement, of the aggression. While the accused-appellant states that he had a conversation with the deceased during which the latter called him a "fool" and drew his revolver from his pocket, which said accused-appellant tried to wrest from him, Valentin Poblacion stated that after he had informed Manuel Montinola that his brother Glicerio's car was at his disposal and Manuel told him to wait because he would first go home, he (Poblacion) went to his car, and, upon turning around, he saw the accused-appellant behind the deceased in the attitude of stabbing him. The testimony of the accused-appellant relative to the conversation had between him and Manuel Montinola is very probable inasmuch as on the morning in question both were at the house of Jose Lapuos from which they came down. This conversation was not contradicted by anybody.

Article 14 of the Revised Penal Code provides that "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 insure its execution, without risk to himself arising from the defense which the offended party might make."

If, as the defense claims, before the fight a conversation was had between the deceased and the accused, during which the deceased called the accused a "fool" and drew his revolver, it cannot be stated that the accused employed means, methods and forms in the fight which tended directly and specially to insure the infliction of the

wound, without risk to himself arising from the defense which the offended party might have made, on the ground that the deceased was not only the provoker but also the aggressor.

But even granting, for the sake of argument that the accused was about to stab Manuel Montinola, while the latter's back was turned, but he did not succeed in his attempt due to Valentin Poblacion's shouts of warning, it can not be said that he acted with treachery in wounding the deceased while the latter lay upon his back in the ditch, inasmuch as he had been defending himself with his feet and hands and his defense was so effective that the accused succeeded in wounding him only slightly. The attempted treachery disappeared from the moment Manuel Montinola became aware of the danger from the knife of the accused, to which his person was exposed, and was able to evade it by retreating until he fell into a ditch from which, as a cat upon its back, he defended himself with his feet and hands. In order that treachery may exist, it is necessary that the means, methods, or forms employed in the commission of any of the crimes against persons be made use of simultaneously or in such a combination as to afford the offended party no defense that may endanger the person of the aggressor. If in the development of a fight commenced treacherously by the aggressor, the offended party comes upon a chance to defend himself and is wounded, it cannot be juridically stated that he was wounded treacherously.

In view of the foregoing considerations, we are, therefore, of the opinion that treachery, as a circumstance qualifying the crime of murder, was not present in this case. The crime resulting from the facts established during the trial should be considered as a simple homicide and punished with the penalties prescribed therefor by the law.

CONCEPCION, J.:

I concur in the foregoing dissenting opinion of Justice Villa-Real.

CONCURRING AND DISSENTING

LAUREL, J.,

I yield to the conclusion of guilt of the appellant. I also accept the concurrence of the mitigating circumstance of vindication of a grave offense in favor of the appellant (par. 5, art. 13, Rev. Penal Code). I however join in the dissent from the opinion of the majority that treachery was present in the commission of the offense. I really do not think that the appellant had adopted a method or form of execution which tended directly and especially to insure the accomplishment of his purpose without risk to himself arising from any defense which Manuel Montinola could have made. The evidence for the prosecution is to the effect that the appellant was seen by the chauffeur Poblacion behind the deceased in the attitude of stabbing the latter. Poblacion called out to Manuel warning him and the latter turned around and, seeing the attitude of the appellant, retreated and in so doing fell on his back into a ditch (pp. 24, 26, 30, t. s. n., Set II). Seeing this the chauffeur cried out for help and brought to the scene Liborb Montelibano who was at the time at a drug store. Montelibano wrested from the defendant the knife, Exhibit F, and the revolver which the defendant had taken from the deceased. Whatever may be the rule as to the continuity of an attack, whether treachery must precede it (U. S. vs. Balagtas and Jaime, 19 Phil., 164) or may be considered if present at any time thereafter in the interval before its termination (U. S. vs. Baluyot, 40 Phil., 385), I express the opinion that upon the facts of this case there was no treachery. Although the defendant was in the attitude of stabbing the deceased from behind, that was at most a mere attempt, ineffectual, and the wound was actually inflicted while the appellant and the deceased were struggling in the ditch and in the course of which the deceased made quite an effective defense.

I believe that the appellant should be convicted of simple homicide with the aggravating circumstance of

recidivism, he having been previously convicted by final judgment of the Court of First Instance of Zamboanga in criminal case 2143 for the crime of homicide on July 20, 1921, which circumstance is compensated by the mitigating circumstance of immediate vindication of a grave offense. Considering the mitigating circumstance of voluntary surrender in his favor, he should be sentenced to an indeterminate penalty ranging from six years and one day, prision mayor, to twelve years and one day, reclusion temporal, with the accessory penalties provided, the indemnity, and the costs.

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