

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PUTITO CAFE, ALIAS “FRANCO”, DEFENDANT-APPELLANT.

G.R. No. 60674. October 28, 1988

Ponente: REGALADO, J.

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REGALADO, J.:

This is an automatic review of the decision of the Court of First Instance of Camiguin[1] in Criminal Case No. 272 thereof for the crime of murder, qualified by treachery, and imposing the capital punishment on the accused-appellant after trial upon an amended information which reads as follows:

That on or about February 7, 1931 at past 11:00 o'clock more or less in the morning, in Alangilan, Municipality of Sagay, Province of Camiguin, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly and unexpectedly attack and assault from behind one Julio Bactong, (sic) then and there hack, strike and stab the latter with a sharp-pointed bolo first seriously wounding him at the shoulder near the base of his neck, and afterwards when the victim was already unable to defend himself, again, stab and strike him in the stomach and many other parts of the body, which wounds being mortal thereby causing the direct and immediate death of said Julio Bactong.

That the crime was committed with insult or in disregard of the respect due the offended party on account of his age, the victim being already 74 years old; and it is further aggravated by the fact that the crime was committed in an uninhabited place.

Contrary to and in violation of Article 248 in relation with (sic) Article 14 Paragraphs 3 and 6 of the Revised Penal Code.[2]

The judgment therein considered two aggravating circumstances against and one ordinary mitigating circumstance in favor of the accused, thus:

WHEREFORE, in view of the foregoing consideration, the Court finds and so hold (sic) that the guilt of the accused Putito (sic) Cafe has been established beyond reasonable doubt of (sic) the crime of Murder qualified by treachery defined and penalized under Article 248, in relation with (sic) Article 14, Paragraphs 3, 13, and 16, all of the Revised Penal Code, with the aggravating circumstance of evident premeditation and lack of respect due the deceased Julio Bactong by reason of his age and taking into consideration, the mitigating circumstance of voluntary surrender, hereby declare Putito (sic) Cafe "GUILTY" beyond reasonable doubt of the crime of MURDER and hereby imposes on him the penalty of DEATH and to indemnify the heirs of Julio Bactong in the sum of P12,000.00.

SO ORDERED. [3]

The facts of this case, as succinctly narrated by the People, are borne out in the main by the record. On February 7, 1981, at around 11:00 forenoon, the victim, Julio Bactong, was in the store of Jesus Lantaca in Alangilan, Sagay, Camiguin. After purchasing two cans of "tinapa" and two bunches or packs of "bijon", he left for home.

The accused, with a bolo in its scabbard tied around his waist, followed Bactong and when they reached a relatively isolated place, the accused struck the latter on the left shoulder with his bolo. The victim turned towards his right whereupon the accused struck the victim again with his bolo on the right shoulder. Bactong fell down into a brook and, as he lay there on his back in the shallow water, the accused continued hacking and stabbing the victim. Thereafter, the accused left his bolo on the right palm of the victim and ran towards the national highway, with the scabbard of his bolo still tied to his waist. The corpse of the victim was wrapped and brought to his house by his neighbors. Later, that same day, Dr. Domingo Talian, resident physician of the Community Health and Medical Center of Sagay, Camiguin, performed an autopsy on the body of the victim and established the cause of death as "cardio-respiratory failure due to massive bleeding caused by multiple stab wounds".[4]

The evidence for the defense established that the accused and his family lived with Marina Zaballero, the aunt of his wife. He was working as a tenant of his said aunt-in-law on a parcel of riceland whose ownership was the subject of a controversy between Zaballero and the victim, Julio Bactong.

At about noon of the day of the killing of Bactong, Cafe confessed to Nicodemus Mabolo, Barangay Captain of Sagay, that he had killed the victim because of the latter's oppressive acts and threats against the accused. Cafe surrendered the scabbard of his bolo to Mabolo who thereafter accompanied the accused to the municipal building where, after Cafe reiterated his confession and surrendered the said scabbard to the station guard, Patrolman Eddie Suazo, he was put inside the jail.

Counsel de oficio, with commendable zeal, assails the decision of the trial Court under the following assignment of errors:

I

THE PROCEEDINGS IN THE TRIAL COURT, FOR BEING IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF AN ACCUSED, ARE NULL AND VOID.

II

THE TRIAL COURT ERRED IN FINDING THAT THE KILLING COMMITTED WITH THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT ERRED IN FINDING THAT THE CRIME WAS COMMITTED WITH THE AGGRAVATING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND LACK OF RESPECT DUE THE DECEASED BY REASON OF HIS AGE.

IV

ASSUMING, ARGUENDO, THAT THE KILLING WAS COMMITTED WITH THE QUALIFYING CIRCUMSTANCE OF TREACHERY, THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF LACK OF RESPECT DUE THE DECEASED BY REASON OF HIS AGE, WHICH AGGRAVATING CIRCUMSTANCE IS ABSORBED IN TREACHERY.

V

THE TRIAL COURT ERRED IN ADMITTING AND CONSIDERING THE EXTRA-JUDICIAL CONFESSION OF CAFE TO SUPPORT ITS FINDING OF GUILT OF THE ACCUSED.[5]

- It is the submission of the accused that the trial judge, by asking him questions which were allegedly misleading, lacking in basis and grounded on his presumed guilt, was thereby prejudiced against him and acted in disregard of his constitutional rights to due process, presumption of innocence and an impartial trial.

We have reviewed the entire record of the case and the transcripts of the hearings conducted therein but We find

no ground to sustain such attributions. The excerpts of the proceedings quoted in appellant's brief, taken in the proper context, reveal that while some questions propounded by the lower Court could have been better formulated, the thrust of the same was actually more for clarificatory purposes and were couched in direct and blunt language obviously in consideration of the educational level of the accused. In fact, the more active role taken by the trial judge in the examination of the witnesses must have been dictated by what was considered necessary for the ascertainment of the credibility of their testimony, considering the capital nature of the offense involved.

A fair assessment of the overall conduct of the case by the lower Court does not confirm the charge that there has been a departure from the judicial norms of impartiality and neutrality on the part of the presiding judge.

- Neither can we indulge the accused in his theory that the killing was not attended by treachery. Two eyewitnesses to the incident, Teodoro Lumayag and Nieves Macabinlar, definitely established that the accused, after following the victim for some distance, suddenly struck the victim from behind with a bolo, first hitting the latter on the left shoulder and following this with another hacking blow on the right shoulder. The victim was completely unaware of the coming attack from behind and was not in a position to repel the same or to defend himself. In fact, there is no intimation that the victim had made any attempt to flee or evade the attack, a cogent consideration showing that he was neither aware that he was being followed nor was he forewarned of the impending assault. Furthermore, the deceased was unarmed; instead he was holding two cans of "tinapa" and two packs of "bihon" which he had just purchased and was bringing home.

The testimony of the aforesaid two eyewitnesses[6] are categorical and there is no showing of any motive for them to falsify the truth. It strains credulity to accept the version of the accused-appellant and his witness, Ronulfo Gadot, that the fight between Cafe and Bactong began when the latter came towards Cafe and collared him, thus impelling the accused to defend himself by hacking the victim on the left shoulder. This theory that the acts of the accused-appellant were in the nature of a mere "natural defensive reaction" is readily unmasked as a puerile pretension since both testimonial and physical evidence show that Cafe thereafter and in rapid succession dealt another blow on the victim's right shoulder; and, when the victim fell down into a brook, Cafe continued hacking and stabbing him in that defenseless state. All told, the autopsy report[7] shows that the deceased sustained eight wounds, five of them in vital parts of the body.

Also, the defense appears to have overlooked the admitted fact that the accused-appellant is left-handed, hence the improbability of his inflicting the first wound on the left shoulder of the victim if they were facing each other considering the awkward movement involved in order to immediately draw his bolo and make such a backhand slashing stroke. Besides, although the deceased was bigger than the accused-appellant, it would be downright foolhardiness for him, and for no apparent reason, to throw his cans of "tinapa" and packs of "bihon" and confront the accused-appellant who was armed with a deadly razor-sharp pointed bolo 15-3/4 inches in length.

Still pursuing his theory of an initial frontal attack, the accused-appellant would seek solace in the indefinite reply of Dr. Talian, to an ambiguous question on cross-examination, "that all these wounds might have (sic) caused by the assailant while the assailant was facing towards Julio Bactong".[8] On the other hand, said witness had clearly explained that the first wound inflicted on the deceased was on his left shoulders at the base of the neck and "there were three wounds directed towards the back" of the victim.[9] The sketch[10] made by Dr. Talian also shows that the second wound inflicted on the right shoulder of the victim was likewise almost at the base of the neck on that side. Considering the length of the weapon used, there would be no difficulty of inflicting said two wounds by blows coming from upward behind the victim, as explicitly established by the aforesaid two eyewitnesses. At any rate, it has long been held that treachery is taken into account even if the deceased was face to face with his assailant, where the frontal attack was not preceded by a dispute and the victim was unable to prepare for his defense.[11] The act of the accused-appellant in following and approaching the victim from behind, the

suddenness of the attack, the weapon used and the continuity of the infliction of fatal wounds on the victim to ensure his death cannot but prove that the treacherous means and methods were deliberately adopted by the accused-appellant.

- We agree with the defense that evident premeditation was not present in the killing of the victim. It is too well-settled a principle dating back to *U.S. vs. Gil*[12] and reiterated with such consistency as would dispense with the need for citation of authorities, that evident premeditation requires proof of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he had clung to his determination; and (c) a sufficient lapse of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. None of the aforesaid elements are established by the record or the appealed decision. The findings of the Court a quo that the accused-appellant always carried with him the bolo hereinbefore described or that there had been disputes between the accused-appellant and his aunt-in-law, on the one hand, and the victim, on the other, while indicative of animosities, grudges or hostile posturing, do not per se warrant a finding of evident premeditation. In fact, in one case where the accused had even stated a few days before the killing that he intended to kill "a person", absent proof of the requisites herein before stated, such fact does not prove premeditation"[13]

- The People and the accused-appellant are in agreement, and correctly so, that the lower Court erred in holding that the offense was committed in disregard of the age of the victim. The mere fact that Julio Bactong was 74 years old does not warrant the appreciation of said aggravating circumstance against the accused-appellant in the absence of proof that the latter deliberately intended to offend or insult the age of the offended party.[14] In fact, it has not been denied that the accused-appellant in this case did not even know whether the deceased was more than 70 years or not.

- The last assignment of error assails the Court a quo for considering the extrajudicial confession of the accused[15] to support its finding of his guilt in violation of the Constitution and the jurisprudence on the matter. The appealed decision, however, shows that there was virtually no reliance on said extrajudicial confession to support the verdict of guilty. As correctly stated by the People, there is sufficient evidence establishing the guilt of the accused-appellant independently of his extrajudicial confession.

The crime committed is murder qualified by treachery, without any aggravating circumstance but with the mitigating circumstance of voluntary surrender to be appreciated in favor of the accused-appellant.

With the abolition of the capital punishment in the 1987 Constitution, the present penalty for murder is reclusion temporal in its maximum period to reclusion perpetua. ????? one mitigating circumstance, the penalty is imposable in its minimum period, or from seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months.

Applying the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or from ten (10) years and one (1) day to seventeen years and four (4) months.

WHEREFORE, the judgment appealed from is hereby affirmed except as to the penalty, which is hereby modified to an indeterminate sentence of twelve (12) years of prision mayor, as minimum, to eighteen (18) years and eight (8) months of reclusion temporal, as maximum. The accused shall pay an indemnity to the heirs of the victim, which is hereby increased to P30,000.00, and the costs. In all other respects, the judgment appealed from is affirmed.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Lone Branch, Judge Luis D. Manta, Presiding.

[2] Original Record, pp. 1-2.

[3] Original Record, p. 84.

[4] Exhibit B; tsn, pp. 10-11, April 20, 1981.

[5] Brief for Defendant-Appellant, p. 7.

[6] tsn, pp. 17-22, April 28, 1981; tsn, pp. 73-77, id.

[7] Exhibit A.

[8] tsn, p. 12, April 20, 1981.

[9] tsn, p. 7, *ibid*.

[10] Exhibit C.

[11] U.S. vs. Cornejo, 28 Phil. 457 (1914.); People vs. Basadre, 128 SCRA 641 (1984); People vs. Damo, 128 SCRA 665 (1984).

[12] 13 Phil. 530 (1909). Appellant's brief (pp. 22-23), specifically cites People vs. Verges, 105 SCRA 744 (1981); People vs. Puno, 105 SCRA 151 (1981); People vs. Del Valle, 103 SCRA 496 (1981); People vs. Beralde, 91 SCRA 125 (1979); People vs. Tison, 66 SCRA 372 (1975).

[13] People vs. Belchez, 22 SCRA 1321 (1968).

[14] People vs. Galapia, 84 SCRA 526 (1978).

[15] Exhibits E, E-1 to E-4.

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