

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. LUIS MISION Y SALIPOT, ACCUSED/APPELLANT.

G.R. No. 63480. February 26, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused Luis Mision y Salipot is before us on appeal from the decision of the Court of First Instance, Branch I, Masbate, convicting him of the complex crime of murder with frustrated murder and sentencing him to reclusion perpetua.

Appellant was the accused in Criminal Case No. 2029 in an information which read as follows:

"The undersigned Asst. Provincial Fiscal accuses Luis Mision y Salipot of the crime of Murder with Frustrated Murder, committed as follows:

That on or about October 24, 1978, in the evening thereof, at poblacion of the Municipality of Esperanza, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused with intent to kill, evident premeditation and treachery did then and there willfully, unlawfully and feloniously attack, assault and stab with a bladed instrument Mercy Dagohoy hitting the latter on the left shoulder and Luciana Dagohoy also hitting her on the chest, thereby inflicting [a] wound which caused the death of said Luciana Dagohoy several days thereafter; thus performing all the acts of execution which would have produced the crime of murder, as a consequence but nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely and able medical attendance rendered to said Mercy Dagohoy which prevented her death.

Contrary to law."[1]

The accused entered a plea of not guilty with the assistance of counsel de oficio during arraignment on 2 April 1979.[2]

After trial, the lower court rendered a decision dated 26 August 1981 finding the accused guilty of the crime charged. The dispositive portion of the decision states:

"WHEREFORE, premises considered, the guilt of the accused Luis Mision, having been proved beyond reasonable doubt, of the crime of Murder with Frustrated Murder, he is hereby sentenced to suffer the penalty of reclusion perpetua, together with all the accessory penalties provided for by law, to indemnify the heirs of Luciana Dagohoy the amount of TWELVE THOUSAND (P12,000.00) PESOS, without subsidiary imprisonment in case of insolvency and to pay the costs of the suit.

x x x x x x x x

SO ORDERED."[3]

Appellant, in his Brief, makes the following assignment of errors:

"1. The trial court erred in giving undue weight and credit to the highly improbable testimonies of the witnesses for the prosecution which are reeking with inherent self-inconsistencies on material points and

which are inconsistent with human experience and against the natural course of things.

2. The trial court erred in giving every ounce of benefit to the prosecution and in not resolving even a gram of doubt in favor of the defense.

3. The trial court erred in finding the herein accused-appellant guilty of the offense charged in the information which he had never committed and in not acquitting him when his innocence had been established."[4]

The facts as found by the lower court are as follows:

"The prosecution through its evidence endeavored to show that at noontime on October 24, 1978, the accused sought to buy drinks on credit from Luciana Dagohoy at Esperanza, Masbate. Luciana Dagohoy had a small store adjacent to her house. She refused the accused.

At about 7:30 o'clock in the evening of said day, as Lelith (Mercy) Dagohoy, a niece of Luciana, was about to close the door of the store for the night, the accused pushed it open. Once inside, he immediately stabbed Lelith on her left shoulder. The latter fell down. Thereafter, the accused approached Luciana, who was sitting some three (3) meters away, and likewise stabbed her, hitting her on the right breast. When Lelith saw her aunt being stabbed, she became unconscious. Meanwhile the accused fled. He used a knife eight (8) inches long.

When Lelith regained consciousness, she heard her aunt shouting for help. Some neighbors responded. Soon Policeman Becamon of the Esperanza Integrated National Police came. He brought the two wounded victims to the Cataingan Emergency Hospital at Cataingan, Masbate, arriving there at about 2:00 o'clock in the morning of October 25, 1978. That morning, Policeman Gavino Castro, Jr. of the Cataingan Integrated National Police interviewed the two wounded victims. He reduced this in writing, duly signed by the two victims. In both documents, the accused, Luis Mision, was identified as the assailant.

On October 26, 1978, Luciana Dagohoy died of septicemia or blood poisoning which set in twenty-four hours after the infliction of the injury, and hemorrhage due to the stab wounds.

Lelith was discharged from the hospital after five (5) days.

x x x x x x x x

In the afternoon of October 25, 1978, Mision was summoned to the municipal building of Esperanza for investigation. During the investigation, the INP Command of Esperanza received a wire from Cataingan, Masbate, apparently in connection with the investigation of the two victims by a member of the Cataingan INP Command. Mision has been detained since then."[5]

Appellant interposed the defense of alibi before the trial court. He testified he never went to the store of the victims either in the afternoon or evening of 24 October 1978. He admitted he had known the victims for more than three (3) years; he had regularly served as a porter of goods sold at the Dagohoys' store.[6]

Dr. Alfonso Almanzor, the resident physician of Cataingan Emergency Hospital who treated the Dagohoys, testified that Luciana Dagohoy was "stretcher borne", "alive but stuporous" when admitted at about 2:55 a.m. on 25 October 1978.[7] He described her injury in the medico-legal certificate he prepared in the following terms:

"Stab wound 1.3 inches along the sternal line over the level of the second right ICS penetrating the thoracic cavity."[8]

The victim was in serious condition at the time and was placed in the intensive care ward of the hospital. She was revived and, her condition stabilized, she could communicate with other people. However, blood poisoning set in about twenty-four (24) hours after she had sustained her stab wound and Luciana Dagohoy died on 27 October 1978.[9]

Dr. Almanzor testified further that Merceda Dagohoy was ambulatory when admitted with an injury described as follows:

"Stab wound one (1) inch long muscular deep, over the (L) supra-clavicular area." [10]

Patrolman Gavino Castro, Jr. testified that in the morning of 25 October 1978, his office, the INP of Cataingan, Masbate, received a communication from the Station Commander of the police station at Esperanza requesting that his office obtain ante mortem statements from the victims of the stabbing incident. He proceeded to the hospital, arriving there at about 9:30 a.m. In the presence of one Restituto Lim, he took the statement of Luciana Dagohoy in the Visayan dialect which was known to her, translating his questions and her answers into English before writing them down in a document which came to be offered and admitted as Exhibit "E" for the prosecution.

It appears from Exhibit "E" that Luciana, in great pain, identified the accused as her assailant. Pat. Castro admitted in court that he could not remember if Luciana was conscious of her impending death at the time he took her statement. He likewise admitted that he was related by marriage to one of the victims, his wife being another niece of Luciana Dagohoy. [11] The record does not indicate that Restituto Lim was presented in court to corroborate or complement Pat. Castro's testimony regarding the circumstances under which Luciana Dagohoy gave her dying declaration.

We agree with the trial court that Luciana's statement is entitled to credence and constitutes sufficient basis for concluding that she had positively identified her assailant. The statement bears all the earmarks of a dying declaration. [12] Appellant implicitly recognized this fact when he failed to impugn its admissibility either before the trial court or in this appeal.

Pat. Castro took the statement of Merceda Dagohoy on the same occasion. In court, this victim, thirteen (13) years of age, affirmed the contents of her statement by positively identifying the accused as the person who stabbed her and her aunt:

"Q:

All right. On Oct. 24, 1978 at about 7:30 o'clock in the evening, do you remember where you were?

A:

In my house.

Q:

You mean in the house of your aunt, Luciana Dagohoy?

A:

Yes, sir.

Q:

On that date and time, do you remember of any unusual incident that happened in that house?

A:

Yes, sir.

Q:

Please tell us what happened there?

A:

Luis Mision entered our house and then stabbed me and my aunt.

Q:

This Luis Mision you have just mentioned stated (sic) whether he is now in court?

A:

Yes, sir.

Q:

Will you point to a man who identified himself as Luis Mision? (sic)

A:

Witness pointed to a man who identified himself as Luis Mision.

Q:

Why do you know the accused Luis Mision?

A:

Because he is also from our place.

Q:

Now you said that this Luis Mision entered your house and stabbed you and your auntie, who first was stabbed, you or your auntie?

A:

I."[13]

Appellant assails what he asserts to be improbable testimony of Merceda Dagohoy. He finds it strange that Merceda, in her narrative, would state that Luciana shouted for help after, rather than before or while being, stabbed. Furthermore, Merceda said she fainted after being stabbed; but later, realizing she could not have seen her aunt stabbed if this was so, corrected herself by saying she fainted after seeing her aunt stabbed. Merceda could not have clearly witnessed the attack, appellant argues, because she could not recall the names of the persons who answered her aunt's call for help nor informed these persons, or those in the hospital, that she had recognized the accused as the assailant. The contention of appellant is that Merceda, uncertain of the identity of the assailant, belatedly identified the accused only upon suggestion of Pat. Castro; that the latter had fixed his suspicions on the accused because blood stains had been found behind the Esperanza municipal building leading to the accused's house; and that Pat. Castro had informed Merceda to convince her that the accused was her probable assailant.[14]

It is evident from the transcript that the inconsistencies in Merceda Dagohoy's testimony refer to minor details which strengthen rather than weaken her credibility as a witness for they indicate she was not coached. The transcript reveals a witness of tender age who was subjected to prolonged cross-examination and yet, instinctively, was able to give answers explaining the inconsistencies, omissions and supposed improbabilities of her testimony. We agree with the trial court that she was telling the truth.

There is nothing improbable about Luciana's belated call for help. The violence and suddenness of the attack must have shocked her into inaction during its commission. It is merely speculative for the defense to say that Merceda was instantaneously adjusting her testimony on the stand to make it appear she actually saw the accused stab her aunt. It is clear to us that she was merely restating with more precision what she had really seen in response to the specific questions of the defense counsel during cross-examination. Merceda's identification of the accused was not belated at all. She saw her aunt stabbed; she herself was stabbed. Bleeding, weakening and in pain from her own shoulder wound, she had to undergo a seven (7)-hour nighttime trip to Cataingan for treatment, probably apprehensive all the way that her injury might prove fatal. At the hospital, all attention was focused at stabilizing their condition. By mid-morning of the next day, 25 October 1978, however, Merceda was able to give a statement to Pat. Castro. Merceda's knowledge of the blood stains behind the Esperanza municipal building certainly came from the results of the police investigation. But she had shown in her testimony, corroborated by the accused's own testimony, that she had dealt with and had come to know the accused during the time he had worked as a porter for their store. Such acquaintance was quite sufficient to have enabled her to recognize easily the accused during the stabbing, rendering redundant any alleged police suggestion on the identity of the probable assailant.

Appellant also impugns the credibility of Dr. Almanzor and Pat. Castro on the ground that their testimony, in relation to each other and to Merceda's testimony, was vitiated by material inconsistencies. Again, it appears to us that these uncertainties refer to details which reinforce the reliability of these witnesses. The alleged uncertainties pointed out do not in any way weaken Merceda's crucial testimony positively identifying the accused as the assailant.

Appellant further sought to impugn the credibility of Pat. Castro as a witness because he was related to the victims by marriage. We believe that the testimony of a witness is not, for that reason alone, necessarily flawed or to be denied any weight. The trial court correctly subjected such testimony to the ordinary processes of evaluation and assigned to it the weight said court deemed proper. This Court has no basis for rejecting such evaluation and weighting. The trial court had observed the demeanor of these three (3) prosecution witnesses while under examination. Its finding on the credibility of these witnesses binds us, there being no circumstance evident in the

record which would compel us to disregard the same.[15]

We do not think that appellant's defense of alibi avails him anything. In the first place, appellant's alibi, a defense inherently weak and difficult, cannot stand up against the positive identification of appellant as the doer of the crimes made by Merceda Dagohoy and Luciana Dagohoy's dying declaration.[16] In the second place, appellant's house where he supposedly was at the time of the stabbing of Luciana and Merceda Dagohoy, was only about 300 meters away from the scene of the crime,[16A] a distance that a mature man in reasonable health can traverse in minutes. There was, in other words, no impossibility of appellant's committing the crimes involved here and then repairing to his own house. Thus, the trial court correctly rejected the defense.

We agree with the trial court that Luciana Dagohoy's dying declaration, corroborated by Merceda Dagohoy's testimony, is sufficient to produce moral certainty of the guilt of the accused.[17] In fact, we believe appellant's conviction may be sustained even without Luciana Dagohoy's dying declaration. The testimony of Merceda Dagohoy would have been sufficient, "it having been declared by this Court that the testimony of a single witness, when credible, is sufficient to convict." [18]

We turn to the proper characterization of the offense(s) for which the accused should be held liable. The trial court found that accused had committed the complex crime of murder with frustrated murder, saying:

"The assault mounted by the accused was simultaneous. After stabbing Lelith, he stabbed Luciana. It is the opinion of the Court that the assault was executed under one single impulse, resulting in the wounding of the two victims, which clearly constitutes a complex crime. (People vs. Lawas, et. al., 97 Phil. 975). Again, when for the attainment of a single purpose, which constitutes an offense, various acts are executed, such acts must be considered as only one offense, a complex one. Various acts committed under one criminal impulse may constitute one single complex offense. (People v. Pincalin, et al., G.R. No. L-38755, January 22, 1981, citing People v. Peñas, 66 Phil. 682 and People v. Abella, L-22205, August 31, 1979). Such being the case, the penalty applicable should be that of the more serious offense, in its maximum." [19]

The Solicitor General contends that the two (2) offenses imputed to the appellant cannot be treated as a single offense because the manner in which he committed them prevented them from constituting a complex crime under either of the two (2) ways by which multiple offenses may be "complexed" under Article 48 of the Revised Penal Code.[20]

We agree with the Solicitor General. The trial court characterized the acts of the appellant as a delito compuesto, the complex crime defined under the first clause of Article 48. In the present case, however, the evidence established that appellant inflicted a stab wound on each of the two (2) victims who were separated from each other by a distance of three (3) meters. There were, in other words, two (2) distinct acts, directed at two (2) different victims successively, separated from each other by a brief but discernible interval of time and space. A [delito compuesto], in contrast, arises from a single physical act resulting in simultaneous (or almost simultaneous) injury to two (2) or more victims. The two (2) distinct offenses here having arisen from two (2) distinct physical acts, such offenses cannot be characterized as constituting a delito compuesto.[21]

Reliance by the trial court on the single impulse principle enunciated in the cases cited by it is misplaced. In People v. Remollino,[22] we had occasion to characterize the Lawas ruling as predicated upon the peculiar circumstances of the case which gave rise to it. Therein the accused and other members of the Home Guard fired upon a large group of Maranaos at a signal from Lawas and continued firing until Lawas gave a ceasefire signal. About fifty (50) Maranaos were killed. However, there was no evidence at all showing the identity or number of persons killed by each accused. Instead of holding each accused responsible for a specific death or deaths or for fifty (50) deaths, the Court was "forced" to find all the accused guilty of only one offense of multiple homicide. In the case at bar, the evidence established that appellant, acting alone, stabbed two (2) victims, one after the other,

by two (2) (or at least two) distinct knife thrusts.

The case of *People v. Pincalin*,^[23] also cited by the trial court, is so different in its facts that it is obviously inapplicable to the case at bar. We reserve to another occasion the discussion and possible re-examination of the apparent doctrine in that case.

The trial court found that the qualifying circumstance of treachery attended the attack upon the Dagohoyos, holding that:

"With respect to treachery, the same is said to exist when the aggressor adopted a mode of attack intended to facilitate the commission of the crime without risk to himself (*Bernabe vs. Bolinas Jr.*, 18 SCRA 812).

In the case at bar, the assault was mounted by the accused against his victims in such a manner that caught them by surprise. It was so swift that they were unable to even defend themselves, unarmed as they were, or to flee from the culprit. The attack was clearly a treacherous one. This circumstance qualified the crime to Murder."^[24]

It appears from the evidence that appellant timed his murderous visit to the store of the Dagohoyos at closing time, that is, a time when it was likely there would be no other persons in the vicinity of the store who could have witnessed the assault or interfere with the same. In other words, the appellant consciously adopted a mode of attack designed to facilitate the killing without risk to himself. In addition, as pointed out by the trial court, the surprise attack upon the two (2) women was carried out so swiftly that they were unable to defend themselves or to flee from the attacker. We believe that *alevosia* was properly found in the instant case.

The evidence also established that appellant had inflicted the stab wound on the shoulder of Merceda Dagohoy. Initially, Dr. Almanzor estimated that Merceda would require medical treatment for a period from seven (7) to fourteen (14) days. The defense now attempts to suggest that the injury upon the person of Merceda was merely "superficial" and that it was improper for the trial court to convict appellant of the crime of frustrated murder. The difficulty with this contention is that the evidence showed that secondary infection had set in within twenty four (24) hours of the time Merceda and Luciana were stabbed and that the hospital to which they were taken was seven (7) hours away from the scene of the attack. Merceda was in fact discharged from the hospital after five (5) days confinement. Even so, we agree with the trial court that the assault upon Merceda constituted frustrated murder, her relatively quick recovery being the result of prompt medical attention which prevented the infection in the wound from reaching fatal proportions which would otherwise have ensued.

We turn to the penalties imposable on appellant for the separate offenses he committed. The penalty prescribed by law for the consummated offense of murder is reclusion temporal maximum to death.^[25] There being no modifying circumstances present in this case, the appropriate penalty imposable on appellant for the death of Luciana Dagohoy would be the medium period, i.e., reclusion perpetua.^[26]

The penalty provided by law for the crime of frustrated murder is prision mayor maximum to reclusion temporal medium, the penalty next lower in degree to that prescribed by law for the consummated offense. There being no modifying circumstance present, the appropriate penalty imposable on appellant would be the medium period, i.e., reclusion temporal minimum. The proper penalty after giving effect to the Indeterminate Sentence Law may then be located within the range from prision correccional maximum to reclusion temporal minimum.

WHEREFORE, the Decision of the trial court dated 26 August 1981 is hereby MODIFIED by holding the accused Luis Mision guilty of two (2) separate crimes of murder and frustrated murder. There being neither a mitigating nor a generic aggravating circumstance alleged and proven, the accused shall suffer the penalty of reclusion perpetua for the death of Luciana Dagohoy. He shall likewise suffer imprisonment of six (6) years and

one (1) day as minimum to fourteen (14) years and eight (8) months as maximum for the frustrated murder of Merceda Dagohoy. The penalties shall be served successively in accordance with the provisions of Article 70 of the Revised Penal Code. The indemnity for which the accused is liable for the death of Luciana Dagohoy hereby increased to P50,000.00 in line with recent jurisprudence of this Court.[27] As so modified, the decision of the trial court is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Record, p. 22.

[2] Id., p. 25.

[3] Id., pp. 71-72.

[4] Appellant's Brief, Rollo, p. 59.

[5] Record, pp. 69-70; Rollo, pp. 7-8.

[6] TSN, 9 August 1979, pp. 10-13.

[7] TSN, 26 September 1979, p. 7.

[8] Id., p. 4; Exhibit "B", Record, p. 9.

[9] Id., pp. 7 & 10; Certificate of Death, Record, p. 8.

[10] Exhibit "A", Record, p. 8.

[11] Record, p. 6; TSN, 27 February 1980, pp. 13-14, 16-19.

[12] *People v. Reyes*, 166 SCRA 483 (1988).

[13] TSN, 9 August 1979, p. 2; underscoring supplied)

[14] Appellant's Brief, Rollo, pp. 60-64.

[15] *People v. Reyes*, 166 SCRA 483 at 492 (1988).

[16] *People v. Tamayo*, 183 SCRA 375 (1990); *People v. Bustarda*, 182 SCRA 554 (1990); *People v. Talla*, 181 SCRA 133 (1990); *People v. Mitra*, 179 SCRA 612 (1989).

[16 A] TSN, 2 March 1981, p. 11.

[17] *People v. Reyes*, 166 SCRA 483 at 491 (1988).

[18] *People v. Traya*, 147 SCRA 381 at 389 (1987).

[19] Decision, pp. 2-3; Rollo, pp. 8-9.

[20] Appellee's Brief, pp. 9-10; Rollo, p. 89.

[21] See *People v. Caldito*, 182 SCRA 66 (1990).

[22] 109 Phil. 607 (1960); reiterated in *People v. Caldito*, *supra*, at 79-80.

[23] 102 SCRA 136 (1981).

[24] Decision, p. 3; Rollo, p. 72.

[25] Article 248, Revised Penal Code.

[26] People v. Munoz, 170 SCRA 107 (1989).

[27] People v. Saron, G.R. 89684, 18 September 1990, p. 18.

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