

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO PAMPANGA, ACCUSED-APPELLANT.

G.R. No. 66046. October 17, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

Arturo Pampanga appealed from the decision of Judge Artemon D. Luna of the Regional Trial Court of Manila, convicting him of murder, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P12,000 to the heirs of the deceased Carlomagno Fajardo and P11,500 to his aunt, Carmelita P. Perez, who shouldered the expenses of his funeral.

The evidence of the prosecution shows that between eight-thirty and nine o'clock in the evening of February 2, 1980 while Carlomagno Fajardo, 26, was in front of a store at the corner of Tapuri and Yangco Streets, Tondo, Manila, Arturo Pampanga, with four companions, approached him and told him: "Pare Caloy, tingnan mo ang nangyari sa akin sa sayawan kagabi. Nabugbog ako."

After Fajardo replied, "ikaw kasi", Pampanga suddenly stabbed him with a balisong knife in his breast below the nipple. At that moment, Rodolfo Orallo, who was armed with a bolo tucked in his back, held Fajardo's shoulders.

Antonio Lopez, Eduardo Santiago and Virginia Manalaysay, the storekeeper, testified as eyewitnesses to the stabbing.

The medico-legal officer certified that Fajardo had a penetrating wound in the chest which perforated the fifth rib, the lung and the left ventricle. It had a depth of nine centimeters (Exh. A). It caused Fajardo's death.

Pampanga's story is that he met Fajardo on the night in question at Yangco Street, Tondo, in front of a store. There was a male storekeeper (tindero). Lopez was present. Fajardo told Pampanga that he was "makulit". Pampanga apologized to Fajardo for what happened at the homosexual dance the night before.

He said that Fajardo was angry with him. Fajardo, who was sitting on the table, stood up and allegedly was about to box Pampanga (witness demonstrating the action of Fajardo by raising his right hand with closed fist on the level of his breast) (9 tsn May 16, 1983). Pampanga retreated. He saw something on the ground, picked it up and stabbed Fajardo. Then, he threw away what he had picked up and ran to his home on Gerona Street, Tondo.

Pampanga tried to prove self-defense. But his testimony cannot prevail over the testimonies of the prosecution eyewitnesses proving beyond reasonable doubt that he was the aggressor who treacherously assaulted Fajardo. Alevosia may be present in a sudden face-to-face assault (People vs. Noble, 77 Phil. 93).

It is credible that Pampanga would be the aggressor. He believed that Fajardo took part in mauling him on the preceding night at the homosexual dance.

Pampanga's contention that there was no treachery has no merit. His act of deliberately and suddenly stabbing Fajardo insured the killing without any risk to himself from any defense which the victim could have made.

Fajardo was unarmed.

Plea of guilty is not mitigating because Pampanga pleaded not guilty at his arraignment (p. 8, Record).

The circumstance of passion and obfuscation is not mitigating because that circumstance must be generated by lawful sentiments and should not be provoked by a spirit of lawlessness and revenge. Moreover, the mauling, which caused the obfuscation, was far removed from the commission of the murder by a considerable length of time during which the accused might have recovered his equanimity (People vs. Daos, 60 Phil. 143, 155).

There being no modifying circumstances attending the commission of the murder, the penalty of reclusion perpetua imposed by the trial court is correct.

WHEREFORE, the judgment of the trial court is, affirmed with the modification that the indemnity due to the heirs of the deceased is increased to P30,000. No costs.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and Alampay, JJ., concur.

Concepcion, Jr., J., on leave.

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