

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PERALTA Y ARENAS ALIAS “TONIONG”, DEFENDANT-APPELLANT.*G.R. No. 67702. January 18, 1991*

Ponente: FERNAN, C.J.

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Antonio Peralta y Arenas alias "Toniong" appeals from the decision of the Regional Trial Court of Pangasinan, Branch XXXIX at Lingayen[1] finding him guilty beyond reasonable doubt of the crime of murder with double less serious physical injuries, imposing on him the penalty of reclusion perpetua and ordering him to indemnify the heirs of Margarita Talleser in the amount of P12,000.[2]

At around 2:00 o'clock in the morning of August 20, 1982, Margarita Talleser was feeding her mother, Veronica Talleser, who had been suffering from diarrhea for more than a week. With them in that room in the house of Veronica's son, Maximo, in Matagdem, San Carlos City, were Veronica's daughter, Teofista Talleser-Arenas; Marlyn Talleser; Maximo's wife, Maura Mendoza-Talleser; Maura's four-year-old, daughter, Jonalyn, and several other relatives.

The room was lighted by a fluorescent lamp placed around four meters from the window. Teofista Arenas was then lying down on the bed with her ailing mother. Her back was towards the window and her arms were around her mother. All of a sudden, the glass jalousies on the window broke. Teofista looked towards the window and saw Antonio Peralta with almost one half of his body inside the room.[3] Peralta aimed a long gun, swung it sideways and then pumped bullets on Margarita who fell on the floor and died instantly. Also hit by the gunfire were Jonalyn and her mother Maura.[4]

Just before the shooting, Marlyn Talleser was facing the window while watching Margarita feed her mother. After she heard the sound of the splintering glass jalousies, Marlyn looked towards the window and saw Peralta as he fired his long gun rapidly. Frightened, she sought cover.[5]

As soon as Teofista regained her equanimity, she ran to the houses of barangay councilmen Nicolas, Dacasin and Tamayo. They then accompanied Teofista to the police authorities in San Carlos City. Patrolman Pastor de Guzman and three other policemen accompanied them back to the scene of the crime to investigate.[6] De Guzman found eleven (11) empty carbine shells and one slug,[7] which he later delivered to the police evidence custodian.

Dr. Pablo P. Mondok III conducted the autopsy on 38-year-old Margarita Talleser. She sustained two lacerated wounds on both sides of the mouth, nine gunshot wounds on the shoulder, chest and back, and eight gunshot wounds on both arms. Her death was attributed by Dr. Mondok to "hemorrhagic shock secondary to multiple gunshot wounds." [8]

Maura Talleser and her four-year-old daughter Jonalyn were treated at the San Carlos Medical and Surgical Clinic. Maura suffered a wound on the right side of the back peeling the skin about one inch long. Dr. Juan C.

Lomibao estimated the healing period to be between fifteen to twenty days.[9] On the other hand, Jonalyn, who was profusely bleeding when she was taken to the clinic, had a wound on the side of her right thigh which penetrated it. Dr. Lomibao reckoned the recovery period to be twenty to thirty-five days.[10]

As a result of the police investigation, Peralta was apprehended in the morning of August 20, 1982.[11] Teofista executed on that day a statement pinpointing Peralta as the perpetrator of the crime.[12] On August 24, 1982, Marlyn Tallester and Maura Tallester also executed statements before the San Carlos city police identifying Peralta as the assailant.[13]

On September 20, 1982, the City Fiscal of San Carlos City filed in court an information which states:

"The undersigned 1st Assistant City Fiscal hereby accuses ANTONIO PERALTA alias 'Toniong' of the crime of Murder with Double Less Serious Physical Injuries committed as follows:

"That on or about the 20th day of August 1982, at San Carlos City (Pangasinan) and within the jurisdiction of this Honorable Court, the above-named accused Antonio Peralta alias 'Toniong', armed with a gun with intent to kill and with evident premeditation and treachery, did then and there, wilfully, unlawfully, and feloniously, attack, assault and shoot for several times, Margarita Tallester, Maura Tallester and Jonalyn Tallester, resulting to (sic) the death of Margarita Tallester and less serious physical injuries to Maura Tallester and Jonalyn Tallester.

"Contrary to Article 248, in relation to Article 265 of the Revised Penal Code." [14]

At the trial, Teofista revealed the possible motive which might have impelled Peralta to commit the heinous crime. According to her, Peralta used to be her family's partner in the business of spraying mango trees to make them bear fruits. Sometime in 1975, however, without their knowledge, Peralta gathered 167 baskets ("kaing") of mangoes. Peralta, who is the nephew of Teofista's husband, resented their refusal to deal with him in business. Later, he spread the rumor that Teofista's family were witches and sorcerers.[15]

Peralta put up alibi as his defense. He testified that at 4:00 o'clock in the afternoon of August 19, 1982, he went fishing, together with Federico Orillan and Tomas Mercado, in a place also in Matagdem, San Carlos City which is within walking distance from his residence. He stayed there overnight, ate supper with his companions in a hut near the fishing ground and slept therein leaving the hut only at "the second crowing of the rooster" or around 4:00 o'clock in the morning to check whether his lines had caught fish. Then he went back to the hut to get his things and arrived at his house at around seven o'clock in the morning.[16]

Mercado and Orillan testified to corroborate Peralta's story. According to 65-year-old Orillan, he did not sleep a wink because he did not want to be late in checking his catch. He stated that he did not notice if Peralta left the hut.[17]

The lower court debunked the defense of alibi and held Peralta guilty beyond reasonable doubt of the complex crime of murder with double less serious physical injuries. It considered treachery and evident premeditation as qualifying circumstances but found that no mitigating or aggravating circumstances attended the commission of the crime.[18] The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused, Antonio Peralta alias 'Toniong', guilty beyond reasonable doubt of the crime charged and therefore, sentences him to suffer the penalty of reclusion perpetua with the accessories of the law and to pay the costs. He should indemnify the heirs of Margarita Tallester in the sum of P12,000.00

"It appearing that the accused is undergoing preventive imprisonment and during the period of his confinement he manifested voluntarily in writing that he was willing to abide by the rules applicable to convicted prisoners,

he should be credited with the entire period of his temporary detention.

"SO ORDERED." [19]

Peralta interposed the instant appeal. He assigns in his brief as sole error his conviction for the complex crime of murder with double less serious physical injuries. While not denying his guilt, Peralta seeks the reversal of the judgment on the ground that contrary to the provisions of the Rules of Criminal Procedure, he was charged with more than one offense in the information. He asserts that the one grave and two less grave offenses charged against him were not the result of a single act but of several separate and independent acts as shown by the recovery at the scene of the crime of eleven empty shells and a slug, and the resulting injuries suffered by the three victims in the different parts of their bodies. [20]

On the other hand, the Solicitor General opines that appellant may not now on appeal raise the issue of the defect in the information. Appellant waived his right to object thereto when he went to trial and presented evidence on his behalf without raising said objection.

However, the Solicitor General states that in imposing the single penalty of reclusion perpetua, the lower court in effect convicted appellant of the crime of murder only. He agrees with the appellant that the crime committed was not the complex crime of murder with double less serious physical injuries. He notes that the injuries sustained by the three victims were not the result of a single act as there is no evidence that the carbine used was an automatic one. He therefore recommends additional separate penalties for the injuries sustained by Maura and Jonalyn Talleser, and an increase to P30,000 of the indemnity to the heirs of Margarita Talleser.

The court is convinced beyond reasonable doubt that Peralta perpetrated the killing of Margarita Talleser and the wounding of Maura and Jonalyn Talleser. By the positive identification of Peralta as the culprit, his defense of alibi totally collapses. Alibi is an inherently weak defense. It will be accepted only upon the clearest proof that the defendant was not or could not have been at the scene of the crime when it was committed. [21] Peralta dismally failed to prove that it was impossible for him to reach the Tallessers' residence which happened to be in the same barangay where he went fishing.

The killing is qualified by treachery. The attack on the Talleser family was so sudden that they were left defenseless. Evident premeditation, however, has not been established with equal certainty and clearness as the criminal act itself. [22] The absence of this attending circumstance, however, does not affect the designation of the killing of Margarita as murder. Under Article 248 of the Revised Penal Code, only one attendant circumstance is needed to qualify the killing as murder.

This otherwise simple case is complicated by the fact that the information charges the accused with the complex crime of murder with double less serious physical injuries. And yet, in describing the commission of the crime, the information states that appellant "feloniously attack, assault and shoot for several times" the victims; in effect charging accused appellant with several distinct and separate crimes, as it is the allegations on actual recitals in the information rather than the technical description of the crime that controls. [23] The defective information not having been timely objected to, however, said defect of duplicity of charges cannot be heard belatedly on appeal [24] and accused-appellant may be convicted of as many offenses as are charged therein and proved beyond reasonable doubt. [25]

Contrary to the trial court's ruling, the evidence presented at the trial negates the existence of a complex crime which, under Article 48 of the Revised Penal Code, exists "when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other." For where the killings are not shown to have been committed by a single discharge of firearms, the crime cannot be complexed. [26] In this case,

while it is true that the killing of Margarita and the wounding of Maura and Jonalyn occurred during the same incident, there is no proof that only one single shot caused the felonies. On the contrary, there is evidence that Peralta fired several shots as shown by the number of shells (and the slug) found in the scene of the crime.

We thus agree with the Solicitor General's observation that because accused-appellant committed separate crimes of murder and two less serious physical injuries, in addition to the penalty of reclusion perpetua, four months of arresto mayor for each of the less serious physical injuries should also be imposed on appellant.

WHEREFORE, the decision of the lower court is hereby modified. Accused-appellant Antonio Peralta y Arenas is found guilty beyond reasonable doubt of the separate crimes of murder and two (2) counts of less serious physical injuries. He is accordingly sentenced to suffer the penalty of reclusion perpetua for the crime of murder and four months of arresto mayor for each of the less serious physical injuries. The civil indemnity in favor of the heirs of Margarita Tallester is increased to P50,000.00 in line with recent jurisprudence. Costs against accused-appellant.

SO ORDERED. Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Judge Cornelio W. Wasan, Jr., presiding.

[2] Criminal Case No. SCC-717.

[3] TSN, March 15, 1983, p. 6.

[4] TSN, *supra*, pp. 2-3.

[5] TSN, April 5, 1983, pp. 3-4.

[6] TSN, March 15, 1983, p. 3.

[7] TSN, February 14, 1983, p. 3, Exhs. A & H.

[8] Exh. D.

[9] Exh. C.

[10] Exh. B.

[11] TSN, December 27, 1983, p. 6.

[12] Exh. F.

[13] Exhs. G & I.

[14] Rollo, p. 4.

[15] TSN, March 15, 1983, p. 4.

[16] TSN, December 27, 1983, pp. 4-5.

[17] TSN, December 20, 1983, p. 13.

[18] Decision, pp. 11-12; Rollo, pp. 16-17.

[19] Rollo, p. 17.

[20] Appellant's brief, pp. 3-4.

[21] *People v. Cirilo, Jr.*, G.R. No. 53542, December 14, 1987, 156 SCRA 397, 402.

[22] U.S. v. Navarro, 7 Phil. 713, 723.

[23] People v. Torres & Salas, G.R. No. 76711, September 26, 1988.

[24] Sec. 10, Rule 117 of the Revised Rules of Court; Provincial Fiscal of Nueva Ecija v. Court of First Instance of Nueva Ecija, 79 Phil. 165 and cases cited therein.

[25] People v. Barruga, 61 Phil. 318; U.S. v. Balaba, 37 Phil. 260; People v. Miana, 50 Phil. 77.

[26] People v. Tilos, L-27151, November 29, 1969, 30 SCRA 734.

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