

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. NARCISO ATIENZA Y PERALTA, DEFENDANT-APPELLANT.

G.R. No. 68481. February 27, 1987

Ponente: YAP, J.

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YAP, J.:

August 22, 1981 was the natal day of Rodelio Refran. It was also a fatal day for him. Around 10:30 o'clock in the evening of that day, upon returning home after celebrating his birthday with friends with whom he had a drinking spree in a nearby house, Rodelio Refran was hacked and stabbed to death right at the back of his house, by the alley leading to Juan Luna Street, Tondo, Manila.

He was brought to Mary Johnston Hospital where he was pronounced dead on arrival. An autopsy conducted by Dr. Marcial G. Cenido, Medico-Legal Officer at the Western Police District, showed that two wounds were inflicted on him, one a hacking wound on his right forehead and another, a penetrating stab wound on the left upper quadrant of his abdomen.[1] According to Dr. Cenido, the wound in the victim's forehead was not fatal; it was the deep abdominal stab wound which caused the victim's death.[2]

Sworn statements of two neighbors and the victim's mother were taken by the police on August 24, 1981. Edmundo Alba, a twenty-one year old neighbor of the victim who was with him earlier at the drinking session, stated that from the back of his house, he saw the assailants of Rodelio Refran, one by the name of Boy Hapon who lived in the neighborhood, and a companion whom he could not identify. It was the latter who hacked the victim in the head, while Boy Hapon followed suit by stabbing him in the stomach.[3]

Adelina Panambitan-Lara, also a neighbor, made a similar declaration, but stated that she did not recognize the assailants; however, she described their physical appearance and declared that if she sees them, she can identify them.[4]

Bienvenida Refran, mother of the victim, stated in her sworn statement that she did not see the stabbing of her son, but that when she opened the back door of her house, she saw Rudy Hapon together with another man going out of the alley leading to Juan Luna Street.[5]

Boy Hapon was identified by police investigator Pfc. Isagani Tolentino as Rodolfo Ramirez in his "Advance Report" dated August 23, 1981.[6] According to Pfc. Tolentino, police informers with whom he tried to talk were afraid to give out information on Boy Hapon, who had a notorious reputation in the neighborhood because his family wielded some influence in the vicinity.[7]

More than three months after the incident, or on November 27, 1981, at about 8:00 a.m., appellant Narciso Atienza was arrested by police operatives led by Pfc. Tolentino while walking along Reina Regente, based on the information supplied by an unidentified informant brought to the police station by Eugenio Estrella, a brother-in-law of the deceased. Appellant was pinpointed as the one "who hacked the victim to death". The appellant submitted to the arrest without any resistance and was brought to the police station of the Western

Police District. When investigated, appellant refused to give any written statement but denied his participation in the killing of the deceased.[8]

The following day, Edmundo Alba, Bienvenida Refran, and Adelina Panambitan-Lara were summoned to the police headquarters. There, they identified Narciso Atienza in separate police line-ups as the "very person who hacked the victim on the head with the jungle bolo". These witnesses executed identical sworn statements,[9] all dated November 28, 1981, although obviously of the three, Bienvenida Refran could not have identified Narciso Atienza as the person who hacked her son because in her previous statement on August 24, 1981, she stated that she did not see her son hacked.

In an information dated December 7, 1981, Narciso Atienza was indicted for Murder and Frustrated Murder, committed as follows:

"That on or about August 22, 1981, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two others, whose true names, real identities and present whereabouts are still unknown and helping one another, and taking advantage of superior strength, did then and there wilfully, unlawfully, and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one RODELIO REFRAN Y DE LA PENA, by then and there hacking the latter on the head with a jungle bolo and stabbing him on the abdomen with a bladed weapon, thereby inflicting upon the said Rodelio Refran y de la Pena mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law."

Arraigned on January 18, 1982, the accused pleaded not guilty.

Rodolfo Ramirez, alias Boy Hapon, was never apprehended nor brought to trial, although a separate information was filed against him (Criminal Case No. CCC-VI-96 (82) of the defunct Circuit Criminal Court).

On November 13, 1983, the trial court rendered a judgment convicting the accused, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused, Narciso Atienza y Peralta, guilty beyond reasonable doubt of the crime of murder, qualified by treachery, and there being no aggravating or mitigating circumstances, hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to pay the heirs of the deceased, Rodelio Refran the following sums: P12,000.00 for the death of the latter, P11,000.00 representing actual expenses incurred during the wake and the funeral, P20,000.00 by way of moral damages, and P10,000.00 by way of corrective damages by way of example or correction for the public good; and to pay the costs.

SO ORDERED."

Assailing the legality of his conviction, appellant alleges that: 1) the decision of the trial court violated Rule 120 of the 1985 Rules of Criminal Procedure in that it does not "contain clearly and distinctly a statement of the facts proved or admitted by the accused"; and 2) there was no sufficient basis for convicting appellant, even assuming that there was a valid judgment.

The first allegation of the appellant has no merit. The trial court's decision sums up the evidence for the prosecution consisting of the testimonies of Edmundo Alba, Bienvenida Refran, Adelina Panambitan-Lara, Pfc. Isagani Tolentino and Dr. Marcial G. Cenido. The decision also summarizes the testimonies of the three witnesses for the defense, Esmundo Jovinar, Danilo Calma and the accused, Narciso Atienza. From the evidence, the trial court makes the following findings:

"From the foregoing evidence on record, it is clear that the accused, Narciso Atienza, was present at the scene

of the crime when the victim, Rodelio Refran was hacked and stabbed to death. Two prosecution witnesses, Edmundo Alba and Adelina Lara declared that it was he who hacked the victim and that it was Rudy Hapon whose real name is Rodolfo Ramirez, who stabbed the deceased. On the other hand, the accused declared that it was Rodolfo Ramirez who hacked and stabbed Rodelio Refran and that he even tried to prevent Rodolfo from further attacking Rodelio by wresting away Rodolfo's jungle bolo.

The Court is of the opinion and so holds that the story told by the prosecution witnesses is nearer to the truth, that is, that accused Narciso Atienza hacked the victim on the head with a jungle bolo and that Rodolfo Ramirez (who is charged in Crim. Case No. CCC-VI-96(82) of the defunct Circuit Criminal Court of Manila, but had not been arrested up to the present) stabbed said victim on the upper quadrant of the abdomen.

First, Rodolfo Ramirez was already known to the witnesses even before the killing and in fact, it was only said Rodolfo Ramirez, alias "Rudy Hapon" among the three suspects, whose name was reported to the police (See Exh. J, Advance Report). When accused Narciso Atienza, whose name was unknown at the time of the killing was identified by police informants and was apprehended, he was duly identified by the eyewitnesses, and thereby have no ill motive in imputing upon him a grave crime which involves the penalty of death.

Secondly, by his own admission, the accused himself disposed of the bolo by throwing it away on his way home after the killing.

And thirdly, the prosecution's witnesses testified in a calm and straightforward manner, answering all questions clearly and with candor, which are the earmarks of sincerity and spontaneity. They weathered extensive and intensive cross-examination from defense counsel and were even able to describe the clothing worn by the accused and his companion, Rodolfo Ramirez, at the time of the killing.

Thus, the accused must be held guilty of the crime of murder, qualified by treachery, for having acted in concert with another or others in killing Rodelio Refran who was attacked so suddenly such that he had no chance of putting up any defense which he may have minded to make in order to avoid or parry the attack."

There is therefore no basis for the charge that the trial court's decision does not conform to the requirements prescribed by Rule 120 of the 1985 Rules of Criminal Procedure.

Anent the second assignment of error, we find no reason to disturb the findings of the trial court, except as to its finding that treachery attended the commission of the offense since the accused "acted in concert with another or others in killing Rodelio Refran who was attacked so suddenly," giving him no chance to put up any defense. Acting in concert with another in committing an offense cannot be taken as proof of treachery, nor would the suddenness of the attack — assuming the same is shown by the evidence — be sufficient to constitute treachery. Treachery or alevosia may not be simply deduced from presumption as it is necessary that the existence of this qualifying circumstance should be proven as fully as the crime itself.[10] The qualifying circumstance should be established by positive evidence, which is absent in the case at bar. The prosecution witnesses did not testify as to the details of the assault and no evidence was offered to prove the circumstance of alevosia. As a matter of fact, the evidence in this case indicates that the victim was attacked frontally, as shown by the fact that the wounds inflicted on him were all in the front part of his body. There is no evidence that the accused rushed toward the victim and attacked him suddenly. Even if it were shown that the attack was sudden, such circumstance is not sufficient to prove treachery. It must be shown that the mode of attack was knowingly adopted by the assailants to ensure the accomplishment of their criminal purpose without risk to themselves arising from any defense that the victim might offer.[11] Lacking such proof, the conviction of the accused for murder cannot be sustained. The crime is homicide.

WHEREFORE, the judgment appealed from is modified and the appellant declared guilty of homicide and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen

(14) years, eight (8) months and one (1) day of reclusion temporal as maximum, and to pay the heirs of Rodelio Refran the amount of P30,000.00 as indemnity for the latter's death and P11,000.00 for actual damages. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Exhibit B.

[2] T.S.N., October 25, 1982, page 9.

[3] Exhibit E.

[4] Exhibit I.

[5] Exhibit H.

[6] Exhibit J.

[7] T.S.N., October 27, 1982, page 18.

[8] Exhibit L.

[9] Exhibits F, H and M.

[10] People v. Ardisa, 55 SCRA 245; People v. Villaruel 87 Phil. 826.

[11] People v. Doral, 92 Phil. 877; People v. Noble, 77 Phil. 92; People v. Pengzon, 44 Phil. 224.

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