

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ANACLETO MONTEJO Y MAGAN, RESPONDENT.

G.R. No. 68857. November 21, 1988

Ponente: CORTES, J.

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CORTES, J.:

Accused-appellant Anacleto Montejo, together with his brother Pedro Montejo and three (3) unidentified accused, was charged with the crime of murder, under the following amended information:

That on or about the 11th day of May, 1978, in Quezon City, Philippines, the above-named accused, conspiring together, confederating together and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously with intent to kill, with evident premeditation and treachery, and without any justifiable cause, assault, attack and employ personal violence upon the person of FELIZARDO MARGARITO Y ARBOLEDA "ALIAS ULOY MARGARITO" by then and there stabbing the latter with a sharp pointed instrument and a bolo on the different parts of his body, while said deceased was seated on the stairs held by Pedro and Anacleto Montejo and therefore had no opportunity to defend himself, thereby inflicting upon said Felizardo Margarito y Arboleda "Alias Uloy Margarito" serious and mortal injuries which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim in such amount as may be awarded to them under the provisions of the New Civil Code. [Rollo, pp. 4-5.]

Upon arraignment, Anacleto Montejo, who was the only one among the accused to be arrested, pleaded not guilty to the charge [Record, p. 35.]

After trial, the court a quo found the following facts:

Established beyond all dispute is the fact that in the evening of May 11, 1978, Felizardo "Uloy" Margarito sustained and succumbed to multiple stab and hack wounds on the chest and head, respectively, from shock secondary thereto. The victim, again beyond all dispute, was crippled in the right leg from birth and could ambulate only with the aid of a pair of crutches ("saklay").

It appears that Margarito, on or about May 11, 1978, had been staying at 44-A Barrio Maligaya, Project 8, Quezon City, in a house owned by his brother Juanito Margarito which had just been vacated by accused Pedro Montejo by virtue of a final judgment in an ejectment case (Exhs. "A" and "B"). As caretaker thereat Felizardo Margarito had also been charged with collecting fees for water drawn from a deep-well in the premises. It further appears that earlier that evening, Felizardo had kicked aside the pail [of] Isabel - a niece of accused Anacleto and Pedro Montejo - from among those lined up for drawing water at said deep-well.

From the mass of evidence, there is sufficient warrant to find that Anacleto and Pedro Montejo, together with several other persons including a certain Paler and a certain other Pedro, accosted Felizardo Margarito in front of the house of one Joel Gasta, also in Barrio Maligaya, Project 8, Quezon City, whereat accused Anacleto challenged Felizardo to a fight, purportedly over the water pail incident. Felizardo declined to meet said challenge, whereupon accused Anacleto called out to the former's brother, Danilo, who lived nearby to come out, but the latter made excuse about having a sore foot.

At this juncture, Anacleto was seen to have taken hold of Felizardo's arms and to have forced him to sit on the stairs of the Gasta house. Other companions then took hold of Felizardo's arms as the latter was thus seated, and after having told Felizardo to go to sleep, Anacleto stabbed him on the chest.

Immediately, thereafter, there was the report and flash of a gun shot, and accused Pedro Montejo was seen holding a gun while Anacleto cried out "Utol, I got hit". Pedro Montejo took his brother Anacleto to the "labasan", and thereafter returned and repeatedly hacked at Felizardo Margarito. Accused Pedro Montejo left after so hacking Felizardo, only to return yet another time to verify if the latter was still alive.

Felizardo Margarito died (Exh. "C") from shock secondary to multiple stab wounds on the chest and multiple hack wounds on the right side of the head ("Exhs. "D" and "E") which, as testified to by supervising medico-legal officer Dr. Mariano Cueva, Jr., were respectively inflicted by a knife and a bolo. Eyewitness accounts establish accused Anacleto Montejo as the knife wielder who stabbed Felizardo Margarito on the chest even as the latter was sitting down and held by both arms by companions of the knife wielder. After a gun shot report and the consequent wounding of Anacleto, accused Pedro was seen to have been holding a shotgun (Exh. "9"). Eyewitness accounts also establish Pedro Montejo as the person who came back to repeatedly hack the fallen Felizardo on the head. The finding is, accordingly, compelled - consistent with the testimony of the medico-legal expert - that the mortal wounds inflicted on Felizardo Margarito were caused by at least two (2) different weapons or instruments. [Rollo, pp. 7-8.]

On the basis of the established facts, the trial court found that the guilt of the accused-appellant had been established beyond reasonable doubt and convicted him of murder, as qualified by evident premeditation. Finding the attendance of treachery as an aggravating circumstance, the trial court thereupon sentenced him to death. The accused-appellant was also ordered to indemnify the heirs of the victim in the amount of P12,000.00 [Rollo, p. 10.]

The case was elevated to the Court for automatic review. A counsel de oficio was appointed by the Court to represent the accused [Rollo, p. 34.] In due time, briefs were filed for the accused-appellant and the People.

In the meantime, the death penalty was abolished in the 1987 Constitution. Thus, the Court inquired from the accused-appellant if he still wished to continue with his appeal in view of the automatic commutation of his sentence to reclusion perpetua [Rollo, 96.] He replied that he was willing to accept the penalty of reclusion perpetua [Rollo, p. 97.] However, when asked to comment, his counsel de oficio urged the Court to decide the appeal, considering the accused-appellant's submission that he had acted in self-defense and should therefore be exonerated from criminal liability [Rollo, pp. 101-102.]

In the exercise of its discretion, and to ensure that justice is not denied the accused-appellant, the Court has resolved to decide the appeal.

- The issue raised in the appeal is whether or not the act of the accused-appellant in stabbing the victim constituted self-defense so as to exonerate him from criminal liability.

The pertinent provision of the Revised Penal Code states:

Art. 11. Justifying circumstances. --- The following do not incur any criminal liability:

- Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself.

*** **The accused-appellant contends that these circumstances concur and gives his version of what transpired as follows:

The parties in this case have been neighbors for quite a period of time. On May 11, 1978, at around 8:00 in the evening of that fateful day, while the accused was resting in his house located at No. 45-B Sitio Maligaya, Bahay Toro, Project 8, Quezon City, Metro Manila, his niece, one named Isabel Rivera, arrived and reported to him a disgusting (sic) incident caused by a neighbor, Felizardo Margarito. It was found that while his niece was queuing in the line in order to fetch a pail of water near the residence of the deceased Felizardo Margarito, the latter, for no apparent reason at all kicked off her (sic) niece's water container. Hence, the accused, reacting to the incident, went and personally approached and demanded an explanation from the deceased. The incident occurred near the faucet where people were always queuing for water. A confrontation between the accused and the deceased followed. In (sic) all of a sudden, the victim turned his back from the accused, instantaneously pulling from his waistline his 12 gauge shotgun, poked it to the accused and immediately fired upon the accused hitting him on his right shoulder (chest). Bleeding caused by the gunshot wound, the accused embraced the deceased to protect himself against further serious injury knowing fully well that the victim (deceased) had a disabled right leg. After embracing the victim, both of them grappled to the ground. During the act and in the process, the accused discovered and felt from the waistline of the deceased a bladed and pointed instrument, prompting the accused to instinctively utilize the same in stabbing the deceased causing serious wounds leading to his death. The accused feeling weak and dizzy was brought to the Manila Central University Hospital where he was confined, operated and treated for fifteen (15) days. It took him six (6) months to fully recover from the gunshot wound. [Rollo, pp. 47-48.]

The accused-appellant argues that from these facts, the elements of self-defense are evident, thus: that there was unlawful aggression when the victim fired his shotgun at the accused-appellant and wounded him; that the means employed by the accused-appellant in defending himself were rationally necessary to repel the unlawful aggression considering the circumstances; and that there was lack of sufficient provocation on the part of the accused-appellant as he merely engaged the victim in a verbal argument prior to the incident. Thus, concludes the accused-appellant, his act of stabbing the victim was justified.

After carefully reviewing the documentary and testimonial evidence adduced by the parties, the Court finds that self-defense has not been established.

The accused-appellant contends that the victim was the unlawful aggressor as the victim shot him without any warning when he confronted him about his niece's complaint that the victim kicked her water pail as she was queuing for water. However, aside from his self-serving testimony that the victim for no reason at all shot him, causing him to defend himself by stabbing the victim [TSN, April 27, 1982, p. 16,] there is no other evidence to support this conclusion. In self-defense the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence, otherwise conviction would follow from his admission that he killed the victim. He must rely on the strength of his own evidence and not on the weakness of that for the prosecution [People v. Clemente, G.R. No. L-23463, September 28, 1967, 21 SCRA 261; People v. Talaboc, Jr., G.R. No. L-25004, October 31, 1969, 30 SCRA 87; People v. Ardisa, G.R. No. L-29351, January 23, 1974, 55 SCRA 245.]

In contrast to the accused-appellant's claim, two witnesses for the prosecution, Edna Johnson and Danilo Margarito (the victim's brother) similarly testified that after challenging the victim to a fight, the former stabbed the latter in the chest while he was seated in a neighbor's staircase and held in the arms by accused Pedro Montejo and some other unidentified men [TSN, March 10, 1981, pp. 2-4; TSN, April 21, 1981, pp. 5-7.] Their testimonies were corroborated by the finding of the NBI Medico-Legal Officer that the victim sustained two stab wounds in

the chest [TSN, June 2, 1981, p. 10.]

Moreover, it has been established through the testimony of Edna Johnson, whose credibility has not been impeached, that the accused-appellant stabbed the victim before the shot or explosion was heard [TSN, March 10, 1981, p. 4], leading to the conclusion that he stabbed the victim before he was shot. Likewise, Johnson testified that after she heard the explosion it was the accused Pedro Montejo she saw holding a gun [Ibid.], thus raising doubts as to who actually fired the shot. In view thereof, the fact that said witness did not see who actually fired the shot [TSN, December 16, 1981, p. 6] and that a shotgun cartridge compatible with the firearm involved in the incident was recovered from the pocket of the victim during the investigation [Rollo, p. 54] will not necessarily lead to the conclusion that the victim was the unlawful aggressor. A plea of self-defense may be accepted only when it is established that the accused did not initiate the unlawful aggression (People v. Mendoza, G.R. No. L-16392, January 30, 1965, 13 SCRA 11.) Unlawful aggression on the part of the victim not having been proved by the evidence for the defense, and it appearing from the evidence that it was actually the accused-appellant who was the aggressor, his claim of self-defense cannot be accepted.

- The Court, however, finds that evident premeditation has not been proved by the evidence and therefore cannot be appreciated as a circumstance to qualify the crime to murder.

The essence of evident premeditation consists in the execution of a criminal act preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment [People v. Durante, 53 Phil. 363 (1929).]

The requisites necessary to properly appreciate the circumstance of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act (People v. Diva, G.R. No. L-22946, April 29, 1968, 23 SCRA 332; People v. Ardisa, supra.) These elements have not been proven by the evidence for the prosecution.

Moreover, the undisputed fact that the stabbing of the victim was preceded by the incident where the victim kicked the water pail of the accused-appellant's niece while she was queuing to get water such that the accused-appellant immediately went to confront the victim after his niece complained about the incident resulting in the hurling of insults and challenge to fight, negates the presence of evident premeditation. The Court has said before that where the assault followed closely a previous incident, between the assailant and the victim, the qualifying circumstance of evident premeditation cannot be deemed to have attended the commission of the crime (People v. Sagayno, G.R. Nos. L-15961-62, October 31, 1963, 9 SCRA 360.) As stated by the Court in People v. Gonzales:

. . . The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime. (United States vs. Abaigar, 2 Phil., 417; United States v. Gil, 13 Phil., 530.) In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. (United States vs. Cunanan, 37 Phil. 777.) But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered. (United States vs. Blanco, 18 Phil. 206.) As the shooting in this case was immediately preceded by a heated discussion between the accused and the deceased, the qualifying circumstance of premeditation cannot be properly considered. [76 Phil. 473, 479 (1946).] [Emphasis supplied.]

The attendance of treachery, which was also alleged in the information and which the trial court appreciated as an ordinary aggravating circumstance, had, however, been proved and may be considered to qualify the crime to murder.

The Revised Penal Code, as amended, provides that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [Art. 14, par. 16.

Thus, there is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer [People v. Condemena, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; People v. Lunar, G.R. No. L-15579, May 29, 1972, 45 SCRA 119.] In the instant case, it has been established that the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms.

Treachery shall be considered as the circumstance that qualified the crime to murder, since evident premeditation, the qualifying circumstance considered by the trial court, did not attend the commission of the crime. Thus, there is no circumstance to aggravate the crime.

The penalty for murder, by virtue of the abolition of the death penalty, is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal. Applying the Indeterminate Sentence Law, the minimum term of the penalty to be imposed shall be within the range of the penalty next lower in degree, prision mayor in its maximum period to reclusion temporal in its medium period, or from ten (10) years and one (1) day to seventeen (17) years, four (4) months and one (1) day. In the exercise of its discretion, the Court fixes the minimum at twelve (12) years and one (1) day of reclusion temporal.

WHEREFORE, in view of the foregoing, the judgment of the trial court is MODIFIED and the accused-appellant Anacleto Montejo y Magan is found guilty beyond reasonable doubt of the crime of murder, as qualified by treachery, without any aggravating or mitigating circumstances, and is sentenced to suffer the indeterminate penalty of from TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum, and to indemnify the heirs of the victim in the amount of P30,000.00.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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