

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL TOTOY; ACAYA, ACCUSED-APPELLANT.

G.R. No. 72998. July 29, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Originally a Petition for Review, the Court resolved instead to consider the petition as an appeal by accused, Angel "Totoy" Acaya, from the Decision of 18 February 1985 of the Regional Trial Court of Basco, Batanes, Branch XIII, finding him guilty beyond reasonable doubt of the crime of Murder and sentencing him to reclusion perpetua.

From the prosecution viewpoint, the facts are as follows:

"On the evening of July 16, 1983, during a wedding celebration at Barangay San Vicente, Ibana, Batanes, Victor Abad was stabbed on the left side of the abdomen by Angel Acaya (pp. 5-6, tsn, Nov. 21, 1984).

"Victor Abad was immediately rushed to the Batanes Hospital where he expired on July 17, 1985 at 3:00 p.m. Cause of death was acute renal shutdown hemorrhage, severe stab wound penetrating left upper quadrant, abdomen; perforating stomach and lacerating omenta. Dr. Felipe Cablay, the doctor who operated on the deceased Abad, issued a certificate of death (Exhibit G, p. 18, records).

"Before his death, however, Vitor Abad was able to name appellant Acaya as his assailant (Exhibit 'I', p. 68, records).

"At his arraignment, accused, assisted by counsel, voluntarily entered a plea of guilty (pp. 2 & 3, tsn, Nov. 21, 1984).

"To establish the degree of culpability of appellant, however, the court required further presentation of evidence.

"Convicted of the crime of murder as charged in the information, appellant interposes the present appeal." (Appellee's Brief, pp. 1-2)

For its part, the defense, which did not present any testimonial evidence, narrates the following as the

"Facts of the Case

"On the evening of July 16, 1983 during a wedding celebration at Barangay San Vicente, Ivana, Batanes, while dancing the fundango with many other participants, Victor Agagan Abad was stabbed on the left side of the abdomen by the accused Angel Acaya, who was then under the influence of liquor.

"Immediately as soon as Victor Abad was stabbed, two persons seized the right hand of the assailant Acaya, on Julius Cataluña, a close friend of the victim; and one Roderico Sinag, who wrested the knife. May others held the other hand of the accused.

"From the time the knife was arrested from Angel Acaya's right hand after he stabbed Victor Abad, there is a

blackout of what happened to the assailant Angel Acaya. The next scene of which the evidence for the prosecution was able to prove was that Angel Acaya was lying down at the porch of a home at Barangay San Vicente where the three policemen who were called from the poblacion, found him sleeping. He was so drunk he could not answer to any interrogation of the police officers. Acaya was taken to the poblacion which is a kilometer away, almost half-dragged and half-carried by the police officers. Upon their arrival at the poblacion, no interrogation could be taken from Angel Acaya because his state of intoxication caused him to fall asleep as soon as they reached the municipal jail.

"In the morning of July 17, the following day, the INP took the sworn statement of Angel Acaya. He was asked if he remembered where he was on the evening of the 16th day of July, 1983 and his answer was he did not, because he was drunk. He was asked also if he knew he was apprehended by the police and his answer was, 'No, Sir.'. He also gave a negative answer when he asked if he remembered having met one Victor Abad on the same night. This sworn statement of Angel Acaya was presented as evidence for the prosecution as Exhibit "F" and adapted by the defense as Exhibit '1.'" (Appellant's Brief, pp. 1-2)

The Information filed against appellant for Murder on 29 July 1983 averred the aggravating circumstances of treachery, evident premeditation, and ignominy, the latter because the accused had committed the crime in a public place and in the presence of many persons.

Upon arraignment, appellant, entered a plea of guilty. The records disclose that the Trial Court had advised appellant of, and that he had understood, the consequences of his plea. Following the rulings of this Court, however, the Trial Court directed the prosecution to present its evidence for the purpose of establishing the guilt and the degree of culpability of the accused.

After the prosecution had presented its evidence, the defense having opted not to present any, the lower Court convicted appellant and sentenced him to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim in the amount of P12,000.00; and to pay them P20,000.00 by way of moral and exemplary damages, and costs

Appellant assigns, the following errors as having been committed by the trial Court:

"I. The trial court acted with grave abuse of discretion and erred when it denied the request of counsel de oficio for a reconsideration of the plea of guilty to not guilty.

"II. The trial court acted with grave abuse of discretion when it did not give due course to the notice of appeal dated November 23, 1984 and filed by counsel de oficio, before the trial court on November 26, 1984.

"III. The trial court erred when it concluded without bases in fact and in law that ignominy was proven during the trial.

"IV. The prosecution having admitted that the accused had no knowledge of what happened on the night of July 16, 1983 due to intoxication, has not proven intent to kill other than the questioned plea of guilty, the trial court should have acquitted the accused.

"V. Granting that the accused is criminally liable for the death of Victor Abad, hence for homicide, the trial court should have appreciated the mitigating circumstances of intoxication and voluntary surrender.

"VI. That respondent judge erred that the allegation of treachery was duly proven by the testimony of prosecution witness.

"VII. The court erred in concluding that the qualified circumstance of evident premeditation was proven beyond reasonable doubt.

"VIII. Granting but not admitting that there was a proper plea of guilt, the guilt of the accused must be based

on the evidence presented by the prosecution and not merely on the plea."

Counsel for the appellant's claim that he had requested for a reconsideration of the plea of "guilty" to one of "not guilty" but that the Trial Court had denied the same, is not borne out by the records. Neither does the transcript show that said Court had orally imposed the death penalty on the date of arraignment but that it was changed to reclusion perpetua in the written Decision that was subsequently rendered. What does appear is that the Trial Court had informed appellant of the possibility of the imposition of the death penalty. Besides, even assuming that there was such a change, it was certainly more favorable to the appellant.

No adequate proof has been presented to show any deletion in, or tampering of, the stenographic notes. Absent sufficient showing, the presumption is that official duty has been regularly performed by the stenographer who took down the notes of the proceedings (*People vs. Arias*, G. R. No. L-40531, January 27, 1981, 102 SCRA 303).

At any rate, the ultimate conviction of appellant by the Trial Court was not based on appellant's guilty plea alone but on the evidence that said Court had required to be presented. As it was, no less than six (6) witnesses were presented by the prosecution in the discharge of its burden of proof. The defense, on the other hand, did not present any testimonial evidence, which could have overcome the incriminatory evidence of the prosecution.

While it may be that the Trial Court had failed to forward the Notice of Appeal to this Court, the records disclose that a letter containing a copy of the Notice of Appeal was sent by the accused to this Court on 28 October 1985 under Registered Mail No. 788 (p. 4, Rollo). Of note also is the fact that what was initially filed by defense counsel was a Petition for Review, which this Court later considered, and is now acting on is an appeal (p. 16, Rollo). No prejudice whatsoever, therefore, has been caused appellant.

Our own review and assessment of the evidence confirm the Trial Court's finding of guilt.

The testimonies of prosecution eyewitnesses, Julius Cataluña, Radrigo Binag, and Roel Barsana, adequately establish appellant's culpability. Cataluña was standing beside the victim when he saw appellant suddenly come and stab the victim while they were dancing prompting said witness to hold appellant's arm. After the victim fell, Sinag, in turn, held appellant's hand, which wielded the knife. Cataluña and Barsana, respectively testified, positively and emphatically, that they saw appellant thrust the knife on the left side of the victim. The victim's ante mortem statement thumbmarked with his own blood (Exh. "H"), taken by the PC investigator on the way to the hospital, which identified appellant as the assailant, and wherein the victim declared that he believed that he was going to die because of his stab wound, further buttresses appellant's guilt.

What remains to be determined are the qualifying and modifying circumstances attending the commission of the crime.

Treachery was present considering the suddenness with which appellant stabbed the victim. The latter was totally unprepared for the unexpected attack. He was dancing at the precise time of the incident and was given absolutely no chance to defend himself.

Evident premeditation, however, should not be appreciated, the elements thereof not having been sufficiently proven, namely, the time when the offender determined to commit the crime; an act manifestly indicating that the accused had clung to his determination; and a sufficient lapse of time between such determination and execution, to allow him to reflect upon the consequences of his acts. Evident premeditation cannot be considered to qualify murder where it is not shown when the plan to kill was hatched, or what time elapsed before it was carried out (*People vs. Corpus*, 107 Phil. 44 [1960]). The fact that another knife was found on the person of appellant aside from the very knife used in the commission of the crime is no proof of "a cold and deep meditation on the plan and tenacious persistence in the accomplishment of the criminal act" as the Trial Court had put it. This Court has

consistently held that evident premeditation must be based on external acts and that such must be evident and not merely suspected indicating deliberate planning (U.S. vs. Ricafor, 1 Phil. 173 [1902]; People vs. Yturriaga, 86 Phil. 534 [1950]; U.S. vs. Cornejo, 28 Phil. 457 [1914]).

The contention that since appellant pleaded guilty to the Information, the aggravating circumstances of treachery and evident premeditation must be deemed fully established inasmuch as a guilty plea covers both the crime as well as its attendant circumstances, is unacceptable, in the light of the evidence negating the presence of those circumstances. The case of People vs. Gravino (G. R. No. L-31327-29, May 16, 1983, 122 SCRA 123) is authority for the ruling that a plea of guilty cannot be held to include treachery and evident premeditation where the evidence adduced does not adequately disclose the existence of those qualifying circumstances.

Neither could the aggravating circumstance of ignominy be appreciated, defined as "a circumstance pertaining to the moral order which adds disgrace and obloquy to the material injury caused by the crime" (U.S. vs. Abalgar, 2 Phil. 417 [1903]). The fact that the crime was committed in a public place and in the presence of many persons did not necessarily tend to make the effects of the crime more humiliating or put the offended party to shame.

Appellant's averment that intent to kill was inexistent because the accused was in a state of intoxication, is unmeritorious. In the first place, with the plea of guilty appellant had admitted the commission of the unlawful act. In the second place, proof is inadequate that, appellant was intoxicated to the point of blurring his reason and depriving him of a certain degree of control at the precise time of the stabbing. Prosecution eyewitness Cataluña categorically testified that he did not notice that appellant was drunk. The testimony of Sgt. Teofilo de la Isla, the police investigator, to the effect that when he arrested appellant at around 11:00 o'clock the same evening of the incident, the latter was very drunk and could not answer questions, only proves the fact of intoxication after the incident but not at the precise time of the commission of the crime. As counsel de officio himself stated in Appellant's Brief, there was a "blackout of what happened to the assailant Angel Acaya" after the stabbing. But, certainly, appellant's act of stabbing the victim with the use of a deadly weapon such as a kitchen knife, producing a severe and penetrating wound which caused his death, indicates no other intention than that of the desire to kill. The rule is unchanged that if it is proved that the accused committed the unlawful act charged, the presumption is that the act was done with an unlawful intent and it is up to the appellant to rebut this presumption. That burden has not been satisfactorily discharged in this case.

The mitigating circumstance of voluntary surrender has neither been proven. There is no showing that the surrender of the accused was made voluntarily or spontaneously. In fact, the defense stresses that appellant was drunk when apprehended. The mere fact that appellant did not resist his arrest cannot be equated with voluntary surrender (People vs. Reyes, No. L-33154, February 27, 1976, 69 SCRA 474). A surrender is not voluntary when forced by circumstances. To be voluntary, a surrender must be spontaneous, that is, there must be an intent to submit oneself to the authorities, either because he acknowledges his guilt or because he wishes to save them from the trouble and expense to be necessarily incurred in his search and capture (People vs. Sakam, 61 Phil 27 [1934]).

The crime committed is Murder, qualified by treachery, attended by the mitigating circumstance of plea of guilty.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. The penalty is imposable in its minimum period, or from seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the

Revised Penal Code for the offense is 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 and four (4) months.

WHEREFORE, the appealed judgment is hereby modified in that appellant, Angel Acaya alias "Totoy Acaya", shall suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, and shall indemnify the heirs of the victim, Victor Abad, in the amount of P30,000.00. The rest of the judgment is affirmed. Costs against appellant, Angel Acaya.

SO ORDERED.

Paras, Padilla and Sarmiento, JJ., concur.

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