

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO PUGAY Y BALCITA, & BENJAMIN SAMSON Y
MAGDALENA, ACCUSED-APPELLANTS.**

G.R. No. 74324. November 17, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

For the death of Bayani Miranda, a retardate, FERNANDO PUGAY Y BALCITA and BENJAMIN SAMSON Y MAGDALENA were charged with the crime of MURDER in Criminal Case No. 175-82 of the Court of First Instance (now Regional Trial Court) of Cavite, under an information which reads as follows:

"That on or about May 19, 1982 at the town plaza of the Municipality of Rosario, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and assisting one another, with treachery and evident premeditation, taking advantage of their superior strength, and with the decided purpose to kill, poured gasoline, a combustible liquid to the body of Bayani Miranda and with the use of fire did then and there, wilfully, unlawfully and feloniously, burn the whole body of said Bayani Miranda which caused his subsequent death, to the damage and prejudice of the heirs of the aforementioned Bayani Miranda.

"That the crime was committed with the qualifying circumstances of treachery and the aggravating circumstances of evident premeditation and superior strength, and the means employed was to weaken the defense; that the wrong done in the commission of the crime was deliberately augmented by causing another wrong, that is the burning of the body of Bayani Miranda.

"CONTRARY TO LAW" (p. 1, Records).

Upon being arraigned, both accused pleaded not guilty to the offense charged. After trial, the trial court rendered a decision finding both accused guilty of the crime of murder but crediting in favor of the accused Pugay the mitigating circumstance of lack of intention to commit so grave a wrong, the dispositive portion of which reads as follows:

"WHEREFORE, the accused Fernando Pugay y Balcita and Benjamin Samson y Magdalena are pronounced guilty beyond reasonable doubt as principals by direct participation of the crime of murder for the death of Bayani Miranda, and appreciating the aforestated mitigating circumstance in favor of Pugay, he is sentenced to a prison term ranging from twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, and Samson to suffer the penalty of reclusion perpetua together with the accessories of the law for both of them. The accused are solidarily held liable to indemnify the heirs of the victim in the amount of P13,940.00, plus moral damages of P10,000.00 and exemplary damages of P5,000.00.

"Let the preventive imprisonment of Pugay be deducted from the principal penalty.

"Costs against both accused.

"SO ORDERED" (p. 248, Records).

Not satisfied with the decision, both accused interposed the present appeal and assigned the following errors committed by the court a quo:

- THE COURT A QUO ERRED IN UTILIZING THE STATEMENTS OF ACCUSED-APPELLANTS IN ITS APPRECIATION OF FACTS DESPITE ITS ADMISSION THAT THE ACCUSED-APPELLANTS WERE NOT ASSISTED BY A COUNSEL DURING THE CUSTODIAL INVESTIGATION.
- THE COURT A QUO ERRED IN NOT FINDING THAT THE SUPPRESSION BY THE PROSECUTION OF SOME EVIDENCE IS FATAL TO ITS CASE.
- THE COURT A QUO ERRED IN LENDING CREDENCE TO THE INCREDIBLE TESTIMONY OF EDUARDO GABION WHO WAS ONE OF THE MANY SUSPECTS ARRESTED BY THE POLICE (Accused-appellants' Brief, p. 48, Rollo).

The antecedent facts are as follows:

The deceased Miranda, a 25-year old retardate, and the accused Pugay were friends. Miranda used to run errands for Pugay and at times they slept together.

On the evening of May 19, 1982, a town fiesta fair was held in the public plaza of Rosario, Cavite. There were different kinds of ride and one was a ferris wheel.

Sometime after midnight of the same date, Eduardo Gabion was sitting in the ferris wheel and reading a comic book with his friend Henry. Later, the accused Pugay and Samson with several companions arrived. These persons appeared to be drunk as they were all happy and noisy. As the group saw the deceased walking nearby, they started making fun of him. They made the deceased dance by tickling him with a piece of wood.

Not content with what they were doing with the deceased, the accused Pugay suddenly took a can of gasoline from under the engine of the ferris wheel and poured its contents on the body of the former. Gabion told Pugay not to do so while the latter was already in the process of pouring the gasoline. Then, the accused Samson set Miranda on fire making a human torch out of him.

The ferris wheel operator later arrived and doused with water the burning body of the deceased. Some people around also poured sand on the burning body and others wrapped the same with rags to extinguish the flame.

The body of the deceased was still aflame when police officer Rolando Silangcruz and other police officers of the Rosario Police Force arrived at the scene of the incident. Upon inquiring as to who were responsible for the dastardly act, the persons around spontaneously pointed to Pugay and Samson as the authors thereof.

The deceased was later rushed to the Grace Hospital for treatment. In the meantime, the police officers brought Gabion, the two accused and five other persons to the Rosario municipal building for interrogation. Police officer Reynaldo Canlas took the written statements of Gabion and the two accused, after which Gabion was released. The two accused remained in custody.

After a careful review of the records, We find the grounds relied upon by the accused-appellants for the reversal of the decision of the court a quo to be without merit.

It bears emphasis that barely a few hours after the incident, accused-appellants gave their written statements to the police. The accused Pugay admitted in his statement, Exhibit F, that he poured a can of gasoline on the deceased believing that the contents thereof was water and then the accused Samson set the deceased on fire. The accused Samson, on the other hand, alleged in his statement that he saw Pugay pour gasoline on Miranda but did not see the person who set him on fire. Worthy of note is the fact that both statements did not impute any participation of eyewitness Gabion in the commission of the offense.

While testifying on their defense, the accused-appellants repudiated their written statements alleging that they were extracted by force. They claimed that the police maltreated them into admitting authorship of the crime. They also engaged in a concerted effort to lay the blame on Gabion for the commission of the offense.

Thus, while it is true that the written statements of the accused-appellants were mentioned and discussed in the decision of the court a quo, the contents thereof were not utilized as the sole basis for the findings of facts in the decision rendered. The said court categorically stated that "even without Exhibits 'F' and 'G', there is still Gabion's straightforward, positive and convincing testimony which remains unaffected by the uncorroborated, self-serving and unreliable testimonies of Pugay and Samson" (p. 247, Records).

Accused-appellants next assert that the prosecution suppressed the testimonies of other eyewitnesses to the incident. They claim that despite the fact that there were other persons investigated by the police, only Gabion was presented as an eyewitness during the trial of the case. They argue that the deliberate non-presentation of these persons raises the presumption that their testimonies would be adverse to the prosecution.

There is no dispute that there were other persons who witnessed the commission of the crime. In fact there appears on record (pp. 16-17, Records) the written statements of one Abelardo Reyes and one Monico Alimorong alleging the same facts and imputing the respective acts of pouring of gasoline and setting the deceased on fire to the accused-appellants as testified to by Gabion in open court. They were listed as prosecution witnesses in the information filed. Considering that their testimonies would be merely corroborative, their non-presentation does not give rise to the presumption that evidence willfully suppressed would be adverse if produced. This presumption does not apply to the suppression of merely corroborative evidence (U.S. vs. Dinola, 37 Phil. 797). Besides, the matter as to whom to utilize as witness is for the prosecution to decide.

Accused-appellants also attack the credibility of the eyewitness Gabion alleging that not only was the latter requested by the mother of the deceased to testify for the prosecution in exchange for his absolution from liability but also because his testimony that he was reading a comic book during an unusual event is contrary to human behavior and experience.

Gabion testified that it was his uncle and not the mother of the deceased who asked him to testify and state the truth about the incident. The mother of the deceased likewise testified that she never talked to Gabion and that he saw the latter for the first time when the instant case was tried. Besides, the accused Pugay admitted that Gabion was his friend and both Pugay and the other accused Samson testified that they had no previous misunderstanding with Gabion. Clearly, Gabion had no reason to testify falsely against them.

In support of their claim that the testimony of Gabion to the effect that he saw Pugay pour gasoline on he deceased and then Samson set him on fire is incredible, the accused-appellants quote Gabion's testimony on cross-examination that, after telling Pugay not to pour gasoline on the deceased, he (Gabion) resumed reading comics; and that it was only when the victim's body was on fire that he noticed a commotion.

However, explaining this testimony on re-direct examination, Gabion stated:

"Q.

Mr. Gabion, you told the Court on cross-examination that you were reading comics when you saw Pugay poured gasoline unto Bayani Miranda and lighted by Samson. How could you possibly see that incident while you were reading comics?

"A.

I put down the comics which I am reading and I saw what they were doing.

"Q.

According to you also before Bayani was poured with gasoline and lighted and burned later you had a talk with Pugay, is that correct?

"A.

When he was pouring gasoline on Bayani Miranda I was trying to prevent him from doing so.

"Q.

We want to clarify. According to you a while ago you had a talk with Pugay and as a matter of fact, you told him not to pour gasoline. That is what I want to know from you, if that is true?

"A.

Yes, sir.

"Q.

Aside from Bayani being tickled with a stick on his ass, do you mean to say you come to know that Pugay will pour gasoline unto him?

"A.

I do not know that would be that incident.

"Q.

Why did you as(k) Pugay in the first place not to pour gasoline before he did that actually?

"A.

Because I pity Bayani, sir.

"Q.

When you saw Pugay tickling Bayani with a stick on his ass you tried according to you to ask him not to and then later you said you asked not to pour gasoline. Did Pugay tell you he was going to pour gasoline on Bayani?

"A.

I was not told, sir.

"Q.

Did you come to know how did you come to know he was going to pour gasoline that is why you prevent him?

"A.

Because he was holding on a container of gasoline. I thought it was water but it was gasoline.

"Q.

It is clear that while Pugay was tickling Bayani with a stick on his ass, he later got hold of a can of gasoline, is that correct?

"A.

Yes, sir.

"Q.

And when he pick up the can of gasoline, was that the time you told him not to pour gasoline when he merely pick up the can of gasoline.

"A.

I saw him pouring the gasoline on the body of Joe.

"Q.

So, it is clear when you told Pugay not to pour gasoline he was already in the process of pouring gasoline on the body of Bayani?

"A.

Yes, sir" (Tsn, July 30, 1983, pp. 32-33).

It is thus clear that prior to the incident in question, Gabion was reading a comic book; that Gabion stopped reading when the group of Pugay started to make fun of the deceased; that Gabion saw Pugay get the can of gasoline from under the engine of the ferris wheel; that it was while Pugay was in the process of pouring the gasoline on the body of the deceased when Gabion warned him not to do so; and that Gabion later saw Samson set

the deceased on fire.

However, there is nothing in the records showing that there was previous conspiracy or unity of criminal purpose and intention between the two accused-appellants immediately before the commission of the crime. There was no animosity between the deceased and the accused Pugay or Samson. Their meeting at the scene of the incident was accidental. It is also clear that the accused Pugay and his group merely wanted to make fun of the deceased. Hence, the respective criminal responsibility of Pugay and Samson arising from different acts directed against the deceased is individual and not collective, and each of them is liable only for the act committed by him (U.S. vs. Magcomot, et. al. 13, Phil. 386; U.S. vs. Abiog, et. al. 37 Phil. 1371).

The next question to be determined is the criminal responsibility of the accused Pugay. Having taken the can from under the engine of the ferris wheel and holding it before pouring its contents on the body of the deceased, this accused knew that the can contained gasoline. The stinging smell of this flammable liquid could not have escaped his notice even before pouring the same. Clearly, he failed to exercise all the diligence necessary to avoid every undersirable consequence arising from any act that may be committed by his companions who at the time were making fun of the deceased. We agree with the Solicitor General that the accused is only guilty of homicide through reckless imprudence defined in Article 365 of the Revised Penal Code, as amended. In U.S. vs. Maleza, et. al. 14 Phil. 468, 470, this Court ruled as follows:

"A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, all those of his fellow-beings, would ever be exposed to all manner of danger and injury."

The proper penalty that the accused Pugay must suffer is an indeterminate one ranging from four (4) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.

With respect to the accused Samson, the Solicitor General in his brief contends that "his conviction of murder is proper considering that his act in setting the deceased on fire knowing that gasoline had just been poured on him is characterized by treachery as the victim was left completely helpless to defend and protect himself against such an outrage" (p. 57, Rollo). We do not agree.

There is entire absence of proof in the record that the accused Samson had some reason to kill the deceased before the incident. On the contrary, there is adequate evidence showing that his act was merely a part of their fun-making that evening. For the circumstance of treachery to exist, the attack must be deliberate and the culprit employed means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.

There can be no doubt that the accused Samson knew very well that the liquid poured on the body of the deceased was gasoline and a flammable substance for he would not have committed the act of setting the latter on fire if it were otherwise. Giving him the benefit of doubt, it can be conceded that as part of their fun-making he merely intended to set the deceased's clothes on fire. His act, however, does not relieve him of criminal responsibility. Burning the clothes of the victim would cause at the very least some kind of physical injuries on his person, a felony defined in the Revised Penal Code. If his act resulted into a graver offense, as what took place in the instant case, he must be held responsible therefor. Article 4 of the aforesaid code provides, inter alia, that criminal liability shall be incurred by any person committing a felony (delito) although the wrongful act done be different from that which he intended.

As no sufficient evidence appears in the record establishing any qualifying circumstances, the accused Samson is

only guilty of the crime of homicide defined and penalized in Article 249 of the Revised Penal Code, as amended. We are disposed to credit in his favor the ordinary mitigating circumstance of no intention to commit so grave a wrong as that committed as there is evidence of a fact from which such conclusion can be drawn. The eyewitness Gabion testified that the accused Pugay and Samson were stunned when they noticed the deceased burning (Tsn, June 1, 1983, pp. 16-17).

The proper penalty that the accused Samson must suffer is an indeterminate one ranging from eight (8) years of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum.

The lower court held the accused solidarity liable for P13,940.00, the amount spent by Miranda's parents for his hospitalization, wake and interment. The indemnity for death is P30,000.00. Hence, the indemnity to the heirs of the deceased Miranda is increased to P43,940.00.

Both accused shall be jointly and severally liable for the aforesaid amount plus the P10,000.00 as moral damages and P5,000.00 as exemplary damages as found by the court a quo.

ACCORDINGLY, the judgment is affirmed with the modifications above-indicated. Costs against the accused-appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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