

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MABUBAY, ACCUSED-APPELLANT.

G.R. No. 87018. May 24, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Edwin Mabubay, herein accused-appellant, seeks a review of the decision dated December 15, 1988 of the Regional Trial Court of Kalibo, Aklan, finding him guilty of murder.

On May 11, 1988, the Provincial Fiscal of Kalibo, Aklan, filed an information charging Edwin Mabubay with murder committed as follows:

“That on or about the 9th day of May, 1988, in the afternoon, in Barangay Bubog, Municipality of Numancia, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, without just motive, with intent to kill one DIOLETO RAZ, and while armed with a knife, did then and there wilfully, unlawfully, and feloniously attack, assault and wound said DIOLETO RAZ, thereby inflicting upon the latter a mortal wound, to wit:

‘Stab wound 2x1 cm., level of the 5th rib, Parasternal line (L) perforating the right ventricle thru and thru.’

as per Autopsy Report and Certificate of Death signed by Dr. Esteban B. Villaruel, Resident Physician, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and forming integral parts hereof, which wound directly caused the death of said DIOLETO RAZ.

“That as a result of the criminal acts of the accused, the heirs of the deceased DIOLETO RAZ, suffered the following damages:

“1. P30,000.00 as actual and compensatory damages;

“2. P20,000.00 as moral damages; and

“3. P20,000.00 as exemplary damages.

“CONTRARY TO LAW.” (p. 5, Rollo.)

Upon arraignment, the accused pleaded “not guilty.” The facts, as found by the trial court, are as follows:

“The evidence of the prosecution show that on May 9, 1988, around 5:30 in the afternoon, deceased Dioleto Raz, Ramil Raz, Rudy Leyson, Ramon Leyson and Romeo Leyson were gathered in front of the store of Spouses Raul Tagala and Telly Tagala located at the side of the provincial road, Barangay Bubog, Numancia, Aklan, drinking tuba and listening to Dioleto Raz, who was then sitting on a stool with his back towards the provincial road, narrating about his fighting cocks, when Edwin Mabubay, coming from the feeder road going towards the provincial road slowly approached deceased Dioleto Raz from the back, suddenly placed his right hand around his neck, pulled his knife from his left waist and stabbed Dioleto Raz on the left breast with his left hand.

“As narrated by witness Romeo Leyson, this is how accused stabbed deceased Dioleto Raz:

“Q - So that the accused came from behind the victim and stabbed him. Will you please demonstrate what was the deceased doing at the time the accused approached him from behind and stabbed him on the breast?

“A - (As demonstrated by the witness, Dioleto Raz represented by Fiscal Peralta was sitting on a stool then from behind him came the accused Edwin Mabubay represented by the witness suddenly placed his right hand around the neck of the victim simultaneously with his left hand and pulled out a knife from his left side then stabbed the victim in his left breast).

“Q - How many times did the accused stab the victim?

“A - Only once.

“Q - Do you mean to say that the accused is a left-handed person?

“A - Yes, your Honor.

“Q - You said that you have known him for a long time, have you noticed that he was left handed?

“A - Yes, your Honor.

“Q - You have known him to be left handed?

“A - Yes, your Honor.” (tsn pp. 7-8, Aug. 31, 1988, MVQ.)

“Romeo Leyson and all his companions were all shocked by what they have seen and they all stood up to help deceased Dioleto Raz but when Romeo Leyson went near Dioleto Raz to help him, accused Edwin Mabubay told him: ‘Do not intervene or interfere because you have nothing to do with this,’ at the same time accused was holding the knife he used at a 45 degree angle while retreating backward. As soon as accused had retreated and walked towards the provincial road, Romeo Leyson, Raul Tagala and their companions rushed to help Dioleto Raz but upon seeing that blood was spurting from the wound of deceased, Romeo Leyson ran to get his tricycle in order to load him and bring him to the hospital. On the way to the hospital, Romeo Leyson passed by the house of a certain Mr. Cawaling, a brother-in-law of the deceased, and because Mr. Cawaling has a jeep and would be a faster vehicle to bring the deceased to the hospital, Romeo Leyson stopped by the house of Mr. Cawaling and informed him that Dioleto Raz was seriously wounded. Mr. Cawaling immediately changed his shirt and instructed them to load Dioleto Raz inside his jeep in order that he can be immediately brought to the hospital. Unfortunately, however, deceased Dioleto Raz died before reaching the hospital.

“Telly Tagala, wife of Raul Tagala, owner of the store where the stabbing incident had occurred, testified in Court and corroborated the testimony of eyewitness Romeo Leyson. She testified that she was very sure that there was no altercation between the accused and the victim nor did the victim ever offer accused a glass of tuba to drink before the stabbing incident. What she saw was that accused, who came from behind deceased, put his right hand around the shoulder of deceased Dioleto Raz and stabbed him with his left hand.

“In his defense, accused Edwin Mabubay testified that on May 9, 1988, he was on his way to Barangay Dongon, Numancia, Aklan, to plow his ricefield with a tractor but he was not able to reach Barangay Dongon because at the store of Raul Tagala situated beside the provincial road of Barangay Bubog, Numancia, Aklan, Dioleto Raz stopped him and offered him a glass of tuba. He accepted the glass of tuba but only drunk one-half and poured the other half to the ground. Dioleto Raz got angry with him and told him: ‘Gago, anong gusto mo?’ (You fool, what do you want?). Because Dioleto Raz, who was then seated in a stool, seemed to stand up, accused immediately placed his arm around his shoulders and stabbed him with his left hand.

“As described by accused, this is how he stabbed Dioleto Raz:

“Q - On what side of the victim was hit when you stabbed him?

“A - Left chest.

“Q - And you said that you were on the left side of the victim when you stabbed him?

“A - Yes, your Honor.

“Q - You also said a while ago that you placed your hand on the shoulder of the victim. What hand did you use? Was it your left that you used in holding the shoulder of the victim?

“A - Right hand.

“Q - Why, are you left handed?

“A - Yes, your Honor.

“COURT:

Proceed.

“ATTY. RAZ:

“Q - So the fact is Dioleto was still seated on the stool when you stabbed him?

“A - He was on the act of standing up.

“QUESTIONS FROM THE COURT:

“Q - When you stabbed the victim, your right hand was holding the shoulder of the victim?

“A - Yes, your Honor.

“Q - You must be very near the victim at the time when you stabbed him with your left hand?

“A - Yes, your Honor.

“Q - And you stabbed him by swinging your right hand around and stabbed him laterally?

“A - Yes, your Honor.”

After stabbing deceased Dioleto Raz, accused immediately went to Numancia and surrendered himself to the police authorities.

“As to his relations with prosecution witnesses Romeo Leyson and spouses Raul and Telly Tagala, the owners of the store where the stabbing incident happened, accused stated the following:

“Q - At the time that you were there, there were other persons aside from Dioleto?

“A - Yes, sir.

“Q - There were certain Romeo Leyson as well as Raul Tagala and his wife?

“A - Yes, sir.

“Q - You have no previous quarrel with Raul Tagala or Romeo Leyson?

“A. - No, sir.

“xxx xxx xxx.

“Q - The wife of the storeowner who testified here, do you know her very well?

“A - Yes, your Honor.

“Q - Did you have any misunderstanding with her or with her husband before this incident?

“A - No, your Honor.

“Q - Do I get it from you that before this incident and up to the present there is no bad blood or ill-feelings between you and that woman and her husband?

“A - No, your Honor.

“Q - So that your relation with the woman and her husband before the incident and after the incident has been cordial?

“A - Yes, your Honor.

“Q - And so you know of any reason why these people are going to testify against you?

“A - Because the incident happened near their store.” (tsn. pp. 8-12, Nov. 2, 1988,>NNL; pp. 13--16, Rollo.)

On December 15, 1988, the trial court rendered judgment finding the accused, Edwin Mabubay, GUILTY beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of “Thirty (30) Years of reclusion perpetua; to indemnify the heirs of Dioleto Raz the sum of P30,000; and to pay the costs” (p. 17, Rollo).

In this appeal, appellant alleges that the trial court erred in convicting him of murder despite the absence of treachery in the killing of the victim which occurred after the latter called him “gago” for drinking only half of a glass of tuba (that the deceased gave him) and throwing out the rest.

Treachery, “the 16th aggravating circumstance, exists 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 any defense which the offended party might make” (Art. 14, par. 16, p. 386, Revised Penal Code by Aquino, Vol. I, 1987 Ed.).

To constitute treachery, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted (People vs. Samonte, 64 SCRA 319).

The trial court found that the appellant’s attack against Raz was surreptitious for he grabbed the victim from behind, encircled his right arm around the latter’s neck, and stabbed him with the knife in his left hand. These acts tended directly and especially to insure the execution of the killing without danger and risk to the appellant arising from any attempt that the victim might make to defend himself.

The Solicitor General pointed out that: “Alevosia or treachery is present because the attack from behind was so sudden and unexpected that the deceased did not have the opportunity to defend himself and there was no risk to the assailant. (People vs. Lopez, 80 SCRA 18; People vs. Alegria, 84 SCRA 614).” (pp. 48-49, Rollo.)

The penalty (30 years of reclusion perpetua) imposed by the trial court is incorrect. The penalty for murder is reclusion temporal in its maximum period to death. Under the Indeterminate Sentence Law, the minimum of the imposable penalty shall be taken from the next lower penalty of prision mayor in its maximum period which is ten (10) years and one (1) day to twelve (12) years. The maximum imposable penalty shall be within the range of reclusion temporal in its maximum period, i.e., seventeen (17) years, four (4) months and one (1) day, to twenty (20) years.

WHEREFORE, the appealed decision is affirmed with modification as to the penalty. The accused is hereby

sentenced to suffer an indeterminate penalty of imprisonment ranging from twelve (12) years of prison mayor as minimum, to twenty (20) years of reclusion temporal, as maximum. In other respects, the decision of the trial court is affirmed. Costs de oficio.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Gancayco, J., on leave.

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