

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR REAL Y BARTOLAY, ACCUSED-APPELLANT.

G.R. No. 93436. March 24, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 44, Masbate, Masbate, in Criminal Case No. 1606 finding appellant guilty of murder.

We affirm, with modification, the appealed decision.

I

The information against appellant reads as follows:

"That on or about March 11, 1978, in the morning thereof, at the Poblacion of the Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully, feloniously and criminally attack, assault and hack with a sharp bolo one Edgardo Corpuz y Rapsing, hitting the latter on the nape, causing an injury which caused the death of the said Edgardo Corpuz y Rapsing several days thereafter.

"That the accused is a recidivist having been convicted by the Municipal Court of Aroroy, in the following cases:

Crime Date of Conviction

1. Ill treatment by Deed - July 6, 1965

2. Grave Threats - November 25, 1968"

(Rollo, p. 14).

Upon being arraigned, appellant pleaded not guilty.

After trial, the court convicted appellant and sentenced him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim the sum of P30,000.00 and costs.

Hence, this appeal.

II

At about 9:00 A.M. on March 17, 1978, in the public market of Aroroy, Masbate, appellant and Edgardo Corpuz, -both vendors, engaged in a heated argument over the right to use the market table to display their fish.

Moreno de la Rosa, the Municipal Mayor, who happened to be at the public market, tried to pacify them, saying that they were arguing over trivial matters.

The two protagonists momentarily kept their peace but after awhile Corpuz raised his voice again and said something to appellant. The latter, in a soft voice, uttered "SOBRA NA INA NA IMO PAGDAOGDAOG" (You are being too oppressive).

When Corpus kept on walking to and fro near the disputed fish table, appellant started to sharpen his bolo while murmuring to himself. Once Corpus turned around with his back towards appellant, the latter hacked him on the nape. The blow caused Corpus to collapse. He was rushed to a medical clinic. When asked by his wife as to who hacked him, he answered "Melchor Real."

A police investigator went to the clinic to take the dying declaration of Corpus, who said that it was appellant who stabbed him. Corpus died two days later.

Appellant admitted hacking Corpus but claimed that he did so out of humiliation and anger when the victim threw his fish in the presence of so many people.

He testified as follows:

"Q.

When Edgardo Corpus was lambasting you in the presence of the public, what did you do, how did you feel?

A.

I got angry.

Q.

And what did you do?

A.

So I hacked him.

Q.

Was he hit?

A.

Yes, Sir.

Q.

In what part of his body was he hit?

A.

At the right neck.

Q.

Did you admit to the authorities that it was you who hacked Edgardo Corpus?

A.

Yes, sir."

On cross-examination, he again admitted his guilt.

Q.

And when this Edgardo Corpus turn (sic) his back, you immediately hacked him on his neck?

A.

Yes, sir" (TSN, July 9, 1986, pp. 6-8; Italics supplied).

III

Before us, appellant argues that the crime committed was only homicide and not murder and that he is entitled to two mitigating circumstances: namely, passion and obfuscation and vindication of a grave offense.

We agree with appellant that the offense committed was homicide. He is entitled to the benefit of the doubt as to whether he acted with alevosia when he attacked the victim. As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was coolly and deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply, however, where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim (*People v. Aguiluz*, 207 SCRA 187 [1992]). This is more so, where the assault upon the victim was preceded by a heated exchange of words between him and the accused (*People v. Rillorta*, 180 SCRA 102 [1989]). In the case at bench, the assault came in the course of an altercation and after appellant had sharpened his bolo in full view of the victim. Appellant's act of sharpening his bolo can be interpreted as an attempt to frighten the victim so the latter would leave him alone. It was simply foolhardy for the victim to continue walking to and fro near appellant in a taunting manner while the latter was sharpening his bolo.

The suddenness of the attack does not, by itself, suffice to support a finding of alevosia where the decision to attack was made peremptorily and the victim's helpless position was accidental (*People v. Ardisa*, 55 SCRA 245 [1974]).

Appellant also claims that he is entitled to two mitigating circumstances: namely, vindication of a grave offense and passion and obfuscation. The peculiarity of these two mitigating circumstances is that they cannot be applied at the same time if they arise from the same facts or motive.

If appellant attacked his victim in the proximate vindication of a grave offense, he cannot successfully claim in the same breath that he was also blinded by passion and obfuscation. At most, only one of two circumstances could be considered in favor of appellant (*People v. Yaon*, Court of Appeals, 43 O.G. 4142 cited in *I Reyes*, Revised Penal Code [1981]).

The act of the victim in berating and humiliating appellant was enough to produce passion and obfuscation, considering that the incident happened in a market place within full view and within hearing distance of many people.

The trial court held, and the Solicitor General agreed, that the attendant aggravating circumstance was reiteracion and not reincidencia as alleged in the information. The trial court and the Solicitor General are in error.

According to the information charging appellant of murder and the evidence, the accused was previously convicted of ill-treatment by deed on July 6, 1965 and grave threats on November 25, 1968.

In recidivism or reincidencia, the offender shall have been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code (Revised Penal Code, Art. 14[g]). In reiteracion, the offender shall have been punished previously for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty (Revised Penal Code, Art. 14[10]). Unlike in reincidencia, the offender in reiteracion commits a crime different in kind from that for which he was previously tried and convicted (Guevarra, Penal Sciences and Philippine Criminal Law 129 [1974]).

Appellant was previously convicted of ill-treatment by deed (Revised Penal Code, Art. 266, Title Eight) and grave threats (Revised Penal Code, Art. 282, Title Nine). He was convicted of homicide in the instant criminal case (Revised Penal Code, Art. 249, Title Eight). Inasmuch as homicide and ill-treatment by deed fall under Title Eight, the aggravating circumstance to be appreciated against him is recidivism under Article 14[g] rather than reiteracion under Article 14(10) of the Revised Penal Code.

There is no reiteracion because that circumstance requires that the previous offenses should not be embraced in the same title of the Code. While grave threats fall in a title (Title Nine) different from homicide (Title Eight), still reiteracion cannot be appreciated because such aggravating circumstance requires that if there is only one prior offense, that offense must be punishable by an equal or greater penalty than the one for which the accused has been convicted. Likewise, the prosecution has to prove that the offender has been punished for the previous offense. There is no evidence presented by the prosecution to that effect.

Appellant is convicted of homicide, appreciating in his favor the mitigating circumstance of passion and obfuscation, which is offset by the aggravating circumstance of recidivism.

WHEREFORE, the judgment of the trial court is AFFIRMED with the MODIFICATION that appellant is convicted of the crime of homicide and sentenced to an indeterminate penalty of TEN (10) YEARS of prison mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum. The indemnity to be paid to the heirs of the victim is increased to P50,000.00.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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