

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDNA CORDERO Y PONTILAGA, ACCUSED-APPELLANT.

G.R. No. 97229. January 05, 1993

Ponente: MELO, J.

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MELO, J.:

Before Us is the automatic review of the decision of the Regional Trial Court of the National Capital Judicial Region stationed in Manila (Branch XXVIII) in its Criminal Case No. 89-65480 finding Edna Cordero guilty of the crime of Murder under an Information which reads:

"That on or about August 6, 1988, in the City of Manila, Philippines, the said accused, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one AURORA MEDINA Y DE LEON, by then and there stabbing the latter with a bladed weapon hitting her on the chest, thereby inflicting upon the said AURORA MEDINA Y DE LEON stab wound which is necessarily fatal and which caused the death of the said Aurora Medina y de Leon thereafter.

"Contrary to law." (p. 31, Rollo)

Upon arraignment, accused-appellant pleaded not guilty to the offense charged. On May 24, 1990, the court a quo rendered its decision convicting accused-appellant, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court finds the accused EDNA CORDERO Y PONTILAGA guilty beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code and she is hereby sentenced to suffer the penalty of imprisonment ranging from TWELVE (12) years and ONE (1) day, the minimum of RECLUSION TEMPORAL to THIRTY (30) YEARS OF RECLUSION PERPETUA, in view of the provision of the new Constitution abolishing death penalty, and to indemnify the heirs of the victim as follows:

1. The sum of P30,000.00 as indemnity for the heirs of the victim AURORA MEDINA Y DE LEON;
2. The sum of P50,675.00 for funeral and burial expenses; and
3. The sum of P20,000.00 by way of temperate damages.

The accused is entitled to full credit of her period of detention from August 6, 1988.

No pronouncement as to costs.

SO ORDERED." (pp. 26-27, Rollo)

Unwilling to accept the decision, accused-appellant interposed the instant appeal, assigning the following errors:

"I. The lower court erred in appreciating the aggravating circumstance of evident premeditation against the accused-appellant.

II. The lower court erred in appreciating the aggravating circumstance of treachery against the accused-appellant." (p. 57, Rollo)

The operative facts and circumstances of the crime charged were summarized by the trial court as follows:

"The first prosecution witness presented was Evelyn Cruz Serrano, 22 years old, the daughter of the victim AURORA MEDINA Y DE LEON. She testified among others, that on August 6, 1988, at about 7:00 o'clock in the evening, she was in the kitchen of their house at No. 2353 Jacobo St., Singalong, Manila, when accused EDNA CORDERO arrived; that Ricardo Cordero, the husband of the accused, is presently the live-in partner of her mother; that the accused hurled stone at the door of their house shouting and looking for her husband Ricardo Cordero, followed by exchange of words between the accused and her mother who was then at the sala of their house; that her mother went upstairs inside the room where Carding was, thereafter she saw her mother come down the stairs followed by Carding who talked to the accused EDNA CORDERO who was still outside the house; that after talking briefly with each other, EDNA CORDERO entered the house and afterwards she heard a sound of slapping; that as she looked back towards the sala, she saw the accused EDNA CORDERO pulling out a sharp instrument from the front portion of her mother's stomach; that she saw accused holding the bladed weapon with Carding trying to pacify her, holding her on the left hand, then she shouted for help and some of their neighbors came and they brought her mother to the hospital and Police Station No. 9 of the WPD. After coming from the police station, they went back to their house and the house of the accused with some policemen and she told the police that the accused was the one who stabbed her mother; that when they reached the house of the accused, she was talking to her in-laws and the police entered the house and apprehended her and they brought her to the police station. She identified the statement she gave to the police dated August 6, 1988, Exhibit "A". (see pp. 3-14, TSN, Mar. 6, 1989).

"The second prosecution witness, GLORIA TORRES, testified: that on said date and time, she was in front of her cousin's (Pilar Valencia) house where they were residing in the same compound with her sister, the victim in this case, at 2353 Singalong, Manila. She was then cooking at that time when a woman passed by whom she identified later as EDNA CORDERO. She corroborated the testimony of Evelyn Cruz Serrano in some respects, regarding the stoning of the house and exchange of words between the accused and the victim saying: "Palabasin mo ang asawa ko. Sabi ko na sa iyo na huwag mong aargabiyadohin ang anak ko"; that after some exchange of words, the accused entered the house of her sister where a short commotion happened inside with Ricardo Cordero holding the hands of the accused who was then holding a bladed weapon on one hand full of blood and when she went near them, Carding told her not to pacify him at "may tama si Aurora." Then she shouted for help from their neighbors and two men came and they carried her sister outside the house, borrowed a car from their neighbor and brought her sister to the Philippine General Hospital where at 8:00 o'clock in the evening, the physician pronounced her dead. She identified the bladed weapon used marked as Exhibit "1" and the statement she gave to the WPD at Police Station No. 9 Exhibit "G". (pp. 23-30, TSN, Sept. 12, 1989). She further testified as to the expenses incurred by the family - that they spent P12,000.00 for funeral expenses which they paid to the Tres Amigos Funeral Parlor as evidenced by Official Receipt No. 0159, Exhibit "J"; P31,000.00 for the tomb; P12,750.00 for the daily expenses; for the wake of eight days, P1,675.00 or a total sum of P50,675.00; that at the time of the incident the victim was a business woman who owned a store and a passenger jeepney which was rented at P250.00 a day. (TSN, Oct. 9, 1989)." (pp. 21-23, Rollo)

Accused-appellant relies on the above narration in her own statement of facts. She, however, disputes, as earlier intimated, the existence of the aggravating circumstances of evident premeditation and treachery, submitting that:

1) The prosecution evidence is insufficient to establish and justify the aggravating circumstance of evident premeditation. Indeed, accused-appellant went to the victim's house in search of her husband to ask for some

money. The lone eyewitness testified that when accused-appellant arrived shouting and hurling stones at the front door of the victim's house, the victim invited accused-appellant inside the house in order not to create a scene. The eyewitness, who was then at the kitchen, heard a sound of slapping (sampal) and when she looked back at the living room where the victim and accused-appellant were, the eyewitness saw accused-appellant pull out a sharp instrument from the stomach of the victim. In the case at hand, it cannot be said that the intention to kill the victim was manifest and that accused-appellant carefully meditated upon it as shown by the proven circumstances, for it is enough that the intention to kill arose at the moment of the aggression. (p. 59, Rollo).

2. The evidence shows that accused-appellant at first refused to enter the house after she was invited by the victim. In fact, accused-appellant slapped the victim before inflicting the fatal injury. The factors contradict treachery.

In consequence, accused-appellant concludes that the proper crime of which she could be convicted is that of Homicide only and not Murder.

In the brief filed by the Office of Solicitor General on July 28, 1992, the People agrees with the accused-appellant that the crime committed was simple Homicide because evident premeditation and treachery were not duly established by the prosecution to have attended the killing of the victim.

We agree with both the accused-appellant and the Solicitor General that evident premeditation and treachery were not proven in this case.

This Court has consistently held that for evident premeditation to be appreciated against an accused, the following requisites must be proved: 1) the time when the offender determined to commit the crime; 2) an act manifestly indicating that that offender had clung to his determination; and 3) the lapse of an interval time between determination to commit the crime and execution thereof, sufficient to allow the offender to reflect upon the consequences of his act (Par. 13, Art. 14, Revised Penal Code). These elements, however, have not been established by the evidence for the prosecution. In the case at bar, the events happened spontaneously, such that it cannot be said that the accused-appellant was able to deliberate on the possible consequences of her act. Before the actual stabbing of the victim, accused-appellant had an altercation with the victim. The attack followed on the spur of the moment and in the heat of the argument. As the evidence fails to show that accused-appellant reflected on her purpose to commit the crime sufficiently to permit the formation of a deliberate determination, it follows as a matter of course that the element of premeditation cannot be said to have been established beyond reasonable doubt.

In *People vs. Narit* (197 SCRA 334 [1991]), this Court ruled:

"... An intimation or expression of hatred does not necessarily imply a resolution to commit a crime and a determination to carry it out. A criminal intent cannot be presumed from hatred or ill-will, unless the expression of the latter is accompanied or thereafter followed by outward acts clearly and manifestly showing such intent. Evident premeditation must be based on external acts and must be evident, not merely suspected, indicating deliberate planning. Otherwise stated, there must be a demonstration by outward acts of a criminal intent that is notorious and manifest. Or, as stated in *People vs. Mendova*, 100 Phil. 811, 'it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime.' No such outward external acts had been shown in this case." (at p. 350)

To justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient time to allow the conscience of the actor to overcome the resolution of his will if he desires to harken its warning (*People vs. Barba* (203 SCRA 436 [1991]); *People vs.*

Francisco (182 SCRA 305 [1990]).

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly or specially to insure its execution, without risk to himself arising from the defense which the offended party might make (Par. 16, Art. 14, Revised Penal Code). As to the attack on the victim by the accused in this case, the court a quo gave full credence to the testimony of Evelyn Serrano. Unfortunately, Serrano's testimony was limited to the pulling out of the bladed instrument from the belly of the victim. Serrano could not give the details on how the initial attack commenced. Consequently, treachery can not be appreciated in this case where the lone eyewitness was not able to see how the assault started. Furthermore, when accused-appellant hurled stones at the house of the victim, the victim invited the accused-appellant to her house but such invitation was declined by the accused-appellant. Accordingly, treachery cannot be considered in this case.

Although the place of the commission of the crime was at the residence of the victim, dwelling should not be considered in this case. We quote with approval the opinion of the Solicitor General:

"A condition sine qua non of the aggravating circumstance of dwelling is that the offended party had not given provocation to the offender. That the offended party has not given provocation in his house is a fact that must be shown by the evidence of the prosecution, as it cannot be assumed. (L.B. Reyes, Revised Penal Code, Book One, 1963 ed., p. 281). This has not been established by the prosecution. On the other hand, appellant testified that when Aurora came out from the kitchen, while she and her husband remained in the sala, Aurora called upon appellant: "Halika rito para makita mo ang hinahanap mo." (p. 9, TSN, Oct. 16, 1989). The prosecution did not rebut this piece of evidence." (p. 15, Appellee's Brief)

Considering that no aggravating circumstances was proved to have attended the killing of Aurora Medina, accused-appellant can be held liable only for homicide which is penalized by reclusion temporal under Article 249 of the Revised Penal Code, the same to be imposed in its medium period. Applying the Indeterminate Sentence Law, the accused-appellant should be sentenced to suffer an indeterminate penalty of from ten (10) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum (People v. Gamut, 118 SCRA 35 [1982], at p. 48).

The civil indemnity imposed by the trial court should be increased from P30,000.00 to P50,000.00 conformably with Our recent rulings, among them People vs. Sison, (189 SCRA 643 [1990]) and People vs. Sazon, (189 SCRA 700 [1990]).

WHEREFORE, judgment is hereby rendered modifying the decision of the trial court, and as modified, accused-appellant Edna Cordero y Pontilaga is hereby found guilty beyond reasonable doubt of the crime of Homicide, as defined and penalized under Article 249 of the Revised Penal Code, for the killing of Aurora Medina, and applying the Indeterminate Sentence Law, she is hereby sentenced to suffer an indeterminate imprisonment penalty ranging from ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to indemnify the heirs of Aurora Medina in the sum of FIFTY THOUSAND PESOS (P50,000.00), without subsidiary imprisonment in case of insolvency.

Accused-appellant should be given full credit for the period of her preventive imprisonment.
SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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