

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDMONDO ABLAO, ACCUSED-APPELLANT.

*G.R. No. 99839. January 14, 1994*

Ponente: PADILLA, J.

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### PADILLA, J.:

This is an appeal from the decision[\*] of the Regional Trial Court of Manila, Branch XLIX in Criminal Case No. 90-86082 finding the accused guilty beyond reasonable doubt of the crime of murder.

The information dated 06 August 1990 charged accused Edmondo Ablao with the crime of murder, committed as follows:

"That on or about July 11, 1990, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously with intent to kill, treachery and evident premeditation, attack, assault and use personal violence upon one SONNY CANLAS y GUILANTANG, by there and there stabbing him with a knife, hitting him on the different parts of the body, thereby inflicting upon the said Sonny Canlas y Guilantang, stab wounds which were the direct and immediate cause of the death thereafter.

Contrary to law."

Upon arraignment, the accused entered a plea of not guilty. Trial on the merits ensued and on 15 February 1991, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime charged.

Dissatisfied with the decision, the accused has appealed to this Court and raises a lone assignment of error: "The trial court erred in appreciating the qualifying aggravating circumstance of treachery in the commission of the crime charged."

The accused insists that the victim was not killed treacherously, in view of the testimony of the prosecution witness Alicia Hipolito which showed that the accused approached the victim Sonny Canlas frontally and thereafter placed his arm on the shoulder of the victim before stabbing him.

After a careful scrutiny of the records before us, we find no cogent reason to reverse or modify the decision of the trial court.

The Court reproduces with approval the findings of fact of the trial court:

"On July 10, 1990 at about midnight, Sonny Canlas told his mother that he was going out to collect the accounts of his customers for whom he did portage service. Shortly after that, at about 1:00 o'clock early in the morning of July 11, 1990, Honoria Canlas, the mother of Sonny Canlas, and Alicia Canlas Hipolito, the aunt of Sonny Canlas, were in the vicinity of the corner of Fulgueras and Sto. Cristo Streets, Divisoria, Manila, buying vegetables. Alicia Hipolito was vending vegetables as a source of livelihood. So did Honoria Canlas. The latter sold assorted goods for a living. Momentarily, Honoria Canlas told Alicia Hipolito that they looked for Sonny Canlas so that the three (3) of them would be leaving for home together. As they were looking for Sonny Canlas, Alicia Hipolito saw a cluster of eight (8) male persons, at the corner of Fulgueras and Sto.

Cristo Streets, Tondo, Manila. Alicia Canlas Hipolito saw Sonny Canlas at the corner and pointed him out to Honoria Canlas. The place was lighted by one hundred (100) kilowatt bulbs from the stores nearby. The stores are bunched side by side. The latter wanted to approach her son but could not do so because her way was blocked by vendors and passersby. Honoria Canlas had to find another way through which she could go near her son. By that time, Alicia Hipolito and Honoria Canlas saw a male person, who turned out to be the Accused, detaching himself from the cluster of eight (8) persons and walked to where Sonny Canlas was, and put his left arm around the shoulders of Sonny Canlas. By then, Honoria Canlas was finding a way through which she could go near her son. Alicia Hipolito saw the Accused standing on the right side of Sonny Canlas, his left arm around the shoulders of the latter and then whipped out a stainless pointed, bladed knife, with his right hand, and stabbed Sonny Canlas repeatedly on the front portion of his body. Alicia Hipolito was just four (4) meters away from the stabbing. Sonny Canlas was able to extricate himself from the clutches of the Accused and managed to run away, at some distance, to the corner of Fulgueras and Recto Avenue, Manila. However, the Accused pursued Sonny Canlas and, as the latter fell on the ground, the Accused overtook Sonny Canlas and stabbed the latter again. Alicia Hipolito was about eight (8) meters away from the corner. Honoria Canlas, by then, saw the Accused stabbing her son, Sonny Canlas, and shouted: "Huwag. Anak ko iyan." The Accused looked at the distraught Honoria Canlas, wiped off the blood of the knife against the shirt of Sonny Canlas and walked towards Asuncion Street, Tondo, Manila. Alicia Hipolito and Honoria Canlas heard the vendors in the vicinity shouting: "Damon, Damon. Siya iyong yumari." It turned out that the nickname of the Accused is "Damon" (Exhibit "K"). Honoria Canlas shouted and pleaded for succor: "Tulungan ninyo ako." Honoria Canlas and Alicia Hipolito put Sonny Canlas on a push cart and brought him to the Mary Johnston Hospital. However, by the time they arrived at the hospital, Sonny Canlas was then dead. Honoria Canlas and Alicia Hipolito saw it futile for Sonny Canlas to be still brought to the operating room of the hospital. At about that time, policemen from Police Station No. 2 of the Western Police District arrived at the hospital and inquired from them about their names and the name of the victim, Sonny Canlas. The cadaver of Sonny Canlas was later transferred to the morgue for the requisite autopsy."<sup>[1]</sup>

The well-entrenched rule is that a qualifying circumstance, such as treachery, must be proven as clearly as the crime itself.<sup>[2]</sup> There is treachery when the offender commits the crime against the offended parties employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.<sup>[3]</sup>

In other words, two (2) conditions must concur before treachery can be appreciated in the commission of a crime, that is, (1) the employment of means, method or manner of execution which would insure the offender's safety from defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or retaliate, and, (2) such means, method or manner of execution was deliberately or consciously chosen by the accused.<sup>[4]</sup>

In appreciating the element of treachery in the conviction of the accused for murder, the trial court said:

"The Prosecution, however, did prove that the Accused stabbed Sonny Canlas with treachery. The Accused detached himself from the cluster of eight (8) or so persons at the corner of Fulgueras and Sto. Cristo Streets, Tondo, Manila and then walked towards Sonny Canlas, placed his left arm around the shoulder of the latter and then stabbed him repeatedly, Sonny Canlas completely unaware at the outset, of the intention of the Accused. The attack by the Accused of Sonny Canlas was so sudden and unexpected that Sonny Canlas was unable to defend himself. More, even as Sonny Canlas ran away from the hold of the Accused, the latter relentlessly pursued Sonny Canlas and, again, stabbed him repeatedly. Under the circumstances, the stabbing was perpetrated by treachery. x x x"<sup>[5]</sup>

On the other hand, in his appeal at bench, the accused argues that treachery is not present because the blows and methods employed by him were very risky. He alleges that it was quite improbable for the victim not to become suspicious when the accused placed his arm on the shoulder of the victim, and that there was a great possibility

that the victim may or could parry the thrusts of the accused and grapple for the possession of the knife. In other words, according to accused, the victim had a chance to defend himself before he was stabbed. Additionally, the accused alleges that the qualifying circumstance of treachery was negated by the location of the wounds inflicted on the victim which showed, per the testimony of Dr. Marcial Cenido, that the accused and the victim were facing each other when the fatal wounds were inflicted on the victim.

Contrary to the pretensions of the accused, we find that there is a clear indication that treachery was present in the commission of the crime charged. It should be remembered that the accused, after detaching himself from the cluster of eight (8) persons, walked to where the victim Sonny Canlas was, put his left arm around the victim's shoulder and then whipped out a stainless, pointed, bladed knife and stabbed the victim repeatedly on the front portion of his body. These circumstances, in our view, affirm that the accused reflected on the means that he adopted in killing the victim and that the latter was not given sufficient time to defend himself from the attack.

Treachery may be appreciated in a sudden frontal attack.[6] In the case before us, the sudden and unexpected attack on the victim ensured the killing without risk to the assailant-accused. It is true that the fatal stab wounds were inflicted when the victim and the accused were facing each other, but, more importantly, the victim was totally unaware of and unprepared for the assault on his person and was not in a position to defend himself. Despite the claim of the accused that the victim was also armed with a knife, the accused remained unscathed with nary a scratch sustained by him.[7] The victim, on the other hand, sustained no less than twenty-two (22) stab and incised wounds both on the anterior and posterior aspects, no less than five (5) of which were fatal, per the report of Dr. Marcial Cenido who conducted the autopsy and submitted the following report:

"POSTMORTEM FINDINGS

EXTERNAL INJURIES AND EXTENSIONS INTERNALLY:

- Incised wound below the lateral and of the right eyebrow measuring 1.2 cm. x 0.4 cm. thru the subcutaneous tissue;
- Incised wound, chin to lower (sic) lip just left of anterior midline measuring 4 cm. x 0.8 cm. grazing the mandible;
- Stab wound, right clavicular region, 3.5 cm. from the anterior midline measuring 2.3 cm. x 0.4 cm. x 2 cm. in depth thru the subcutaneous tissue and directed slightly downwards backwards and towards the midline;
- Stab wound, right anterior shoulder measuring 1.5 cm. x 0.8 cm. x 3.2 cm. in depth thru the muscle tissue and directed obliquely back-wards, upwards and towards the midline;
- Penetrating stab wound, right upper anterior thorax, 2 cm. from the anterior midline, measuring 2.2 cm. x 0.6 cm. x 6 cm. in depth, directed obliquely backwards, slightly upwards and towards the lateral thru the 3rd inter--costal space and piercing the upper lobe of the right lung;
- Penetrating stab wound, left anterior thorax about the level of the nipples, 4 cm. from the anterior midline, measuring 2 cm. x 0.6 cm. in depth, directed obliquely backwards, slightly upwards and towards the midline and piercing the pericardium and left ventricle of the heart;
- Stab wound, left anterior thorax below the level of the left nipple, 2 cm. from the anterior midline, measuring 1.3 cm. x 0.5 cm. x 2.5 cm. in depth, directed obliquely back-wards, slightly downwards and towards the midline piercing the left 6th costal cartilage only;
- Lacerated wound, lateral end of the left eyebrow region measuring 2 cm. x 1 cm.;
- Incised wound, lateral to the left eye measuring 0.9 cm. x 0.2 cm.;

- Stab wound, upper neck, left anterolateral surface measuring 3 cm. x 0.4 cm. x 7.5 cm. in depth, directed obliquely backwards, slightly upwards and towards the lateral thru the muscle tissue;
- Stab wound, left lower neck, anterior, 6 cm. from the anterior midline, measuring 1.5 cm. x 0.3 cm. x 6 cm. in depth directed obliquely backwards, slightly upwards and towards the lateral thru the muscle tissue;
- Stab wound, left infraclavicular region, 10 cm. from the anterior midline, measuring 1.5 cm. x 0.4 cm. x 5 cm. in depth, directed obliquely backwards, slightly upwards and towards the midline thru the subcutaneous tissue;
- Stab wound, left shoulder, anterior, 13.2 cm. from the anterior midline, measuring 1.5 cm. x 0.4 cm. x 5 cm. in depth, directed obliquely backwards, slightly downwards and towards the midline thru the muscle tissue;
- Penetrating stab wound, left upper anterior thorax above the level of the left armpit, 14 cm. from the anterior midline, measuring 1 cm. x 0.5 cm. x 7 cm. in depth, directed obliquely backwards, downwards and towards the midline thru the 1st left intercostal space and piercing the upper lobe of the left lung;
- Penetrating stab wound, left anterior thorax above the level of the left nipple, 12 cm. from the anterior midline, measuring 1.5 cm. x 0.5 cm. x 9 cm. in depth, directed obliquely backwards, upwards and towards the midline thru the 3rd intercostal space and piercing the upper lobe of the left lung;
- Penetrating stab wound, left anterior thorax and above the left nipple, 10 cm. from the anterior midline, measuring 1.5 cm. x 0.5 cm. x 10 cm. in depth, directed obliquely back-wards, upwards and towards the midline thru the 3rd intercostal space and piercing the upper lobe of the left lung;
- Stab wound, left lower lateral thorax at midaxillary line measuring 1.5 cm. x 0.5 cm. x 9.5 cm. in depth, directed obliquely back-wards, upwards and towards the midline thru the muscle tissue;
- Stab wound, point of entry at the posterior middle 3rd of the left forearm measuring 2 cm. x 0.4 cm., directed obliquely forwards, upwards and very slightly towards the midline thru the muscle tissue and exiting at the anterior proximal 3rd of the same forearm and which measures 1.5 cm. x 0.6 cm.;
- Penetrating stab wound, left anterior thorax above the level of the left nipple, 6 cm. from the anterior midline, measuring 1.8 cm. x 0.6 cm. x 10 cm. in depth, directed obliquely backwards, very slightly downwards and very slightly towards the midline thru the 3rd intercostal space and piercing the pericardium and right auricle of the heart;
- Stab wound, point of entry above the left angle of the mandible measuring 2.5 cm. x 1 cm., directed backwards, very slightly downwards and very slightly towards the midline thru the subcutaneous tissues and exiting behind the angle and which measures 2 cm. x 0.8 cm.;
- Incised wound, left upper neck, lateral, measuring 1.5 cm. x 0.5 cm. thru the subcu-taneous tissue;
- Stab wound, base of the nape, left, 6 cm. from the posterior midline, measuring 2.5 cm. x 0.5 cm. x 5 cm. in depth, directed obliquely forwards, slightly downwards and towards the lateral thru the muscle tissue;
- Stab wound, back below the nape, 3.3 cm. left of posterior midline, measuring 0.8 cm. x 0.3 cm. x 3.5 cm. in depth, directed obliquely forwards, upwards and towards the lateral thru the muscle tissue;
- Small abrasions, left supra clavicular, base of the nape at midline and above the right lateral maleolus.

#### INTERNAL FINDINGS:

- Stab wounds of the internal organs and tissues indicated under the internal extensions of the external wounds, with recovered blood of about 1,700 cc from the thoracic cavities and generalized pallor; and

- Recovered from the stomach a small amount of brownish liquid and without alcoholic odor.' - Exhibits 'B' and 'B-1'." [8]

The above autopsy report is a strong and eloquent testimony to the cruel and merciless attack by the accused with clear intent to kill the victim. The number and location of the stab wounds, coupled with the deep and piercing thrusts of the knife, lead to no other conclusion than that the accused employed all the means to ensure the successful consummation of the crime without risk to himself. Death was instantaneous rendering prompt medical attention inutile due to the severity of the wounds.

WHEREFORE, the appealed judgment of the trial court dated 15 February 1991 is hereby **AFFIRMED**. Costs against accused-appellant.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

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[\*] Penned by Honorable Romeo J. Callejo

[1] Rollo, pp. 12-13

[2] People vs. Sarense, G.R. No. 97433, 20 October 1992, 214 SCRA 780

[3] Art. 14, par. 16, Revised Penal Code

[4] People vs. Ganut, November 2, 1982, 118 SCRA 35

[5] Rollo, p. 34

[6] People vs. Reyno, 77 Phil. 93; People vs. Basadre, April 17, 1984, 128 SCRA 641

[7] Rollo, p. 23(a)

[8] Ibid, pp. 14-17

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