

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PIO BISO ALIAS BISOY, EDUARDO YALONG ALIAS BULOY, APPELLANTS.*G.R. Nos. 111098-99. April 03, 2003*

Ponente: CALLEJO, SR., J.

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Before us, on appeal, is the decision,[1] dated June 9, 1987, of the Regional Trial Court of Manila, Branch 31, in Criminal Cases Nos. 84-24430 and 84-25774, finding Pio Bisoy and Eduardo Yalong guilty beyond reasonable doubt of murder and sentencing them to suffer the penalty of reclusion perpetua and ordering them to pay in solidum the heirs of the victim Dario Pacaldo the amount of P50,000 as civil indemnity.

The Antecedents

At a little past 12:00 midnight on February 16, 1984, Dario Pacaldo, a black belt in karate, entered an eatery located in Masinop, Tondo, Manila, owned by Augustina Yalong. He seated himself beside Teresita Yalong, the 14-year-old daughter of Augustina Yalong. He made sexual advances on Teresita in the presence of her brother, Eduardo (Buloy). Dario embraced and touched Teresita's private parts. As Dario was older, bigger, taller and huskier than Eduardo, the latter and Teresita could do nothing but to shout for help from their mother Augustina. However, before Augustina could do anything, Dario left the eatery and proceeded to the nearby Gereli Pub House and Disco.[2]

Augustina and Teresita rushed to the house of Barangay Captain Lachica for assistance. Although he was out of the house, his wife Dolores Lachica accompanied Augustina and Teresita to the police station where Teresita and Augustina lodged a complaint against Dario. Policemen and the three women proceeded to the nearby Gereli Pub House and Disco where Dario was apprehended by the police officers. They brought him to the Tondo Police Station where he tried to settle the matter with Augustina and Teresita by offering to pay them P200. However, the two rejected his offer. An investigation ensued but Dario was released. Augustina and Teresita were told to return to the station in the morning for them to file the appropriate criminal complaint against Dario.

At about 1:00 a.m., Eduardo contacted his cousin, Pio G. Bisoy (Bisoy), an ex-convict and a known toughie in the area, and related to him what Dario had done to Teresita. Eduardo and Pio, Boy Madang and Butso decided to confront Dario. They waited in an alley near the well-lighted Masinop Street for his arrival.

At or about 1:20 a.m., Eduardo became impatient when Dario had not yet arrived. Eduardo went to the house of Dario and knocked on the door. When Carmen Augusto, the house helper of the Pacaldos, opened the door, she was surprised to see Eduardo at the door. The latter inquired if Dario was at home already. When told that Dario had not yet arrived, Eduardo and Pio, Boy Madang and Butso positioned themselves in the alley near the house of Dario. Carmen noticed that Eduardo and his companions were conversing. Momentarily, Dario arrived on board a taxicab. Eduardo and Pio, Boy Madang and Butso assaulted Dario. Porfirio Perdigonos who was on his way home from work was startled when he saw the assault. He saw Eduardo hold, with his right hand, the wrist of Dario and cover with his left hand the mouth of Dario. He also saw Boy Madang and Butso hold Dario's right hand and

hair. Pio then stabbed Dario near the breast with a fan knife. Petrified, Porfirio fled to his house. Eduardo stabbed Dario and fled with his three companions from the scene.

Dario was able to crawl to their house and knocked at the door. His younger brother Felixberto was shocked when he opened the door and saw Dario bloodied all over. Their father Roberto was so incensed when he saw Dario mortally wounded. When Roberto asked Dario who assaulted him, Dario identified Eduardo with the help of three others. Roberto and Felixberto then called for help to bring Dario to the hospital. Dario motioned that it was pointless for him to be brought to the hospital. However, Roberto and Felixberto insisted, and brought Dario to the nearby Mary Johnston Hospital. On the way, Dario told his father that he was stabbed by Eduardo, at the same time flashing three fingers. Dario likewise told his brother Felixberto that his assailants were Eduardo, Pio, Boy Madang and Butso. Dario died upon arrival in the hospital.

At about 5:30 a.m., Porfirio went to the house of Roberto and told the latter that earlier at about 1:00 a.m., he saw Pio and three others assaulting Dario. He also told Roberto that he cannot recall their names but can recall their faces. He likewise told Roberto that Pio used a fan knife (balisong) in stabbing Dario.

Roberto reported the incident to the homicide section of the Tondo Police Station. Police officers arrested Pio. However, Eduardo managed to elude the police officers and went into hiding. After a month, Eduardo was arrested in Pampanga.

In the meantime, Dario's cadaver was autopsied by Dr. Marcial G. Cenido. The doctor prepared a report on his autopsy which reads:

POSTMORTEM FINDINGS

EXTERNAL INJURIES AND EXTENSIONS INTERNALLY:

- Penetrating stab wound, left upper anterior thorax, 122 cm. from the heel, 6.5 cm. left of anterior midline, measuring 1.5 cm. x 0.8 cm. in depth, thru 2nd left inter-costal space, cutting upper border of the 3rd costal cartilage, directed obliquely backwards, slightly upwards and towards the midline perforating the pericardium, incising the upper lobe of the left lung about the hilus;
- Penetrating (sic) stab wound, left posterior lumbar, 98 cm. from the heel, 12 cm. left of posterior midline, measuring 2 cm. x 0.9 cm. x 10.5 cm. in depth, directed obliquely forwards, slightly upwards and towards the midline and piercing the descending colon of the large intestine; and
- Deep abrasion, right chin and which measures 1 cm. x 0.2 cm.

INTERNAL FINDINGS:

- Stab wounds of the internal organs and tissue indicated under the internal extensions of the external wounds items 1 & 2, with generalized pallor;
- Massive left hemothorax with a very small amount of blood recovered from the abdominal cavity; and
- Recovered from the stomach a small amount of viscid/without alcoholic odor.

CAUSE OF DEATH

Penetrating stab wounds, left anterior thorax and posterior lumbar.[3]

Pio Bisio was charged with murder in an Information docketed as Criminal Case No. 84-24430 which reads:

That on or about February 16, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with three others whose true names, identities and present whereabouts are unknown and helping

one another did then and there wilfully, unlawfully and feloniously with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one Dario Pacaldo y Luega by, then and there stabbing the latter with the use of a bladed weapon thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.[4]

A separate Information for murder was filed against Eduardo with the said court docketed as Criminal Case No. 84-25774 which reads:

That on or about February 16, 1984, in the city of Manila, Philippines, the said accused conspiring and confederating with Pio G. Bisio who was also charged with the Regional Trial Court of Manila docketed under Criminal Case No. 24430, and two others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with premeditation, attack, assault and use personal violence upon one, Dario Pacaldo y Luega, by there and then stabbing him with a “balisong” on the left chest and on the left portion of the back, thereby inflicting upon the said Danilo Pacaldo y Luega mortal wounds which were the direct and immediate cause of his death.

Contrary to law.[5]

When arraigned on May 13, 1984 and January 3, 1985, respectively, Pio Bisio and Eduardo Yalong, assisted by their counsel, pleaded not guilty.[6] The proceedings in the two cases were consolidated.

The Case for the Accused

Pio denied any participation in the stabbing and the consequent death of Dario, the victim. He averred that he was in his house, sleeping with his common-law wife Myrna when Dario was stabbed to death.

Eduardo, on the other hand, admitted stabbing Dario. However, he stressed that it was he alone who stabbed the victim. He furthered that he had no intention of killing the victim. On March 20, 1984, Eduardo gave the same statement to the police officers admitting having stabbed the victim.[7] He related that after having coffee at a nearby store, he saw the victim who was seemingly drunk alighting from a taxicab. Upon seeing Eduardo, Dario shouted “Nagreklamo pa kayo ay halagang dalawang daang piso lang kayo.” To which Eduardo replied “Kami na nga ang naagrabado ay kayo pa ang matapang.” Dario slapped Eduardo so hard that he was pushed to the wall. Eduardo asked Dario “Ano ba ang kasalanan ko?” Dario replied “Matapang ka ha.” Simultaneously, he took out his “balisong” and lunged at Eduardo. However, Eduardo was able to parry the thrust and wrest the knife from Dario. Eduardo then swung the knife to Dario, hitting the latter on the chest. Eduardo fled from the scene of crime and went into hiding.

On June 9, 1987, the court a quo rendered a decision, finding Pio and Eduardo guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua:

WHEREFORE, the Court finds both accused GUILTY beyond reasonable doubt for the crime of Murder qualified by treachery and evident premeditation not offset by any mitigating circumstances and the Court hereby sentences each of them to suffer imprisonment of reclusion perpetua or life imprisonment.

Ordering both accused to indemnify the heirs of Dario Pacaldo y Luega the sum of P50,000.00.

Ordering both accused to pay litigation expenses and the costs of this proceedings.[8]

The accused appealed from the decision of the court.[9]

After filing his brief with this Court on June 12, 1999, Pio filed a motion dated January 20, 2000 praying for the withdrawal of his appeal. After verifying the veracity and the voluntariness of the motion, the Court, in a

Resolution dated October 16, 2000, granted the said motion and declared the case closed and terminated as to Pio Bisio.[10]

Appellant Eduardo filed his brief contending that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER.[11]

The appellant posits that the prosecution failed to prove beyond cavil of doubt that he killed the victim with treachery and evident premeditation. Hence, he is guilty only of homicide and not of murder. He avers that the prosecution failed to prove the essential requisites for evident premeditation. The trial court, on the other hand, stated in its decision that evident premeditation attended the commission of the crime:

There was evident premeditation as shown by the burning hatred of accused Eduardo Yalong to avenge the dishonor of his sister Teresita Yalong who was earlier molested and sexually molested by the deceased in the presence of said accused Yalong. Accused Yalong had a score to settle with the deceased Pacaldo, so he sought out the help of his ex-convict first cousin Pio Bisio, who, together with two (2) others waited at the scene of the crime for more than one (1) hour near the house of the deceased until his arrival, thereafter they were able to carry out their plan when deceased arrived after midnight.[12]

We agree with the appellant.

Case law has it that qualifying circumstances must be proved with the same quantum of evidence as the crime itself.[13] For evident premeditation to be appreciated, the prosecution is required to prove the following:

... (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[14]

Evident premeditation is not presumed from mere lapse of time. The prosecution is burdened to prove that the malefactors had decided to commit a crime and performed an “act manifestly indicating that the offender had clung” to a previous determination to kill.[15] It must be shown that there was a period sufficient to afford full opportunity for meditation and reflection, a time adequate to allow the conscience to overcome the resolution of the will, as well as outward acts showing the intent to kill.[16] The premeditation to kill should be plain and notorious. In the absence of clear and positive evidence proving this aggravating circumstance, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough.[17]

Evident premeditation must be established by clear and convincing evidence that the accused persistently and continuously clung to this resolution despite the lapse of sufficient time for them to clear their minds and overcome their determination to commit the same.[18]

In this case, the prosecution established that the appellant, incensed at seeing the victim molesting his younger sister Teresita, went to Pio, a notorious toughie in the area, and with two cohorts, proceeded to the house of the victim to confront him but failed to see the victim. However, the prosecution failed to prove that the four intended to kill Dario and if they did intend to kill him, the prosecution failed to prove how the malefactors intended to consummate the crime. Except for the fact that the appellant and his three companions waited in an alley for Dario to return to his house, the prosecution failed to prove any overt acts on the part of the appellant and his cohorts

showing that that they had clung to any plan to kill the victim.

We do not agree with the appellant's contention that treachery was not attendant in the commission of the crime.

For treachery to be appreciated as a qualifying circumstance, the prosecution must establish that (a) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; (b) the means of execution is deliberately or consciously adopted.[19]

The prosecution discharged its burden. Porfirio Perdigones testified how appellant Pio, and their cohorts killed Dario with treachery:

Q: When did you see that Dario Pakaldo (sic) was killed by Pio Bisio and his companions?

A: February 16, 1984 about 1:00 in the morning at Masinop St., Tondo, Manila.

Q: How did Pio Bisio and his companions killed (sic) Dario Pakaldo?

A: I saw how Dario was killed by Pio Bisio, sir. One was holding his right hand, one was holding his left hand, one was holding his head this way, sir. (witness demonstrating that the fellow hold (sic) Dario on his head, holding his hand at the mouth and other hand at the head and he was stabbed by Pio Bisio).[20]

Dario was powerless to defend himself or retaliate against the appellant and his cohorts.[21] By their collective and simultaneous acts, the appellant and his cohorts deliberately and consciously insured the consummation of the crime. In sum, the appellant is guilty of murder as defined and penalized under Article 248 of the Revised Penal Code.

Proper Penalty for the Crime

When the crime was committed in 1984, the penalty for murder was reclusion temporal in its maximum period to death. The appellant testified that he was 17 years old at the time of the commission of the crime. In his sworn statement to the police authorities, he also claimed that he was 17 years old.[22] The prosecution did not adduce any evidence to disprove the evidence of the appellant. Hence, the appellant is entitled to the privileged mitigating circumstance of minority under Article 63 of the Revised Penal Code.[23] Considering that the appellant was 17 years old at the time of the commission of the felony, the imposable penalty should be reduced by one degree. Hence, the imposable penalty for the crime is prision mayor in its maximum period to reclusion temporal in its medium period with a range of from ten years and one day to seventeen years and four months. Although the crime was committed at nighttime, there is no evidence that the appellant and his companions took advantage of nighttime or that nighttime facilitated the commission of the crime. Hence, nighttime is not aggravating in the commission of the crime.[24] The crime was committed by a band. However, band was not alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure.[25] Although the new rule took effect on December 1, 2000 long after the crime was committed, the same shall be applied retroactively being favorable to the appellant.[26] Taking into account the indeterminate sentence law, the appellant should be meted an indeterminate penalty of seven years and one day of prision mayor in its medium period as minimum, to twelve years, five months and eleven days of prision mayor in its medium period as maximum.

Civil Liabilities of the Appellant

The trial court correctly ordered the appellant to pay to the heirs of the victim Dario Pacaldo, P50,000 by way of civil indemnity.[27] The heirs of the victim are not entitled to moral damages as none of the heirs testified for the prosecution on the factual basis for said award. The heirs are also entitled to exemplary damages in the amount of P25,000 conformably with the ruling of the Court in *People v. Catubig*. [28]

The Verdict of the Court

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Manila, Branch 31, is hereby AFFIRMED WITH MODIFICATION. The appellant is found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code and is sentenced to an indeterminate penalty of from seven years and one day of prision mayor as minimum to twelve years, five months and eleven days of prision mayor as maximum. He is ordered to pay to the heirs of the victim Dario Pacaldo, the amount of P50,000 as civil indemnity and P25,000 as exemplary damages.

With costs de oficio.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

- [1] Penned by Judge Regino T. Veridiano II.
- [2] Exhibit “3,” paragraph 12.
- [3] Exhibit “D.”
- [4] Records, p. 31.
- [5] Id. at 181.
- [6] Rollo, p. 173.
- [7] Exhibit “3.”
- [8] Original Records, pp. 182-183.
- [9] Id. at 184-185.
- [10] Rollo, p. 234.
- [11] Id., at 245.
- [12] Records, pp. 182-183.
- [13] People v. Delim, G.R. No. 142773, January 28, 2003.
- [14] People v. Sison, 312 SCRA 792 (1999).
- [15] People v. Sol, 272 SCRA 393 (1997).
- [16] People v. Tabones, 304 SCRA 781 (1999).
- [17] People v. Mahinay, 304 SCRA 767 (1999).
- [18] People v. Manes, 303 SCRA 231 (1999).
- [19] People v. Silvestre, 307 SCRA 68 (1999).
- [20] TSN, April 23, 1985, p. 17.
- [21] People v. Daroy, 336 SCRA 24 (2000).
- [22] Exhibit “3”; TSN, February 9, 1987, p. 3.

[23] People v. Chua, 339 SCRA 405 (2000).

[24] People v. Lumacang, 324 SCRA 254 (2000).

[25] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[26] People v. Salvador, G.R. No. 132481, August 14, 2002.

[27] People v. Sanchez, 313 SCRA 254 (1999).

[28] 363 SCRA 621 (2001).

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