

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO LATUPAN Y SIBAL, ALIAS JERRY, ACCUSED-APPELLANT.

G.R. Nos. 112453-56. June 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Tuao, Cagayan, Branch 11 convicting Gerardo Latupan y Sibal, alias Jerry of the complex crime of double murder and sentencing him to "life imprisonment" and to indemnify the heirs of the two victims in the amount of fifty thousand (P50,000.00) pesos each. The court also convicted accused Gerardo Latupan of inflicting physical injuries to Jaime Asuncion, and sentenced him to "ten days imprisonment" and to pay two hundred (P200.00) pesos as indemnity.

On April 13, 1992, Provincial Prosecutor Alejandro A. Pulido of Cagayan filed with the Regional Trial Court, Tuao, Cagayan four separate informations charging Gerardo Latupan y Sibal alias Jerry with two counts of frustrated murder and two counts of murder, committed as follows:

Criminal Case No. 379-T

"That on or about April 29, 1991, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Gerardo Latupan alias Jerry, armed with a pointed knife, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault, box, maul, kick and hit with his aforesaid arm one Leo Asuncion, inflicting upon him injuries on the different parts of his body.

"That the accused had performed all the acts of execution which would have produced the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of his own will.

"Contrary to law."[2]

Criminal Case No. 380-T

"That on or about April 29, 1991, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Gerardo Latupan alias Jerry, armed with a pointed knife, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault, box, maul and kick one, Jaime Asuncion inflicting upon him injuries on the different parts of his body.

"That the accused had performed all the acts of execution which would have produced the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of his own will.

"Contrary to law."[3]

Criminal Case No. 381-T

"That on or about April 29, 1991, in the Municipality of Tuao, Province of Cagayan, and within the

jurisdiction of this Honorable Court, the said accused, Gerardo Latupan alias Jerry, armed with a pointed knife, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and stab one, Jose Asuncion inflicting upon him stab wound on his body which caused his death.

"Contrary to law."[4]

Criminal Case No. 382-T

"That on or about April 29, 1991, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Gerardo Latupan alias Jerry, armed with a pointed knife, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and stab one, Lilia Asuncion inflicting upon her stab wounds on her body which caused her death.

"Contrary to law."[5]

At the arraignment on May 25, 1993, accused pleaded not guilty to the charge of frustrated murder.[6] During the pre-trial conference of the four cases, accused offered to change his plea of not guilty to guilty of the complex crime of double murder and frustrated murder. The prosecution did not interpose any objection. Thus, on July 20, 1993, the trial court re-arraigned the accused. He withdrew his plea of not guilty and instead pleaded guilty to the single offense of multiple murder with multiple frustrated murder.[7]

Thereafter, the trial court ordered the prosecution to present evidence to establish the culpability of the accused.

The facts are as follows:

On April 29, 1991, at around 4:00 in the afternoon, Ceferino Dagulo (hereafter Ceferino) was chopping firewood outside his house in Angang, Tuao, Cagayan. Suddenly, he heard the shouts of a woman and a child coming from the north.

Moments later, Ceferino saw accused Gerardo Latupan y Sibal walking in his direction, carrying a thin, bloodied knife. Accused Latupan entered the house of Ceferino and started chasing Ceferino's wife, who was able to run to another house nearby. Unable to catch Ceferino's wife, accused Latupan turned to Ceferino and said, "I will kill you all." At that time, accused Latupan's clothes, chest, hands and legs were full of blood. Accused Latupan attempted to thrust the knife into Ceferino, who was able to parry it. Later on, accused Latupan told Ceferino to bring him to the authorities and tried to give the knife to Ceferino. Ceferino refused to touch the knife and told accused to go to the authorities by himself. Hearing this advice, accused ran away.

The house of Emilio Asuncion (hereafter Emy) was 100 meters from Ceferino's house. At around 4:00 in the afternoon of the same day, Emy Asuncion was returning to his house from a store. He reached his house and found his wife, Lilia, dead on the ground with several stab wounds on her body. His one-year old son, Leo, was lying on top of Lilia Asuncion. Emy picked up Leo and saw that the left side of Leo's face was lacerated. He saw Jaime, his three-year old son and asked where Jose, his eldest son, was. At that moment, Emy heard the voice of Jose from upstairs of the house, asking for medicine. He ran upstairs and saw that Jose was wounded. He asked Jose who stabbed him. Jose replied, "Uncle Jerry, Tatang." Seeing that Jose needed immediate medical treatment, Emy brought him to the house of Ceferino and then returned to his house to get his two other children, Leo and Jaime. They left the corpse of Lilia Asuncion inside Emy's house.

Lilia Asuncion was the sister of Ceferino's wife.

Meanwhile, Ceferino tried to ask a barangay councilman for assistance. Failing to obtain assistance, Ceferino went back to his house and found Emy Asuncion and his children there. Then, Ceferino went to a military camp to

borrow a vehicle to bring the children to the hospital. The military men provided them with a jeep. Thus, the three children were taken to the Nuestra Señora de Piat Hospital in Cabalansan. Riding in the jeep were five soldiers, the accused Latupan, Emy Asuncion, Ceferino Dagulo, Ceferino's wife, and the three children, Leo, Jaime and Jose Asuncion.

During the trip to the hospital, Emy's son, Jose, saw accused Latupan inside the jeep. Jose pointed to accused Latupan as the one who stabbed him.

At the hospital, the doctors treated the injuries of Leo and Jaime. However, the doctors advised Emy and Ceferino to bring Jose to another hospital due to the seriousness of his wounds. So, they proceeded to Cagayan Valley Regional Hospital. Sadly, Jose was dead on arrival.[8] He was only nine years old.

Jaime, 5 year-old son of Emy Asuncion, testified that he was three years old when the incident occurred. He stated that accused Latupan stabbed his mother, stepped on him, threw his brother, Leo, outside the window and stabbed his other brother, Jose.[9]

After presenting testimonial and documentary evidence, the prosecution rested its case. The defense did not present any testimonial or documentary evidence, merely relying on accused's plea of guilty. Thus, the case was considered submitted for decision.

On August 25, 1993, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused GERARDO LATUPAN alias JERRY GUILTY beyond reasonable doubt of the complex offense of Double Murder, the Court hereby sentences him to suffer life imprisonment and to indemnify the heirs of the two victims in the amount of P50,000.00 each or a total of P100,000.00.

"For the physical injuries suffered by Jaime Asuncion, the accused is sentenced to suffer ten (10) days imprisonment. Likewise, for the physical injuries suffered by Leon Asuncion, the accused is also sentenced to suffer ten (10) days imprisonment, both to be suffered simultaneously with the more grievous sentence of life imprisonment, plus P200.00 indemnity to each of the two victims.

"SO ORDERED.

"Given in chambers this 25[th]day of August, 1993, at Tuao, Cagayan, Philippines."

"(sgd.) ORLANDO D. BELTRAN

"Judge"[10]

Hence, this appeal.[11]

Accused-appellant pleaded guilty to the single offense of multiple murder with multiple frustrated murder.

Although this Court has set aside convictions based on plea of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment, the circumstances of this case merit a different result. "Where the trial court receives evidence to determine precisely whether or not the accused erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged." [12]

Crucial to the prosecution is the testimony of the eyewitness, Jaime Asuncion, who witnessed the incident and even suffered injuries from the unprovoked attack of accused-appellant. He was familiar with accused-appellant and categorically related to the court the events that occurred on the afternoon of April 29, 1991. Jaime narrated how accused-appellant stabbed his mother, threw his brother out of the window, stepped on him, and stabbed his

other brother.

Moreover, accused-appellant was seen not far from the scene of the crime with a bloodied knife and clothes, and mumbling threats at onlookers, including Ceferino Dagulo and his wife.

Thus, accused-appellant is liable for the deaths of Lilia and Jose Asuncion, and the physical injuries of Jaime and Leo Asuncion. From the manner accused attacked the family, he left them with no means of defense or escape. Considering the treacherous manner by which the victims were killed, the accused-appellant is liable for murder and physical injuries.

The trial court, however, erred in convicting accused-appellant of the "complex crime of double murder" and separate offenses of serious physical injuries. Article 48 of the Revised Penal Code provides: "When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." The instant case does not fall under any of the two mentioned instances when a complex crime is committed.[13] The killing of Lilia Asuncion and Jose Asuncion and the wounding of Jaime and Leo Asuncion resulted not from a single act but from several and distinct acts of stabbing. "Where the death of two persons does not result from a single act but from two different shots, two separate murders, and not a complex crime, are committed." [14]

Thus, accused-appellant is liable, not for a complex crime of double murder, but for two separate counts of murder, and separate counts of physical injuries.

Further, the trial court incorrectly assumed that the aggravating circumstance of evident premeditation was included in the plea of guilty. Qualifying and aggravating circumstances, which are taken into consideration for the purpose of increasing the degree of penalty to be imposed, must be proven with equal certainty as the commission of the act charged as criminal offense.[15]

Thus, evident premeditation cannot be presumed against accused-appellant. To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt.[16] In this case, there was no proof, direct or circumstantial, offered by the prosecution to show when accused-appellant meditated and reflected upon his decision to kill the victim and the intervening time that elapsed before this plan was carried out. When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[17]

Under Article 248 of the Revised Penal Code, the penalty for murder at the time of the commission of the crime in April 1991 was reclusion temporal maximum to death. The trial court convicted accused-appellant of murder and sentenced him to "life imprisonment." The proper imposable penalty is reclusion perpetua, not life imprisonment. Obviously, the trial court intended to impose reclusion perpetua.

However, the penalty of life imprisonment is not the same as reclusion perpetua. They are distinct in nature, in duration and in accessory penalties.[18] First, "life imprisonment" is imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under the Revised Penal Code. Second, "life imprisonment" does not carry with it any accessory penalty. Reclusion perpetua has accessory penalties. Third, "life imprisonment" does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, although the maximum period thereof shall in no case exceed forty (40) years.[19]

We likewise note that the trial court sentenced accused to "ten days of imprisonment" for each count of slight physical injuries. We reiterate the rule that it is necessary for the courts to employ the proper legal terminology in

the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties.[20] The appropriate name of the penalty must be specified inasmuch as under the scheme of penalties in the Revised Penal Code, the principal penalty for a felony has its own specific duration and corresponding accessory penalties.[21] Thus, the courts must employ the proper nomenclature specified in the Revised Penal Code, such as "reclusion perpetua," not "life imprisonment" or "ten days of arresto menor," not "ten days of imprisonment."

Hence, the proper penalty for each murder committed in April 1991, considering the absence of aggravating and mitigating circumstances, is reclusion perpetua, with its accessory penalties. Further, accused-appellant is liable for two counts of slight physical injuries and must be sentenced to twenty (20) days of arresto menor, each, likewise with its accessory penalties under the Revised Penal Code.[22]

We sustain the trial court's award of fifty thousand (P50,000.00) pesos as death indemnity for each of the victims. No further proof is necessary other than the fact of death of the victim and the accused's responsibility therefor.[23] In addition, we award moral damages in the amount of P50,000.00 pesos for each victim, without need of proof of consequent physical suffering and mental anguish of the heirs of the victims, in line with recent rulings.[24]

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court, Tuao, Cagayan, Branch 11 in Criminal Case Nos. 112453-56 with MODIFICATION. The accused-appellant Gerardo Latupan y Sibal is convicted of two counts of murder, for the death of Lilia Asuncion and Jose Asuncion, and is sentenced to reclusion perpetua in each case, and to indemnify the heirs of Lilia and Jose Asuncion in the amount of P50,000.00 pesos, each case, and in addition thereto, the amount of P50,000.00 pesos, each case, as moral damages. Accused-appellant is further convicted of two counts of slight physical injuries and is sentenced to twenty (20) days of arresto menor, in each case, plus P2,000.00 pesos as indemnity to each of the two victims, Jaime and Leo Asuncion.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J.,(Chairman), Puno, and Kapunan, JJ., concur.
Ynares-Santiago, J., on official business abroad.

[1] In Criminal Case Nos. 379-T, 380-T, 381-T, 382-T, Judge Orlando D. Beltran, presiding.

[2] Regional Trial Court Record, Book I, p. 31.

[3] Regional Trial Court Record, Book II, p. 4.

[4] Regional Trial Court Record, Book III, p. 4.

[5] Regional Trial Court Record, Book IV, p. 4.

[6] Certificate of Arraignment, Regional Trial Court Record, Book I, p. 43.

[7] Certificate of Arraignment, Regional Trial Court Record, Book I, p. 50.

[8] TSN, August 9, 1993, pp. 3-10.

[9] TSN, August 9, 1993, pp. 12-13.

- [10] Decision, Regional Trial Court Record, Book I, pp. 59-65, at p. 65.
- [11] Notice of Appeal, Regional Trial Court Record, Book I, p. 66.
- [12] *People v. Derilo*, 271 SCRA 633, 658-659 [1997].
- [13] *People v. Abubu*, 322 SCRA 407, 414 [2000].
- [14] *People v. Tabaco*, 270 SCRA 32, 62 [1997].
- [15] *People v. Piamonte*, 303 SCRA 577, 588 [1999].
- [16] *People v. Basao*, 310 SCRA 743, 780 [1999].
- [17] *People v. Enolva*, 323 SCRA 295, 310-311 [2000].
- [18] *People v. Ricafranca*, 323 SCRA 652, 665 [2000].
- [19] *People v. Fuertes*, 326 SCRA 382, 414 [2000].
- [20] *People v. Literado*, 209 SCRA 319, 328 [1992], citing *People v. Mobe*, 81 Phil. 58 [1948]; *People v. Baguio*, 196 SCRA 459 [1991].
- [21] *Austria v. Court of Appeals*, 339 Phil. 486, 495-496 [1997]; *People v. Serdan*, 213 SCRA 329, 344 [1992]; *People v. Aquino*, 186 SCRA 851, 863 [1990].
- [22] Article 44, Revised Penal Code.
- [23] *People v. Paraiso*, 319 SCRA 422, 440 [1999]; *People v. Cayago*, 312 SCRA 623, 639 [1999].
- [24] *People v. Sullano*, 331 SCRA 649, 662 [2000], citing *People v. Atrejenio*, 310 SCRA 229 [1999]; *People v. Salcedo*, 340 Phil. 12, 35 [1997].

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