

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUANITO IBAÑEZ Y CARTICIANO @ JUANITO CARTICIANO, APPELLANT.

G.R. Nos. 133923-24. July 30, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This is an automatic review of the joint decision,[1] dated March 10, 1998, of the Regional Trial Court (Branch 27), Cabanatuan City, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds and so holds that the accused JUANITO IBAÑEZ Y GARTICIANO guilty beyond reasonable doubt of the crime[s] of MURDER and FRUSTRATED MURDER and sentences him to suffer the penalty of:

- DEATH in Criminal Case No. 7564 (AF), and for him to indemnify the heirs of the deceased offended party in the amount of P50,000.00, and the amount of P100,000.00 representing actual damages.

No moral damages are awarded as the same is subsumed in the civil indemnity for death (People vs. R. Daen, G.R. No. 112015, 26 May 1995).

- 12 years and one (1) day to twenty (20) years of reclusion temporal in Criminal Case No. 7563 (AF), and for him to indemnify the offended party in the amount of P50,000.00, as moral damages, and the amount of P13,599.00, as actual expenses.

- To pay the costs of the suits.

SO ORDERED.[2]

On February 3, 1997, appellant was charged with Frustrated Murder in an Information, docketed as Criminal Case No. 7563, which reads:

That on or about the 17[th] day of October, 1996, at 3:00 o'clock in the morning, more or less, at Poblacion West, Aliaga, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and while armed with a deadly weapon (bolo) did then and there willfully, unlawfully and feloniously attack, assault and hack FELIX AYROSO OLANDA with a bolo while victim was asleep in the master's bedroom, inflicting upon him serious hackwounds in his face and other parts of his body, thus performing all the acts of execution which should have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, that is, the timely medical attendance extended to the victim which prevented his death, to the damage and prejudice of the said offended party.

Contrary to law.[3]

He was also charged with Murder, in an Information docketed as Criminal Case No. 7564, to wit:

That on or about the 17[th] day of October, 1996, at around 3:00 o'clock in the morning, more or less, at

Poblacion West, Aliaga, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation and while armed with a deadly weapon (bolo), did then and there willfully, unlawfully and feloniously attack, assault and hack ROSARIO ESPINOZA OLANDA with a bolo while said victim was asleep in the master's bedroom, inflicting upon her fatal hack wounds in the neck, head and other parts of her body which caused her instantaneous death, to the damage and prejudice of the heirs of the victim.

Contrary to Law.[4]

Upon being arraigned on December 4, 1997, appellant, assisted by his counsel de oficio, entered a plea of "guilty". The prosecution was ordered to adduce evidence as required by the Rules of Court. On motion of the Assistant Provincial Prosecutor, the two cases were consolidated. Thereafter, joint trial ensued.

Based on the evidence presented by the prosecution, the following facts were established:

In the very early morning of October 17, 1996, Felix Olanda, in his early eighties, and wife Rosario Olanda, 72, were sleeping in a room in their house in Poblacion West II, Aliaga, Nueva Ecija. A light in the house porch and another from the religious altar inside the house illuminated their room. The spouses were soundly asleep when Felix suddenly felt somebody hack him. Felix saw the assailant when the latter was about to leave and he recognized appellant who used to reside in the house of their neighbor. Felix then fell unconscious. Upon regaining consciousness, he went to the main door of their house and asked for help. He walked around the house and saw his wife already dead. He was later rushed to the Nueva Ecija Doctor's Hospital.[5]

Dr. Francisco de Guzman attended to Felix who was brought to the hospital in a rather critical condition with multiple incised wounds on the right side of the face and nose, on the left side of the face and buccal cavity, on the right shoulder and scapular region, on the right arm and left arm; avulsion skin dorsum left index finger; abrasion on the abdominal wall; and fracture on the right scapula.[6] Felix was immediately brought to the operating room, given blood transfusion and operated on. He was confined in the hospital for about 5 days. According to Dr. de Guzman, all wounds inflicted on Felix were serious, especially the ones on the face and right shoulder. The doctor asserted that Felix lost a lot of blood which could have caused his death without immediate medical attention, especially since the victim was an elderly; and that the possible weapon used could be something sharp, like a bolo, that caused the clean cut incised wounds.[7]

On the other hand, Dr. Edgardo Carlos, the Rural Health Physician of Aliaga, Nueva Ecija, conducted on the same day, October 17, 1996, a post mortem examination on the cadaver of Rosario Olanda. He found an incised wound at the back of the ear and deep hacking wounds on the scalp, parietal area, at the back of the neck and left shoulder.[8] According to Dr. Carlos, the hacking wound on the left shoulder of the victim caused her death, the primary cause of which is hypovolemia, or the loss of blood due to hacking wounds; and the weapon used could have been a bolo, which is a sharp object.[9]

Earlier on the same date, that is, October 17, 1996, between 3:00 and 4:00 in the morning, appellant went to the house of Juanito Sarmiento, his former employer. Sarmiento saw appellant with scratches on his legs, knees and arms. Ibañez told him that he escaped from his employer who is a palay dealer and asked for money in order to go to Umangan. Sarmiento gave him P20.00. On October 20, 1996, Sarmiento reported the incident to the police. When he was shown the items recovered from the crime scene - bolo, maong pants, t-shirt, and belt - he recognized them to be those of appellant. On October 23, 1996, Sarmiento executed a statement regarding the incident before SPO2 Rodolfo Gutierrez, which was subscribed and sworn to before Chief of Police Anselmo Baluyot.[10]

On October 24, 1996, at around 8:30 in the morning, Atty. Gavino Villanueva appeared before the Police Station

of Aliaga, Nueva Ecija because he was asked by investigation officer SPO2 Gutierrez to assist appellant in the execution of the extrajudicial confession of his guilt to the commission of the crimes of murder and frustrated murder. Atty. Villanueva explained to Ibañez his constitutional right to refuse to answer if he does not want to, as well as his right to remain silent. Despite the warnings, appellant stated that he was still willing to tell the truth. Atty. Villanueva was present during the entire time that the investigator asked appellant questions and the latter gave his answers. After the investigation, SPO2 Gutierrez read, interpreted and explained the contents of the extrajudicial confession to appellant. Then, the investigator asked him if he was still willing to sign the confession. Appellant signed before the investigator and Atty. Villanueva, and the confession was subscribed and sworn to by appellant before P/Insp. Anselmo Baluyot, the Station Commander of Aliaga Police Station. Atty. Villanueva affixed his signature as assisting counsel.[11]

After the prosecution rested its case, the defense opted to dispense with the presentation of evidence.

On March 10, 1998, the trial court rendered herein assailed joint decision finding appellant guilty beyond reasonable doubt of the crimes charged in the Informations and imposing upon him the penalty of Death for Murder and reclusion temporal for Frustrated Murder.

Hence, the joint decision is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In assailing the judgment of conviction, appellant raised a single Assignment of Error, to wit:

THE TRIAL COURT SERIOUSLY ERRED IN NOT APPLYING MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER, VOLUNTARY CONFESSION OF GUILT AND INTOXICATION IN FAVOR OF THE ACCUSED.[12]

An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[13] Thus, before we resolve the assigned error of the trial court, we deem it imperative to resolve two questions that necessarily arise in the present appeal. First, whether or not the automatic review of the decision in Criminal Case No. 7564 finding appellant guilty of Murder and sentencing him to death includes the review of Criminal Case No. 7563 finding appellant guilty of Frustrated Murder and sentencing him to reclusion temporal; and, second, whether or not appellant had made an improvident plea of guilty; and if in the affirmative, whether or not the cases should be remanded to the trial court for proper re-arraignment and further proceedings.[14]

On the first question -

In *People vs. Francisco*,[15] we reiterated our rulings in *People vs. Panganiban*,[16] and *People vs. Lasanas*,[17] thus:

In the 1983 case of *People vs. Panganiban*, we ruled that an automatic review of the death penalty imposed by the trial court was deemed to include an appeal of the less serious crimes, not so punished by death, "but arising out of the same occurrence or committed by the accused on the same occasion, as that giving rise to the more serious offense." The ruling was based on Sec. 17, par. (1), R.A. No. 296, as amended (The Judiciary Act of 1948), which to date has not been repealed and continues to be good law thus -

Sec. 17. The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in -

(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense,

regardless of whether the accused are charged as principals, accomplices or accessories or whether they have been tried jointly or separately . . .

Panganiban dealt with the types of cases where the facts and circumstances involved in a less serious crime were interlinked and closely interwoven with the facts in the capital cases subject of the automatic review, such that the findings of fact in the latter case would substantially affect the other cases. In those instances it became procedurally sound to include even the less serious crime in the automatic appeal to enable the Court to review the facts as a whole and accordingly evaluate all the evidence for the capital offense as well as the less serious one. (Emphasis supplied)

In the present cases, the crimes were committed on the same occasion by appellant and practically the same evidence was presented for both offenses. We will therefore proceed in this appeal to evaluate all the evidence for both the capital offense and the lesser offense.

On the second question -

Section 3, Rule 116 of the Revised Rules on Criminal Procedure specifically mandates the course that the trial courts must follow in case the accused pleads guilty to a capital offense, as follows:

SEC. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form - death - for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.[18] The primordial purpose is to avoid improvident pleas of guilt on the part of the accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea.[19]

Based on the aforequoted rule, we have enunciated that it is mandatory for the trial court to accomplish three things to avoid an improvident plea of guilty, namely: (1) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he desires.[20]

The trial court failed to conduct a "searching inquiry".

A "searching inquiry," under the Rules, means more than informing cursorily the accused that he faces jail term but so also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony.[21] It is not enough to inquire as to the voluntariness of the plea; the court must explain fully to the accused that once convicted, he could be meted the death penalty;[22] that death is a single and indivisible penalty and will be imposed regardless of any mitigating circumstance that may have attended the commission of the felony.[23]

Thus, the importance of the court's obligation cannot be overemphasized for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilt, he may be imposed a lesser penalty, as it actually happened in the case at bar. In his extrajudicial confession, appellant expressed his hope that the court would be lenient on him as to the penalty that may be imposed, thus:

23. T:

Ang iyo bang isinagawang pag-amin sa nangyaring krimen na ito na inamin mo sa harap ng abogado na si Atty. Gavino S Villanueva ay lubos mong nauunawaan o kung ano ang iyong kahihinatnan tungkol sa pag-amin mong ito?

S: Opo, nauunawaan ko na kusa ko na pong inamin ito at iyon ay maaring siyang makatulong pa sa akin para magaanan kung ano mang kaparusahan ang igagawad sa akin ng batas o hukuman.[24] (Underscoring ours.)

Not infrequently indeed, an accused pleads guilty in the hope of a lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.[25]

On the date of arraignment of appellant, immediately after he pleaded guilty to the crimes charged, the trial court questioned appellant, duly represented by a counsel de oficio, thus:

COURT:

Personally read the two informations. Now, do you admit the accusations?

ACCUSED IBAÑEZ:

A Yes, sir, I am entering a plea of guilty.

Q Why were you able to do that?

A Because I was then so drunk and intoxicated, sir.

Q Do you have something against Rosario Espinoza Olanda?

A None, sir.

Q So the fact is you might have killed her because of your intoxication?

A Yes, sir.

Q In connection with the other case you also hacked to death Felix Olanda, but you were not able to kill him?

A

Yes, sir.

Q Why were you able to do it?

A Because I was over intoxicated and so drunk, sir.

Q Do you have anything against Felix Olanda before you attacked him and inflicted injuries to him?

A None, sir.

Q So what do you want now?

ATTY. BELTRAN:

May we invoke the mitigating circumstances of plea of guilty and the accused was then suffering from over intoxication, Your Honor.

COURT:

We will take that into consideration and we will hear the cases on the merits. May we make it appear on record that Atty. Rodolfo C. Beltran who has been appointed counsel de oficio is a very active and competent trial

lawyer and past [president] of IBP Nueva Ecija Chapter. The accused was informed of all his constitutional rights, yet he still entered a plea of guilty and asked the mitigating circumstances of plea of guilty and intoxication.

FISCAL BELTRAN:

May we place it on record that aside from the plea of guilty of the accused to both the crime[s] of murder and frustrated murder he has executed a voluntary confession with the assistance of Atty. Gavino Villanueva.

COURT:

We will consider that.[26]

Again, after the prosecution rested its case, the trial court questioned appellant, which we quote verbatim, to wit:

COURT:

Q Where were you detained?

A At the Provincial Jail, Your Honor.

Q

Mr. Ibañez, when the case was called for arraignment after the Court explained to you the possible consequences of your plea of guilty you pleaded Guilty and in fact admitted having executed the extrajudicial confession before the policemen or the police investigators of Aliaga, Nueva Ecija.

Q Tell us, did the policemen maltreated, manhandled or water-cured you?

A No, Your Honor.

Q

When you entered your plea of Guilty in open Court, did anybody threatened, coerced, forced you or promised you any reward in whatever nature or kind?

A No, Your Honor.

Q

Will you please tell the Court if the items that were presented by the prosecutor which were recovered at the scene of the crime were yours?

A Yes, Your Honor.

COURT:

Make it appear on record that the defense counsel is present and the public prosecutor is also present. There are other lawyers present as the Court is undertaking certain questions to the accused to determine the voluntariness of his plea of Guilty and the voluntariness of his extrajudicial confession.

COURT:

Q In other words, you have no witness to present in this case?

A No more, Your Honor.

Q Is there a final plea which you want to be recorded in the records of this case?

A None, Your Honor.

Q

In other words, you are now ready with clean conscience to submit the case for decision based on the evidence submitted by the prosecution and based on your admission?

A Yes, Your Honor.

COURT:

Any question from the defense?

ATTY. A. ADRIANO:

No more, Your Honor.

COURT:

Prosecution?

FISCAL F. MACARAIG:

No more, Your Honor.

....

SESSION ADJOURNED.[27]

In both occasions, the trial court failed to do its duty to properly make searching inquiry.

The proceedings taken by the trial court was short of being satisfactory. Appellant had made an improvident plea of guilt as he was not fully apprised of the consequences of his plea. Nowhere in the proceedings conducted by the trial court was it explained to appellant that the penalty imposable for the crime attended by the qualifying circumstances of treachery and evident premeditation, as alleged in the Information, is death even if he pleads guilty and regardless of the presence of other mitigating circumstances.

Should the appealed decision be set aside and remanded to the trial court for re-arraignment and further reception of evidence?

As a rule, we have set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment.[28] However, where the trial court received evidence to determine properly whether or not the accused had erred in admitting his guilt, the manner by which the plea of guilt was made, whether 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.[29] Stated differently, even without considering the plea of guilty of herein appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction.[30]

After going over the entire records of the cases, we find that the evidence for the prosecution, independently of the improvident plea of guilty, adequately established the guilt of appellant beyond reasonable doubt as charged in the Informations:

- The extrajudicial confession of appellant presented by the prosecution, marked as Exhibit "A" (for the murder case) and identified in court by Atty. Gavino S. Villanueva, the lawyer who assisted him in the execution of said confession, reads in full:

MALAYA AT KUSANG LOOB NA SALAYSAY NI JUANITO IBAÑEZ Y' CARTICIANO ALYAS JUANITO CARTICIANO AT DANNY NA IPINAGKALOOB KAY CHIEF INVESTIGATOR SPO2

RODOLFO L GUTIERREZ DITO SA TANGGAPAN NG TIGASIYASAT NG ALIAGA POLICE OFFICE, ALIAGA, NUEVA ECIJA NGAYONG IKA-24 NG OKTUBRE 1996 GANAP NA IKA-8:30 NG UMAGA SA HARAP NI ATTY. GAVINO S. VILLANUEVA.

[illegible]

PASUBALI: G. JUANITO IBAÑEZ y Carticiano, ikaw ngayon ay nahaharap sa isang pagsisiyasat dito sa aming tanggapan

dahil sa ikaw ay nasasangkot sa kaso ng pagpatay o sadyang pagpatay kay Gng. Rosario Espinoza Olanda at grabeng pagkakasugat o bigong pagpatay sa asawa nito na naganap sa kanilang tahanan nuong petsa Oktubre 17, 1996 humigit kumulang sa ika-3:00 ng madaling araw, gayunman aking ipinaaalala sa iyo ang ilan sa karapatan mo sa pagsisiyasat na ito gaya ng sumusunod;

1. Karapatan mo ang manatiling tahimik o magsawalang kibo sa pagsisiyasat na ito;
2. Karapatan mo ang humirang o pumili ng sarili mong abogado na papatnubay sa iyo sa pagsisiyasat na ito;
3. Karapatan mo ang di sumagot ng tuwiran sa mga tanong ko na di mo dapat sagutin;
- 4.

Ipinaaalala ko pa rin sa iyo na kung wala kang abogado na sariling pili mo ay amin kang pagkakalooban na siyang papatnubay sa iyo;

5.

Ipinaaalala ko pa rin na anumang salaysay ang ibigay mo dito ay maaring gamiting pabor o laban sa iyo saan mang hukuman;

TANONG: Ang mga ipinaalala ko ba sa iyong ito ay lubos mong nauunawaan?

SAGOT: Opo. [handwritten]

T:

Nais mo bang ipagpatuloy ang imbigtigasyong ito sa harap ng isang abogado na si Atty. Gavino S. Villanueva na siya naging pinakiusapan para humarap sa pagsisiyasat na ito, ikaw ba ay kumporme sa pagkakakuha namin kay Atty. Gavino S. Villanueva:

S: Opo. [handwritten]

T: Sumusumpa ka bang lahat ng iyong sasabihin sa pagsisiyasat na ito ay pawang katotohanan lamang?

S: Opo. [handwritten]

(signed)

JUANITO C. IBAÑEZ

(Magsasalaysay)

ASSISTED BY:

(signed)

ATTY. GAVINO S. VILLANUEVA

of Aliaga, Nueva Ecija

01. TANONG:

Sabihin mo ngang muli sa akin ang buong pangalan, edad, hanapbuhay, tirahan at iba pang bagay na mapagkakakilanlan sa iyo?

SAGOT:

JUANITO IBAÑEZ y Carticiano po, may alyas na Juanito Carticiano at Danny, 24 taong gulang, may asawa, helper/laborer, nakatira sa Brgy Umangan, Aliaga, Nueva Ecija at tubong Brgy Umod, Bayawan, Negros Oriental.

02. T:

Bakit naririto ka ngayon sa himpilan ng pulisya ng Aliaga, Nueva Ecija at isinasailalim sa isang pagsisiyasat?

S:

Ako po ay isinama at inimbata ng mga pulis dito para kuhanan ng pahayag tungkol sa nangyaring krimen sa bahay nina Felix Olanda sa Poblacion West 3, Aliaga, Nueva Ecija.

03. T:

Saan ka bang lugar pinuntahan ng mga pulis dito para dalhin dito sa aming himpilan at kuhanan ng pahayag?

S:

Sa Purok Dimla po, sakop ng Brgy Inaon, Pulilan, Bulacan at iyon ay kahapon petsa Oktubre 23, 1996 na halos gabi na ng dumating kami dito.

04. T:

Bakit napunta ka duon samantalang tiga Brgy Umangan, Aliaga ka nakatira?

S:

Pumunta po ako duon sa Pulilan, Bulacan nuong araw ng biyernes petsa Oktubre 18, 1996 para makigapas duon.

05. T: Sino ba tinuluyan mo duon habang naruon ka sa Bulacan?

S: Si Lando na di ko alam ang buong pangalan.

06. T:

Alam mo na ba kung bakit ka pinuntahan ng mga pulis dito duon sa tinuluyan mo sa Inaon, Pulilan, Bulacan?

S:

Opo, dahil sa ako ay nasangkot sa krimen na pagpatay kay Gng. Rosario Espinoza Olanda at bigong pagpatay naman kay Felix Ayroso Olanda.

07. T: Ano masasabi mo ngayon tungkol dito sa krimeng ito na ikaw ang sangkot?

S: Ako po ang nagsagawa ng krimen na iyon.

08. T: Kailan at saan mo ba isinagawa ang nangyaring krimen na kusang loob mo ng inamin?

S:

Isinagawa ko po ang krimen humigit kumulang sa mga alas 2:00 ng madaling araw ng Oktubre 17, 1996 at

iyon ay duon sa loob ng isang kwarto ng bahay mismo ng mag-asawang Felix at Rosario Olanda ko isinagawa.

09. T: Paano ka ba nakapasok ng bahay nina Olanda nuon?

S:

Umakyat po ako sa dingding na pader na una ay duon sa bintana ako tumuntong upang maabot ko ang butas sa itaas malapit sa may kisame kaya't nakapasok ako sa loob ng bahay.

10. T:

Anong gamit o instrumento ang ginamit mo sa pagpatay kay Gng. Rosario Olanda at bigong pagpatay kay Felix Olanda?

S:

Isa pong matulis at matalim na mahabang gulok na ginamit kong panaga sa mag-asawang Olanda.

11. T: Alin sa mag-asawang Olanda ang una mong pinagtataga?

S:

Hindi ko po matiyak kung sino sa kanila ang una kong tinaga dahil may kadiliman sa loob ng k[w]arto nila na nakahiga pa sila sa kama ng salakayin ko sila ng mga taga.

12. T: Bakit mo nagawang pagtatagain ang mag-asawang Olanda?

S:

Dala po iyon ng sobrang pagkalasing ko sa alak na ginebra San Miguel kaya't nangyari at naisagawa ko ang krimen.

13. T: May personal na galit ka ba sa mag-asawang Olanda?

S: Wala po.

14. T: Bakit mo kakilala ang mag-asawang Olanda?

S:

Kilala ko po sila dahil ako ay matagal ding nagtira bilang katulong sa pagsasaka ni Rolando Viesca na kapitbahay ng biktima.

15. T: May iba ka pa bang pakay ng pasukin mo sila at pagtatagain?

S:

Wala po akong ibang pakay na kahit na magnakaw, basta po sa sobrang pagkalasing ko ay di ko malaman kung bakit ko nagawa iyon.

16. T: Wala bang ibang tao na nag-utos sa iyo o nag-upa kaya para patayin ang biktima?

S :Wala po, iyon ay nag-iisa lamang ako ng isagawa ko [ang] krimen.

17. T: Saan mo kinuha ang gulok na ginamit mong panaga sa mag-asawa?

S:

Iyon po ay kinuha ko ng walang paalam sa kapitbahay namin sa Brgy Umangan, Aliaga, Nueva Ecija.

18. T:

May isang matulis at matalim na gulok dito sa aming himpilan na may takyaran, kilalanin mo nga kung ano kaugnayan nito sa gulok na ginamit mo. Ito ay narekober ng mga pulis sa bisinidad ng pinagyarihan ng krimen?

S:

Iyan po ang ginamit ko (Nang ipakita ng Police Investigator ang gulok na may haba na talim na humigit kumulang sa dalawang talampakan at matulis ang dulo, may puluhang yari sa kahoy at takyarang kahoy) (ito ay positibong itinuro ng suspek na iyon ang kanyang ginamit sa krimen).

19. T:

Ang pantalong maong na ito may sinturong kulay brown, at isang kulay itim na T'shirt na narekober din ng mga pulis. Kangino ba ito?

S:

Sa akin din po iyan na naiwanan ko ng tumakas ako dahil naghubad ako bago ako pumasok ng bahay.

20. T: Yung bisekleta na nakuha rin namin sa lugar o malapit sa lugar ng krimen, kangino iyon?

S:

Ginamit ko po iyon na aking hiniram kay Alice dela Cruz sa Brgy Umangan, Aliaga bago mangyari ang krimen na siya kong sinakyan patungo dito sa Aliaga.

21. T:

Nuon bang ikaw ay nakatira kay Rolando Viesca na kapitbahay ng biktima ay nangyaring ikaw ay nakapasok sa bahay o bakuran nina Olanda?

S: Hindi po.

22. T: Paano mo nagawang makabisado ang daan para makapasok ng bahay?

S:

Nuon pong pumasok ako ko nalang nakita duon pwede dumaan dahil sarado mga pinto ng bahay.

23. T:

Ang iyo bang isinagawang pag-amin sa nangyaring krimen na ito na inamin mo sa harap ng abogado na si Atty. Gavino S Villanueva ay lubos mong nauunawaan o kung ano ang iyong kahihinatnan tungkol sa pag-amin mong ito?

S:

Opo, nauunawaan ko na kusa ko na pong inamin ito at iyon ay maaring siyang makatulong pa sa akin para magaanan kung ano mang kaparusahan ang igagawad sa akin ng batas o hukuman.

24. T: Ang imbistigador ay wala ng itatanong may gusto ka pa bang sabihin?

S: Wala na po akong sasabihin.

25. T:

Ang salaysay mo bang ito ng pag-amin mo sa kasalanan ay malalagdaan mo ng kusang loob, walang tumakot,

pumilit o kaya ay nangako ng anumang uri ng pabuya para lamang aminin ang mga bagay na ito?

S:

Malalagdaan ko po iyan ng kusang loob.[31]

A careful examination of the above-quoted sworn declarations of appellant convinces us that his extrajudicial confession leaves no doubt as to its voluntariness and spontaneity. He described the house of the victims, the manner of his entry therein as well as the weapon he used. He also identified the t-shirt and pants recovered from the crime scene as the ones he wore during the incident. Indeed, the details contained in his confession could have been known by him alone.

The confession was signed by appellant with the assistance of counsel, Atty. Gavino Villanueva, and the affidavit was read and explained to appellant before he signed the same. Atty. Villanueva further testified that appellant was asked if he wanted to have another lawyer to assist him to which he replied in the negative. The prosecution witness was subjected to cross-examination conducted by appellant's counsel, which failed to show that the direct testimony of said witness is not worthy of belief.[32] Thus, in the absence of countervailing proof, the presumption that the extra-judicial confession was voluntarily and validly made must be upheld.

Moreover, appellant admitted, upon query of the trial court, that he executed the sworn confession before the police investigators and with the assistance of counsel. There was no claim that he was forced, coerced or threatened to make the confession. In fact, appellant asserted that he was not maltreated, manhandled or water-cured by the police.[33]

- The testimony of the surviving victim, Felix Olanda. He recounted in detail the incident that occurred on October 17, 1996 which not only jibes with the confession of appellant but more significantly, he categorically identified the appellant as the person who hacked him and his wife who died by reason of said hacking. It is the most natural reaction for victims of crimes to strive to remember the faces of their assailants.[34] There is no reason for us to disbelieve Felix Olanda's testimony or to suspect his motives.

- The testimonies of Dr. Francisco de Guzman and Edgardo Carlos together with their respective medical and autopsy reports attesting to the serious wounds sustained by Felix Olanda and the fatal wounds of Rosario Olanda.[35]

- The testimony of prosecution witness Juanito Sarmiento. It is established that between 3:00 and 4:00 in the morning after the incident happened, Juanito Sarmiento saw appellant with scratches on his legs, knees and arms, when the latter asked him for money to go to another place. Further, Sarmiento recognized the things recovered from the crime scene to be those of appellant's.[36]

With the foregoing evidence, the trial court did not err in finding appellant guilty beyond reasonable doubt of the crimes charged in the Informations.

We will now proceed to review the modifying circumstances that attended the commission of the crimes.

In evaluating the circumstances that qualified the crimes to murder and frustrated murder, the trial court considered the aggravating circumstances of abuse of superior strength and dwelling. We note that these aggravating circumstances were not alleged in the Informations. By virtue of its amendment, effective December 1, 2000, Section 8, Rule 110 of the Revised Rules on Criminal Procedure now provides that aggravating circumstances must be alleged in the information, otherwise they cannot be considered against the accused even if they were proven during the trial.[37] Being favorable to appellant, this Rule, as amended, should be applied retroactively. Hence, the trial court erred in appreciating abuse of superior strength and dwelling.

Besides, where there is treachery, the aggravating circumstance of abuse of superior strength is deemed absorbed in treachery.[38]

We are thus left to review the finding of the trial court on the presence of the aggravating circumstances of treachery and evident premeditation which are alleged in the Informations.

The Court finds that the trial court correctly held that treachery attended the killing of Rosario Olanda and the frustrated killing of her husband Felix. There is no question that the spouses were hacked while asleep. It was very early in the morning when they were hacked. Felix testified they were asleep when a sudden hacking awakened him.[39] It rendered the victims completely unable to defend themselves. There is treachery where the victim was killed while he was asleep.[40]

In ascertaining whether there is evident premeditation, we noticed that in the extrajudicial confession of appellant, he meticulously described as to how he entered the house of the victims. According to him, he climbed up the wall of the house, stepped on the window frame until he reached an opening between the ceiling and the wall where he entered.[41] This fact betrays his familiarity with the place. That he might have planned his entry and therefore, would indicate that he premeditated the killing may not be far-fetched but such fact alone is not sufficient to constitute evident premeditation. We have ruled that for courts to consider evident premeditation as aggravating circumstance, the prosecution must prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit has clung to his determination, and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of this act and to allow his conscience to overcome the resolution of his will.[42]

In the case at bar, no proof has been adduced to establish that appellant had previously planned the killing of the spouses.[43] There is no evidence when and how he planned and prepared for the same,[44] nor was there a showing that sufficient time had lapsed between his determination and execution. Thus, the aggravating circumstance of evident premeditation ought not to have been considered by the trial court.

The claim of the Office of the Solicitor General that the trial court should have considered two other generic aggravating circumstances - disregard of the respect due the offended parties on account of age and cruelty is devoid of merit.

Disregard of old age is not aggravating where the accused did not deliberately intend to insult the age of the offended party.[45] The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanly increased the victim's suffering or outraged or scoffed at his/her person or corpse.[46] In these criminal cases, said aggravating circumstances are neither alleged in the Informations nor proven by the prosecution.

To repeat, the Revised Rules of Criminal Procedure proscribes the consideration of aggravating circumstances which, though proven, were not alleged in the information.

Coming now to the consideration of the mitigating circumstances in the commission of the offense, appellant cites certain circumstances that mitigated his liability. He claims that the trial court failed to take into account the fact that he voluntarily surrendered, his plea of guilty and intoxication.

We find that there was no voluntary surrender on the part of appellant. For voluntary surrender to be a mitigating circumstance, the following must concur: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary. Surrender, to be deemed voluntary, must be spontaneous, the accused submitting his person unconditionally to the authorities with an acknowledgment of his guilt and with the intent to save them the trouble and expense of effecting his capture.[47]

Appellant in this case did not of his own volition surrender himself to a person in authority. After the incident in question, appellant went to Pulilan, Bulacan and only surrendered after the Aliaga, Nueva Ecija police were tipped on his whereabouts and sent a team to arrest him.[48] He did not spare the authorities the trouble and expense necessary to search and capture him. Clearly, appellant's surrender was neither spontaneous nor voluntary.

However, appellant's plea of guilty to the two charges against him must be taken into consideration in imposing the proper penalty on him, as will be discussed forthwith.

Under Article 13(7) of the Revised Penal Code, a plea of guilty on arraignment is a mitigating circumstance. To effectively alleviate the criminal liability of an accused, a plea of guilty must be made at the first opportunity, indicating repentance on the part of the accused.[49] Article 13(7) requires that the offender voluntarily confesses his guilt before the court prior to the presentation of the evidence for the prosecution. A plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance.[50] In this case, appellant pleaded guilty upon being arraigned and before the prosecution had presented witnesses. Thus, the trial court erred in not taking said mitigating circumstance in favor of appellant.

As to the circumstance of intoxication, the lower court was correct in not appreciating intoxication as a generic mitigating circumstance. Under Article 15 of the Revised Penal Code, intoxication is mitigating when it is not habitual or subsequent to the plan to commit the felony. To be mitigating, the accused's state of intoxication must be proved.[51] In the case at bar, appellant merely alleged that when the offenses were committed, he was so drunk. However, his self-serving statement in the extrajudicial confession was not corroborated by other evidence. The defense did not present evidence neither was it elicited on cross-examination of Juanito Sarmiento who testified that appellant went to see him between 3:00 and 4:00 in the morning on the date of incident. Thus, appellant's bare assertion of intoxication is devoid of any probative value.[52]

In sum, treachery qualified the killing and frustrated killing to murder. There are no aggravating circumstances attendant in this case. There is however plea of guilty, as a generic mitigating circumstance, which should be considered in favor of appellant.

We come now to the imposition of penalties.

The trial court erred in imposing the death penalty in the Murder case. Article 248 of the Revised Penal Code imposes the penalty of reclusion perpetua to death on accused found guilty of the crime of Murder. Applying paragraph 3, Article 63 of the Code, in cases in which the law prescribes a penalty composed of two indivisible penalties, when the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. Thus, the impossible penalty is reclusion perpetua. However, under Section 2 of Act No. 4103, as amended, the Indeterminate Sentence Law does not apply.

As to the frustrated murder of Felix Olanda, the penalty next lower in degree than that prescribed by law for the consummated felony, or reclusion temporal, is the proper impossible penalty under Articles 50 and 250 of the Revised Penal Code. The range of reclusion temporal is twelve years and one day to twenty years. The trial court erred in imposing the whole range. In the absence of any aggravating circumstance, and in the presence of the mitigating circumstance of plea of guilty, the impossible penalty under Article 64(2) is the minimum period of reclusion temporal which ranges from twelve years and one day to fourteen years and eight months. Thus, applying the Indeterminate Sentence Law, the maximum penalty is the minimum period of reclusion temporal while the minimum penalty is one degree lower than that prescribed by the Revised Penal Code in any of its periods, or prision mayor, which ranges from six years and one day to twelve years.

As to damages awarded by the trial court:

In the Murder case -

Conformably with the observations of the trial court, appellant should indemnify the heirs of Rosario Olanda the amount of P50,000.00 as civil indemnity.[53] As to moral damages, however, the widower Felix Olanda is not entitled to the same. He did not testify on any mental anguish or emotional distress which he suffered as a result of his wife's death.[54] No other heirs of Rosario testified in court .

However, recent jurisprudence justifies the imposition of exemplary damages in cases where treachery is proved,[55] as in this case. An award of P25,000.00 is thus proper.

Of the amount of P100,000.00 awarded by the trial court for actual damages, only P45,000.00 may be granted as only so much for burial expenses are supported by the evidence on record.[56] The alleged reasonable miscellaneous expenses of P55,800.00 are disallowed for not having been sufficiently proved.[57] Actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim.[58]

In the Frustrated Murder case -

Appellant should indemnify Felix Olanda in the amount of P13,599.00, as actual expenses.

Felix Olanda likewise did not testify on the moral damages he suffered. However, considering that it is duly proven by the medical certificate issued by Dr. Francisco de Guzman[59] that Felix sustained serious hacking injuries inflicted by appellant, it is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Felix would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[60] We deem it just and reasonable to award P40,000.00 as moral damages for frustrated murder.

WHEREFORE, the decision of the Regional Trial Court (Branch 27) of Cabanatuan City in Criminal Cases Nos. 7563 and 7564 finding appellant Juanito Ibañez GUILTY of the crimes of Murder and Frustrated Murder beyond reasonable doubt is AFFIRMED with MODIFICATIONS:

In Criminal Case No. 7563, appellant is sentenced to suffer the penalty of imprisonment ranging from six years and one day of prision mayor, as MINIMUM, to twelve years and one day of reclusion temporal as MAXIMUM and to pay Felix Olanda the amount of Thirteen Thousand Five Hundred Ninety Nine Pesos (P13,599.00) as actual damages; Forty Thousand Pesos (P40,000.00) as moral damages; and Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.

In Criminal Case No. 7564, appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Rosario Olanda the amount of Fifty Thousand Pesos (P50,000.00) for her death as civil indemnity, Forty Five Thousand Pesos (P45,000.00) as actual damages and Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.

Costs de oficio in both cases for the proceedings in the court a quo and in the present appeal.

The provisions of Article 70 of the Revised Penal Code shall be observed in the service of the penalties herein imposed.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Penned by Judge Feliciano V. Buenaventura.

[2] Rollo, p. 28; Records, Vol. II, p. 106.

[3] Rollo, pp. 9-10; Records, Vol. I, pp. 1-2.

[4] Rollo, pp. 11-12; Records, Vol. II, pp. 2-3.

[5] TSN, Testimony of Felix Olanda, December 15, 1997, pp. 17-21; December 17, 1997, pp. 2-5; Salaysay (Felix Olanda), Rollo, pp. 11-13.

[6] Medical Certificate dated October 18, 1996, Exhibit "A" (for the case of Frustrated Murder), Records, Vol. I, p. 29.

[7] TSN, December 15, 1997, pp. 2-9.

[8] Autopsy Report, Exhibit "H" (for the case of Murder), Records, Vol. II, p. 7.

[9] TSN, January 5, 1998, pp. 2-6.

[10] TSN, Testimony of Juanito Sarmiento, December 8, 1997, pp. 9-14; December 15, 1997, pp. 9-15.

[11] TSN, Testimony of Atty. Gavino Villanueva, December 8, 1997, pp. 2-5.

[12] Appellant's Brief, p. 1; Rollo, p. 43.

[13] *People vs. Matano*, 354 SCRA 27, 38 (2001); *People vs. Villareal*, 261 SCRA 386, 397 (1996).

[14] *People vs. Dayot*, 187 SCRA 637, 646 (1990).

[15] 354 SCRA 475, 483-484 (2001).

[16] 125 SCRA 595 (1983).

[17] 152 SCRA 27 (1987).

[18] *People vs. Olarte*, 365 SCRA 635, 643 (2001).

[19] *Id.*, pp. 643-644.

[20] *People vs. Chua*, 366 SCRA 283, 292 (2001); *People vs. Olarte*, 365 SCRA 635, 643 (2001); *People vs. Galas*, 354 SCRA 722, 729 (2001), citing *People vs. Dayot*, 187 SCRA 637 (1990).

[21] *People vs. Bello*, 316 SCRA 804, 813 (1999).

[22] *People vs. Galas*, 354 SCRA 722, 729-730 (2001).

[23] *Ibid.*; *People vs. Derilo*, 271 SCRA 633, 653-655 (1997).

[24] *Sinumpaang Salaysay* (Juanito Ibañez), Exh. "A" (for the case of Murder), Records, Vol. II, pp. 17-19.

- [25] *People vs. Bello*, 316 SCRA 804, 814 (1999), citing *People vs. Dayot*, 187 SCRA 637 (1990).
- [26] TSN, pp. 1-2, December 4, 1994.
- [27] TSN, pp. 2-3, March 3, 1998.
- [28] *People vs. Derilo*, 271 SCRA 633, 658 (1997).
- [29] *Id.*, pp. 658-659; *People vs. Galas*, 354 SCRA 722, 730 (2001), citing *People vs. Petalcorin*, 180 SCRA 685 (1989).
- [30] *Derilo case*, *supra*, p. 659.
- [31] *Sinumpaang Salaysay* (Juanito Ibañez), pp. 1-3; Exh. "A" (for the case of Murder), Records, Vol. II, pp. 17-19.
- [32] TSN, December 8, 1997, pp. 5-8.
- [33] TSN (Juanito Ibañez), March 3, 1998, p. 2.
- [34] *People vs. Bacungay*, G.R. No. 125017, March 12, 2002.
- [35] TSN, December 15, 1997, January 5, 1998, Exhibits "A" (For the Frustrated Murder case) and "H" (For the Murder case).
- [36] TSN, December 8, 1997, pp. 11, 14.
- [37] See *People vs. Durohom*, G.R. No. 146276, November 21, 2002; *People vs. Manlansing*, G.R. Nos. 131736-37, March 11, 2002.
- [38] *People vs. Macandog*, 358 SCRA 462, 477 (2001); *People vs. Herbias*, 265 SCRA 571, 578 (1996).
- [39] TSN (Felix Olanda), December 15, 1997, p. 18.
- [40] *People vs. Evangelista*, 256 SCRA 611 (1996), citing *People vs. Dequina*, 60 Phil. 279 (1934).
- [41] Question No. 9, *Sinumpaang Salaysay* (Juanito Ibañez), Exhibit "A," Records, Vol. II, p. 18.
- [42] I L.B Reyes, *The Revised Penal Code* 381 (2001).
- [43] See *People vs. Macandog*, 358 SCRA 462, 477 (2001).
- [44] See *People vs. Naag*, 322 SCRA 716, 739 (2000).
- [45] *People vs. Diaz*, 55 SCRA 178, 187 (1974).
- [46] *People vs. Bonito*, 342 SCRA 405, 427 (2000).
- [47] *People vs. Lagrana*, 147 SCRA 281, 285 (1987).
- [48] *Pinagsamang Sinumpaang Salaysay* (SPO4 Pablo Ragasa, SPO3 Domingo Cariaga, SPO1 Jessie Belmonte, and SPO1 Marito Lina), dated October 24, 1996; Exhibit "A," Records, Vol. II, p. 20.
- [49] See *People vs. Sitchon*, G.R. No. 134362, February 27, 2002, citing *People vs. Roman*, 296 SCRA 559 (1998).
- [50] *People vs. Almendras*, 372 SCRA 737, 747 (2001).
- [51] *People vs. Fortich*, 281 SCRA 600, 621 (1997), citing *People vs. Apduhan, Jr.*, 24 SCRA 798 (1968).

[52] *People vs. Fortich*, 281 SCRA 600, 621 (1997), citing *People vs. Noble*, 77 Phil. 93.

[53] See *People vs. Dumalahay*, G.R. No. 131837-38, April 2, 2002.

[54] *People vs. Bernal*, G.R. Nos. 132791 and 140465-66, September 2, 2002.

[55] *Id.*

[56] Exh. "G"; Records, Vol. II, p. 111.

[57] *People vs. Mercado*, 346 SCRA 256, 291 (2000); *People vs. Nullan*, 305 SCRA 679, 706 (1999), citing *People vs. Degoma*, 209 SCRA 266 and *People vs. Corder*, 263 SCRA 122.

[58] Art. 2199, Civil Code of the Philippines; *People vs. Perreras*, 362 SCRA 202, 214 (2001), citing *People vs. Galo*, G.R. No. 132025, 16 January 2001, 349 SCRA 161.

[59] Exhibit "A" (For the Frustrated Murder case).

[60] *People vs. Belaong*, G.R. No. 138615, September 18, 2002.

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