

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMER MOYONG Y TALORONG AND JORRY VELASCO (AT LARGE), ACCUSED.

G.R. Nos. 135413-15. November 15, 2000

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellant Amer Moyong y Talorong was convicted, on three counts, of murder in a joint decision, dated 17 August 1988, rendered by the Regional Trial Court ("RTC") of Cavite City, Branch 88, in Criminal Cases No. 27-98, No. 28-98 and No. 29-98.

The three informations filed against accused-appellant and his co-accused Jorry Velasco were worded uniformly, except for the names of the victims, viz:

"That on or about December 7, 1997, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a knife and an ice pick, acting with treachery and evident premeditation, taking advantage of superior strength with nighttime purposely sought to facilitate the commission of the offense, conspiring, confederating together and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously assault, attack and repeatedly stab with their weapons NORMITA BAWAR y MADLANGBAYAN [JOSELITO AQUINO y ESTEBAN; PASCUAL BAWAR y AMON], hitting and inflicting upon the latter multiple stabbed and punctured wounds in the different parts of the body which caused the latter's instantaneous death.

"CONTRARY TO LAW."[1]

Amer Moyong pled "not guilty" upon arraignment.[2]

After trial, the court a quo promulgated its decision finding accused Moyong guilty and pronouncing on him a death sentence; thus:

"WHEREFORE, in view of all the foregoing considerations, this court hereby finds the accused Amer Moyong y Talorong guilty beyond reasonable doubt of the crime of murder as charged in the three (3) Informations, qualified by treachery and aggravated by evident premeditation and scoffing or outraging at the corpses of the victims, and accordingly hereby sentences him to suffer the supreme penalty of death in each of the three (3) cases, and is hereby ordered to pay the heirs of the victims separate amounts of P50,000.00 each or a total of P150,000.00 as death indemnity.

"SO ORDERED."[3]

The records of the case have been forwarded to this Court for review. Accused-appellant, in his appeal brief, posits a lone but a familiar all-embracing assignment of error, to wit:

"THE LOWER COURT HAS COMMITTED AN ERROR IN NOT ABSOLVING AND EXCULPATING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED HEREIN."[4]

The evidence presented by the prosecution incriminating accused-appellant are narrated by the Office of the Solicitor General in the People's Brief.

At around 3:45 in the morning of 07 December 1997, Bayani Panganiban, Chief Barangay Tanod of Barangay 39 in Cavite City, was on duty at the barangay hall when he was alerted by a male helper from "Our Inn Hotel and Restaurant" about an on-going "trouble" at the establishment. Panganiban, together with two tanods, responded and proceeded to the scene. Standing in front of the hotel, the responding barangay officials called out the name of hotel owner Pascual Bawar. Hearing no answer from Bawar and suspecting that something was wrong, Panganiban, used his VHF/UHF radio to call for police assistance. Meanwhile, Panganiban and his fellow tanods requested some members of the local Citizen's Crime Watch, as well as a number of tricycle drivers, to go around the hotel and guard possible escape routes of malefactors.

Joselito Jaro, a tricycle driver, and his companions stationed themselves at the back of the hotel along Molina Street. The people who had by then gathered in the area cried out that there was a man at the rooftop. Jaro, together with two others, climbed to the roof of a nearby house. Searching the premises with his flashlight, Jaro saw accused-appellant Amer Moyong crawling from a small opening near the fire exit of the hotel. In no time, accused-appellant was apprehended and detained at the barangay hall. His pair of pants, shirt and sandals were stained with blood.

Minutes later, PO3 Enrico Rosal, accompanied by other police officers, arrived at the scene. Inside the hotel, they found Pascual Bawar at the hallway in the second floor dead with multiple stab wounds. Nearby, they found Normita Bawar at the doorway of Room 113 and Joselito Aquino, the hotel cashier, lying on the bed, both also dead, with multiple stab wounds. In the hallway were prints of blood caused by the footwear worn by the assailant or assailants. The police officers were informed that a suspect was already in the custody of barangay officials. Later, at the police station, PO3 Rosal saw accused-appellant Amer Moyong, stained with blood, taken in for investigation.[5]

Dr. Regalado Sosa, the health officer of Cavite City, conducted an autopsy on the cadaver of Joselito Aquino on 07 December 1997 and found twelve stab, incised and punctured wounds on the victim. A knife and an ice-pick were found to have been used in the killing. Dr. Abe Escario, on the same day, performed an autopsy on the remains of Pascual and Norma Bawar. Pascual sustained 17 stab and punctured wounds while Norma Bawar suffered from 12 stab and punctured wounds.

SPO4 Virgilio Pilapil, an investigator of the Cavite City Police Force, stated that, on 12 December 1997, he took the written statements of Amer Moyong who was assisted by a PAO field lawyer.

Accused-appellant bewails his conviction and instead attributes the death of the three victims to his co-accused Jorry Velasco.

Accused-appellant would insist he was taking a bath inside the hotel room where he and Jorry Velasco checked-in when the latter ran berserk and stabbed the three victims to death. Accused-appellant himself was shocked to see that Jorry had attacked the three victims. Accused-appellant was threatened by Jorry to stab Pascual Bawar, who apparently was dead by then, in order "to mess things up." Soon, accused-appellant lost his composure, panicked and hid himself in a nearby rooftop. It was Jorry Velasco, accused-appellant claimed, not he, who had an axe to grind against the victims for having been maltreated by the Bawar spouses.

Admittedly, there were no eyewitnesses to the killing of the three victims. In convicting accused-appellant, the trial court relied on circumstantial evidence.

A conviction based on circumstantial evidence would be proper if its requisites concur, i.e., (1) there is more than

just one circumstance in attendance; (2) the facts from which inferences can be derived are adequately proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[6] These circumstances must be consistent with the hypothesis that the accused is guilty of the crime sought to be established and can lead to no rational assumption that may be congruent with the innocence of the accused.[7]

The prosecution succeeded in putting up together not one but several pieces of circumstantial evidence. (1) Accused-appellant, along with Jorry Velasco, admittedly checked-in and stayed at Room 113 of the "Our Inn Hotel and Restaurant" where the bloodied remains of the three victims were found; (2) accused-appellant was in the hotel when the killings occurred; (3) not long after, accused-appellant was seen crawling out from the hotel through an opening near the fire exit located at the rooftop of the building; (4) accused-appellant was accosted while attempting to flee from the scene of the crime; (5) accused-appellant's t-shirt, pair of pants and sandals were stained with blood; and (6) the nature and number of the stab wounds sustained by the three victims were consistent with the findings of the police in their ocular investigation and the results of autopsy performed on the remains of the victims.

In convicting accused-appellant for murder, the trial court saw the attendance of treachery and evident premeditation in the commission of the crime as so alleged in the Information. These qualifying circumstances, to be aptly appreciated, should first be firmly established and not merely to be supposed or speculated. No eyewitness to the killing was presented and no specific evidence was shown on how the killings might have actually transpired. Whether there was provocation on the part of the victims, or whether the attack was sudden and unexpected, or whether the victims were forewarned of an impending danger, matters that would be essential in considering treachery, had not been ascertained.[8] Neither could evident premeditation be appreciated absent any showing of (1) the time when the accused was determined to commit the crime, (2) an act manifestly indicating that the accused clung to his determination, and (3) a sufficient lapse of time between such determination and execution that allowed him to reflect upon the consequences of his act.[9]

Nor could the Court consider the circumstances of abuse of superior strength and nocturnity. Mere superiority in number, even assuming it to be a fact, would not necessarily indicate the attendance of abuse of superior strength. The prosecution should still prove that the assailants purposely used excessive force out of proportion to the means of defense available to the persons attacked. Nocturnidad, upon the other hand, would be a modifying element only when (1) it was especially sought by the offender; or (2) the offender took advantage of it; or (3) it facilitated the commission of the crime by ensuring the offender's immunity from identification or capture.[10] The mere fact that the killing was committed at night would not suffice to sustain nocturnity for, by and of itself.[11]

The law[12] would consider to be an aggravating circumstance a situation where the wrong done in the commission of the crime was "deliberately augmented by causing other wrongs not necessary for its commission." While the victims indeed suffered from several stab wounds, this fact alone, however, absent any other showing, could make it certain that the wounds were inflicted to intentionally augment the suffering of the victims.[13] Similarly, it would not be right to conjecture that the mop handle found in the mouth of one of the victims was meant to mock or outrage his corpse.

Absent any qualifying circumstance, the killing constituted, not murder, but merely one of homicide for which commission Article 249 of the Revised Penal Code prescribes the penalty of reclusion temporal. Absent either an aggravating or a mitigating circumstance, reclusion temporal must be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty that can be meted out on the offender would be anywhere within the range of prision mayor, as minimum, to reclusion temporal in its medium period, as maximum.

The Court sustains the civil indemnity of P50,000.00 awarded by the trial court for each offense.

WHEREFORE, the decision under review is MODIFIED. Accused-appellant Amer Moyong y Talorong is found guilty beyond reasonable doubt only of the crime of HOMICIDE, defined and penalized under Article 249 of the Revised Penal Code, in each of the three criminal cases, and he is hereby sentenced to an indeterminate penalty ranging from nine (9) years and one (1) day of prision mayor, as minimum, to sixteen (16) years, four (4) months and one (1) day of reclusion temporal, as maximum, in each of the three cases. The award by way of civil indemnity of P50,000.00 to the heirs of each of the victims, namely Pascual Bawar, Normita Bawar and Joselito Aquino, or a total liability against accused-appellant of P150,000.00 civil indemnity is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Mendoza, J., on leave.

[1] Records of Crim. Case No. 27-98, p. 1.

[2] Jorry Velasco, his co-accused, has to date remained at large.

[3] Rollo, p. 38.

[4] Rollo, p. 58.

[5] TSN, 06 April 1998, pp. 2-29.

[6] People vs. Sanchez, 298 SCRA 48; People vs. Mendoza, 284 SCRA 705; People vs. Bato, 284 SCRA 223; People vs. Olivarez, 299 SCRA 635.

[7] People vs. Llaguno, 285 SCRA 124; People vs. Mijares, 297 SCRA 520.

[8] People vs. Demonteverde, 290 SCRA 175; People vs. Bautista, 254 SCRA 621.

[9] People vs. Villamor, 292 SCRA 384.

[10] People vs. dela Cruz, 291 SCRA 164.

[11] People vs. Belo, 299 SCRA 654.

[12] Article 14, paragraph 21, Revised Penal Code.

[13] People vs. Ilaoa, 233 SCRA 231; People vs. Ferrer, 255 SCRA 19; People vs. Sion, 277 SCRA 127.

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