

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO ANDO; COSTALES AND FERNANDO RAMIREZ (AT-LARGE), ACCUSED.

G.R. Nos. 141154-56. January 15, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Traditionally, religious fervor nourishes love, respect and concern for one another among brethren; it was not so however in the case of one whose adherence to his faith became the harbinger of his tragic end, sending his wife hanging by the thread of death, and worse, the crimes were perpetrated apparently by their brethren professing to be "denizens of the temple."

Accused Fernando "Ando" Costales and Fernando Ramirez, the latter being still at large, stood charged with the murder of Miguel Marcelo and the frustrated murder of Crispina Marcelo. As the perpetrators were found to be in unlawful possession of firearms they were also charged with violation of PD 1866, as amended by RA 8294.

Since accused Fernando Ramirez remained at large, only accused Fernando "Ando" Costales was arraigned and tried.

For violation of Sec. 1, PD 1866, as amended (Crim. Case No. T-2054), accused Fernando "Ando" Costales was found guilty and sentenced^[1] to an indeterminate penalty of six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum, and to pay a fine of P30,000.

For the murder of Miguel Marcelo (Crim. Case No. T-2057), accused Fernando "Ando" Costales was found guilty and meted the ultimate penalty of death.

For the frustrated murder of Crispina Marcelo (Crim. Case No. T-2056) he was found guilty only of attempted murder and sentenced to an indeterminate penalty of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum. Additionally, he was ordered "to pay the heirs of the two (2) victims P250,000.00 in damages to be shared by and among them in a manner that suits them best."

Sitio Raniag, Barangay Capas, was a placid but forlorn barrio in Pangasinan where the spouses Miguel and Crispina Marcelo resided in a small one-room shanty with concrete flooring and cogon roofing. Although their married daughters Donabel, Jessie and Erlinda already had their own houses they would spend the night with them every once in a while. And so it was on the night of 27 November 1997.

Jessie Molina recalled that at around 11:30 o'clock in the evening of 27 November 1997, she and her sisters Donabel and Erlinda together with their parents Miguel and Crispina had taken their own corners of their small house to prepare for the night. Miguel laid in a folding bed beside the door while the others occupied a bamboo bed with the exception of Jessie who for want of available space settled instead on the concrete floor. Jessie and Erlinda had just watched tv when two (2) persons suddenly barged into their house passing through the door kept ajar by sacks of palay and strangled her father Miguel. Jessie readily recognized the two (2) intruders because the

entire room was illuminated by a nightlamp which the family kept burning overnight.

Jessie narrated that Fernando "Ando" Costales, one of the assailants, poked a gun at the head of her father and shot him once in cold blood. Thereafter the other assailant Fernando Ramirez sprayed on their faces what she described as "something hot and pungent," and with his firearm pumped a bullet on her mother's chest.

Erlinda Marcelo was also awakened when the two (2) accused suddenly entered their house and strangled their father after which Fernando Costales shot him point blank in the head. According to Erlinda, when tear gas was sprayed by Ramirez, she ducked and almost simultaneously she heard a gunshot towards the direction of her mother. When she opened her eyes, she saw her mother Crispina clutching her breast, reeling from the blow and collapsing on the floor in a heap. In her testimony Crispina herself confirmed that Ramirez shot her once on the right chest which caused her to bleed and lose consciousness.

Both Jessie and Erlinda affirmed that they were familiar with the two (2) accused because, like the rest of the family, they were members of the "Baro a Cristiano" also known as Lamplighter, of which Fernando "Ando" Costales and Fernando Ramirez were the high priests in their respective areas. According to Jessie, her parents decided to quit the brotherhood because Ramirez warned them not to sever their ties with the sect if they did not want any harm to befall them. In fact, according to her, a month earlier Ramirez even threatened her sister Erlinda with bodily harm.

Like her sister, Erlinda stated that their family distanced themselves from the congregation when Ramirez threatened her father. According to her, on 16 November 1997, Miguel tried to fetch her from the house of Ramirez but Miguel relented only after Ramirez threatened her with a bolo. Her father tried to get her when he learned that Ramirez was molesting her every time his wife was away. She however did not report this matter immediately to the authorities because she feared for her life.

Dr. Alex E. Trinidad, Rural Health Physician of Umingan, Pangasinan, after conducting an autopsy on the body of Miguel Marcelo reported: (a) The gunshot wound penetrating the left lobe of the liver of deceased Miguel Marcelo was fatal; (b) Considering the trajectory of the gunshot wound, the assailant was probably pointing slightly downward; (c) The cause of death of the deceased was internal hemorrhage arising from the gunshot wound; and, (d) Considering the wound of the victim, he could have survived for a few minutes after he was shot.

To show that he could not have been a party to the crimes charged, accused Fernando Costales gave a detailed account of his activities by retracing his steps from late afternoon of 27 November 1997 until dawn of the following day. He narrated that at 5:00 o'clock in the afternoon of 27 November he was irrigating his land in Barangay Libeg, then proceeded to a nearby chapel to pray. At past 7:00 o'clock in the evening, he went to see a certain Isidro who was irrigating his own land with the use of his (Fernando's) water pump. That being done he went back home.

A couple of hours later, in the company of his wife and children, he returned to the mission house to attend another religious service. At past 9:00 o'clock that same evening he dropped by Isidro's farmland to verify if the latter had finished irrigating. He went back home at around 11:00 o'clock to sleep and was awakened by Isidro at about 11:45 o'clock only to inform him that he (Isidro) was through. When Isidro left, Fernando went back to sleep only to be roused again by Gregorio Baguio who also wanted to borrow his water pump. With his sleep disrupted, he decided around midnight to visit as he did the nearby mission house to pray. Shortly after, he resumed his sleep but woke up again at 4:00 o'clock in the morning to see if Baguio had already finished watering his farm.

Defense witnesses Isidro Costales and Gregorio Baguio corroborated the claim of Fernando Costales that he could

not have perpetrated the crimes as he was with them all the time they were irrigating their farms. Likewise, Elvie Costales, wife of accused Fernando Costales, presented an "attendance notebook," purportedly prepared by her, showing that her husband, who was the chapter's religious leader, was worshipping in the Barangay Libeg chapel from 4:45 to 4:47 o'clock and from 5:30 to 5:37 o'clock at daybreak,[2] from 7:22 to 8:00 o'clock after sunset,[3] and from 12:10 to 12:15 o'clock midnight[4] of 27 November 1997, although he would periodically leave the prayer meeting to check if Isidro had already finished watering his farm so that Baguio could also use the pump.

But the trial court viewed the alibi of the defense with askance and assigned full credit to the declarations of the prosecution witnesses.

In disbelieving the veracity of the "attendance notebook," the court a quo opined that Exh. "2" could have been more impressive had it borne the confirming signatures or thumbmarks of the "Baro a Cristiano" faithful, including their leader Fernando Costales, or had Exhs. "2-B" and "2-C" been corroborated on the witness stand by a less interested member, or had the church secretary who allegedly kept record of attendance been some member other than Mrs. Costales or the nearest of kin.[5]

The court below also virtually jettisoned the testimonies of Isidro Costales and Gregorio Baguio when it said that "they had every reason to come to the rescue of the accused Costales, their admittedly common nephew." Further, it pointed out that the accused and his witnesses issued contradictory and irreconcilable statements when, on one hand Isidro testified that before midnight of 27 November 1997 he went to the house of his nephew Fernando Costales to inform him that the irrigation of his farm was already through; on the other hand, Baguio claimed that at around 11:00 o'clock that night he roused the accused who thereafter went to operate the pump and stayed put beside it until Baguio's farm was completely irrigated at 4:00 o'clock the next morning.

The above statements, the court a quo observed, did not jibe with those made by the accused that his uncle Isidro woke him up at around 11:45 o'clock in the evening and told him that the irrigation of his farm was finished, after which he returned to bed and when he awakened at past 4:00 o'clock the following morning, he met Baguio who told him that he too was through irrigating.

In contrast, the trial court saw no dark motives behind the respective testimonies of Crispina Marcelo and her two (2) daughters. The Costaleses and the Marcelos used to be members of the same religious sect and accused "Ando" Costales even stood as a sponsor at the wedding of Jessie Marcelo, and again when Crispina's brother got married. In short, the Marcelos could not have mistaken "Ando" Costales and Fernando Ramirez for other felons.

In this automatic review, accused Fernando Costales takes exception to the findings of the trial court and thus seeks reversal of his convictions on the ground that it erred: (a) in according credence to the testimonies of the prosecution witnesses although the same are perforated with material inconsistencies and bias; (b) in not giving weight to the defense of alibi despite the weakness of the prosecution evidence; (c) in convicting him of violation of Sec. 1, PD 1866, as amended, since the same was absorbed in the crime of murder; (d) in finding that the crime was attended by conspiracy despite the fact that no aggravating circumstance was established beyond reasonable doubt; and, (e) in not appreciating the mitigating circumstance of voluntary surrender in his favor.

The first and second assigned errors will be discussed jointly since they are interrelated.

Accused-appellant argues that the seemingly flawless and unwavering testimonies of the three (3) key prosecution witnesses on the assault of the Marcelo household are obviously biased that they invite suspicion and disbelief.

Concededly, the prosecution witnesses gave almost uniform observations on how the malefactors carried out their detestable crimes, i.e., the identity of the assailants, that Miguel was strangled by both intruders and almost simultaneously shot on the head, that one of them sprayed a chemical on the other occupants of the house and

after a split second fired at Crispina. Such consistency and uniformity may be irregular at first blush, but accused-appellant failed to take into account the following factors which account for the "near flawless" statements of the prosecution witnesses: (a) the one-room shanty was very small with no substantial obstruction to impede the vision of the occupants; (b) the room was lighted by a kerosene lamp sufficient enough for the occupants to recognize accused-appellant and his cohort, especially so since the assailants were prominent and venerated leaders of their church; and, (c) at the time of the incident the Marcelo spouses and their children were lying very near each other because of the very limited space of their shanty such that every perceived action could be seen, felt, or at least sensed, by all of them.

Accused-appellant is seeing ghosts where there is none. Contrary to his submission, it would be highly irregular indeed if the prosecution witnesses failed to observe the events that transpired on that fateful night of 27 November 1997 and their statements did not dovetail, at least on material points, despite very favorable conditions for a fairly accurate observation.

Neither should we ascribe importance, as the accused-appellant seems to suggest, to an apparent "inconsistency" by witness Jessie Molina when she mentioned that the unwanted intrusion occurred shortly after she turned off the television set, contrary to her earlier claim that barangay Capas was without electricity. Jessie Molina dispelled this obscurity when she clarified that the television set was powered by Motolite battery which is in fact a common practice in unenergized "barrios," as the trial court would put it,[6] and Sitio Raniag, Barangay Capas did not still have electricity at that time.

Clearly, the straightforward and consistent narration of facts, as the trial court observed, by the three (3) prosecution witnesses, especially Crispina Marcelo, a victim herself, immensely fortifies the conclusion that accused-appellant is guilty as charged. Moreover, no impure motive on their part has been established by the defense to sully their truthfulness and erode their credibility.

Accused-appellant cannot insist on his alibi, especially so since he and his co-accused were positively identified by the prosecution witnesses. More so when it is undisputed that the proximity of their place to the scene of the crimes did not preclude the possibility that they were in fact present at the time of their commission.

On the third issue, accused-appellant decries the Decision of the court a quo in qualifying the crimes of murder and attempted murder with illegal possession of firearm and at the same time convicting him for violation of PD 1866, as amended.

We agree. Although the prosecution duly established that the crime of illegal possession of firearm under PD 1866 was committed, RA 8294, which took effect 7 July 1997, amended the decree and now considers the use of unlicensed firearm as a special aggravating circumstance in murder and homicide, and not as a separate offense.[7]

As it should be, possession and use of firearm without license should aggravate the crimes of murder and frustrated murder as herein charged but, fortunately for accused-appellant, Secs. 8 and 9 of the Revised Rules on Criminal Procedure, which took effect 1 December 2000, now require the qualifying as well as aggravating circumstances to be expressly and specifically alleged in the complaint or information, otherwise the same will not be considered by the court even if proved during the trial. Withal, in the absence of any allegation in the Information in Crim. Case No. T-2057 that accused-appellant committed murder with the use of unlicensed firearm, the same cannot be appreciated in imposing the proper penalty.

Moving now to the modifying circumstances raised under the fourth assigned error, accused-appellant points out that the trial court grievously erred in appreciating unlicensed firearm, evident premeditation and nighttime which

were alleged in the Informations in Crim. Case No. T-2056 for frustrated murder and Crim. Case No. T-2057 for murder.

While we yield to the trial court's finding of treachery, we take exception to its view that evident premeditation and nighttime also aggravated the offenses. Without doubt, treachery has been established by the prosecution evidence which showed that accused-appellant Fernando Costales and his confederate Fernando Ramirez swiftly and unexpectedly barged into the Marcelo residence in the middle of the night, shot Miguel Marcelo to death as well as his wife Crispina who almost lost her life, and sprayed a substance which temporarily blinded the other occupants of the house. The suddenness of the attack gave the victims no opportunity whatsoever to resist or parry the assault thereby ensuring the accomplishment of their dastardly deed without risk to themselves. Since the attack on the victims was synchronal, sudden and unexpected, treachery must be properly appreciated.

We cannot however give our assent to the view that nighttime and evident premeditation accompanied the commission of the crimes. The aggravating circumstance of nighttime is absorbed by treachery,[8] while evident premeditation cannot be appreciated in the absence of proof of the planning and preparation to kill or when the plan was conceived.[9]

The convergence of the wills of the two (2) executioners amply justifies the imputation that they acted in concert and in unity in their unlawful objective when in the stillness of the night they both crashed into the Marcelo residence, strangled the victim Miguel, then one of them shot him in the head while the other sprayed tear gas on the other members of the family obviously to disable them, and thereafter pumped a bullet at the horrified Crispina. This series of actions betrays a concerted design and concurrence of sentiments to cause mayhem and murder. Accordingly, conspiracy was properly appreciated by the trial court.

Neither can we sympathize with accused-appellant's misplaced sentiment that he had been denied the mitigating circumstance of voluntary surrender. As found by the trial court, his alleged surrender was made too late, and in a place too distant from the crime site as well as his place of residence.[10]

We observe that the trial court awarded P250,000.00 to the heirs of the deceased on the justification that the same had been stipulated upon by the parties. This is patently wrong. Award of damages is dictated, not by the agreement of the parties; worse, "in a manner that suits them best,"[11] but by the mandate of law and jurisprudence. Accordingly in conformity with established law and jurisprudence, the award of P50,000.00 as civil indemnity and another P50,000.00 as moral damages should be awarded to the heirs of the victim.

Pursuant to Art. 248 of The Revised Penal Code as amended by RA 7659, the penalty for murder is reclusion perpetua to death. There being no modifying circumstances found in Crim. Case No. T-2057, and applying par. 2 of Art. 63 of the Code, the lesser penalty of reclusion perpetua shall be imposed.

In Crim. Case No. T-2056, accused-appellant was charged by the trial court with frustrated murder but was convicted only for attempted murder. In its Decision, the trial court explained that the failure of the prosecution to present a medical certificate or competent testimonial evidence showing that Crispina would have died from her wound without medical intervention, justified the accused's conviction for attempted murder only.

We call to mind *People v. De La Cruz*[11] where this Court ruled that the crime committed for the shooting of the victim was attempted murder and not frustrated murder for the reason that "his injuries, though no doubt serious, were not proved fatal such that without timely medical intervention, they would have caused his death." In fact, as early as *People v. Zaragosa*,[12] we enunciated the doctrine that where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted,

not frustrated murder.

WHEREFORE, the assailed Decision finding accused-appellant Fernando "Ando" Costales guilty of murder and attempted murder is AFFIRMED with the following MODIFICATION: In Crim. Case No. T-2057, the crime of murder not being considered to have been attended by any generic mitigating or aggravating circumstances, accused-appellant Fernando "Ando" Costales is sentenced to suffer only the penalty of reclusion perpetua. In Crim. Case No. T-2056, the crime of attempted murder not likewise considered to have been attended by any generic mitigating or aggravating circumstances, accused-appellant Fernando "Ando" Costales is accordingly sentenced in addition to his penalty imposed in Crim. Case No. T-2057 herein before mentioned, to suffer an indeterminate prison term of two (2) years and four (4) months of prision correccional medium as minimum, to eight (8) years and six (6) months of prision mayor minimum as maximum;

Accused-appellant Fernando "Ando" Costales is further ordered to pay the heirs of the victim Miguel Marcelo P50,000.00 as death indemnity and another P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Decision penned by Judge Ulysses Raciles Butuyan, RTC-Br. 51, Tayug, Pangasinan.

[2] Exh. "2-A."

[3] Exh. "2-C."

[4] Exh. "2-B."

[5] Rollo, p. 49.

[6] TSN, 17 November 1998, p. 30.

[7] People v. Mendoza, G.R. Nos. 109279-80, 18 January 1999, 301 SCRA 66; People v. Lumilan, G.R. No. 102706, 25 January 2000, 323 SCRA 170, citing People v. Quijada, 259 SCRA 191, 232 (1996).

[8] People v. Abitona, G.R. Nos. 96943-45, 20 January 1995, 240 SCRA 335, People v. Broncano, G.R. No. 104870, 22 August 1996, 260 SCRA 724.

[9] People v. Tampon, G.R. No. 105583, 5 July 1996, 258 SCRA 115.

[10] As evidenced by a certification (Exh. "8") By the PNP Camp Diego Silang, San Fernando, Launion, showing that accused-appellant surrendered to one SPO2 Maximiano R. Peralta on 9 June 1998, or roughly six (6) months after the issuance of warrants for his arrest on 4 December 1997.

[11] Rollo, p. 56.

[11] G.R. Nos. 109619-23, 26 June 1998, 291 SCRA 164.

[12] 58 O.G. 4519.

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