

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO PACOT Y BABAD, DEFENDANT-APPELLANT.

G.R. Nos. 62295-96. March 22, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of the decision dated March 15, 1982 of the then Circuit Criminal Court of Cebu City in Criminal Cases Nos. CCC-XIV-2539-Cebu, for Murder; CCC-XIV-2541-Cebu, for Murder; and CCC-XIV-2542-Cebu, for Frustrated Murder, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Romeo Pacot guilty beyond reasonable doubt of the crime of MURDER charged in Criminal Case No. 2539. Finding the presence of the following aggravating circumstances: (1) disregard of sex; (2) dwelling; (3) abuse of confidence or obvious ungratefulness; (4) abuse of superior strength; and (5) evident premeditation, while only the mitigating circumstance of plea of guilty serves to extenuate the crime, the Court is constrained to sentence, as it hereby sentences, the accused to suffer the extreme penalty of death, with the accessories of the law; to indemnify the heirs of the deceased Yolanda Margate in the sum of P12,000.00, and to pay the costs.

"As to Criminal Case No. 2541, while We find the presence of the following aggravating circumstances: (1) disregard of the tender age of the offended party; (2) dwelling; (3) abuse of confidence or obvious ungratefulness; (4) abuse of superior strength; and (5) evident premeditation, only the mitigating circumstance of plea of guilty serves to extenuate the crime. Consequently, the accused Romeo Pacot should be, as he is, hereby sentenced to suffer the extreme penalty of death, with the accessories of the law; to indemnify the heirs of the deceased Dennis Siozon in the sum of P12,000.00, and to pay the costs.

"As to Criminal Case No. 2542, while We find the presence of the following aggravating circumstances: (1) evident premeditation; (2) abuse of superior strength; (3) disregard of tender age and sex; and (4) dwelling, only the mitigating circumstance of plea of guilty serves to extenuate the crime. Consequently, the accused Romeo Pacot should be, as he is, hereby sentenced to the indeterminate penalty of, from EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, with the accessory penalties of the law; to indemnify the offended party Diane Siozon in the sum of P5,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs." (pp 97-98, Rollo)

Records show that the victim Yolanda Margate is the common-law wife of Noel Siozon who is married to Ophelia Ofinada. In 1970, Ophelia left Noel taking their daughter with her. Subsequently, he met Yolanda Margate who became his common-law wife and with whom he has two (2) children, namely: Diane and Dennis. After three (3) years, they left Tacloban City and moved to Cebu City where they established their new residence at Oliva Street. It was on July 21, 1980 when appellant Romeo Pacot, 23 years old, a native of Butuan City and a civil engineering student at the Cebu Institute of Technology, met Yolanda. Appellant fell in love with Yolanda whom he found to be still single but has two (2) children with her common-law husband, Noel, a businessman from Tacloban City.

According to appellant, by August 1980, Yolanda agreed to go out with him - to the beach, to the movies and, at times, to dinner. He found her also showing signs of affection for him and, on August 15, 1980, in a moviehouse, he proposed and she accepted him. Thereafter, they had frequent dates, specially at times when Noel was out of town for business which was often.

On October 1, 1980, appellant and Yolanda had their first intercourse at the D' Inn Hotel and thereafter they would meet as often as four times a week. About four months after, or in February 1981, Noel came to know about the love affair of appellant and Yolanda and he confronted Romeo who promised not to see Yolanda again. However, according to Romeo, Yolanda continued to call him by phone and so in March 1981 their relationship was again resumed. The matter was brought to the attention of Barrio Captain Jose Navarro upon complaint of Noel that appellant was always pestering them, courting Yolanda and following her wherever she went. The barrio captain was able to settle the matter when he suggested that appellant leave Cebu City so that his relationship with Yolanda would be cut off. Pacot promised to leave Cebu City for Butuan City. It was sometime in July 1981 when appellant returned to Cebu and, upon meeting Yolanda at the Seiko Service Center, they went to Queensland Hotel where they made love and, thereafter, at the Siozon residence, whenever Noel left for Tacloban City.

On October 14, 1981, appellant went to the Siozon residence at about 2:00 in the afternoon, using the back door as suggested by Yolanda over the telephone. Yolanda and Dennis were asleep while Diane and the maid Delia were watching the television. Yolanda woke up and asked Diane for the time. As the clock was in the kitchen, Diane went down and saw that it was 2:14. On her way back, Diane saw appellant in the sala reading a newspaper. He followed her to the bedroom, closed the windows and turned on the air conditioning unit. Yolanda then ordered the maid to get some refreshment. Yolanda asked appellant if he was ready to marry her. Appellant would not commit himself giving the excuse that he was not yet economically stable and that his parents would disown him if they would know that he is married. According to appellant, Yolanda became furious and suddenly kicked his genitals causing him to suffer in pain. He blacked out, took the knife which was on top of the cabinet and stabbed Yolanda several times, then the children until he thought all of them had died. However, Diane did not die and, upon regaining consciousness, she went down to open the door for the police to enter.

Three cases were filed against appellant Romeo Pacot y Babad. Upon arraignment on November 9, 1981, Pacot, assisted by counsel pleaded "not guilty" to each of the informations filed against him. However, when the trial started on February 8, 1982, Pacot, again assisted by counsel, moved to withdraw his plea of not guilty and to enter instead a plea of guilty. The trial court admonished him of the consequences of a plea of guilty but, notwithstanding, he insisted in his motion which the court granted. He was re-arraigned and pleaded guilty to the three charges filed against him.

Considering the gravity of the offenses, the trial court required the prosecution to present evidence and the defense the opportunity to prove any mitigating circumstance.

On March 15, 1982, the lower court rendered its decision finding Romeo Pacot guilty of each of the crimes charged and sentenced him accordingly.

In this appeal, appellant contends that the lower court erred (1) in not giving the defendant the benefit of the mitigating circumstances of voluntary surrender, passion, and obfuscation; (2) in holding that the aggravating circumstances alleged in the informations should be applied against the defendant; and (3) in imposing the extreme penalty of death against the defendant.

Appellant's claim that he is entitled to the mitigating circumstance of voluntary surrender is without merit. In order that the same may be properly appreciated in favor of the accused, it must appear that (a) he had not been

actually arrested; (b) he surrendered himself to a person in authority or his agent; and (c) his surrender is voluntary, which circumstances are not present in this case (People vs. Molo, 88 SCRA 22). For, while appellant did not try to escape, he did nothing to place himself in the custody of the authorities.

The mitigating circumstance of passion and obfuscation cannot also be invoked in favor of appellant considering that his relationship with Yolanda, the common-law wife of Noel Siozon, is illegitimate. The victims did not do anything which were unlawful and sufficient to produce the passion and obfuscation contemplated by law. Appellant's claim that Yolanda kicked him in the genital area was not corroborated; and, even if true, the same could not have resulted in depriving him of reason that has driven him to kill Yolanda and Dennis, and to almost kill Diane.

Neither did the lower court err in appreciating the qualifying circumstance of treachery alleged in the three informations, and in considering the sex and age of the helpless victims.

The court properly considered in his favor the mitigating circumstance of plea of guilty. Thus, the maximum penalty of death was properly imposed in each of the cases where Yolanda and Dennis were the victims. However, for lack of necessary votes, the death penalties in said cases are both reduced to reclusion perpetua.

WHEREFORE, in Criminal Case No. CCC-XIV-2539-Cebu, the judgment is AFFIRMED but modified in the sense that appellant is sentenced to reclusion perpetua, to indemnify the heirs of Yolanda Margate in the sum of P30,000.00, and to pay the costs.

In Criminal Case No. CCC-XIV-2541-Cebu, judgment is AFFIRMED but modified in the sense that appellant is also sentenced to reclusion perpetua, to indemnify the heirs of Dennis Siozon in the sum of P30,000.00, and to pay the costs.

In Criminal Case No. CCC-XIV-2542-Cebu, the judgment is AFFIRMED with the modification that appellant is to indemnify Diane Siozon in the sum of P15,000.00, without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Makasiar, Acting C.J., Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr. and De la Fuente, JJ., concur.

Aquino, J., Capital punishment should be imposed on the accused. The trial court's judgment should be affirmed.

Fernando, C.J., and Teehankee, J., on leave - abroad.

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