

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO TAC-AN Y HIPOS, ACCUSED-APPELLANT.

G.R. Nos. 76338-39. February 26, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Accused Renato Tac-an appeals from the decision of the Regional Trial Court of Tagbilaran City, convicting him of qualified illegal possession of a firearm and ammunition in Criminal Case No. 4007 and of murder in Criminal Case No. 4012 and imposing upon him the penalty of death in both cases.

On 18 December 1984, appellant was charged with violation of Section 1, paragraph (2), of Presidential Decree No. 1866, committed as follows:

"That on or about the 14th day of December, 1984, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while acting under the influence of drugs and without any license or permit from the proper authorities, did then and there willfully, unlawfully and feloniously have in his possession, custody and control an unlicensed firearm, a SMITH & WESSON Airweight caliber .38 revolver with Serial Number 359323 with Five (5) spent shells and Five (5) live ammunitions and without any justifiable cause and with intent to kill, used the said firearm and ammunitions to shoot one Francis Ernest Escaño III hitting and inflicting upon the latter the following gunshot wounds or injuries, to wit:

MULTIPLE GUNSHOT WOUNDS — Head & Chest (through and through);

Head Entrance — 1.4 x 2.2 cm., Left Fronto-Temporal Area: Port — 1.3 x 0.3 cm.; Right Cheek, 3.5 cm., above the right external meatus;

Chest Entrance — 0.3 x 1 cm. — Right Infrascapular Area at the level of the 7th Intercostal Rib (Back); Exit - 0.3 cm. dia; above the right nipple;

Y-shape laceration, check at the right angle of the mouth, Right

Dimensions: 3 x 1.2 cm. x 1.8

which gunshot wounds or injuries directly caused his death, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 1, paragraph 2 of the Presidential Decree No. 1866."^[1]

On 11 January 1985, an amended information^[2] for murder was also filed against appellant reading as follows:

That, on or about the 14th day of December, 1984 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause and with intent to kill, evident premeditation, treachery, while acting under the influence of drugs, with cruelty and deliberately augmenting the suffering of the victim, did then and there willfully, unlawfully and feloniously attack, assault

and shoot one Francis Ernest Escaño with the use of an unlicensed SMITH & WESSON Airweight caliber .38 revolver with Serial Number 359323 hitting and inflicting upon the latter the following gunshot wounds or injuries, to wit:

‘MULTIPLE GUNSHOT WOUNDS — Head and Chest (Through & through);

Head Entrance — 1.4 x 2.2 cm., Left Fronto-temporal Area; Port — 1.3 x 0.3 cm., Right Cheek, 3.5 cm., above the right external meatus;

Chest Entrance — 0.3 x 1 cm. — right Infrascapular Area at the level of the 7th Inter-Costal Rib (back); exit — 0.3 cm. dia; above the right nipple

Y-shape laceration, cheek at the angle of the mouth, Right

Dimensions: 3 x 1.2 cm, x1.8.’

which gunshot wounds or injuries directly caused his death, to the damage and prejudice of the heirs of the deceased namely: Judge & Mrs. Francisco Rey H. Escaño, in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Article 248 of the Revised Penal code, in relation to Section 17 of Batas Pambansa Blg. 179, with the qualifying aggravating circumstances of evident premeditation, treachery and acting under the influence of dangerous drugs and cruelty.

Appellant entered a plea of not guilty in both cases. The two (2) criminal cases were consolidated upon motion of the prosecution and tried jointly. On 31 July 1986, the trial court rendered a decision[3] convicting appellant under both informations. The dispositive portion of the decision read as follows:

WHEREFORE, all the foregoing premises considered, decision as hereby rendered in Criminal Case No. 4007 finding the accused Renato Tac-an y Hipos GUILTY beyond reasonable doubt of Illegal Possession of Firearms and Ammunitions qualified with Murder under Section 1, paragraph 1 and 2 of Presidential Decree No. 1866 and hereby sentences said Renato Tac-an y Hipos to suffer the penalty of DEATH. Further, decision is also rendered in Criminal Case No. 4012 finding the same accused Renato Tac-an y Hipos GUILTY beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, in relation to Batas Pambansa Blg. 179 and P.D. 1866. Appreciating the aggravating circumstance of evident premeditation (treachery used to qualify the crime to murder) and the special aggravating circumstances of acting while under the influence of dangerous drugs and with the use of an unlicensed firearm and with insult to a person in authority and there being no mitigating circumstance to offset them, and sentences the said Renato Tac-an y Hipos to suffer the penalty of DEATH. The accused is likewise ordered to indemnify the heirs of the deceased Francis Ernest Escaño in the amount of THIRTY THOUSAND PESOS (P30,000.00); to pay actual compensatory damages in the amount of ONE HUNDRED EIGHT THOUSAND THREE HUNDRED TEN PESOS (P108,310.00); to pay moral damages to Judge Francisco Escaño, Jr., the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) and to Mrs. Lydia Escaño the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) for the mental anguish and suffering each experienced because of the death of Francis Ernest. All such amount shall earn legal interest from the time this decision shall become final and executory until fully satisfied. The accused shall also pay the costs.

SO ORDERED."

Immediately after promulgation of the decision, appellant signified his intention to appeal to this Court, although the same was subject to automatic review by this Court.

In his brief, appellant assigned the following as errors allegedly committed by the trial court:

"I.

The lower court erred in believing the prosecution's version of the case instead of according full faith and credence to the defendant's version

II. The trial court erred in not holding that Renato Tac-an was justified in shooting the deceased.

III. The trial court erred in not holding that in (sic) the least the defendant acted in incomplete self-defense in shooting the deceased.

IV. The trial court erred in not holding that P.D. 1866 is inapplicable to the defendant inasmuch as said decree was enforceable only during the existence of the Martial Law Regime.

V. The trial court erred in not holding that the defendant was placed twice in jeopardy for having been prosecuted for violation of P.D. 1866 despite his being prosecuted for murder in an information which alleges that the accused used an unlicensed firearm in killing the deceased.

VI.

The trial court erred in not adjudging the defendant innocent of murder.

From the record, the facts may be collated and summarized as follows:

Appellant Renato Tac-an, then eighteen (18) years and seven (7) months of age, and the deceased Francis Ernest Estaño III, fifteen (15) years old, were classmates in the third year of high school of the Divine Word College in Tagbilaran City. They were close friends, being not only classmates but also members of the same gang, the Bronx gang. Renato had been to the house where Francis and his parents lived, on one or two occasions. On those occasions, Francis' mother noticed that Renato had a handgun with him. Francis was then advised by his mother to distance himself from Renato.[4]

Francis withdrew from the Bronx gang. The relationship between Renato and Francis turned sour. Sometime in September 1984, Renato and Francis quarrelled with each other, on which occasion Francis bodily lifted Arnold Romelde from the ground. Arnold was friend and companion to Renato. The quarrel resulted in Renato and Francis being brought to the high school principal's office. The strained relationship between the two (2) erstwhile friends was aggravated in late November 1984 when Francis learned that Renato, together with other members of the Bronx gang, was looking for him, apparently with the intention of beating him up. Further deterioration of their relationship occurred sometime in the first week of December 1984, when graffiti appeared on the wall of the third year high school classroom and on the armrest of a chair in that classroom, deprecating the Bronx gang and describing Renato as "bayot" (homosexual).[5] Renato attributed the graffiti to Francis.

At about 2:00 o'clock in the afternoon of 14 December 1984, Renato entered Room 15 of the high school building to attend his English III class. Renato placed his scrapbook prepared for their Mathematics class on his chair, and approached the teacher, Mrs. Lilirosa Baluma, to raise a question. Upon returning to his chair, he found Francis sitting there, on the scrapbook. Renato was angered by what he saw and promptly kicked the chair on which Francis was seated. Francis, however, explained that he had not intentionally sat down on Renato's scrapbook. A fistfight would have ensued but some classmates and two (2) teachers, Mrs. Baluma and Mr. Damaso Pasilbas,

intervened and prevented them from assaulting each other. After the two (2) had quieted down and apparently shaken hands at the instance of Mrs. Baluma, the latter resumed her English III class. Francis sat on the last row to the extreme right of the teacher while Renato was seated on the same last row at the extreme left of the teacher. While the English III class was still going on, Renato slipped out of the classroom and went home to get a gun. He was back at the classroom approximately fifteen (15) minutes later.[6]

The Mathematics class under Mr. Damaso Pasilbas scheduled for 3:00 p.m. had just started in Room 15 when Renato suddenly burst into the room, shut the door and with both hands raised, holding a revolver, shouted "Where is Francis?" Upon sighting Francis seated behind and to the right of student Ruel Ungab. Renato fired at Francis, hitting a notebook, a geometry book and the armrest of Ruel's chair. Francis and Ruel jumped up and with several of their classmates rushed forward towards the teacher's platform to seek protection from their teacher. Renato fired a second time, this time hitting the blackboard in front of the class. Francis and the other students rushed back towards the rear of the room. Renato walked towards the center of the classroom and fired a third time at Francis, hitting the concrete wall of the classroom. Francis and a number of his classmates rushed towards the door, the only door to and from Room 15. Renato proceeded to the teacher's platform nearest the door and for the fourth time fired at Francis as the latter was rushing towards the door. This time, Francis was hit on the head and he fell on the back of Ruel and both fell to the floor. Ruel was pulled out of the room by a friend: Francis remained sprawled on the floor bleeding profusely.[7]

Renato then went out of Room 15, and paced between Rooms 14 and 15. A teacher, Mr. Pablo Baluma, apparently unaware that it was Renato who had gunned down Francis, approached Renato and asked him to help Francis as the latter was still alive inside the room. Renato thereupon re-entered Room 15, closed the door behind him, saying: "So, he is still alive. Where is his chest?" Standing over Francis sprawled face down on the classroom floor. Renato aimed at the chest of Francis and fired once more. The bullet entered Francis' back below the right shoulder, and exited on his front chest just above the right nipple.[8]

Renato then left with two (2) remaining students and locked Francis alone inside Room 15. Renato proceeded to the ground floor and entered the faculty room. There, he found some teachers and students and ordered them to lock the door and close the windows, in effect holding them as hostages. He also reloaded his gun with five (5) bullets. After some time, a team of Philippine Constabulary troopers led by Capt. Larino Lazo arrived and surrounded the faculty room. With a hand-held public address device, Capt. Lazo called upon Renato to surrender himself. Renato did not respond to this call. Renato's brother approached Capt. Lazo and volunteered to persuade his brother to give up. Renato's father who, by this time had also arrived, pleaded with Renato to surrender himself. Renato then turned over his gun to his brother through an opening in the balustrade of the faculty room. Capt. Lazo took the gun from Renato's brother, went to the door of the faculty room, entered and placed Renato under arrest.[9]

Meantime, as soon as Renato left Room 15, some teachers and students came to rescue Francis but could not open the door which Renato had locked behind him. One of the students entered the room by climbing up the second floor on the outside and through the window and opened the door from the inside. The teachers and students brought Francis down to the ground floor from whence the PC soldiers rushed him to the Celestino Gallares Memorial Hospital.[10] Francis died before reaching the hospital.

Capt. Lazo brought Renato to the PC Headquarters at Camp Dagohoy, Tagbilaran City. The officer deposited the revolver recovered from Renato which was an Airweight Smith and Wesson .38 caliber revolver, with Serial No. 359323, as well as the five (5) live bullets removed from the said revolver, and the five (5) empty cartridges which Renato had turned over to him. Ballistic examination conducted by Supervising Ballistician, Artemio Panganiban, National Bureau of Investigation, Cebu, showed that the empty cartridge cases had been fired from

the revolver recovered from Renato.[11]

Appellant at the outset assails the trial court for having believed the prosecution's version of the facts instead of the version offered by the appellant. The trial court took into account, inter alia, the positive and direct testimony of:

1. Mrs. Lilirosa Baluma who testified as to among other things, the events which took place inside her English III classroom immediately before the shooting;
2. Ruel Ungab — a fifteen (15) year old classmate of Renato and Francis, who had fallen on the floor with Francis when the latter was finally hit by Renato;
3. Damaso Pasilbas — the Mathematics teacher who was holding his class when Renato had burst into Room 15 and started firing at Francis; and
4. Napoleon Jumauan — another, sixteen (16) year old, classmate of Renato and Francis who was inside the classroom when Renato had started firing at Francis and who was only about a foot away from the head of Francis when Renato, having re-entered Room 15, had fired at Francis as the latter was sprawled on the floor of the classroom.

After careful examination of the record, we find no reason to disagree with the conclusion of the trial court that Renato had indeed shot and killed Francis under the circumstances and in the manner described by these witnesses.

1. The claim of self-defense.

Renato claimed that he was acting in self-defense, or at least in incomplete self-defense, when he shot Francis. For a claim of self-defense to be sustained, the claimant must show by clear and convincing evidence that the following requisites existed:

- a)
unlawful aggression on the part of the victim;
- b)
reasonable necessity of the means employed by the accused to repel the aggression; and
- c)
lack of sufficient provocation on the part of the accused.[12]

Testifying in his own behalf, Renato said that a few minutes before the end of Mrs. Baluma's English III class, Francis had approached him:

"(Atty. Seno, Defense Counsel)

Q:

How did it happened (sic) that you had a conversation with Francis?

(Renato)

A:

While the class was going on, Mrs. Baluma was writing on the blackboard.

Q:

Then what happened?

A:

While our teacher was writing on the blackboard Francis suddenly got near me.

Q:

And what happened when Francis approached you?

A:

He said, 'So you are brave now you had a (sic) guts to fight against me.'

Q:

And what else did he say?

A:

He said, 'Go home, get your firearm because I will go home to set a gun.'

Q:

Was that all that he told you?

A:

He further said, 'You go home get your firearm, if you won't go home and get a gun, I will go to your place and kill you including your parents, brothers and sisters.'

Q:

And after that where did Francis go?

A:

Before the bell rang he went ahead."^[13]
(Italics supplied)

We note at the outset that there was no evidence before the Court, except Renato's own testimony, that Francis had uttered the above statements attributed to him by Renato. Although there had been about twenty-five (25) other students, and the teacher, in the classroom at the time, no corroborating testimony was offered by the defense. In the second place, assuming (*arguendo* merely) that Francis had indeed made those statements, such utterances cannot be regarded as the unlawful aggression which is the first and most fundamental requirement of self-defense. Allegedly uttered in a high school classroom by an obviously unarmed Francis, such statements could not reasonably inspire the "well grounded and reasonable belief" claimed by Renato that "he was in imminent danger of death or bodily harm."^[14] Unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent: it cannot consist in oral threats or a merely threatening stance or posture.^[15] Further, as pointed out by the Solicitor General, Francis was obviously without a firearm or other weapon when Renato returned and burst into Room 15 demanding to know where Francis was and forthwith firing at him repeatedly, without the slightest regard for the safety of his other classmates and of the teacher. There being no unlawful aggression, there simply could not be self-defense whether complete or incomplete,^[16] and there is accordingly no need to refer to the other requirements of lawful self-defense.

2. The claim that P.D. No. 1866 is inapplicable. As pointed out at the outset, appellant was charged with unlawful possession of an unlicensed firearm, a Smith and Wesson Airweight .38 Caliber revolver with five (5) spent bullets and five (5) live ones and with having used such firearm and ammunition to shoot to death Francis Ernest Escaño III, in violation of Section 1 of P.D. No. 1866.

Section 1 of P.D. No. 1866 provides, in relevant part, that:

"Section 1. Unlawful Manufacture, Sales, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. — The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed." (Italics supplied)

Appellant urges that P.D. No. 1866 is inapplicable to him "considering that the reason for its [P.D. No. 1866] issuance no longer exists." He argues that P.D. No. 1866 was enforceable only during the existence of martial law, and that when martial law was "lifted in 1979," the reason for the "existence" of P.D. No. 1866 faded away, with the result that the "original law on firearms, that is, Section 2692 of the [Revised] Administrative Code, together with its pre-martial law amendments, came into effect again thereby replacing P.D. No. 1866."^[17]

There is nothing in P.D. No. 1866 (which was promulgated on 29 June 1983) which suggests that it was intended to remain in effect only for the duration of the martial law imposed upon the country by former President Marcos. Neither does the statute contain any provision that so prescribes its lapsing into non-enforceability upon the termination of the state or period of martial law. On the contrary, P.D. No. 1866 by its own terms purported to "consolidate, codify and integrate" all prior laws and decrees penalizing illegal possession and manufacture of firearms, ammunition and explosives in order "to harmonize their provisions," as well as to update and revise certain provisions and prior statutes "in order to more effectively deter violators of the law on firearms, ammunitions and explosives."^[18] Appellant's contention is thus without basis in fact.

3. The claim of double jeopardy.

It is also contended by appellant that because he had already been charged with illegal possession of a firearm and ammunition in Criminal Case No. 4007, aggravated by the use of such unlicensed firearm to commit a homicide or murder, he was unconstitutionally placed in jeopardy of punishment for the second time when he was charged in Criminal Case No. 4012 with murder "with the use of an unlicensed [firearm]," in violation of Article 248 of the Revised Penal Code in relation to Section 17 of B.P. Blg. 179.

It is elementary that the constitutional right against double jeopardy protects one against a second or later prosecution for the same offense, and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no prohibited double jeopardy. In the case at bar, it appears to us quite clear that the offense charged in Criminal Case No. 4007 is that of unlawful possession of an unlicensed firearm penalized under a special statute, while the offense charged in Criminal Case No. 4012 was that of murder punished under the Revised Penal Code. It would appear self-evident that these two (2) offenses in themselves are quite different one from the other, such that in principle, the subsequent filing of Criminal Case No. 4012 is not to be regarded as having placed appellant in a prohibited second jeopardy.

We note that the information in Criminal Case No. 4007 after charging appellant with unlawful possession of an unlicensed firearm and ammunition, went on to state that said firearm and ammunition had been used to shoot to death Francis Ernest Escaño III. We note also that the amended information in Criminal Case No. 4012 after charging appellant with the unlawful killing of Francis Ernest Escaño III, stated that the killing had been done with the use of an unlicensed firearm. We believe these additional allegations in the two (2) informations did not have the effect of charging appellant with having committed the same offense more than once.

However, in sentencing Renato to suffer the penalty of death for the crime of murder, the trial court did take into account as a "special aggravating circumstance" the fact that the killing of Francis had been done "with the use of an unlicensed firearm." In so doing, we believe and so hold, the trial court committed error. There is no law which renders the use of an unlicensed firearm as an aggravating circumstance in homicide or murder. Under an information charging homicide or murder, the fact that the death weapon was an unlicensed firearm cannot be used to increase the penalty for the second offense of homicide or murder to death (or reclusion perpetua under the 1987 Constitution). The essential point is that the unlicensed character or condition of the instrument used in destroying human life or committing some other crime, is not included in the inventory of aggravating circumstances set out in Article 14 of the Revised Penal Code.[19]

In contrast, under an information for unlawful possession (or manufacture, dealing in, acquisition or disposition) of a firearm or ammunition, P.D. No. 1866 authorizes the increase of the imposable penalty for unlawful possession or manufacture, etc. of the unlicensed firearm where such firearm was used to destroy human life. Although the circumstance that human life was destroyed with the use of the unlicensed firearm is not an aggravating circumstance under Article 14 of the Revised Penal Code, it may still be taken into account to increase the penalty to death (reclusion perpetua, under the 1987 Constitution) because of the explicit provisions of P.D. No. 1866. As noted earlier, the unlawful possession of an unlicensed firearm or ammunition is an offense punished under a special law and not under the Revised Penal Code.

4. The claim that there was no treachery.

Appellant contends that there was no treachery present because before any shot was fired, Renato had shouted "where is Francis?" Appellant in effect suggests his opening statement was a warning to Francis and that the first three (3) shots he had fired at Francis were merely warning shots. Moreover, building upon his own testimony about the alleged threat that Francis had uttered before he (Renato) left his English III class to go home and get a

gun, appellant argues that Francis must have anticipated his return and thus had sufficient time to prepare for the coming of the appellant.[20] Appellant's contention, while ingenious, must be rejected. The trial court made a finding of treachery taking explicit account of the following factors:

"1.

Room 15 of the Divine Word College, High School Department, Tagbilaran City, is situated in the second floor of the building. It is a corner room and it has only one (1) door which is the only means of entry and exit;

2.

The time of the attack, the deceased was seated on his chair inside his classroom and was writing on the armrest of his chair and also talking to Ruel Ungab and while their teacher, Mr. Damaso Pasilbas was checking the attendance. The deceased was not aware of any impending assault neither did he have any means to defend himself:

3.

The accused used an airweight Smith & Wesson .38 caliber revolver in shooting to death the defenseless and helpless Francis Ernest Escaño:

4.

The attack was so sudden and so unexpected. The accused consciously conceived that mode of attack:

5. The accused fired at Francis again and again and did not give him a chance to defend himself. After the deceased was hit on the head and fell to the floor while he was already sprawled and completely defenseless the accused fired at him again and the deceased was hit on the chest:

6.

The deceased was not armed. He was totally defenseless. He was absolutely not aware of any coming attack."[21]

The court also pointed out that Renato must have known that Francis while inside Room 15 had no means of escape there being only one (1) door and Room 15 being on the second floor of the building. Renato in effect blocked the only exit open to Francis as he stood on the teacher's platform closest to the door and fired as Francis and Ruel sought to dash through the door. Renato's question "where is Francis?" cannot reasonably be regarded as an effort to warn Francis for he shot at Francis the instant he sighted the latter, seated and talking to Ruel Ungab. That Renato fired three (3) shots before hitting Francis with the fourth shot, can only be ascribed to the indifferent marksmanship of Renato and to the fact that Francis and the other students were scurrying from one part of the room to the other in an effort to evade the shots fired by Renato. The cumulative effect of the circumstances underscored by the trial court was that the attack upon Francis had been carried out in a manner which disabled Francis from defending himself or retaliating against Renato. Finally, the circumstance that Renato, having been informed that Francis was still alive, re-entered Room 15 and fired again at Francis who lay

on the floor and bathed with his own blood, manifested Renato's conscious choice of means of execution which directly and especially ensured the death of his victim without risk to himself.[22] We are compelled to agree with the trial court that treachery was here present and that, therefore, the killing of Francis Ernest Escaño III was murder.

5. The claim that there was no evident premeditation.

The trial court also found the presence of evident premeditation and appreciated the same as a generic aggravating circumstance. Here, it is the urging of the appellant that the requisites of evident premeditation had not been sufficiently shown. In order that evident premeditation may be taken into account, there must be proof of (a) the time when the offender formed his intent to commit the crime: (b) an action manifestly indicating that the offender had clung to his determination to commit the crime: and (c) of the passage of a sufficient interval of time between the determination of the offender to commit the crime and the actual execution thereof, to allow him to reflect upon the consequences of his act.[23] The defense pointed out that barely fifteen (15) minutes had elapsed from the time Renato left his English III class and the time he returned with a gun. While there was testimony to the fact that before that fatal day of 14 December 1984, anger and resentment had welled up between Francis and Renato, there was no evidence adequately showing when Renato had formed the intention and determination to take the life of Francis. Accordingly, we must discard evident premeditation as an aggravating circumstance.

6. The claim that the killing was not done under the influence of a dangerous drug.

Section 17 of B.P. Blg. 179 which was promulgated on 2 March 1982 provides as follows:

"SEC. 17. The provisions of any law to the contrary notwithstanding, when a crime is committed by an offender who is under the influence of dangerous drugs, such state shall be considered as a qualifying aggravating circumstance in the definition of a crime and the application of the penalty provided for in the Revised Penal Code."

The trial court found that Francis was killed by Renato while the latter was under the influence of a dangerous drug, specifically marijuana, and took that into account as a "special aggravating circumstance". No medical evidence had been submitted by the prosecution to show that Renato had smoked marijuana before gunning down Francis. Fourteen (14) days had elapsed after December 14, 1984 before Renato was medically examined for possible traces of marijuana; the results of the examination were negative. Defense witness Dr. Rogelio Ascona testified that in order to have a medically valid basis for determining the presence of marijuana in the human system, the patient must be examined within twenty-four (24) hours from the time he is supposed to have smoked marijuana.[24] The prosecution had presented Orlando Balaba, a student at the Divine Word College, High School Department, who testified that he found Renato and one Jaime Racho inside the men's room of the High School Department sucking smoke from a hand-rolled thing that look like a cigarette, that he had asked Renato what that was and that Renato had replied "damo" (marijuana).[25] While the testimony of Orlando Balaba was corroborated by two (2) other prosecution witnesses, we believe that Orlando Balaba's testimony was incompetent to show that what Renato and Jaime Racho were smoking inside the men's room was indeed marijuana. It was pointed out by appellant that Orlando Balaba had never smoked nor smelled marijuana.

In the absence of medical evidence, the Court took into account certain detailed factors as circumstantial evidence supporting the testimony of Orando Balaba. These circumstances were:

"The circumstance of place where the killing was committed, the circumstance of the manner of the attack, the circumstance of holding hostage some teachers and students inside the faculty room, the circumstance of terrifying an entire school, the circumstance that sitting on a scrapbook is too insignificant as to arouse passion strong enough to motivate a killing, are circumstantial evidences that gave the court no room for doubt that

prosecution witnesses Orlando Balaba, Benjamin Amper and Allan de la Serna truthfully told the court that they saw the accused smoking marijuana inside the comfort room at 1:45 in the afternoon of December 14, 1984. x x x".[26]

The above circumstances pointed to by the trial court may be indicative of passionate anger on the part of Renato; we do not believe that they necessarily show that Renato had smoked marijuana before entering his English III class. In the absence of competent medical or other direct evidence of ingestion of a dangerous drug, courts must be wary and critical of indirect evidence, considering the severe consequences for the accused of a finding that he had acted while under the influence of a prohibited drug. The Court considers that the evidence presented on this point was simply inadequate to support the ruling of the trial court that Renato had shot and killed Francis while under the influence of a prohibited drug.

7. The claim that appellant had voluntarily surrendered.

Appellant contends that he had voluntarily surrendered and that the trial court should have considered that mitigating circumstance in his favor. The trial court did not, and we consider that it correctly refused to do so. Firstly, Renato surrendered his gun, not himself,[27] by handing over the weapon through the balustrade of the faculty room. Secondly, he surrendered the gun to his brother, who was not in any case a person in authority nor an agent of a person in authority.[28] Thirdly, Renato did not surrender himself: he was arrested by Capt. Lazo. The fact that he did not resist arrest, did not constitute voluntary surrender.[29] Finally, if it be assumed that Renato had surrendered himself, such surrender cannot be regarded as voluntary and spontaneous. Renato was holed up in the faculty room, in effect holding some teachers and students as hostages. The faculty room was surrounded by Philippine Constabulary soldiers and there was no escape open to him. He was not entitled to the mitigating circumstance of voluntary surrender.

8. Whether or not the crime was committed in contempt of or with insult to the public authorities.

The trial court held that the shooting to death of Francis had been done "in contempt of or with insult to the public authorities:

"Under Republic Act 1978, as amended, a teacher of a public or private school is considered a person in authority. The fact that Mr. Damaso Pasilbas, the teacher in mathematics, was already checking the attendance did not deter the accused from pursuing his evil act. The accused ignored his teacher's presence and pleas. Not yet satisfied with the crime and terror he had done to Francis and the entire school, the accused entered the faculty room and held hostage the teachers and students who were inside that room. To the court, this act of the accused was an insult to his teachers and to the school, an act of callous disregard of others feelings and safety and completely reprehensible."[30]

We believe the trial court erred in so finding the presence of a generic aggravating circumstance. Article 152 of the Revised Penal Code, as amended by Republic Act No. 1978 and Presidential Decree No. 299, provides as follows:

"Art. 152. Persons in authority and agents of persons in authority. — Who shall be deemed as such. — In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission, shall be deemed a person in authority. A barrio captain and a barangay chairman shall also be deemed a person in authority.

A person who by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barrio councilman, barrio policeman and barangay leader and any person who comes to the aid of persons in

authority, shall be deemed an agent of a person in authority.

In applying the provisions of Articles 148 and 151 of this Code, teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance, shall be deemed persons in authority. (As amended by P.D. No. 299, September 19, 1973 and Batas Pambansa Blg. 873, June 12, 1985)."

Careful reading of the last paragraph of Article 152 will show that while a teacher or professor of a public or recognized private school is deemed to be a "person in authority," such teacher or professor is so deemed only for purposes of application of Articles 148 (direct assault upon a person in authority), and 151 (resistance and disobedience to a person in authority or the agents of such person) of the Revised Penal Code. In marked contrast, the first paragraph of Article 152 does not identify specific articles of the Revised Penal Code for the application of which any person "directly vested with jurisdiction, etc." is deemed "a person in authority." Because a penal statute is not to be given a longer reach and broader scope than is called for by the ordinary meaning of the ordinary words used by such statute, to the disadvantage of an accused, we do not believe that a teacher or professor of a public or recognized private school may be regarded as a "public authority" within the meaning of paragraph 2 of Article 14 of the Revised Penal Code,[31] the provision the trial court applied in the case at bar.

ACCORDINGLY, the decision of the trial court dated 31 July 1986 is hereby MODIFIED in the following manner and to the following extent only:

1. In Criminal Case No. 4007, appellant shall suffer the penalty of reclusion perpetua;
2. In Criminal Case No. 4012 — (a) the aggravating circumstances of evident pre-meditation and of having acted with contempt of or insult to the public authorities shall be DELETED and not taken into account; and (b) the special aggravating circumstances of acting while under the influence of dangerous drugs and with the use of an unlicensed firearm shall similarly be DELETED and not taken into account. There being no generic aggravating nor mitigating circumstances present, the appellant shall suffer the penalty of reclusion perpetua.

The two (2) penalties of reclusion perpetua shall be served successively in accordance with the provisions of Article 70 of the Revised Penal Code. As so modified, the decision of the trial court is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 11-12.

[2] Rollo, pp. 13-14.

[3] Ibid, pp. 30-93.

[4] TSN, 12 November 1985, pp. 179-180.

[5] TSN, 28 April 1986, pp. 11-16.

[6] TSN, 1 April 1985, pp. 8-16, 30; TSN, 2 April 1985, pp. 5-11.

[7] TSN, 2 April 1985, pp. 11, 12, 19-39; TSN, 25 April 1986, pp. 39-48.

- [8] TSN, 10 September 1985, pp. 144-147; TSN, 11 November 1985, pp. 106-107.
- [9] TSN, 1 April 1985, pp. 22-26.
- [10] TSN, 10 September 1985, pp. 152-154.
- [11] See Ballistic Report. Exhibit "I" for the Prosecution
- [12] Article 11 (1), Revised Penal Code.
- [13] Appellant's Brief, pp. 23-24; Rollo, pp. 134-135.
- [14] Appellant's Brief, pp. 35-36; Rollo, pp. 146-147.
- [15] *People v. Lachica*, 132 SCRA 230 (1984).
- [16] *People v. Nulla*, 153 SCRA 471 (1987).
- [17] Appellant's Brief, p. 42; Rollo, p. 153.
- [18] Third, Fourth and Fifth Whereas Clauses, P.D. No. 1866.
- [19] And even if it were, the provisions of Article 62, paragraph 1 of the same Code would become applicable to prevent its being appreciated for the purpose of increasing the imposable penalty:
- "Article 62. Effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency. —
x x x
- (1) Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty." (Italics supplied.)
- [20] Appellant's Brief, pp. 46-47; Rollo, pp. 157-158.
- [21] Rollo, pp. 82-83.
- [22] *People v. Tingson*, 47 SCRA 243 (1972).
- [23] *People v. Estillore*, 141 SCRA 456 (1986).
- [24] TSN, 1 April 1986, pp. 166-169.
- [25] TSN, 11 November 1985, pp. 172-175.
- [26] Rollo, p. 206.
- [27] *People v. Palo*, G.R. No. L-9593, 31 July 1957.
- [28] Article 13, paragraph 7, Revised Penal Code.
- [29] *People v. Siojo*, 61 Phil. 307 (1935); *People v. Yuman*, 61 Phil. 786 (1935); *People v. Velez*, 58 SCRA 21 (1974); and *People v. Conwi*, 71 Phil. 595 (1976).
- [30] Decision, RTC, p. 45; Rollo, p. 207.
- [31] Reyes, L. B., Revised Penal Code, p. 133 (1981 ed.).

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