

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTELITO ESTRELLA Y COLLARIN, ACCUSED-APPELLANT.

G.R. Nos. 92506-07. April 28, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

In two informations filed in the Regional Trial Court, Valenzuela, Metro Manila, appellant was charged in Criminal Case No. 7581-V-86 with Qualified Theft punishable under Article 310 of the Revised Penal Code and in Criminal Case No. 7582-V-86 with Murder punishable under Article 248 of the Revised Penal Code.

After a joint trial and in a joint decision, appellant was acquitted in Criminal Case No. 7581-V-86 and convicted in Criminal Case No. 7582-V-86.

Appellant appealed from the decision of the trial court finding him guilty beyond reasonable doubt of Murder and sentencing him "to suffer the penalty of imprisonment for life; to indemnify the heirs of Pat. Abelardo Tan in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs." (Rollo, p. 27)

Inasmuch as the appeal was from a joint decision, it was docketed as G.R. Nos. 92506 (Criminal Case No. 7581-V-86) and 92507 (Criminal Case No. 7582-V-86).

The antecedent facts were simple.

On September 23, 1985, Pat. Abelardo Tan and Police Cpl. Teresita De Leon of the Investigation Division of the Valenzuela Police Station, were instructed to proceed to the Avondale Garments in Karuhatan, Valenzuela, Metro Manila, to investigate a report of the pilferage of T-shirts manufactured by the firm.

The security guard on duty that day was appellant, an employee of the Southern Luzon Security Agency. Appellant had been assigned to the Avondale Garments since July 1, 1982.

Prior to September 23, 1985, that was on August 6, 1985, appellant was brought to a police station for investigation in connection with the loss of T-shirts in the garment factory. He was maltreated by the police investigator, one of whom was Pat. Tan. He was released after three days. The severity of the water torture and fist blows given him caused his ears to bleed and he had to be hospitalized.

Pat. Tan and Cpl. De Leon finished their investigation at about 12:30 pm. Prior to their departure, Pat. Tan was waiting at the second floor to talk to Ruby Soliven, the office secretary, when appellant left his post and stealthily went up to the second floor. Approaching from behind, appellant shot Pat. Tan once at the back with a shotgun.

Appellant fled down the stairs and left the premises.

Appellant was chased by Cpl. De Leon but he managed to evade her. Failing to apprehend appellant, Cpl. De Leon returned to the second floor of the building. She brought Pat. Tan to a hospital, where he died on arrival.

Upon learning of the incident, Capt. Carlos Tiquia, Chief of the Investigation Division, Valenzuela Police Station,

instructed police officers Isagani Salonga and Loreto Dominguez to conduct an investigation of the shooting. An official of the company gave them the 12-gauge shotgun (Exh. "N") used by appellant in shooting Pat. Tan. The gun had Serial No. SN-129732 and contained three live bullets. The police investigators also recovered one spent shell (Exh. "Q"). Salonga placed the marking "1DS" on the shotgun and the marking "ABE" on the spent shell (Exh. Q-1). Capt. Tiquia sent the shotgun and the spent shell for ballistic examination to the Philippine Constabulary (PC) Crime Laboratory at Camp Crame, Quezon City. He also requested the National Bureau of Investigation to conduct an autopsy on Pat. Tan's body.

Dr. Alberto M. Reyes, NBI Medico-legal Officer, conducted a post mortem examination of Pat. Tan's body, which was identified by the latter's widow.

The autopsy report disclosed that the cause of Pat. Tan's death was severe hemorrhage, secondary to shotgun wounds at the back and that two of the pellets exited while one was recovered from the heart (Exhs. "F" and "G"). Based on the autopsy, Dr. Reyes opined that the victim's assailant was probably behind him during the act of shooting. He submitted the recovered pellet to the Ballistics Division of the NBI for examination (Exh. "H").

The report of Apolinario Calix, Senior Ballistician of the NBI, stated that the lead pellet was fired from a 12-gauge shotgun (Exh. "H").

The chemistry examination conducted by Leona Layador, Assistant Chief, Chemistry Branch, PC Crime Laboratory of the 12-gauge shotgun showed that it tested positive for the presence of nitrate (Exh. "M").

Vicente R. De Vera, Chief of Ballistics of the PC Crime Laboratory, who conducted the ballistic examination of the shotgun, Exhibit "N", as well as the spent shell, Exhibit "Q", submitted a ballistic report (Exh. "H") showing that the shell marked "ABE" was fired from the 12-gauge shotgun with Serial No. 129732 (Exh. "N").

Appellant put up the defense of alibi. He claimed that on September 23, 1985 he was in Candelaria, Quezon, working as a rice thresher. According to him, he never returned to work at the Avondale Garments after his release by the Valenzuela police on August 8, 1985. The defense presented Dionisio Austria, a boyhood friend and neighbor of appellant, who testified that he hired appellant as a rice thresher.

Alibi is a weak defense and becomes weaker in the face of positive identification of the accused by the prosecution witnesses. (People v. Repato, 6 SCRA 202, [1962])

The distance between Candelaria, Quezon, and Valenzuela, Metro Manila, which by appellant's own admission can be negotiated in four hours by bus, is not too great as to make it impossible for appellant to be in both places the same day.

Ruby Soliven testified that appellant was the security guard on duty that fatal day and that appellant was the one who shot the victim at the back. Aside from Ruby Soliven, appellant was positively identified by Rodolfo Tan, an office messenger of Avondale Garments. Tan saw appellant rushing down the stairs after the shooting and leaving hurriedly the factory compound.

The flight of appellant from the scene of the crime and his hiding himself until his arrest on January 1, 1989 are circumstances indicative of his guilt. (People v. Vengco, 127 SCRA 242, [1984])

The trial court found appellant guilty of Murder qualified by treachery and aggravated by evident premeditation.

There is no question that the offense was committed with treachery, the victim having been shot from behind and when he least expected the impending attack on his person by the accused. (People v. Alcantara, 206 SCRA 662 [1992])

However, we do not agree with the trial court that the aggravating circumstance of evident premeditation was present.

The trial court based its finding of the presence of evident premeditation on appellant's testimony that on August 6, 1985 he was arrested in connection with the report by the owner of Avondale Garments of the loss of T-shirts. He was brought to a police station, where he was maltreated by the investigators to force a confession from him. The trial court held that there was enough time for appellant to ponder on and premeditate the killing from the date he was released up to 12:15 of September 23, 1986 when Pat. Tan and his companion were about to leave the premises of Avondale Garments. The trial court concluded that appellant shot Pat. Tan out of revenge for the maltreatment inflicted on him the previous month.

The prosecution did not present any evidence to show that appellant had made plans to kill Pat. Tan to avenge the ill-treatment given him when he was under investigation by the Valenzuela police in August 1985. There is no evidence to show that appellant knew that Pat. Tan would be the one assigned to investigate the second report of loss in the garment factory. Under the circumstances, the only conclusion that can be made is that appellant thought of killing Pat. Tan only when the latter showed up at the garment factory on September 23, 1985.

Before evident premeditation can be appreciated, the prosecution should prove the time when the intent to commit the crime was engendered in the mind of the accused. The premeditation must be evident and manifest. The determination to kill must be plain and notorious. There must be evidence of outward acts showing that intent to kill. (People v. Bañagale, 24 Phil. 69 [1913]; People v. Mendoza, et al., 100 Phil. 811 [1957]; 1 Aquino, Revised Penal Code, 326, 1976 ed.)

The penalty imposed on appellant should be changed from "imprisonment for life" to "reclusion perpetua". There is no penalty of "imprisonment for life" provided for in the Revised Penal Code. The penalty of reclusion perpetua and life imprisonment are not synonymous. The former entails imprisonment for at least 30 years and carries with it accessory penalties whereas the latter has no definite duration and does not entail any accessory penalty. (People v. Baguio, 196 SCRA 459 [1991]; People v. Ruedas, 194 SCRA 553 [1991]; People v. Nillos, 127 SCRA 207 [1984])

WHEREFORE, the judgment appealed from is AFFIRMED with the penalty modified to "reclusion perpetua" and civil liability increased to P50,000.00.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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