

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL BALATUCAN AND THREE (3) JOHN DOES, ACCUSED-APPELLANTS.

G.R. Nos. 93805-06. February 07, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Ramil Balatucan was found guilty of the murder of Jonnel Labao and of the frustrated murder of Alex Balatucan, and appeals the two (2) verdicts.

Appellant was charged with murder in an information which read:

"The undersigned 4th Assistant Provincial fiscal accuses Ramil Balatucan and three (3) John Does of the crime of Murder committed as follows:

That on or about March 18, 1988, in the evening thereof, at Barangay Umabay Exterior, Municipality of Mobo, Province of Masbate, Philippines, within the jurisdiction of this Court, the above-named accused confederating together and helping one another, with deliberate intent to kill, evident premeditation, treachery, superiority of strength and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and stab with a fan knife (batangas) one Jonnel Labao hitting the latter on the chest thereby inflicting wound which caused his instantaneous death.

Contrary to law.[1]

A second charge of frustrated murder was preferred against appellant in a separate information which read:

"The undersigned 4th Assistant Provincial fiscal accuses Ramil Balatucan and three (3) John Does of the crime of Murder committed as follows:

That on or about March 18, 1988, in the evening thereof, at Barangay Umabay Exterior Municipality of Mobo, Province of Masbate, Philippines, within the jurisdiction of this court, the above-named accused confederating together and helping one another with deliberate intent to kill, evident premeditation, treachery, superiority of strength and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and stab with a fan knife (batangas) one Alex Balatucan, hitting the latter on the left forearm, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless did not produce it by reasons of causes independent of the will of the said accused that is the timely intervention of Jaime Balatucan and medical attendance rendered to the said victim which prevented his death.

Contrary to law."[2]

At arraignment, appellant pleaded not guilty to both charges and after trial, the trial court held him guilty in a decision dated 30 April 1989. The dispositive portion of this decision is as follows:

"WHEREFORE, based on the premises the court is convinced beyond reasonable doubt that Ramil Balatucan is guilty of the two crimes filed against him, one for murder and one for frustrated murder. For criminal case

no. 5472 he is hereby sentenced to a penalty of reclusion perpetua as there are no mitigating circumstances to reduce the penalty. For criminal case no. 5473 he is further sentenced to a penalty after applying the indeterminate sentence law to TWO (2) years FOUR (4) months and ONE (1) day, the medium of prision correccional to EIGHT (8) years and ONE (1) day of the medium of prision mayor. He is further ordered to pay the amount of P30,000.00 as damages to the heirs of Jonnel Labao and P10,000.00 to Alex Balatucan as damages for his injury and to pay the cost of the suit.

SO ORDERED."[3]

The prosecution presented Jaime Balatucan and his brother Alex Balatucan as witnesses, and their testimonies tended to establish the following:

On the evening of 18 March 1988, Jaime Balatucan went to a dance held at the BLISS Housing Project in Umabay Exterior, Mobo, Province of Masbate, on the occasion of the barangay fiesta. When Jaime arrived at the scene of the dance, and just before entering the hall where the dance was being held, he was suddenly boxed by one Rudy Tugbo. Rudy Tugbo was then in the company of appellant Ramil Balatucan. Arturo Natividad and one other unidentified person. After striking Jaime, Rudy Tugbo ran away. Jaime pursued him but lost him. Jaime Balatucan then joined his brother, Alex Balatucan, the deceased Jonnel Labao and Joey Labao in the dance hall.

At around 10:00 o'clock in the evening, Jaime Balatucan and his companions left the dance hall and proceeded on to the public highway. On the highway, they were met by appellant who rushed towards Jonnel Labao and stabbed him with a knife. Jonnel collapsed on the highway, with a knife thrust to the heart, and died on the spot. As Alex Balatucan tried to help Jonnel Labao up, appellant also stabbed Alex. Jaime Balatucan grappled with appellant for possession of the knife, but failed to disarm him. Jaime Balatucan managed to grab Ramil by the shirt: Ramil tore loose, leaving his shirt or part of it in Jaime's hand. Alex Balatucan was brought to the Masbate Provincial Hospital and was confined there for a week.

The prosecution also presented Arturo Natividad who testified that on the evening of 18 March 1988, he was drinking gin with appellant and four (4) other persons in a store in Barangay Cogon, Mobo, Masbate. During the drinking, appellant Ramil Balatucan informed Arturo that "he (Ramil) will stab" somebody without indicating who the unfortunate person(s) would be. Around 8:30 p.m., the gin drinkers proceeded to the dance hall and stayed there until about 10:30 p.m. when they went out into the highway which is about 30 meters from the dance hall. They stayed on the shoulder of the highway. In about an hour's time, Jaime Balatucan and his companions emerged from the dance hall and started on the highway. Ramil Balatucan rushed towards the approaching group and Arturo Natividad testified, stabbed Jonnel Labao and Alex Balatucan.

Dr. Maria Belen Chan, another prosecution witness, testified that the knife wound sustained by Alex Balatucan on his left arm, could have been fatal as it produced profuse bleeding. Alex's injury was more particularly described in a medico-legal certificate issued by Dr. Chan of the following tenor:

"1.5 inches wide stab wound through and through distal 3rd posterior (L) arm directed toward medial aspect middle 3rd (L) arm 1 cm. wide, incised opening."[4]

Dr. Artemio Capellan, who had conducted a postmortem examination on Jonnel Labao, issued a report which contained the following

"Findings:

1. Stab wound affecting the lateral portion of the chest just above the mammary gland. Vital organs and major blood vessels were affected.

Cause of Death: Hypovolomic (sic) shock due to single fatal wound."[5]

Dr. Capellan explained in open court that the cause of death was irreversible shock due to severe hemorrhage.

The Court notes that while appellant Ramil had pleaded not guilty at arraignment and had asserted the defense of alibi before the trial court, claiming that he could not have been the culprit as he had been knocked unconscious during a fight at the dance hall, he now impliedly admits in his appellant's brief having stabbed both Jonnel Labao and Alex Balatucan. Appellant asserts, however, that he should have been found guilty of homicide and attempted homicide only, claiming that the qualifying circumstances of evident premeditation and treachery had not been sufficiently established.[6]

The Solicitor General argues that both crimes had been attended by treachery, that the attack had not been impulsively done and that the decision to kill was not a spontaneous on-the-spot decision. The Solicitor General stressed that:

"x x x. [Appellant Ramil] went out of the dance hall ahead of his intended victims, and purposely positioned himself on the highway gutter to avoid notice. As soon as he spotted his prey, he struck without warning and without giving the unarmed and hapless Jonnel and Alex the opportunity to defend themselves. Indeed, appellant deliberately and consciously adopted that mode of attack to preclude any risk to himself or retaliation from victim and to insure the execution of the crime. Treachery was unquestionably present." [7] (Underscoring supplied)

Appellant, on the other hand, contends that neither of the two (2) crimes had been attended by treachery. In respect of the slaying of Jonnel Labao, appellant claims that treachery should not have been appreciated by the trial court considering that, according to appellant, the mode of attack had not been previously considered and hence had not been consciously chosen but was rather the result of a sudden decision made when the contending groups of high school students (the group of Jaime Balatucan and the group of Ramil Balatucan) accidentally met.

There is treachery when the offender adopts means, methods or forms in the execution of the felony which insures its commission without risk to himself arising from any defense which the offended party might take.[8] In the instant case, the deadly attack upon Jonnel Labao was not merely an unplanned attack which occurred during an accidental meeting of the two (2) groups. On the contrary, the evidence of the prosecution showed that appellant had deliberately posted himself on the shoulder or gutter of the highway not far from the dance hall and waited for about an hour until his victim passed by. Appellant then suddenly flung himself on the approaching group and thrust his knife at Jonnel Labao's chest, piercing the heart.

Appellant similarly denies treachery in the stabbing of Alex Balatucan, contending that "the suddenness of attack does not, of itself, suffice to support a finding of alevosia (treachery) even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position is accidental." [9]

Examination of the record of this case shows that the near fatal wounding of Alex Balatucan was properly classified as treacherous. Appellant stabbed Alex Balatucan while the latter was in the act of lifting Jonnel Labao from the ground. Alex Balatucan testified:

"Q: Now when Jonnel Labao fell down after being stabbed by Ramil Balatucan what happened next?

A: When I saw Jonnel Labao fall down the ground, and I was about to lift him this Ramil Balatucan stabbed him (sic).

COURT

Q: From where did he come from in relation to the body in the right or left?

A: From the left side.

Q: From in front or behind (sic)?

A: On my side (sic)."[10]

We consider that the treachery which attended the killing of Jonnel Labao also infected the attack on Alex Balatucan. While the act of stabbing Jonnel on the chest was distinguishable from the act of stabbing Alex through his left arm, the two (2) acts occurred on the same occasion, the interval between them being measured in seconds. Jonnel and Alex were together as they walked down the highway. Both were unarmed. Neither could respond to the knife-thrusts delivered by Ramil. Alex was obviously disabled from defending himself when Ramil thrust his knife through and through Alex's left arm, as Alex was trying to help Jonnel to his feet.

Appellant also claims that the trial court erred in finding the presence of the element of evident premeditation. According to appellant, Arturo Natividad's testimony to the effect that appellant had told Arturo that he (appellant) would stab "someone"[11] does not prove premeditation, since that statement had been made after appellant had begun drinking hard liquor.

The Court has consistently held that for evident premeditation to be appreciated against an accused, the following requisites must be established: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the lapse of an interval of time between determination to commit the crime and execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[12] The record of this case shows that these requisites had been proven in the instant case. The determination to stab or kill "someone" had been arrived at as early as 6:30 in the evening of that fatal day while appellant was engaged in a drinking session with Arturo Natividad, Boboy Adovas and another male companion. Appellant repeated his announced threat at least three (3) times that evening. At that time, appellant had with him a 10-inch batangas knife, the same knife that he would later use to assault Jonnel and Alex. Between the time that appellant and his companions were drinking and the time of the attack at about 11:00 o'clock of the same evening, appellant had several hours to reflect on the crime that, per his own announcement, he was about to commit and to desist from it if he had wanted so to desist. The slaying of Jonnel and the serious stab wound inflicted on Alex demonstrated clearly that appellant had clung to his determination to kill.

Appellant also submits the argument that evident premeditation in the case of the stabbing of Alex Balatucan should not have been taken into account, since there was no appreciable interval between the time Ramil decided to stab Alex and the moment Ramil actually did so. We have, however, already noted that appellant had previously stated his intent to stab someone that night, without specifying any particular individual person or persons. The creative suggestion apparently being made by appellants' counsel here is that, because two (2) separate crimes had been committed by Ramil, separate premeditation (and an adequate interval of time) must precede each crime.

We are not persuaded. We believe that the evident premeditation which qualified the slaying of Jonnel to murder also qualified the frustrated homicide of Alex into frustrated murder. The two (2) crimes need to be considered and characterized in an integrated manner. The evident premeditation which preceded the killing of Jonnel also in fact preceded the assault on Alex.

It is important in this connection to remember that evident premeditation may exist even if at the time the offender determined to commit the crime, a definite victim had not been settled upon. In *U.S. v. Manalinde*,[13] the accused acted upon the order of Datu Rajamuda Mupuck to "go juramentado in Cotabato in order to kill somebody," because the Datu had certain grievances to avenge against two (2) military officers. In holding that the element of premeditation had accompanied the killing of a Chinaman and the wounding of a Spaniard whom Manalinde encountered after forming his intent to kill, although Manalinde had never met either the Chinaman or

the Spaniard before in his life, the Court, speaking through Mr. Justice Torres, said:

"As to the other circumstance it is also unquestionable that the accused, upon accepting the order and undertaking the journey in order to comply therewith, deliberately considered and carefully and thoughtfully meditated over the nature and the consequences of the acts which, under orders received from the said datto, he was about to carry out, and to that end provided himself with a weapon, concealing it by wrapping it up, and started on a journey of a day and a night for the sole purpose of taking the life of two unfortunate persons whom he did not know, and with whom he had never had any trouble; nor did there exist any reason which, to a certain extent, might warrant his perverse deed. The fact that the arrangement between the instigator and the tool considered the killing of unknown persons, the first encountered, does not bar the consideration of the circumstance of premeditation. The nature and the circumstances which characterize the crime, the perversity of the culprit, and the material and moral injury are the same, and the fact that the victim was not predetermined does not affect nor alter the nature of the crime. The person having been deprived of his life by deeds executed with deliberate intent, the crime is considered a premeditated one as the firm and persistent intention of the accused from the moment, before said death, when he received the order until the crime was committed is manifestly evident. x x x

x x x. On going to Cotabato the Moro Manalinde intended to and did kill the first two persons he encountered, and the fact that the victim was not predetermined does not alter the nature, conditions, or circumstances of the crime, for the reason that to cause the violent death of a human being without any reasonable motive is always punishable with a more or less grave penalty according to the nature of the concurrent circumstances.

x x x x x x x x"[14]

(Underscoring supplied)

Appellant protests that he had no reason to assault either of the victims, as it was Rudy Tugbo, and not the appellant, who had an altercation earlier in the evening with Jaime Balatucan. In his testimony before the trial court, appellant had in fact tried to pin the blame for the slaying of Jonnel and the wounding of Alex upon Rudy Tugbo.[15] It is, however, common doctrine that proof of motive is immaterial when the identity of the appellant has been clearly established. As earlier noted in the instant case, appellant admits having slain Jonnel and seriously wounded Alex and only disputes the legal characterization of his acts.

We address next the question of the proper penalty imposable upon appellant. Appellant invokes *People v. Intino*,[16] where the Court held that, with the abolition of the death penalty, the proper imposable penalty for "murder is reclusion temporal maximum to reclusion perpetua with three (3) periods -- lower half of reclusion temporal maximum, higher half of reclusion temporal maximum and reclusion perpetua." [17]

Intino has, however, been modified by *People v. Muñoz*[18] where the Court held that "the original penalty, including death, was thus maintained except that the maximum period was not imposed because of the constitutional prohibition." [19] Thus, the range of the minimum and medium periods of the imposable penalty remain unchanged, such that in the absence of any mitigating or aggravating circumstances, the penalty for murder would remain reclusion perpetua.

In the instant case, there are two (2) aggravating circumstances -- evident premeditation and treachery -- either of which would qualify the killing to murder. In *People v. Dueno*[20] the Court held that where there are two (2) qualifying aggravating circumstances, only one aggravating circumstance should be considered to qualify the crime to murder, while the other should be considered a generic aggravating circumstance merely. Because of the constitutional prohibition against enforcement of the death penalty, the penalty properly imposable remains reclusion perpetua. The crime of frustrated murder is punishable by prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, the minimum term may be fixed within the range of

the penalty next lower in degree to the penalty prescribed and properly imposable under the Revised Penal Code, while the maximum term shall be the penalty properly imposable under the same Code in view of the attendant circumstances of the offense.

ACCORDINGLY, for all the foregoing, the decision of the trial court is AFFIRMED in part and MODIFIED in part.

In respect of the crime of murder, the judgment imposing the penalty of reclusion perpetua is hereby AFFIRMED, but the award of damages is hereby INCREASED to P50,000.00, in line with recent jurisprudence.

In respect of the crime of frustrated murder, the judgment is hereby MODIFIED by increasing the penalty to an indeterminate sentence ranging from a minimum of eight (8) years and one (1) day of prision mayor, to a maximum of seventeen (17) years and four (4) months of reclusion temporal and AFFIRMED as to the award of P10,000.00 for the injury sustained by Alex Balatucan. Costs against appellants.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Records of Criminal Case No. 5472, p. 1.

[2] Records of Criminal Case No. 5473, p. 1.

[3] Decision, pp. 8-9; Records of Criminal Case No. 5472, pp. 8-9.

[4] Records of Criminal Case No. 5472, p. 71.

[5] Id., p. 72.

[6] Appellants' Brief, p. 10.

[7] Appellee's Brief, pp. 9-10.

[8] E.g., *People v. Cuyo*, 196 SCRA 447 (1991).

[9] Appellants' Brief, p. 11.

[10] TSN, 18 January 1989, p. 9.

[11] Appellants' Brief, p. 12.

[12] E.g., *People v. Cafe*, 166 SCRA 704 (1988).

[13] 14 Phil. 77 (1909).

[14] 14 Phil. at 81-82.

[15] TSN, 23 June 1989, p. 5.

[16] 165 SCRA 637 (1988).

[17] Appellants' Brief, p. 15.

[18] 170 SCRA 107 (1989).

[19] 170 SCRA at 120.

[20] 90 SCRA 23 (1979).

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