Supreme Court E-Library

again raised a controversial issue touching on their very execution, validity and enforceability of the documents relied upon, which objection were also supported with documents. Said issue must be taken together with those raised below in an ordinary action.

IN VIEW OF ALL THE FOREGOING, the impugned orders of the court of February 6, 1968 and March 30, 1968 in LRC (GLRO) Cadastral Record No. 158 affecting the lands covered by TCT Nos. 42611 and 27552, both of the Register of Deeds of Manila in the names respectively of Shintoist Shrine and Japanese Charity Bureau and Hongwanji Church of Japan are hereby set aside in order that the issues of legality and validity of the transactions and instruments respectively relied upon by the parties may be properly litigated in corresponding ordinary civil actions. Costs against appellee.

Fernando (Chairman), Antonio, Aquino, and *Santos, JJ.*, concur.

Concepcion Jr., J., is on leave.

EN BANC

[G.R. No. L-30355. May 31, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellant, vs.* **HON. UNION KAYANAN and HON. ENRIQUE AGANA, Judges of the Court of First Instance of Quezon, and PELAGIO ORGANO**, *defendants-appellees.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PALPABLY IRREGULAR AND LEGALLY ERRONEOUS CONDUCT CONSTITUTES GRAVE ABUSE OF DISCRETION. — It is grave abuse of

Supreme Court E-Library

discretion for a judge in one branch to call for arraignment a murder case in another branch (already tried, with the prosecution having rested and the defense about to close, but left pending by the retirement of the presiding judge), without any formal calendaring thereof, without notice to prosecutors, in the absence of the accused's counsel of record, and then and there, without the record of the case before him, allow the accused to enter a plea of guilty to the lower offense of homicide and to credit said accused not only with the mitigating circumstance of plea of guilty, but also with those of voluntary surrender and incomplete self-defense, as to which not even an iota of evidence was presented.

2. **ID.; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A LIGHTER OFFENSE.** — A plea of guilty to a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused. The rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged. When such an offer is made, the court is duty bound to inquire carefully into the circumstances on which it is premised.

3. **ID.; ID.; JUDGMENT; ERROR OF JUDGMENT; FAILURE OF JUDGE TO DISCERN OBVIOUS BLUNDER IN THE JUDICIAL CONDUCT OF HIS COLLEAGUE, A CASE OF,.** — A judge has committed an error of judgment by denying, on the ground of double jeopardy, a motion for a reconsideration of an obviously illegal, unjustifiable and void decision rendered by his predecessor in a criminal case.

4. **ID.; ID.; PLEA OF GUILTY AFTER ARRAIGNMENT.** — An accused can confess guilt at any time, even after arraignment and after trial has began, but the law is clear that he shall not thereby be entitled to have such plea considered as a mitigating circumstance.

5. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; MUST BE PROVEN.** — Evidence must be presented in order to credit an accused with the mitigating circumstances of voluntary surrender and incomplete self-defense.

6. **JUDICIAL ETHICS; RETIREMENT OF JUDGES; PREVENTS IMPOSITION OF ADMINISTRATIVE SANCTIONS.** — The retirement of a judge prevents the Supreme Court from imposing due administrative sanctions against him.

Supreme Court E-Library

7. ID.; JUDGES; JUDGE ADMONISHED FOR ERROR IN JUDGMENT. — Judges would be well advised to be more circumspect in upholding a plea of double jeopardy of the accused when it is quite apparent and manifest that it is the State and the interests of justice that are the ones in jeopardy.

APPEARANCES OF COUNSEL

Solicitor General F. V. Makasiar, Asst. Sol. Gen. F. C. Zaballero and *Sol. C. T. Agapinan* for plaintiff-appellant.

Euclides A. Abcede for defendant-appellee Pelagio Organo.

D E C I S I O N

BARREDO, *J.*:

Petition for *certiorari* seeking the annulment and setting aside of a decision in a case of murder in which respondent Judge Union Kayanan is alleged to have allowed the accused to enter a plea of guilty to the lower offense of homicide even after the prosecution had already rested and the defense had started presenting evidence, and even to be credited with the mitigating circumstances of voluntary surrender and incomplete self-defense, without requiring said circumstances to be proven by proper evidence. Respondent Judge Enrique Agana is being faulted for having denied the prosecution's motion for reconsideration and for holding that to grant the same would place the accused in double jeopardy.

The case in question is Criminal Case No. 1692-G, against private respondent Pelagio Organo and two others in Branch III of the Court of First Instance of Quezon sitting in Gumaca, Quezon Province, for the killing of Alfredo Puyal. Although the information was filed by Assistant Provincial Fiscal Eufemio Caparros of the same province, the preliminary investigation was actually conducted with the assistance of State Prosecutor Lilia Lopez and Provincial Fiscal Juan Aquino. At the trial, the prosecution was handled by Lopez and Aquino.

The proceedings were overtaken by the retirement of the presiding judge. But the prosecution had already rested and

Supreme Court E-Library

the defense was in the process of presenting its evidence. As the judge was to retire, the continuation of the trial was postponed indefinitely. Such was the status of the case on February 13, 1968.

On that day, without the case being calendared for continuation of trial and without notice to any of the prosecutors handling it, the following proceedings appear on the record to have taken place in Branch IV, the sala of respondent Judge Kayanan, sitting in Lucena, also in Quezon Province:

"INTERPRETER AVILA:

> Criminal Case No. 1692-G — *People of the Philippines versus Pelagio Organo, et al.*

COURT:

> What do you say Fiscal?

FISCAL FLORIDO:

> This is a Gumaca case, Your Honor, and I have not even the *expediente*, however, as the accused is pleading guilty. I submit.

COURT:

> No objection, Fiscal?

FISCAL:

> I submit, Your Honor.

COURT:

> Atty. Cerilla, will you please help the accused in the arraignment only?

INTERPRETER AVILA: (To accused)

> (Arraignment from English to Tagalog and vice-versa by Interpreter Francisco J. Avila).

"INTERPRETER TO THE COURT:

> The accused pleaded guilty to Homicide, Your Honor.

Supreme Court E-Library

ATTY. CERILLA:

We would ask that the following mitigating circumstances be considered in favor of the accused, voluntary surrender, plea of guilty. and incomplete self-defense.

WARDEN TO COURT:

Mabuting bata po iyan.

FISCAL:

We could be amenable to surrender, Your Honor.

COURT:

Plea of guilty cannot be considered because the prosecution has . . .

ATTY. CERILLA:

Incomplete self-defense, considering that the deceased is a recidivist.

COURT:

DECISION

The accused PELAGIO ORGANO, among others, is charged with Murder by virtue of the following Information:

'The undersigned Assistant Provincial Fiscal accuses PELAGIO ORGANO, ADOLFO BORCA and FLORENTINO CALINTAG of the crime of murder, defined and published under Article 248 of the Revised Penal Code, committed as follows:

That on or about the 11th day of April, 1964, in the municipality of Catanauan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the said accused Pelagio Organo, Adolfo Borca, and Florencio Calintag, armed with deadly weapon to wit: double bladed pointed instrument, with intent to kill and with treachery and evident premeditation, conspiring and confederating together and mutually, helping each other did then and there willfully, unlawfully and feloniously, attack, assault and strike with said pointed double bladed instrument one ALFREDO PUYAL on the different parts of his body and as a result thereof suffered mortal wounds which caused his death.

Supreme Court E-Library

That in the commission of the offense the following aggravating circumstances were present; that the crime was also committed with superior strength.

Contrary to law.'

"The accused was originally arraigned and tried before Branch III, CFI, Gumaca and said accused Pelagio Organo pleaded guilty.

"On representation of the Asst. Provincial Warden, co-accused Adolfo Borca is already dead, as per death certificate attached to the records showing that he died in the Quezon Memorial Hospital on November 8, 1967; while co-accused Florencio Calintag is at-large. The accused Pelagio Organo called the attention of the Court that he wanted to change his plea and that accordingly, Atty. Leovigildo Cerilla was appointed counsel *de oficio* for the arraignment only. Upon being arraigned said accused entered the plea of guilty to Homicide only without necessarily amending the Information and invoked the mitigating circumstances of voluntary surrender and incomplete self-defense without objection on the part of the Prosecuting Fiscal. It also appears that the victim Alfredo Puyal was a habitual delinquent having been convicted on March 13, 1954 and that he was paroled on July 10, 1964.

"WHEREFORE, finding the accused PELAGIO ORGANO guilty beyond reasonable doubt of the crime of Homicide only punishable under Article 249 of the Revised Penal Code, he is hereby CONVICTED and to suffer a penalty of Four (4) Years, Two (2) Months and one (1) day to Five (5) Years Four (4) Months and ten (10) days the minimum of *prision correccional* maximum to *prision mayor* minimum granting him two degrees lower than that prescribed by law and the benefit of the Indeterminate Sentence Law; to indemnify the heirs of the deceased ALFREDO PUYAL in the amount of Six Thousand (₱6,000.00) Pesos, Philippine Currency, but without subsidiary personal liability in case of insolvency, with costs *de oficio*.

"SO ORDERED." (Annex F of Petition, pp. 34-36, Record.)

Completely surprised and outraged by such an unexpected turn of events, on February 28, 1968, State Prosecutor Lopez filed an urgent motion for reconsideration alleging that:

Supreme Court E-Library

"1. State Prosecutor Lilia Lopez and Provincial Fiscal Juan Aquino were duly designated by the Secretary of Justice to handle the investigation and prosecution of the above-entitled case. The records of this case will bear this out.

"2. Pursuant to the aforesaid designation the State Prosecutors actively handled the prosecution of this case and presented ample evidence to show that the crime of murder has been committed by the accused and that the wounds inflicted were located at the back of the victim, thus proving the presence of the qualifying circumstances of treachery. After the prosecution closed its evidence the defense presented its evidence which consists of the testimony of the accused himself which is self-serving and that of Assistant Fiscal Batario who tried to corroborate the mitigating circumstance of voluntary surrender. However, this evidence of the defense was disproved by the testimony of Catanauan policeman shown in the records who testified that the accused was actually arrested and did not voluntarily surrender.

"3. The State Prosecutor was not notified at all of the date of hearing of this case which resulted in the court promulgating its decision of February 13, 1968.

"4. It is the position of the State Prosecutors that whoever was the fiscal who appeared in the sala of the Presiding Judge had no authority to bind the State in this case and the court should have postponed the case to enable the state prosecutors to state its position as to the alleged offer of the accused to enter a plea of guilty to the lesser offense of homicide. Indeed it is extremely irregular to allow the accused to enter a plea of guilty after all the evidence for the prosecution had already been received as well as that of the defense. There must be a satisfactory showing for the validity of such a plea. (*People vs. de la Cruz*, 64 Phil. 1067).

"5. Add to this the fact that it does not appear that any evidence was received by the Court to support the mitigating circumstances of voluntary surrender and incomplete self-defense as claimed by the accused which we submit even assuming that the prosecuting fiscal in that sala then conformed to, can not be considered when the evidence of record is against it. Hence, until and unless the Court receives evidence disproving what the record of the trial shows that there was voluntary surrender, much less incomplete self-defense, the accused should not be credited these two mitigating circumstances.

Supreme Court E-Library

"6. Assuming for the sake of argument that the plea to a lesser offense could have been allowed by the Court, and assuming further that these two mitigating circumstances should be credited to the accused, the Court failed to consider that when the accused entered a plea of guilty to the Information he entered a plea of guilty to the aggravating circumstances alleged therein. In the instant case there are two qualifying circumstances, namely, treachery and evident premeditation, and one aggravating circumstance which is the use of superior strength alleged in the Information. The qualifying circumstances should be considered as ordinary aggravating circumstances. Thus, there being three aggravating circumstances as against two mitigating circumstances, there is no justification for the court to impose a penalty two degrees lower than that prescribed by law for the crime of homicide.

"7. Moreover, the Prosecution excepts to the observation of the Court which we consider irrelevant to wit: 'It also appears that the victim Alfredo Puyal was a habitual delinquent having been convicted on March 13, 1954 and that he was paroled on July 10, 1964.' Suffice it to say that there is no such evidence whatever that the victim is a habitual delinquent nor does the record show that any such evidence was received by the now Presiding Judge, and the Revised Penal Code defines a habitual delinquent as one who has been convicted several times of an offense under the same Title. The victim in this case was convicted only once and cannot be considered a habitual delinquent. The Prosecution cannot understand why the name of the victim had to be besmirched with this allusion which is not supported by law.

"WHEREFORE, it is respectfully prayed that this Honorable Court reconsider its decision and reopen the case to enable all the evidence to be adduced and that thereafter a decision be rendered in accordance with the evidence in the record. The Prosecution further prays for such other remedy as may be just and equitable." (Annex B, pp. 19-22, Record.)

Judge Kayanan almost nonchalantly reacted with the following order dated March 18, 1968:

"ACTING on the Motion for Reconsideration filed by State Prosecutor Lilia Lopez, the Court finds meritorious the ground that the phrase 'The victim Alfredo Puyal was a habitual delinquent x x x,' is not supported by positive evidence. The portion of the decision dated February 13, 1968 to that effect is ordered deleted.

Supreme Court E-Library

"SO ORDERED." (Annex C, p. 24, Record.)

Seeing that the foregoing order did not resolve squarely her motion for reconsideration, State Prosecutor Lopez filed a supplemental motion for reconsideration on October 11, 1968. (Annex D of the Petition.) This gave occasion for the other respondent judge herein, Judge Enrique Agana, who had taken over Branch III, to issue the following order dated January 29, 1969:

"This is a motion for reconsideration filed by State Prosecutor Lilia Lopez and Provincial Fiscal Juan Aquino, who were designated by the Secretary of Justice to assist the Provincial Fiscal of Quezon in the prosecution of this case, on a decision rendered by the Court convicting the accused herein of the lesser crime of homicide.

"From the records, it appear that a complaint for murder against herein accused Pelagio Organo was filed in the municipal court of Catanauan and after preliminary investigation the case was remanded to this Court for trial. At this stage, the office of the Provincial Fiscal, through Assistant Provincial Fiscal Eufemio A. Caparros, conducted a reinvestigation with a view of including Adolfo Borca and Florencio Calintag in the information. In the said reinvestigation, Fiscals Juan Aquino and Lilia Lopez appeared for the prosecution and submitted their evidence for the offended party. After the reinvestigation was concluded, Assistant Provincial Fiscal Eufemio A. Caparros filed an information for murder against herein accused Pelagio Organo, together with Adolfo Borca and Florencio Calintag. Adolfo Borca died during the pendency of this case while Florencio Calintag remained at large.

"After a protracted trial, the prosecution was able to rest its case and the defense started presenting its evidence. However, before the defense rested, the accused Pelagio Organo on the 13th day of February 1968 asked the Court permission to change his plea of not guilty to the crime of murder to that of guilty to the lesser crime of homicide and invoked the mitigating circumstances of voluntary surrender and incomplete self-defense. Fiscal Celso B. Florido of the office of the Provincial Fiscal appeared for the prosecution and consented to the change of plea of the accused. Whereupon, the Court convicted the accused for the lesser crime of homicide.

"State Prosecutor Lilia Lopez and Fiscal Juan Aquino who conducted the examination of the witnesses during the course of

Supreme Court E-Library

the trial, now seek to have this decision reconsidered and the case reopened on the ground (1) that they were not notified of the hearing; and (2) that Fiscal Florido did not consent to the change of plea of the accused as provided for in Section 4 of Rule 118; that double jeopardy has not set in this case as the decision rendered on February 13, 1968 is null and void, it having been irregularly and illegally promulgated in violation of Section 6 of Rule 118.

"From a reading of the transcript of the stenographic notes taken on February 13, 1968, it could be gleaned therefrom that the Fiscal's office, through Fiscal Florido, was sufficiently notified of the hearing thereon. As a matter of fact, there is nothing in the transcript which would show that the said Fiscal Florido intended to ask for a postponement of the hearing.

"It is contended that the state prosecutors having been designated by the Secretary of Justice to handle the prosecution of the case should have been notified of the hearing. The Court finds no basis for such a contention for the record shows that the information was filed by the office of the Provincial Fiscal through Assistant Provincial Fiscal Eufemio A. Caparros, and as such notice to the Provincial Fiscal would be sufficient notice to the prosecution. The mere fact that the State Prosecutors were designated by the Secretary of Justice to assist the Provincial Fiscal in the prosecution of the case and pursuant thereto conducted the examination of the witnesses in the course of the trial does not necessarily make them the sole and exclusive prosecutors of the case as to entitle them to a separate notice, especially so when no manifestation to that effect has been made by them. They being part of the office of the Provincial Fiscal are bound by a notice made to the latter.

"With respect to the second ground that the Fiscal who attended the trial did not consent to the change of plea as provided for by Section 4 of Rule 118, the said transcript clearly shows that the Fiscal had submitted to the discretion of the Court. The said Fiscal's submission to the discretion of the Court, coupled with his manifestation that he is amenable to accept voluntary surrender as a mitigating circumstance, shows his express conformity with the change of plea of the accused from not guilty to the crime of murder to a plea of guilty to the lesser crime of homicide.

"The questioned decision having been regularly issued by the Court and the accused having began to serve the sentence, to reopen the said case now would constitute double jeopardy.

Supreme Court E-Library

"WHEREFORE, the Court denies the motion for reconsideration.

"SO ORDERED." (Annex E, pp. 29-33, Record.)

It is the stand of petitioner People of the Philippines that respondent Judge Kayanan acted with grave abuse of discretion in the premises and that Judge Agana's refusal to reconsider the matter is a manifest legal error. We do not hesitate to agree.

In fact, to call the impugned actuation of Judge Kayanan as grave abuse of discretion is the mildest way such palpably irregular and legally erroneous conduct be categorized. We cannot see anything in it that conforms with the law and the rules. It is incomprehensible how anything like it could happen in any court of this country. Indeed, one is left to wonder just how much allowance for good faith could be accorded to respondent.

To begin with, no explanation at all has been given as to how a case in Branch III of Gumaca, particularly one of murder to which special prosecutors have been specifically assigned by the Secretary of Justice, already tried, with the prosecution already rested and the defense about to close, was called for a new arraignment in Branch IV in Lucena without any formal calendaring thereof and without so much as even a verbal or informal notice, if not to the special prosecutors, at least to assistant provincial fiscal assigned to the case. To be sure, a little sense was shown by Fiscal Florido who tried to point out that "This is a Gumaca case, Your Honor, and I have not even the *expediente*," but not enough, for, in the same breadth, he inexplicably relented saying naively, "(H)owever, as the accused is pleading guilty, I submit." Worse, not even the counsel of record of the accused was present, and there is no reason given why the judge had to appoint a counsel *de oficio* for him for the "arraignment only."

Secondly, the record of the case was in Gumaca. No one other than the accused, knew, — certainly not the judge nor the fiscal — the actual status of the case and how far proceedings therein had gone. But neither of them seemed to care, if they knew as they ought to have known, such information was indispensable. It seemed the "new" arraignment had to go on

Supreme Court E-Library

regardless. So much so that even a formal amendment of the information to serve as basis for the plea of guilty to the lower offense of homicide did not anymore occur to them to be a "necessity."

Thirdly, how the instant counsel *de oficio* came to move that voluntary surrender and incomplete self-defense should be credited the accused is to be marvelled at. The record does not show he even consulted with the accused, much less knew anything about what appears already in the record of the case, particularly, the trial that had already progressed more than half-way.

Fourthly, no effort was even made to present evidence on the proposed mitigating circumstance of voluntary surrender. How incomplete self-defense could be reconciled, if that was possible, with what had already been proven by the evidence on record was not even looked into. And assuming the existing evidence could legally be disregarded altogether, it does not appear that the accused or his counsel *de oficio* had at least offered some evidence to prove the elements of the alleged incomplete self-defense. Besides, there was the aggravating circumstance of superiority of strength alleged in the information, together with treachery and evident premeditation, as qualifying circumstances of murder. It has not been explained how there could be self-defense in any sense where there is treachery and/or evident premeditation.

To top it all, the plea of guilty offered by the accused was not to the grave offense of murder charged in the information. It was for the lesser offense of homicide. A plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused. The rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged. Indeed, when such an offer is made, the court is duty bound to inquire carefully into the circumstances on which it is premised. The manifest indifference of respondent judge revealed in the record of the proceedings aforequoted is an unpardonable betrayal of the administration of justice. Precisely

Supreme Court E-Library

because the subject case did not pertain to his sala, as the fiscal had advised him, there was every reason for him to first investigate and apprise himself of what proceedings had already taken place. This was recklessness of the highest order devoid of any element of judicial circumspection. Judge Agana ought to have readily discerned such an obvious blunder in the judicial conduct of his colleague and immediately taken steps to right the wrong done to the People, instead of straining himself to baselessly apply the principle of double jeopardy in the premises.

As We have already noted earlier, everything was irregular and violative of all pertinent and applicable rules. The whole proceeding looked no more than a prearranged compromise between the accused and the judge to flaunt the law and every norm of propriety and procedure, so the former could be accommodated with a lighter penalty than that which already appeared to be inevitably warranted by the evidence on record, with the fiscal then present and the "instant" counsel *de oficio* taken in wittingly or unwittingly. There was no consideration whatsoever of the public interest. For the Court now to sanction such an outrageous disregard of all norms of procedure and the sanctions of the criminal laws would be to abandon all ideas of order and the public interest altogether. We hold that the whole proceeding in question is manifestly illegal and unjustified. It is completely void, and, accordingly, jeopardy could not have attached to it. Judge Agana's holding to the contrary is a patent error of judgment.

We are not saying, however, that a plea of guilty may not be made in the midst of trial. Surely, the accused can confess guilt at any time even after arraignment and after trial has began, but the law is clear that he shall not thereby be entitled to have such plea considered as a mitigating circumstance. Strangely, here, the accused Organo was not only irregularly credited with the mitigating circumstance of a plea of guilty to a lesser offense than that already proven by the evidence on record, he was also given credit for voluntary surrender and incomplete self-defense, as to which he did not even offer, much less present an iota of evidence. Only the retirement of

Supreme Court E-Library

respondent judge prevents Us from imposing due administrative sanctions against him. The Court strongly admonishes all judges to be careful not to follow his footsteps. And respondent Judge Agana is advised to be more circumspect in upholding a plea of double jeopardy of the accused when it is quite apparent and manifest that it is the state and interests of justice that are the ones in jeopardy.

IN VIEW OF ALL THE FOREGOING, the petition is granted and the impugned order of Judge Kayanan of February 13, 1968 is hereby declared null and void, whereas the order of Judge Agana of January 21, 1969 is reversed. The Court of First Instance of Quezon, Branch III, is directed to proceed with the continuation of the trial of Criminal Case No. 1692-G against herein private respondent Pelagio Organo and to thereafter decide the same as the evidence and the law may warrant.

Castro, C.J., Fernando, Teehankee, Aquino, Concepcion Jr., Santos, and *Guerrero, JJ.*, concur.

Makasiar and *Antonio, JJ.*, took no part.

Muñoz Palma and *Fernandez, JJ.*, on leave.

EN BANC

[G.R. Nos. L-31303-04. May 31, 1978]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **THE HONORABLE COURT OF APPEALS, ALFREDO V. DE OCAMPO and OSCAR ANGLO**, *respondents*.