Supreme Court E-Library

As regards the civil aspect, the award is hereby modified. Appellant is hereby ordered to indemnify the heirs of each victim in the amount of P30,000.00.

WHEREFORE, and except as thus MODIFIED, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., and *de la Fuente, JJ.,* concur.

EN BANC

[G.R. No. 55049. February 25, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO CORTAGA and ROMEO YANZA,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION AND CONSPIRACY; ATTENDANT IN CASE AT BAR.**— The evidence shows the existence of evident premeditation and conspiracy between appellants Cortaga and Yanza in the commission of the offense. They had planned and scheduled the killing of Alafriz on the 28th of June 1977. This is clear from the unassailed extra-judicial written statement executed by Cortaga before the "Tanod Tagasiyasat."

2. **ID.; ID.; TREACHERY; APPRECIATED WHERE VICTIM WAS UNARMED AND COMPLETELY DEFENSELESS.**— The extrajudicial statement likewise supports a finding of

Supreme Court E-Library

treachery. By their own admission, appellants suddenly stabbed the victim, several times with improvised deadly weapons. At the time, the victim was unarmed and completely defenseless.

3. **ID.; MURDER; PENALTY; CASE AT BAR.**— The crime is Murder qualified by treachery and attended by the generic aggravating circumstance of evident premeditation and the special aggravating circumstance of quasi-recidivism considering that appellants were serving their respective sentences by virtue of final judgments at the time they fatally stabbed the deceased. The penalty thus imposable is the maximum penalty of death without regard to the effect of the mitigating circumstance of accused-appellants' plea of guilty or voluntary surrender. However, due to lack of the necessary votes, the sentence is commuted to *reclusion perpetua.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Joaquin Yuseco, Jr. for accused-appellants.

D E C I S I O N

MELENCIO-HERRERA, *J.:*

For automatic review is the Decision of the then Circuit Criminal Court at Pasig, Metro Manila, sentencing Alfredo Cortaga and Romeo Yanza with capital punishment (CCC-VII-2621-Rizal).

Alfredo Cortaga, Artemio Malinao and Romeo Yanza, all convicts serving their respective sentences at the New Bilibid Prison, Muntinlupa, Metro Manila, were charged with the crime of Murder committed as follows:

"That on or about 28th day of June, 1977, in the municipality of Muntinlupa, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, convicts confined and serving their respective sentences in the New Bilibid Prison by virtue of final judgment rendered against them by courts of competent jurisdiction, conspiring and confederating together and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with improvised deadly weapons one Jaime

Supreme Court E-Library

Alafriz, also a convict confined and serving sentence in the said institution, thereby inflicting upon the latter stab wounds on the vital parts of his body which directly caused his death.

Contrary to law, with the aggravating circumstance of quasi-recidivism, the accused having committed the crime charged while serving their respective sentences in the New Bilibid Prison."[1]

Upon arraignment, accused Cortaga and Yanza, with the assistance of counsel, pleaded guilty, while their co-accused Malinao pleaded not guilty. The Trial Court directed the taking of testimony to establish guilt and determine the precise degree of culpability.

The evidence presented disclosed the following facts:

"The stabbing incident in question transpired at the New Bilibid Prison, Muntinlupa, Metro Manila. It involved appellants Alfredo Cortaga and Romeo Yanza on one hand, and Jaime Alafriz, all prisoners serving their respective sentences. Appellants Alfredo Cortaga and Romeo Yanza are members of the 'Batang City Jail' Gang while Jaime Alafriz was a member of the 'Bahala Na' Gang (pp. 1-6, tsn., July 11, 1978, p. 12, tsn., July 7, 1978).

"In the afternoon of June 28, 1977, when that incident transpired, Rodolfo Reyes, a prisoner belonging to the gang of Jaime Alafriz, was standing inside the control gate just about to return to his dormitory. When Rodolfo Reyes saw appellants pull out something from their waists, he pretended to pull out a weapon. Appellants, thus retreated, and proceeded instead to the NBP hospital. At the corridor, appellants met unarmed Jaime Alafriz and suddenly stabbed him several times with improvised deadly weapons (Exhs. D, E, F). Rodolfo Reyes witnessed appellants stab Jaime Alafriz (p. 3, tsn., July 11, 1978). Shortly thereafter, Jaime Alafriz died (p. 21, tsn., July 7, 1978).

"After the stabbing incident, appellants surrendered their weapons used in stabbing Jaime Alafriz (p. 13, tsn., July 13, 1978) to NBP Supervising Prison Guard Constantino Guerrero. Subsequently, appellants, after being apprised of their constitutional rights, voluntarily executed separate extrajudicial statements (Exhs. H, H-1, pp. 39-40, rec.; Exh. J, p. 43, rec.) before NBP investigator Severo Joven

[1] Original Record, p. 2.

Supreme Court E-Library

in which they confessed that they stabbed Jaime Alafriz with improvised deadly weapons (Exhs. D, E, F). Appellant Cortaga, in his statement (Exh. H, H-1, *id.*), further stated that a day prior to the actual stabbing he and appellant Yanza planned the killing of Jaime Alafriz because members of their gang were shouted at and warned to be careful by him.

"According to Dr. Virgilio Gernale, NBI Medico Legal Officer who conducted an autopsy, Jaime Alafriz sustained five stab wounds and two incised wounds on various parts of his body caused by blunt deadly instruments (Exh. A, A-1, to A-2; C, unnumbered page, rec.; Exh. B, p. 35, rec.) p. 3, tsn., July 7, 1978) and that the stab wounds which penetrated his heart and intestines caused his death (p. 13, tsn., July 7, 1983) [should be 1978]."[2]

After reception of testimony, judgment was rendered, the dispositive portion of which reads:

"WHEREFORE, finding the accused Artemio Cortaga (should be Alfredo) and Romeo Yanza, Guilty beyond reasonable doubt for violation of Article 248, in relation to Article 160 of the Revised Penal Code, the Court hereby sentences each one of them to suffer the penalty of DEATH; to indemnify the heirs of the offended party in the amount of P10,000.00, jointly and severally; to pay moral damages in the amount of P5,000.00, to pay exemplary damages in the amount of P5,000.00, jointly and severally; and to pay their proportionate share of the costs. The accused, Artemio Malinao is hereby ACQUITTED.

"The immediate release of accused Artemio Malinao from his detention is hereby ordered, unless held on some other legal grounds.

Pursuant to Section 32, Rule 138 of the New Rules of Court, Atty. Agcot, who was appointed counsel de oficio is hereby ordered compensated in the amount of P500.00, subject, however, to the availability of funds."[3]

Appellants now assail the imposition of the death penalty and contend that —

---

[2] Brief for the People, pp. 2-3.

[3] *Ibid.*, pp. 61-62.

Supreme Court E-Library

I

"The trial Court erred in holding that there was evident premeditation and conspiracy in the commission of the offense.

II

"The trial Court erred in not considering the spontaneous plea of guilty of the accused to mitigate the offense.

III

"The trial Court erred in sentencing the two accused to death.

The assigned errors cannot be sustained.

The evidence shows the existence of evident premeditation and conspiracy between appellants Cortaga and Yanza in the commission of the offense. They had planned and scheduled the killing of Alafriz on the 28th of June 1977. This is clear from the unassailed extrajudicial written statement executed by Cortaga before the "Tanod Tagasiyasat" (Exhibit "H"), which reads in part:

"05. T - May pangkat ka bang kinaaaniban sa ngayon?
S - Oho sir at BCJ po Batang City Jail po.

06. T - Sa ngayon saang brigada ka ngayon nakahimpil?
S - Sa building 7-D po sir.

07. T - Alam mo ba kung bakit kita tinawagan sa iyong brigada ngayon?
S - Opo sir tungkol po sa pagkakasaksak po namin kay Alafriz.

08. T - Sino sino pa iyong tinutukoy mong kasama namin na sumaksak kay Alafriz?
S - Si Bilanggong Romeo Yanza po sir at wala ng iba.

09. T - Noong Hunyo 28 ng taong 1977 humigit kumulang sa alas singko singkwenta ng hapon saan ka naroroon?
S - Andoon po sir sa may tabi ng Hospital at paikot ikot sa paglalakad.

10. T - Noong Hunyo 28 taong 1977 humigit kumulang sa alas singko singkwenta ng hapon mayroon pangyayari ka bang natatandaan na naganap dito sa loob ng compound ng bilangguang ito?

Supreme Court E-Library

S - Opo sir ang pagkakasaksak po namin sa bilanggong si Jaime Alafriz.

11. T - Saan mo nakilala itong si bilanggong Jaime Alafriz, at ano ang kinaaanibang pangkat ni Alafriz?

S - Dito lang po sir sa Bilibid ang pagkakaalam ko po sir ay miyembro ng Bahala na Gang.

12. T - Sinabi mong ikaw ang isa sa mga sumaksak dito sa bilanggong si Jaime Alafriz, sabihin mo nga sa akin ang dahilan kung bakit sinaksak ninyo siya?

S - Ang dahilan po sir bago naganap noon ang pananaksak namin ay sumigaw siya sa pangkat ng GIG na noon ding araw na iyon ay may dalawang miyembro ng GIG ang aming inaabangan na nanggaling sa dalaw at sinabi niya (Alafriz) sa dalawang GIG na mag-ingat kayo at may dalawang nag-aabang sa inyo at ng marinig namin iyon sir na pagsigaw ni Alafriz ay hindi na namin tinuloy ang pananaksak at kami ni bilanggong Romeo Yanza ay umuwi na sa aming brigada. Ng kami ay nasa brigada na ay pinag-usapan namin ni Bilanggong Romeo Yanza na papatayin namin si Alafriz dahil sa galit namin na sumigaw siya sa mga GIG kaya noong kinabukasan din ay iniskedyul namin siya.

13. T - Noong petsa 28 ng Hunyo 1977 papaano naman kayo nakalabas sa inyong brigada?

S - Dumaan po kami sir sa kisame at gumamit kami ng tale para makalabas.

14. T - Saan lugar ninyo sinaksak itong si bilanggong Jaime Alafriz?

S - Doon po sir sa malapit sa harapan ng pintuan ng Hospital dito po sir loob ng Prison Compound.

15. T - Ano ang ginagawa nitong si Alafriz ng inyong saksakin?

S - Nanggaling po sir kami dito sa kanto ng Hospital na malapit po sa dalawan ay nakita namin itong si bilanggong Jaime Alafriz na lumalabas ng Hospital ng makita namin ay agad agad naming siyang sinalubong at sinaksak po namin agad ni bilanggong Romeo Yanza sa parte ng kanyang harapang katawan."[4]

[4] Exhibit "H", pp. 39-40, Original Record.

Supreme Court E-Library

The foregoing likewise supports a finding of treachery. By their own admission, appellants suddenly stabbed the victim, several times with improvised deadly weapons. At the time, the victim was unarmed and completely defenseless.

The crime is Murder qualified by treachery and attended by the generic aggravating circumstance of evident premeditation and the special aggravating circumstance of quasi-recidivism considering that appellants were serving their respective sentences by virtue of final judgments at the time they fatally stabbed the deceased. The penalty thus imposable is the maximum penalty of death without regard to the effect of the mitigating circumstance of accused-appellants' plea of guilty or voluntary surrender.[5] However, due to lack of the necessary votes, the sentence is commuted to *reclusion perpetua.*

WHEREFORE, the judgment under review is hereby modified in that accused-appellants are hereby sentenced to *reclusion perpetua* and the indemnity is increased to P30,000.00. Costs against accused-appellants.

SO ORDERED.

Fernando, C.J., Aquino, Concepcion Jr., Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., de la Fuente, Cuevas, and *Alampay, JJ.,* concur.

Teehankee, J., in the result.

Makasiar, J., no sufficient proof of evident premeditation - less than 24 hours from argument to kill to execution.

EN BANC

[G.R. No. 55873. February 25, 1985]

ERNESTO G. PEREZ, PEDRO C. GONZALES, ZACARIAS AGNO, REYNALDO AQUINO, AMBROCIO

---

[5] Article 160, Revised Penal Code; People *vs.* Bautista, 65 SCRA 460 (1975).