Supreme Court E-Library

"* * * This Court has also taken judicial notice of the fact that the value of the Philippine peso has considerably gone down since the year 1959. * * *." (*Republic v. Castellvi, supra*, at p. 363.)

The ceiling conversion rate of the peso to the dollar in 1963 when the Republic took possession of the property was ₱3.20 to $1.00;[5] the inter-bank guiding rate for January 20, 1975 was ₱7.0705,[6] more than double that in 1963; on January 20, 1975, the foreign exchange rate was $1.00 for ₱7.32;[7] so that even if Celestino Juan is to be considered as having judicially admitted the price of his property in the sum of ₱300,000.00 (which admission is, as previously stated, qualified or non-categorical), the doubling of this sum at this time is justified.

In contrast to the foregoing, land values have considerably appreciated and continue to increase.

EN BANC

[G.R. Nos. L-28104-05. July 20, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO MIL,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUIREMENT THEREOF BEFORE IT MAY BE CONSIDERED.— The crime is not attended by evident premeditation. Premeditation must be clearly proven as the criminal act itself and if there is nothing in the case that can serve as a ground to determine when the accused resolved to

---

[5] Central Bank Memo. March 12, 1962.

[6] Philippines Daily Express, January 20, 1975, p. 10.

[7] Newsweek, January 20, 1975, p. 43.

Supreme Court E-Library

commit the crime, nor, consequently, to determine if the said criminal resolution was meditated on, reflected upon and persisted in, which constitutes premeditation, this circumstance is not present. The evidence must show not only when the intent to commit the crime was engendered in the mind of the accused, but the motive which gave rise to it, the means which he selected beforehand to carry out his criminal intention, in short, all those facts and antecedents which together show that the crime was knowingly premeditated, as required by law, and that the accused acted not only with preexisting design, which is a condition ordinarily found in all crimes, but with a cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose.

2. **ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.**— The alleged threats against the deceased made prior to the commission of the crime by the accused, are not sufficient in themselves to constitute premeditation, the said threats not having been followed by subsequent acts revealing, on the part of the accused, a firm and tenacious persistence to carry out the said threats, and which purpose he had reflected upon coldly and deeply.

3. **ID.; ID.; CRUELTY; NOT CONSIDERED.**— It appears that the reason why accused kicked the deceased or placed his right foot on the body of the deceased was to verify whether or not the latter was still alive, and not for the purpose of deliberately and inhumanly increasing the victim's sufferings. The aggravating circumstance of cruelty cannot therefore be appreciated against the accused.

4. **ID.; ID.; USE OF MOTOR VEHICLE; REQUIREMENT THEREOF BEFORE IT COULD BE CONSIDERED.**— Under Article 14, paragraph 20 of the Revised Penal Code, motor vehicle would be an aggravating circumstance if the crime were committed by means thereof. It will not be considered as an aggravating circumstance where there is no showing that the motor vehicle was purposely used to facilitate the commission of the crime or where it is not shown that without it the offense charged could not have been committed.

5. **ID.; ID.; ID.; ID.; NOT CONSIDERED IN CASE AT BAR.**— In the case at bar, the primary purpose of the appellant in riding

Supreme Court E-Library

on a motorized tricycle was to return to their camp after shooting Augusto Arteche and it was just incidental that on his way to the camp, he happened to see Pedro Arteche sitting by the window of his house.

6. **ID.; ID.; INSULT OR DISREGARD OF THE RESPECT DUE THE OFFENDED PARTY ON ACCOUNT OF HIS RANK; NOT CONSIDERED IN CASE AT BAR.**— The aggravating circumstance that the offense was committed with insult or disregard of the respect due the offended party on account of his rank, may be appreciated only where there is a difference in the social condition between the offender and the offended party because persons of dignity, or those generally considered of high station in life deserve to be respected. Here, the accused and the deceased Pedro Arteche are both non-commissioned officers in the Constabulary and while Pedro Arteche is a staff sergeant and Pedro Mil a corporal, there is no evidence that the accused deliberately or particularly intended to insult or disregard the respect due the offended party.

7. **ID.; MITIGATING CIRCUMSTANCES; PASSION AND OBFUSCATION; CONSIDERED.**— In order that courts may take into consideration the existence of the mitigating circumstance of "passion and obfuscation" in the commission of a felony, it is necessary to show the causes or special motives which have produced in the mind of the offender those stimulants so powerful that they naturally resulted in passion and obfuscation overcoming reason. The guilty party must act under the impulse of such special motives originating from lawful sentiments. Here, the failure of Pedro Arteche to deliver the letter of Felimon Arteche to Augusto Arteche is a prior, unjust and improper act sufficient to produce great excitement and passion in the accused as to confuse his reason and impel him to kill Pedro Arteche. It was a legitimate and natural cause of indignation and anger since the accused Pedro Mil had pinned his hopes of settling the case against him amicably on that letter. Accordingly, the accused should be accredited with the mitigating circumstance of passion and obfuscation.

TEEHANKEE, *J.*, separate opinion:

1. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; SHOULD BE CONSIDERED IN CASE AT**

Supreme Court E-Library

BAR.— Counsel *de oficio* of the accused concedes the existence of evident premeditation, which is amply shown by the systematic acts of harassment and threats perpetrated by the accused on the victim and his family which culminated in his cold-bloodedly gunning down the victim and kicking his corpse, and turning on the cold-bloodedly shooting his sleeping drunken companion Alba, when the victim refused to drop the case he had filed against the accused.

2. **ID.; MITIGATING CIRCUMSTANCES; PASSION AND OBFUSCATION; SHOULD NOT BE CONSIDERED IN CASE AT BAR.**— The mitigating circumstance of passion and obfuscation overcoming reason should not be properly appreciated in the accused's favor, because the failure of the victim Sgt. Pedro Arteche to deliver the vice-mayor's letter was not such an "unjust and improper act" as to confuse the accused's reason and impel him to kill Sgt. Arteche and to shoot at the latter's innocent wife, but fortunately his gun failed to fire. If at all, these circumstances show the perversion and depravity of the accused who would gun down everyone in sight at his frustration to have the criminal charges against him dropped despite his threats and as if it were an affront to hold him liable under the law for his criminal acts.

APPEARANCES OF COUNSEL

Estanislao A. Fernandez (Counsel de Oficio) for defendant-appellant.

Solicitor General Felix Q. Antonio, Assistant Solicitor General Antonio A. Torres and *Solicitor Teodulo R. Diño* for plaintiff-appellee.

D E C I S I O N

CONCEPCION JR., *J.*:

Mandatory review of the decision of the Court of First Instance of Samar, finding the accused Pedro Mil, an enlisted man of the Philippine Constabulary, of the crimes of murder in Criminal Cases Nos. 7548 and 7551, sentencing him to death in each case and ordering him to pay an indemnity of ₱6,000.00 and

Supreme Court E-Library

moral damages in the sum of ₱15,000.00 to each of the heirs of the deceased Augusto Arteche and Pedro Arteche.

It appears that on December 22, 1966, the deceased Augusto Arteche was boxed by the accused Pedro Mil at the Arco Iris, a nightspot in Catbalogan, Samar, where the said Augusto Arteche worked as a piano player, causing physical injuries to Augusto Arteche.[1] As a result, Pedro Mil was charged with the crime of less serious physical injuries before the Municipal Court of Catbalogan, Samar. As a PC enlisted man, Pedro Mil was stationed at Camp Lukban in said municipality. He was therefore placed under technical arrest under the custody of his commanding officer.[2] Augusto Arteche, in turn, was charged with Direct Assault upon an Agent of a Person in Authority.[3] Almost every night thereafter, Augusto Arteche and his family were harassed by Pedro Mil and his companions.[4] Augusto Arteche feared for his life and sought security assistance from the President of the Philippines,[5] and the Municipal Mayor of Catbalogan, Samar,[6] and a policeman was detailed to guard their house. But, the policeman stayed there for only three nights.[7]

However, efforts had also been made towards settling the cases amicably and to this end, Atty. Filomeno Arteche, Jr., then Vice-Mayor of Catbalogan, Samar, wrote his cousin, Augusto Arteche, to effect a settlement of their cases as a personal favor to him.[8] This letter was entrusted to Sgt. Pedro Arteche for delivery to Augusto Arteche.[9]

---

[1] p. 120, t.s.n., May 9, 1967.

[2] Exhibit "H"

[3] Exhibit 1-a.

[4] pp. 14-15, t.s.n., Session of May 5, 1967.

[5] Exhibits N, N-1, N-2.

[6] Exhibit N-3.

[7] p. 17, t.s.n., Session of May 5, 1967.

[8] Exhibits J, J-1, J-2.

[9] p. 91, t.s.n., Session of May 9, 1967.

Supreme Court E-Library

At about 6:00 o'clock in the evening of February 12, 1967, while Augusto Arteche, Salvador Alba, and some friends were drinking at the Amba's Refreshment Parlor, Pedro Mil, and Sgt. and Mrs. Anicio Laparra entered the store and occupied a table near a counter. Upon seeing them, Augusto Arteche informed Pablo de los Reyes and Fidel Tan of the presence of his enemies, pointing to the table occupied by Pedro Mil and his companions. Augusto Arteche was told to remain seated and was cautioned to be very extra careful. But, after a time, Sgt. Laparra saw Augusto Arteche and invited him to their table. Augusto Arteche acceded and was offered a bottle of beer, after which they talked.[10] Salvador Alba tried to follow Augusto Arteche. However, Alba was already very drunk and he just sat beside a table nearby and slept, with his head cradled in his arms. Suddenly, Pedro Mil shouted at Augusto Arteche: "Let's have a fight"; "*Kung ganoon kailangan kang mamatay*," immediately drawing a .45 cal. pistol tucked under his belt. Augusto Arteche stood up, pleading: "*Huwag, huwag*," at the same time raising his hands. Nevertheless, Pedro Mil shot him, causing him to fall face downwards. The accused then took a step towards the prostrate body of Augusto Arteche and fired two more shots at his back. As he fired, he exclaimed: "This is the killer of Leyte." The accused then kicked the fallen body of Augusto Arteche, [11] and turned on the sleeping Salvador Alba and shot him saying: "*Ikaw pa.*"[12] Pedro Mil then left the store. Outside, he accosted a passerby and asked for the house of one Atty. Plaridel Bohol, but the person did not know. So,

---

[10] Part of the conversation, according to the accused was as follows:

"A I asked him if he received a letter from his relative Atty. Filomeno Arteche, and he told me that I have not even received and what is the contents; I told him the contents was to advise us to drop these cases because they are only light cases. And then he told me that is easy, you send a telegram to your attorney and upon arrival here you just come to me and both of you, your attorney and you will kneel before me." (p. 90, t.s.n., Session of May 9, 1967).

[11] pp. 96-100, t.s.n., Session of May 3, 1967.

[12] pp. 100, 151, 163, t.s.n., Session of May 4, 1967.

Supreme Court E-Library

Pedro Mil went towards the Noble Drug Store, where he hailed a motorized tricycle and left the place.[13]

Augusto Arteche was brought to the Samar Provincial Hospital at Catbalogan, but he expired a few minutes upon arrival.[14] An autopsy was conducted on his body,[15] and the cause of his death was found to be as follows:[16]

"WOUNDS, GUNSHOT, MULTIPLE; WRIST LEFT, THRU & THRU, WITH FRACTURE, RADIUS, LEFT; LOWER 3RD ARM, THRU & THRU-ENTRANCE OUTER ASPECT RIGHT; HYPOCHONDRIUM & RIGHT, ILIAC AND RIGHT LUMBAR, POSTERIOR WITH PERFORATIONS, MULTIPLE, SMALL AND LARGE INTESTINES & MESENTERY AND PERFORATION-STOMACH, ABRASIONS, FORE-HEAD, LEFT ASPECT, & INFRA-ORBITAL REGION, LEFT SLUG EXTRACTED FROM THE LATERAL REGION, LUMBAR LEFT."

Meanwhile, at about 7:00 o'clock in the evening of that very same day, while Sgt. Pedro Arteche and his wife were seated by the window of their house at Barrio Maulong, Catbalogan, Samar, about half a kilometer from the PC Camp, the accused Pedro Mil arrived aboard a motorized tricycle and asked Pedro Arteche about the letter which Pedro Arteche was supposed to deliver to Augusto Arteche,[17] saying: "Sergeant, you did not hand the letter to Augusto because Augusto said that he did not receive it"; to which Pedro Arteche replied: "Why, where is Augusto now?" Pedro Mil told him that Augusto Arteche was at Amba's place and insisted: "But, you did not give?" Pedro Arteche answered: "No, I did not." Thereupon, Pedro Mil shot Pedro Arteche. When Trinidad Arteche asked why Pedro Mil shot her husband, Pedro Mil pointed the gun at her

---

[13] pp. 106, 142, 143, t.s.n., Session of May 4, 1967.

[14] p. 45, t.s.n., Session of May 3, 1967.

[15] pp. 12, 45, t.s.n., Session of May 3, 1967.

[16] Exhibit A.

[17] See footnotes 8 and 9.

Supreme Court E-Library

and squeezed the trigger. But, the gun did not fire. Pedro Mil then ran to the waiting tricycle and returned to the PC Camp where he surrendered to his commanding officer, Capt. Villena.[18]

Pedro Arteche was brought to the Samar Provincial Hospital and was operated on for the gunshot wound. But, he died two days later.[19] The cause of death was: "WOUND, GUNSHOT, LEFT HYPOCHONDRIAC REGION WITH SLUG EXTRACTED ON RIGHT LUMBAR WALL POSTERIOR; ATELECTASIS, PULMONARY, RIGHT."[20]

For the death of Augusto Arteche, Pedro Mil was charged with Murder, qualified by evident premeditation and treachery, and attended by the aggravating circumstances of (1) taking advantage of his public position; (2) use of a motor vehicle; (3) that the wrong done was deliberately augmented by causing other wrong not necessary for its commission; and (4) that means were employed or circumstances brought about which add ignominy to the natural effects of the act. For killing Sgt. Pedro Arteche, Pedro Mil was also accused of Murder, qualified by evident premeditation and treachery and attended by the aggravating circumstances of (1) taking advantage of his public position; (2) use of a motor vehicle; (3) that the crime was committed in the dwelling of the offended party; and (4) that the act was committed with insult or in disregard of the respect due the offended party on account of his rank. Pedro Mil was further prosecuted for Frustrated Murder, for the shooting of Salvador Alba, and for Illegal Possession of Firearm, the firearm used in the shooting being unlicensed.

After trial, the accused was found guilty of Frustrated Murder and Illegal Possession of Firearm, as well as for two cases of Murder for the killing of Augusto Arteche and Pedro Arteche. The cases are now before the Court in view of the death sentence imposed upon the accused in each of the murder cases.

---

[18] p. 189, t.s.n., Session of May 5, 1967.

[19] p. 47, t.s.n., Session of May 3, 1967.

[20] Exhibit B.

Supreme Court E-Library

In this appeal, eminent counsel *de oficio* does not question the findings of the trial court that the accused is guilty of the crimes for which he is charged. Counsel merely disputes the propriety of the imposition of the death penalty in each of the murder cases.

1. *Re: Augusto Arteche:*

In imposing the death sentence upon the accused for the killing of Augusto Arteche, the trial court found the accused guilty of the crime of Murder, qualified by evident premeditation, and attended by the aggravating circumstances of (1) treachery; (2) taking advantage of public position; and (3) scoffing or outraging the person or corpse of the deceased; and the mitigating circumstance of voluntary surrender.

While affirming that the crime committed is Murder, qualified by evident premeditation, counsel *de officio* contends that there is no treachery since Augusto Arteche had been forewarned of the presence of the accused in the refreshment parlor and he was given enough chances to prepare for his defense or to avoid a confrontation with the accused, who had allegedly harassed him and his family as a result of the filing of the criminal case for physical injuries against the said accused, Pedro Mil. Besides, the accused shouted: "*Magaway kita*" before shooting the deceased. Counsel further contends that the aggravating circumstance of scoffing at the person or corpse of the deceased has not been proven in view of the contradictory statements of prosecution witnesses Pablo de los Reyes and Fidel Tan as to the kicking of the body of the deceased by the accused after the latter had shot the former. But, counsel acknowledges that the aggravating circumstance of taking advantage of public position is present which circumstance is offset by the mitigating circumstance of voluntary surrender.

We find, however, that the crime is not attended by evident premeditation. Premeditation must be clearly proven as the criminal act itself and if there is nothing in the case that can serve as a ground to determine when the accused resolved to commit the crime, nor, consequently, to determine if the said criminal resolution was meditated on, reflected upon and persisted

Supreme Court E-Library

in, which constitutes premeditation, this circumstance is not present. The evidence must show not only when the intent to commit the crime was engendered in the mind of the accused, but the motive which gave rise to it, the means which he selected beforehand to carry out his criminal intention, in short, all those facts and antecedents which together show that the crime was knowingly premeditated, as required by law, and that the accused acted not only with preexisting design, which is a condition ordinarily found in all crimes, but with a cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose.[21]

In the instant case, the evidence presented by the prosecution to prove that the accused had deliberately planned to commit the crime and had persistently and continuously followed his plan consists merely of the testimony of Elena Arteche, the wife of Augusto Arteche, that the accused had threatened her husband before the killing. But, the alleged threats against the deceased made prior to the commission of the crime by the accused, are not sufficient in themselves to constitute premeditation, the said threats not having been followed by subsequent acts revealing, on the part of the accused, a firm and tenacious persistence to carry out the said threats, and which purpose he had reflected upon coldly and deeply. The testimony of Elena Arteche reads, in part, as follows:

"Q Why did Augusto Arteche write the police department of Catbalogan, Samar?

"A Because informations were received regarding the intent to kill of my husband.

x x x x x x x x x

"Q Did you know who were the tormentors of your husband, those who were giving him threats to his life after that mauling incident?

x x x x x x x x x

"A Pedro Mil.

---

[21] Albert, *The Revised Penal Code*, pp. 121-124.

Supreme Court E-Library

"COURT

"Q How did you know that?
"A Because my husband has indicated to me that that is the very Pedro Mil.

"FISCAL JUABAN

"Q Since those threats on the life of Augusto Arteche came to your knowledge, did you of your own knowledge know of this fact?
"A Yes, sir, somebody told us, advising my late husband not to go out because should Mil meet him, he would be killed.

x x x x x x x x x

"Q This persistent threats on your husband days that you know of by reason of that information given, was this during the pendency of this case against Mil in the municipal court?
"A Still pending.

"Q During the pendency of this case, did you ever see Pedro Mil and his companions?
"A Yes, sir.

x x x x x x x x x

"Q In what particular place did you see them?
"A We have seen the accused and his companions in the following places: By the Imay's Restaurant near our house, and by the Caltex Station near our house, and near the moviehouse.

x x x x x x x x x

"Q How far is this Caltex Station where you used to see Mil and his companions?
"A From here to that Telecom (64 meters).

"Q What were these soldiers among whom was Pedro Mil and his companions doing at the Caltex that distance of your house?
"A They were watching us and they lighted us with the lights of the jeep, and then we have to run.

"Q How often did they do this during the pendency of Criminal Case No. 1360 now Exhibit 'H', before the Municipal Court?
"A Almost every night.

Supreme Court E-Library

"Q How far is this Imay's Restaurant from your house?
"A About the same distance to the house of Mr. Abesamis.

"Q What were the companions of Mil and Mil himself doing in that Carenderia of Imay as you saw them?
"A Standing, but they were looking at us."[22]

Moreover, it does not appear in the record that the accused Pedro Mil had purposely looked for his victim at the Amba's Refreshment parlor where he was killed. From the evidence, their meeting thereat was indeed casual. It is therefore clear that when the accused Pedro Mil went to the refreshment parlor it was not for the purpose of killing Augusto Arteche. On the contrary, the accused was hopeful that the case against him would be settled in view of the letter of Atty. Filomeno Arteche to Augusto Arteche asking the latter to settle the case. Pablito de los Reyes and Fidel Tan, both testifying for the prosecution, declared that Sgt. Laparra, upon seeing Augusto Arteche, invited the latter to join them at their table and Pedro Mil even offered Augusto Arteche a bottle of beer, which the latter accepted, after which they conversed.[23] If there was premeditation to kill Augusto Arteche, Pedro Mil would have shot him the moment he saw him.

However, there is treachery present in the commission of the offense because the accused fired at the victim who, with hands upraised, was pleading that his life be spared.[24] Treachery, therefore, qualifies the crime to murder.

Is the aggravating circumstance of cruelty present? Witness Pablo de los Reyes testified, as follows:

"Q After Pedro Mil successfully shot Augusto Arteche, and after he shot Alba, what did Pedro Mil do, if any, with the fallen body of Augusto Arteche?
"A He kicked the fallen body to show if he was still alive, he kicked with his foot.

---

[22] pp. 14-16, t.s.n., Session of May 5, 1967.

[23] pp. 94, 95, t.s.n., Session of May 4, 1967.

[24] *People vs. Ricohermoso*, 56 SCRA 431 (1974); *People vs. Tan*, 73 SCRA 288 (1976).

Supreme Court E-Library

"Q What portion of the fallen body of Augusto Arteche did Pedro Mil kick?

"A This part of his body (witness touching the left lumbar portion)."[25]

Witness Fidel Tan, on the other hand, stated as follows:

"Q After Mil went towards that direction you have made mention of where did he go?"

A Mil attempted to go out through the door. He just pulled the shutter and half-way opened and discontinued the attempt to go out, then return to the fallen body of Augusto and stepped his right foot on the fallen body of Augusto.

"Q What portion of the fallen body of Augusto Arteche did Mil step on?

"A The middle of the back."[26]

From their testimonies it appears that the reason why accused kicked the deceased or placed his right foot on the body of the deceased was to verify whether or not the latter was still alive, and not for the purpose of deliberately and inhumanly increasing the victim's sufferings.[27] The aggravating circumstance of cruelty cannot therefore be appreciated against the accused. For the same reason, aside from the fact that it was not alleged in the information, We cannot consider as present the qualifying circumstance of outraging or scoffing at the victim's person or corpse.

It results that the accused is guilty of the crime of murder, qualified by treachery and attended by the sole aggravating circumstance of taking advantage of his public position, offset by the mitigating circumstance of voluntary surrender. The correct penalty therefore should be *reclusion perpetua*.

---

[25] pp. 110-111, t.s.n., Session of May 4, 1967.

[26] p. 164, t.s.n., Session of May 4, 1967.

[27] *People vs. Aguinaldo*, 55 Phil. 610; *U.S. vs. Vitug*, 17 Phil. 1; *U.S. vs. Cervo*, 9 Phil. 158; *U.S. vs. Ulat*, 7 Phil. 559; *People vs. Luna*, 58 SCRA 198; *People vs. Llamera*, 51 SCRA 48; *People vs. Manzano*, 58 SCRA 250.

Supreme Court E-Library

2. *Re: Pedro Arteche:*

There is no dispute that the killing of Pedro Arteche had been properly classified as murder, qualified by treachery, since the attack upon him was sudden and unexpected and he was in a defenseless position: and attended by the aggravating circumstances of (a) dwelling, since the deceased was killed in his own house and he has not given provocation; and (b) taking advantage of public position. The trial court further found that the offense was aggravated by (1) insult or disregard of the respect due the offended party on account of his rank being a sergeant while the accused was a corporal; and (2) committed with the aid of a motor vehicle, as the accused took a motorized tricycle in going to the house of Pedro Arteche.

We agree with counsel that the offense is not attended by the aggravating circumstances of (1) with the aid of a motor vehicle; and (2) with insult or disregard of the respect due the offended party on account of his rank.

Under Article 14, paragraph 20 of the Revised Penal Code, motor vehicle would be an aggravating circumstance if the crime were committed by means thereof.[28] It will not be considered as an aggravating circumstance where there is no showing that the motor vehicle was purposely used to facilitate the commission of the crime or where it is not shown that without it the offense charged could not have been committed.[29] In the case at bar, the primary purpose of the appellant in riding on a motorized tricycle was to return to their camp after shooting Augusto Arteche and it was just incidental that on his way to the camp, he happened to see Pedro Arteche sitting by the window of his house.

The aggravating circumstance that the offense was committed with insult or disregard of the respect due the offended party on account of his rank, may be appreciated only where there is a difference in the social condition between the offender and the offended party because persons of dignity, or those

[28] *People vs. Canial*, 46 SCRA 634, 652.

[29] *People vs. Tingson*, 47 SCRA 243.

Supreme Court E-Library

generally considered of high station in life deserve to be respected.[30] Here, the accused and the deceased Pedro Arteche are both non-commissioned officers in the Constabulary and while Pedro Arteche is a staff sergeant and Pedro Mil a corporal, there is no evidence that the accused deliberately or particularly intended to insult or disregard the respect due the offended party.

Counsel further maintains that the accused should be credited with the mitigating circumstance of "passion and obfuscation" in the shooting of Pedro Arteche in view of the findings of the trial court that the accused now already "blinded with rage" after shooting Augusto Arteche and Salvador Alba decided to kill also Pedro Arteche because of the failure of Pedro Arteche to deliver the letter of Atty. Felimon Arteche, Jr. to Augusto Arteche.

In order that courts may take into consideration the existence of the mitigating circumstance of "passion and obfuscation" in the commission of a felony, it is necessary to show the causes or special motives which have produced in the mind of the offender those stimulants so powerful that they naturally resulted in passion and obfuscation overcoming reason. The guilty party must act under the impulse of such special motives originating from lawful sentiments. Here, the failure of Pedro Arteche to deliver the letter of Felimon Arteche to Augusto Arteche is a prior, unjust and improper act sufficient to produce great excitement and passion in the accused as to confuse his reason and impel him to kill Pedro Arteche. It was a legitimate and natural cause of indignation and anger since the accused Pedro Mil had pinned his hopes of settling the case against him amicably on that letter. Accordingly, the accused should be accredited with the mitigating circumstance of passion and obfuscation.

To recapitulate, in Criminal Case No. 7548, the crime committed is murder, qualified by treachery and attended by the sole aggravating circumstance of taking advantage of his public position, offset by the mitigating circumstance of voluntary surrender. Hence, the correct penalty should be *reclusion*

[30] Albert, *The Revised Penal Code*, p. 109.

Supreme Court E-Library

perpetua. In Criminal Case No. 7551, the crime committed is likewise murder, qualified by treachery and attended by the aggravating circumstances of (a) dwelling, and (b) taking advantage of public position; and the mitigating circumstances of (a) voluntary surrender, and (b) passion and obfuscation. The correct penalty, therefore, is *reclusion perpetua.*

WHEREFORE, the decision of the trial court is modified and judgment is rendered as follows:

In Criminal Case No. 7548, the accused Pedro Mil is sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the deceased Augusto Arteche in the sum of ₱12,000.00; and in Criminal Case No. 7551, the accused Pedro Mil is likewise sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the deceased Pedro Arteche in the sum of ₱12,000.00.

The decision of the trial court in both cases is affirmed in all other respects.

SO ORDERED.

Fernando, C.J., Makasiar, Fernandez, Guerrero, Abad Santos, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., votes for affirmance of the death penalty and files a separate opinion.

Barredo, J, concurs in the opinion of Justice Aquino that under the facts proven by the evidence, the penalty should be death, but in view of my position stated in my separate opinion in *People v. Borja*, G.R. No. 22947, I vote for life imprisonment, since appellant was convicted by the trial court in 1967 yet as more than ten years ago.

Aquino, J., concurs and dissents in part.

Antonio[*] and *De Castro, JJ.*, took no part.

Santos, J., on leave.

---

[*] Mr. Justice Felix Q. Antonio took no part being the Solicitor General at the Time.

Supreme Court E-Library

TEEHANKEE, *J.*, *separate opinion*:

I vote for affirmance of the death penalty imposed on the accused for each of the two cold-blooded murders committed by him.

The ruthless killing of the hapless victim Augusto Arteche whom, together with his family, the accused Pedro Mil, taking advantage of his public position as a Philippine Constabulary corporal harassed "almost every night" to force the victim to drop the criminal charges for less serious physical injuries that Augusto had filed against Mil, was qualified by evident premeditation and attended by three aggravating circumstances of treachery, taking advantage of his public position and outraging and kicking the corpse of his victim as against a single mitigating circumstance of voluntary surrender. Counsel *de oficio* of the accused concedes the existence of evident premeditation, which is amply shown by the systematic acts of harassment and threats perpetrated by the accused on the victim and his family which culminated in his cold-bloodedly gunning down the victim and kicking his corpse, and turning on the cold-bloodedly shooting his sleeping drunken companion Alba, when the victim refused to drop the case he had filed against the accused.

In the second equally ruthless killing of PC Sgt. Pedro Arteche, whose only fault was in having failed to deliver a letter from the vice-mayor to the first victim Augusto Arteche to effect a settlement of the latter's cases with the accused, the killing was qualified by treachery and attended by three aggravating circumstances of dwelling, taking advantage of his public position and disregard of the respect due to the offended party on account of his higher rank of staff sergeant, (while the accused held a lower rank of corporal), offset by the single mitigating circumstance of voluntary surrender. The mitigating circumstance of passion and obfuscation overcoming reason should not be properly appreciated in the accused's favor, because the failure of the victim Sgt. Pedro Arteche to deliver the vice-mayor's letter was not such an "unjust and improper act" as to confuse the accused's reason and impel him to kill Sgt. Arteche and to shoot at the latter's innocent wife, but fortunately his gun failed

Supreme Court E-Library

to fire. If at all, these circumstances show the perversion and depravity of the accused who would gun down everyone in sight at his frustration to have the criminal charges against him dropped despite his threats and as if it were an affront to hold him liable under the law for his criminal acts.

AQUINO, *J.*, ***concurring and dissenting opinion:***

I concurs in the affirmance of the judgment of conviction but I dissent as to the imposition of *reclusion perpetua* only. The accused should be sentenced to death for the killing of Augusto Arteche because in kicking the prostrate victim, he committed an outrage or wrong on his corpse. a circumstance which is included in the allegation in the information that he deliberately augmented the wrong done by causing another wrong not necessary for the consummation of the killing. See Art. 248 (6), RPC.

EN BANC

[G.R. No. L-29994. July 20, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE BALICTAR ALIAS BODO, SOFIO ADA, TITO NALE ALIAS BANDOT AND PEDRO DUARTE,** *defendants-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; HEARSAY RULE; DYING DECLARATION AS AN EXEMPTION; REQUISITE THEREOF PRESENT IN CASE AT BAR.— The fact that the declarant (victim) was "moving uneasily" ("restless" is more appropriate) and immediately expired after making the statement more than satisfies the requisite element as to the victim's consciousness of an impending death. Accordingly, we find the trial court did not err in holding the *ante-mortem* statement of the victim as a dying declaration.