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[G.R. No. L-32073. October 23, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO SANTOS** *y* **JUBILADO,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; LOCATION OF WOUND MAY INDICATE HOW VICTIM WAS STABBED.** — Where the evidence shows that the wound was on the left side of the victim and that the accused was holding the knife in his right hand when he stabbed the victim, it is probable that the victim was stabbed face to face.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; EVIDENCE OF TREACHERY MUST BE CLEAR AND CONVINCING.** — Treachery, like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that "the attack was sudden"; there must be a clear showing from the narration of facts why the attack or assault is said to be "sudden." A nebulous atmosphere surrounding the attack is not be tolerated especially where the liberty and life of an individual is at stake. Mere suddenness of the attack is not enough because it must be shown that the mode adopted by the assailant was one which he knowingly intended to insure the accomplishment of his criminal purpose without risk to himself arising from the defense the victim might offer.

3. **ID.; INCULPATORY FACTS FAVORABLE TO ACCUSED SHOULD BE ADOPTED.** — Where the evidence for the prosecution presents two possibilities as to how the stabbing occurred, *vis*: 1) the declaration of the witnesses that the victim was "suddenly" stabbed, and 2) the contents of the prosecution's exhibit which offer a different version, the time-honored principle in criminal law that if the inculpatory facts are capable of two or more explanations, one consistent with

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the innocence or lesser degree of liability of the accused, and the other guilt or graver responsibility, the Court should adopt that explanation which is more favorable to the accused for then the evidence does not fulfill the test of moral certainty.

4. **ID.; AGGRAVATING CIRCUMSTANCES, EVIDENT PREMEDITATION; ACCUSED MUST HAVE NURTURED THE PLAN TO COMMIT A CRIME.** — Where the act of stabbing the victim was an aftermath of the joke played on him and there is no showing that appellant right there and then nurtured the plan to attack and kill the former and that sufficient time elapsed to allow him to reflect upon the consequences of his act, the aggravating circumstance of evident premeditation cannot be considered. In *People vs. Sagayno, et al.*, 1963 9 SCRA 360 it was held that where the fatal assault followed closely a previous incident between the assailant and the victim, the circumstance of evident premeditation cannot be deemed to have attended the commission of the crime.

5. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER MUST BE THE RESULT OF THE ACCUSED'S UNILATERAL DESIRE TO SUBMIT HIMSELF TO THE AUTHORITIES.** — The fact that defendant-appellant did not actually surrender himself to a person in authority or to an agent in authority but was arrested through the initiative of his father who, alone and without appellant's intervention or urging, brought a policeman to his house to have his son who was sleeping at the time taken in custody, rules out any intention or appellant to unilaterally submit himself to the authorities, and thus, justifies the trial court's not crediting him with the mitigating circumstance of voluntary surrender because he cannot be said to have surrendered himself within the meaning of Article 13, paragraph 7 of the Revised Penal Code. Since appellant was arrested, the mitigating circumstance of voluntary surrender cannot be invoked.

6. **ID.; ID.; PROVOCATION; WHEN NOT CONSIDERED MITIGATING.** — If the provocation came from the appellant, he cannot raise the victim's response thereto as a mitigating circumstance.

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APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio for plaintiff-appellee.
F.L. Abel for defendant-appellant.

D E C I S I O N

MUÑOZ PALMA, *J.*:

In a decision rendered on January 22, 1970, Judge Manuel R. Pamaran of the Circuit Criminal Court of Manila found Reynaldo Santos guilty of murder qualified by treachery with the aggravating circumstance of evident premeditation and sentenced him "to DEATH; to indemnify the heirs of deceased Bayani Cuyugan *y* Mangalili as follows: ₱12,000.00 for the death of the deceased; ₱10,000.00 for exemplary damages; ₱10,000.00 for moral damages, all amounts to bear interest until they shall have been fully paid; and to pay the costs."[1]

The case is now before Us to automatic review.

On November 18, 1969, the Office of the City Fiscal filed an information against Reynaldo Santos for "murder" alleged to have been committed as follows:

"That on or about November 6, 1969, in the City of Manila, Philippines, the said accused, with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one Bayani Cuyugan *y* Mangalili by then and there stabbing him with a fan knife (*balisong*) on the right side of his body, thereby inflicting upon the latter a mortal stab wound which was the direct and immediate cause of his death thereafter.

Contrary to law."
(p. 1, CFI record)

To the above, accused pleaded "not guilty" on November 26, 1969.

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[1] p. 33, CFI record.

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On January 5, 1970, the case was tried during which accused was represented by a counsel *de oficio,* Atty. Amado de la Merced. The hearing was finished on that same day, and the decision was promulgated in the presence of the accused on January 22, 1970.[2]

On February 9, 1970, Atty. Felipe J. Abel filed a "Motion for Reconsideration and/or New Trial" but this was denied.[3]

The evidence of the prosecution consist of the testimonies of Remigia Mangalili, mother of the victim, Petra de la Cruz, Pat. Jose dela Cruz, and Dr. Angelo Singian, Chief of the Medico-Legal Division of the Manila Police Department, and the following documents:

Exhibit A – identification slip of the deceased, Bayani Cuyugan;

Exhibit B – human sketch indicating the injuries sustained by the victim;

Exhibit C – death certificate;

Exhibit D – post-mortem findings prepared by Dr. Angelo Singian;

Exhibit E – statement of Reynaldo Santos dated November 16, 1969;

Exhibit E-1 – Information sheet dated November 6, 1969, prepared by Detective Ongkiko, Manila Police Department;

Exhibit E-2 – another sworn statement of Reynaldo Santos;

Exhibit F – advance report dated November 16, 1969 prepared by Pat. Jose dela Cruz;

Exhibit F-1 – booking sheet and arrest report (tsn p. 21)

Through the testimonies of Remigia Mangalili and Petra dela Cruz, the prosecution sought to establish the following:

At about 5:00 o'clock in the afternoon of November 6, 1969 Bayani Cuyugan was sleeping on a bench under a bougainvillea

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[2] pp. 33-34, *ibid.*

[3] pp. 36-43, *ibid.*

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vine near a neighbor's house. Seeing Bayani in that position, the accused Reynaldo Santos and some companions placed four candles at the four corners of the bench and tied a handkerchief around the face of Bayani to make it appear as if the latter was lying in state. Remigia Mangalili, mother of Bayani, came upon the group and shouted at them "you fools, why are you doing that to my son?" Santos' companions ran away leaving the former behind. Mrs. Mangalili then woke up Bayani and scolded him for sleeping on the bench. Bayani confronted Reynaldo about the dirty joke he played on him Reynaldo resented Bayani's reaction to the joke, and he drew a fan knife and made a motion to stab Bayani but missed. Mrs. Mangalili intervened and drew aside her son and with the latter went home.[4] At about 6:00 o'clock in the evening or thereabouts, Mrs. Mangalili and Bayani went down the house to go to church and as they were walking in their yard Reynaldo Santos suddenly appeared and without any warning stabbed Bayani on his left side after which he ran away.[5]

Bayani was brought to Jose Reyes Memorial Hospital for treatment of his stab wound. On November 16, 1969, Bayani died.[6] A necropsy was performed by Dr. Angelo Singian of the Medico-Legal Division of the Manila Police Department. The post-mortem findings showed that Bayani Cuyugan sustained a "penetrating stab wound, left lateral lumbar region measuring 2 cm. penetrating into the abdominal cavity coursing slightly downward lacerating the descending colon of the big intestine and inferior pole at the left kidney," and that the cause of death was "(T)erminal cardiorespiratory failure secondary to localized peritonitis and ileus of the small intestines, due to a stab wound on the left lateral lumber region, lacerating the descending colon and left kidney."[7]

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[4] tsn pp. 7-8.

[5] tsn pp. 8-9; 16-17.

[6] Death Certificate, Exhibit C, p. 10, CFI record.

[7] Exhibit D, p. 11, *ibid.*

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On the other hand, the testimony of accused-appellant, Reynaldo Santos, who at the time was 21 years old, a jeepney driver by occupation, and residing at Vitas Street, Tondo, Manila runs as follows: In the afternoon of November 6, 1969, Reynaldo while drinking pepsi-cola in a store owned by Ernie saw Bayani Cuyugan lying on a bench; two men arrived who bought candles from the store, placed one candle near the head of Bayani and the other at his feet, and they also put cotton on his nostrils and mouth; a small girl who turned out to be a niece of Bayani called the latter's mother and when she arrived, the two men who played the joke ran away; when Cuyugan woke up and saw Reynaldo, he held the latter by the collar of his shirt and boxed him; Reynaldo left the place to go home but Cuyugan intercepted him, drew his gun and was about to shoot Reynaldo; however, because Cuyugan could not shoot as there were many children playing around, Reynaldo stabbed Cuyugan when he was at a distance of about one meter from the latter; Cuyugan ran after Reynaldo but was not able to overtake the latter.[8]

Bartolome Santos, father of appellant, in turn declared that in the morning of November 7, 1969, he came to know that his son was involved in a stabbing incident; he had a talk with the mother of the victim who agreed to compromise the case if he would give her ₱200.00 which he did; after Bayani Cuyugan died, he surrendered his son to the police more particularly on November 16, 1969.[9]

The trial judge found appellant's defense incredible and sentenced him as earlier indicated.

In this appeal, appellant through his counsel *de parte*, Atty. Felipe Abel, who was the same lawyer who filed below a "Motion for reconsideration and/or new trial" assigns the following errors:

"I

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT-APPELLANT GUILTY OF MURDER INSTEAD OF HOMICIDE.

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[8] tsn pp. 26-29.

[9] tsn pp. 22-26.

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II

THE TRIAL COURT ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER ON THE PART OF THE DEFENDANT-APPELLANT AND SUFFICIENT PROVOCATION ON THE PART OF THE DECEASED OR VICTIM.

III

THE TRIAL COURT ERRED IN NOT GRANTING A NEW TRIAL BY REASON OF IRREGULARITIES COMMITTED DURING THE TRIAL WHICH ARE PREJUDICIAL TO THE SUBSTANTIAL RIGHTS OF THE ACCUSED." (p. 69, *rollo*)

Appellant's counsel now submits that the portion of the *testimony of Remigia Mangalili* declaring that appellant treacherously stabbed her son *is false* and *so also is the testimony of the appellant himself* that he stabbed the victim in self-defense which was invoked only to get an acquittal. Counsel claims that what actually happened was that when Bayani Cuyugan woke up and saw that he was a victim of a joke, he grabbed Reynaldo Santos by his shirt and boxed him and the latter in turn opened his fan knife and stabbed Bayani on the left side of his body, and under those circumstances accused is guilty only of homicide and not of murder as the prosecution would want to establish.

In support of his assertion, defense counsel calls our attention to Exhibit "E-1" an information sheet dated November 6, 1969, on file with the Manila Police Department wherein the following data appears:

"November 6, 1969

INFORMATION

Nature of Case	:	Frustrated Homicide (Stabbing)
Complainant	:	Bayani Cuyugan *y* Mangalili, 24 years old, single, househelper, native of and residing at No. 2224 B Vitas, Tondo, Manila
Date & Time of Occurrence	:	November 6, 1969 — 6:30 P.M.
Place of Occ.	:	Front yard of complainant's residence

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Date & Time Reported	:	November 6, 1969 — 9:00 P.M., by Mrs. Remigia Mangalili (Mother)
Suspect	:	REYNALDO SANTOS @ Rey, around 24 yrs., single, jobless, native of and residing somewhere at Vitas, Tondo, Manila.
Witness	:	Mrs. Remigia Mangalili, mother of complainant residing at same address.
Details	:	At around 6:30 p.m. this date complainant was sleeping on a bench under a mango tree in front of their residence. While sleeping suspect with two other companions played jokes on complainant by placing a piece of cotton inside victim's mouth and placing two lighted candles on both sides of complainant. While this childish prank was being made, a younger sister of complainant who witnessed the incident reported the matter to her mother. While the incident was being relayed to complainant's mother, the former woked up and discovering what suspect and his companions have done to him complainant carried by his anger dealt a fist blow to suspect. In retaliation suspect drew knife and stabbed complainant once at the left lower part of the body. After inflicting the wound suspect and his companions fled from the scene. In a medical examination at the JRM Hospital, Dr. Hembrador found the victim with "Wd. stabbed 2 cm. lateral (L); with the findings of deferred (sic) and the patient was admitted. In view of the serious condition of complainant the Homicide Div. MPD was notified thru Cpl. E. Cortes. Meantime, this case is under follow-up.
PREPARED BY	:	Det CARLOS E. ONGKIKO SR.
APPROVED BY	:	PEDRO A. (Surname, illegible) Capt., MPD Chief, Investigation Unit" (p. 13, CFI record)

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Strangely enough, but for reasons of Our own, We are constrained to agree with appellant's counsel that accused is to be held liable only for homicide and not murder. There is neither treachery nor evident premeditation in this case.

The testimonies of Regimia Mangalili and Petra de la Cruz are inadequate to sustain the presence of treachery as a qualifying circumstance.

We quote the pertinent portions of their testimony, *viz*:

Remigia Mangalili

"COURT:

Q. Where was Reynaldo Santos when he stabbed your son? From what direction?

A. It happened so fast so I did not know where he came from.

Q. Would you be able to tell the court what hand did the accused use in stabbing your son?

A. Right hand and my son was stabbed on the left side." (tsn p. 8)

Petra dela Cruz

"Q. How far were you from Remigia when you first saw them?

A. Quite near, about six meters, sir.

Q. And did you not call either of the two?

A. No, sir, I just followed them.

Q. When you saw them and then you followed, did anything unusual happen to either or both of them?

A. Accused immediately appeared and stabbed Bayani Cuyugan, sir.

Q. From what direction did the herein accused suddenly come out and stabbed the victim?

A. I did not notice because the event happened so fast." (tsn p. 17)

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From the foregoing, it can be seen that both witnesses could not state from where Reynaldo came. It is rather curious and unusual for these two women not to have seen the direction from where Reynaldo appeared or how Reynaldo happened to be in the yard at the time although Bayani was walking ahead of Remigia while Petra was behind Remigia and Bayani when she claimed to have seen the stabbing. Neither of them could state if Bayani was stabbed from behind or face to face, this notwithstanding their short distance from the victim. All that the two witnesses stressed was that appellant *suddenly* stabbed Bayani.

We are convinced however that Reynaldo was facing Bayani when the former stabbed the latter, Dr. Singian testified that from the location of the wound which was on the left side of the body of the victim, it is probable that the assailant was facing the victim and holding the weapon in his right hand.[10] This is confirmed by the victim's mother who declared that she saw Reynaldo holding the knife in his right hand when the latter stabbed Bayani on the left side of his body.[11]

Treachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that "the attack was sudden"; there must be a clear showing from the narration of facts why the attack or assault is said to be "sudden." A nebulous atmosphere surrounding the attack is not to be tolerated especially where the liberty and life of an individual is at stake.

In *People v. Delgado, et al.*, this Court ruled that mere suddenness of the attack is not enough because it must be shown that the mode adopted by the assailant was one which he knowingly intended to insure the accomplishment of his criminal

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[10] tsn. p. 4.

[11] tsn. p. 8.

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purpose without risk to himself arising from the defense the victim might offer.[12]

In the situation before Us, the evidence for the prosecution presents two possibilities as to how the stabbing occurred, *viz*: 1) the declarations of Remigia Mangalili and Petra de la Cruz that Bayani was "suddenly" stabbed, and 2) the contents of the prosecution's Exhibit E-1 quoted above, which offer a different version. This being the case, We apply the time-honored principle in criminal law that if the inculpatory facts are capable of two or more explanations, one consistent with the innocence or lesser degree of liability of the accused, and the other with his guilt or graver responsibility then the evidence does not fulfill the test of moral certainty, and the Court should adopt that explanation which is more favorable to the accused.[13]

With respect to the aggravating circumstance of evident premeditation We do not agree with the trial court that the same can be considered against the appellant. The act of stabbing the victim was an aftermath of the joke played on the latter that very same afternoon, and there is no showing that appellant right there end then nurtured the plan to attack and kill Bayani and that sufficient time elapsed to allow him to reflect upon the consequences of his act. In *People v Sagayno, et al., 1963,* this Court held that where the fatal assault followed closely a previous incident between the assailant and the victim, the circumstance of evident premeditation cannot be deemed to have attended the commission of the crime.[14]

Having reached the conclusion that the crime committed by appellant is homicide the remaining matter to be resolved is appellant's claim that he is entitled to two mitigating circumstances, *viz*: voluntary surrender and sufficient provocation on the part of the deceased Bayani Cuyugan.

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[12] 77 Phil 11. See also *People v Flores, et al.*, 43 SCRA 342; *People v de Leon*, 41 SCRA 120.

[13] *People v Pacana*, 1924, 47 Phil 48 citing *U.S. v Maaño*, 2 Phil 718 *People v. Bautista*. 81 Phil 78; *People v. Agpangan*, 79 Phil. 334.

[14] 9 SCRA 360.

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On this point, We find appellant's submittal untenable.

An examination of the record discloses that the appellant did not actually surrender himself to a person in authority or to an agent in authority but was arrested through the initiative of his father. The fact that it was Bartolome Santos who, alone and without the appellant's intervention or urging, brought a policeman to his house to have who was sleeping at the time taken in custody,[15] rules out any intention of appellant to unilaterally submit himself to the authorities, and thus, justifies the trial court's not crediting him with a mitigating circumstance. This Court had occasion to rule, that where it appears that it was not defendant's idea to send for the policeman for the purpose of giving himself up and that the police came upon being summoned through the initiative or request of another leading to his arrest, the accused cannot he held to have surrendered himself within the meaning of Article 13, paragraph 7 of the Revised Penal Code.[16] Along the same line, since appellant was arrested, the mitigating circumstance of voluntary surrender cannot be invoked.[17]

Likewise, appellant's claim that there was sufficient provocation on the part of the victim is without merit. We cannot consider this mitigating circumstance in favor of appellant for even if it were true that the victim boxed appellant, it was the latter who provoked the former into hitting him by playing a dirty joke upon the deceased. In other words, the provocation came from appellant and he cannot now raise the victim's response thereto as a mitigating circumstance.[18]

PREMISES CONSIDERED, the decision under review is modified. We find appellant, Reynaldo Santos, guilty of *HOMICIDE* with no mitigating nor aggravating circumstance

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[15] tsn p. 22-23.

[16] *People v. Canoy*, 90 Phil 633.

[17] *People v. Siojo*, 61 Phil 307; *People v. Adlawan*, 83 Phil 194; *People v Rubinial, et al.*, 110 Phil 119.

[18] *People v. Imson*, 80 Phil 284.

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present, and pursuant to Article 249 of the Revised Penal Code in conjunction with the Indeterminate Sentence Law, We impose upon him an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum with the corresponding accessory penalties provided for by law. Appellant is ordered to indemnify the heirs of the victim in the sum of ₱12,000.00. With costs against appellant.

SO ORDERED

Fernando, Teehankee, Barredo, Makasiar, Concepcion Jr., Santos, Fernandez, and *Guerrero, JJ.*, concur.

Castro, C.J., Antonio, and Aquino, JJ.*, took no part.

SECOND DIVISION

[G.R. No. L-33140. October 23, 1978]

J. M. TUASON & CO., INC., JOSE M. TUASON, NICASIO A. TUASON, TERESA TUASON, CELSO S. TUASON and SEVERO A. TUASON, *petitioners, vs.* **HON. HERMINIO C. MARIANO, Presiding Judge of the Court of First Instance of Rizal, MANUELA AQUIAL, Spouses JOSE M. CORDOVA and SATURNINA C. CORDOVA,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; *STARE DECISIS*; SETTLED ISSUE NO LONGER SUBJECT TO RELITIGATION. — Under the principle of *stare decisis et non quieta movere* (follow past

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* Justice Felix Q. Antonio was then the Solicitor General who filed the brief for the People in this Court.