

THIRD DIVISION

[G.R. No. 108491, July 02, 1998]

**PEOPLE OF THE PHILIPPINES. PLAINTIFF-APPELLEE, VS.
SERGIO AMAMAMPANG, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

In the early morning of 8 November 1991, SPO1 Placido Flores, a member of the Philippine National Police in Carmen, Bohol, was fatally hacked with a scythe and shot with a .38 caliber revolver in the home of appellant Sergio Amamangpang in Guadalupe, Carmen, Bohol. On 17 January 1992, appellant was charged with the murder of Flores in an information which read, thus:

That on or about the 8th day of November, 1991, in the municipality of Carmen, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attacked, assault and strike with a scythe and then shoot with the use of the service handgun which the accused wrested from the victim, SPO1 Placido Flores, who was unaware of the attack, thereby inflicting mortal injuries on the vital parts of the victim's body which resulted in the death of the said SPO1 Placido Flores; to the damage and prejudice of the heirs of the deceased in the amount to be proved during the trial.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended.^[1]

Upon the arraignment, appellant entered a plea of not guilty.

The prosecution established the following facts:

On 8 November 1991, at the police station in Carmen, Bohol, SPO1 Placido Flores sought permission from PO3 Gregorio Alimpolos to go to the house of appellant with "trustee-prisoner" Ellorde Galacio at around 1:00 a.m.. It was the birthday of appellant's wife, Sinforiana and Flores was bringing along Elorde to help roast the Amamangpang's pig that was earlier butchered.^[2]

On their way to appellant's residence abroad the victim's patrol jeep, Flores and Galacio passed Manuel Noculan who was walking towards his carinderia at the public market to see to the newly harvested palay he had deposited there. Flores stopped and asked Noculan to Accompany them to appellant' house.^[3]

Upon reaching the Amamangpang residence, Flores and Galacio entered the house of Noculan. Noculan followed and upon entering saw Flores sitting on the stairs with

his head resting on the edge of a table. Noculan seated himself outside the house while Galacio stood beside the door. Appellant was then standing near Sinforiana who was cooking in the kitchen.^[4]

Suddenly, from inside the house, Noculan heard a child shout. "Father! Don't!" Noculan immediately stood up and, peering through the door, saw appellant holding a scythe and about to strike Flores who was still wearing his fatigue pants and a white T-shirt with PNP emblem. Appellant's daughter, Genalyn had her arms around his (appellant's) waist.^[5] Shocked by what he had witnessed, Noculan ran and hid. While running, he heard several gunshots.^[6]

At the police station around 250 meters away from the Amamangpang residence, PO3 Alimpolos heard two gun shots followed by a rapid succession of four shots, alerting him and another patrolman. Thereafter, appellant, in bloody clothes and accompanied by his daughter, arrived at the police station and surrendered himself to Alimpolos. He admitted to the latter that he had killed Flores but gave no reason why. Appellant surrendered a .38 Smith and Wesson revolver and empty shells.^[7]

Thereafter, police officers Jovencio Ybañez, Alfredo Llongas and Magdaleno Dano were dispatched to investigate the incident. At appellants house, they retrieved the scythe.^[8]

Dr. Amalia G. Añana, municipal health officer of Carmen, Bohol, who was summoned to the crime scene, found the lifeless body of the victim lying in appellant's bedroom at the second storey of his house.^[9] Her postmortem report reveals the following findings:

Cause of Death:

A. Incised wounds – multiple at the ff:

1. 6 x 4 inches at the nape; base of the neck; 7th rib, right axillary region.
2. 6 x ½ inch – mid-lateral forearm, right upper extremity
3. 5 x 1 inch at the upper lip slicing the tip of the nose.

B gunshot wounds, multiple at the ff:

1. ¼ inch right naso-maxillary bone 2 inches below the right eyeball; right parietal bone, 3 in number.
2. ¼ inch- entrance wound at the right posterior costal 7-rib, 4 inches from the spinal column.

The body was supine position (sic) with stretched upward outward upper extremities. The body from the waist up to his head was all covered with blood. The mat, floor, blanket and clothes were soaked with blood. The underwear at his ankle pants beside the left foot and the blanket

underneath the body. The room was lighted with a small kerosene lamp near the Sto. Niño image. The body was found 1-1/2 meters from the lamp and the image.^[10]

In support of its theory that the appellant killed Flores in a fit of jealousy, the prosecution presented Margarita Flores (the wife of Placido Flores) who brought a certification^[11] issued by the barangay captain of Guadalupe, Carmen, Bohol, showing that a complaint had been lodged against appellant resulting from physical injuries he had inflicted upon a certain Simon Betonio on suspicion that Betonio and appellant's wife were having an affair, but that the parties settled the case amicably after appellant shouldered the medical expenses incurred by Betonio.

For his part, appellant admitted killing Flores but claimed that he did it in defense of his wife's honor. As an alternative defense, appellant contended that his action was justified under Article 247 of the Revised Penal Code. After he caught his wife, Sinforiana and Flores engaged in the sexual act on that fateful day. He narrated the events as follows:

In the evening of 7 November 1991, in honor of his wife's birthday the next day, appellant butchered a pig with the assistance of Flores and Galacio. When his wife, Sinforiana and his daughter, Genalyn arrived, the former prepared their supper. After eating, Genalyn went to bed and rest (appellant, Flores, Galacio and Sinforiana) drank tuba until midnight. Subsequently, Flores prodded appellant to sleep in his (appellant's) store at the public market with Galacio to guard the store against robbers. At first, appellant refused because he had to wake up early to roast the butchered pig. However, he changed his mind when Flores assured him that he would wake him up at dawn when he (Flores) reported for duty.^[12]

That settled, Flores, Galacio and appellant boarded the patrol jeep. After dropping off the two men at the public market, Flores proceeded home. Appellant, however, discovered that he left his store key at home. He tried to force open the padlock but the effort proved futile. Resigned, he sat beside Galacio who was sleeping on the bamboo bed near the store. Minutes later, however, appellant felt cold, so he woke up Galacio and they decided to go home.^[13]

Upon reaching appellant's house, Galacio excused himself to answer the call of nature. When appellant entered through the unfinished door at the back of his house, he heard a noise ("kasikas"). He proceeded upstairs and lighted a match. To his astonishment, he saw the half-naked Flores on top of his wife who still had her clothes on. Thereupon, appellant unsheathed his scythe and hacked the victim on the neck. He attempted to strike a second time but the handle of the scythe broke off. Flores was then lying face down in a crawling position.^[14] Appellant jumped on Flores' back who tried "to draw his gun."^[15] The two grappled for possession thereof. After wresting the gun from Flores, appellant ran downstairs. Flores pursued him. Appellant then faced Flores and shot him on the forehead. Flores "retraced his way" and fell down. Because of his anger, appellant consumed all the gun's bullets on the fallen Flores.^[16]

Corroborating appellant's story, his wife, Sinforiana, testified that after supper she drank a little tuba with her husband, Flores and Galacio. At midnight, her husband followed the advice of Flores to spend the night in their store. After her husband,

Flores and Galacio left, she went to sleep with her daughter.

Sinforiana was awakened when Flores "tried to abuse" her. At first, Flores held her, telling that he wanted to borrow money. She told him that she had no money as they had just made purchases for their store. Responding to what she said, Flores told her that he had long developed his love for her. She thus retorted, "Pre, are you not foolish? We are close friends, why are you doing this to me?" But Flores removed his pants and briefs and embraced her. When Sinforiana tried to resist, Flores threatened to kill her. While Flores was on top of her, and embracing her, appellant arrived, unsheathed his scythe and hacked Flores. Freed from his embrace, Sinforiana ran away followed by her daughter.^[17]

Twelve-year-old Genalyn Amamangnpang testified that she was awakened by a noise and her mother saying, "Pre, why are you still here when in fact you already went home?" She saw her "manimoy" (godfather) Flores completely naked. She told him, "maninoy, what are you going to do with my mother?" Flores answered, "Keep quiet there Genalyn because if you will not, I will shot you." (sic) Just then, her father arrived and pulled out his scythe. Genalyn ran outside to fetch a policeman as her father instructed. She ran towards the public market but, not seeing any policeman, she went back home. Upon her arrival, her father told her to go with him to surrender and, together, they proceeded to the municipal building where the police station was located.^[18]

On 8 October 1992, the RTC of Bohol, Branch 1 Tagbilaran City rendered a decision convicting appellant of murder. The trial court ruled that appellant's act of "emptying the bullets of the gun" on the body of the victim, even when the latter was "already helpless and severely wounded on the nape" constituted treachery. Likewise, the trial court appreciated nighttime as a generic aggravating circumstance and imposed the penalty of reclusion perpetua upon appellant. The dispositive portion of the decision reads, thus:

PREMISES CONSIDERED, the Court finds the accused SERGIO AMAMANGPANG guilty of the crime of Murder punished under Article 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of Reclusion Perpetua, with the accessories of law and to pay the cost.

The accused SERGIO AMAMANGPANG is further ordered to indemnify the surviving spouse Margarita Flores and the children of the late Placido Flores in the amount of FIFTY THOUSAND PESOS (P50,000.00) representing indemnity and THIRTY FIVE THOUSAND PESOS (P35,000.00) representing burial expenses and in both instances without subsidiary imprisonment in case of insolvency.

The Smith and Wesson (sic) revolver with Serial Number .335516 is ordered returned to the government through the PNP authorities.

SO ORDERED.^[19]

In this appeal, appellant raises the following issues:

STATEMENT OF ISSUES

I. WHETHER OR NOT THE KILLING IS JUSTIFIED AS AN ACT OF DEFENSE OF HONOR.

II. WHETHER OR NOT THE KILLING HAS THE CHARACTER OF DEATH UNDER EXCEPTIONAL CIRCUMSTANCES AS PROVIDED FOR PROVIDED FOR UNDER ARTICLE 247 OF THE REVISED PENAL CODE OF THE PHILIPPINES.

ASSIGNMENT OF ERRORS

1. The trial court erred in finding the presence of the element of nighttime in appreciating it as aggravating circumstance.

2. The trial court erred in finding that accused emptied the bullets of the firearm in killing the victim who was already helpless and severely wounded in the nape.

3. The trial court erred in convicting the accused of the crime of murder and the subsequent application of the penalty of reclusion perpetua.^[20]

Before going to the main defense, we shall first resolve the preliminaries raised by appellant.

Appellant contends that the pictures taken by the investigators, depicting the victim's body lying naked in the bedroom floor, were tampered with and suppressed by the prosecution. In support, appellant cites the following testimony of Dr. Añana:

Q Among those policeman who came to you, do you know if any pictures were taken by them or any of your companions in your direction?

A There was.

Q Where is the picture now?

A I told the policeman to get a picture, the body of the victim did not appear in the picture.

Q How many pictures were honestly taken by the policeman?

A One or two shots.

Q When the picture was taken by the policeman, that was the time when the body of the victim was naked and lying face up/

A Yes, sir.

Q You said that the picture was blurred because you were told by the policeman?

A I think it was Alfredo Luengas who said it was blurred. I went to the police station I saw the picture, it was black.

Q Could it be possible that it could be a negative of another shot not necessarily the shot taken at the time of the