

FIRST DIVISION

[G.R. No. 130945, November 19, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO CONDINO Y PEREZ, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court, Fourth Judicial Region, Branch 58, Lucena City in Criminal Case No. 90-361 finding the accused-appellant guilty of the crime of Murder.

The Information filed on June 5, 1990 reads as follows:

That on or about the 29th day of December 1989, at Barangay Canda, Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a piece of stone and pointed weapon, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and hit with said piece of stone one Alejandro Magadia and thereafter stab with the said pointed weapon said Alejandro Magadia while lying prostrate on the ground, thereby inflicting upon the latter various wounds on the different parts of his body which directly caused his death.

Contrary to law.^[1]

Arraignment was scheduled on July 5, 1990 which was however postponed to July 12, 1990.^[2] Upon a Manifestation and Motion dated July 10, 1990^[3], counsel for the accused-appellant from the Public Attorney's Office (PAO) moved that the arraignment of accused-appellant be deferred considering that the latter appeared to be out of his mind when he appeared for the July 5, 1990 arraignment. Counsel, thus requested that the accused-appellant be submitted for mental examination in order to determine whether he is fit for trial.

As prayed for, the accused-appellant was transferred from the Quezon Provincial Jail to the National Center for Mental Health, Mandaluyong City for the purpose of examining the accused-appellant's mental condition.^[4] In a Report dated August 30, 1990 submitted to the trial court, Resident Physician Dr. Edgardo I. Canlas found Alberto Condino "to be suffering from a mental illness called Psychosis or Insanity classified under Schizophrenic Disorder." He was deemed incompetent to withstand the rigors of court trial and recommended for further treatment and confinement.^[5] The proceedings was thereby suspended and the case ordered archived until such time that the accused-appellant shall have recovered from his insanity and shall stand the rigors of court trial.^[6]

On March 6, 1992, the Chief of the National Center for Mental Health filed a "Petition for Release" of Alberto Condino from its care and custody after finding that said accused-appellant's mental condition has considerably improved to stand the rigors of court trial.^[7] Thus, in an Order dated March 25, 1992, accused-appellant was transferred from the National Center for Mental Health to the Quezon Provincial Jail. Consequently, the case was ordered reinstated and set for arraignment.

On June 9, 1992, accused-appellant was arraigned where he, assisted by counsel *de officio*, Atty. Reverito P. Carurucan of the PAO, pleaded not guilty to the crime charged in the Information.

Trial thereby ensued. The prosecution presented three (3) witnesses: Dr. Cecilio R. Macaraeg, Jr., Felipe Mojica and Marcelino Cabutihan. The defense, on the other hand, presented two (2) witnesses: Florentina Portugal and the accused himself.

The facts as found by the trial court are as follows:

After evaluating the evidence submitted by both the prosecution and the defense, the Court finds that on December 29, 1989 at 1:30 o'clock in the afternoon at Barangay Canda, Sariaya, Quezon, while Alejandro Magadia, the herein victim, together with Rustico Lontoc, Marcelino Pulugin and Felipe Mojica were playing basketball, accused Alberto Condino, who was then under the influence of liquor, armed with a "gulukan", arrived and challenged Alejandro Magadia in a one on one basketball game which Alejandro Magadia acceded. After making a shot, Alejandro Magadia gave the ball to Alberto Condino but instead of shooting the ball, he threw it to a place, drew his "gulukan" and chased Alejandro Magadia who ran away but he was not able to catch up.

At 5:30 o'clock in the afternoon of the same day, while the group of Alejandro Magadia was walking towards the direction of Barangay Limbon, Sariaya, Quezon to attend a dance party, accused Alberto Condino was seen on the left side of the road, waiting for the said group and when Alejandro Magadia, who was walking ahead of the group, passed in front of Alberto Condino, accused suddenly stoned Alejandro Magadia which hit his left head and when he fell down to the ground, lying flat, accused Alberto Condino stabbed Alejandro Magadia for three (3) times hitting his left side of the back, face and other parts of the body. As the attack was sudden, Alejandro Magadia was not able to defend himself. Thereafter, Alberto Condino left the place of the incident. Alejandro Magadia was boarded on a trolley to be brought to the hospital and on the way to the hospital, he passed away.

The Post-Mortem Examination conducted on the cadaver of Alejandro Magadia (Exhibit "A" and "A-1"), issued by Dr. Cecilio R. Macaraeg, Jr., M.C. (sic), Municipal Health Officer of Sariaya, Quezon, would reveal the following:

"1. Lacerated wound. 3.5 cm in length, 1.5 cm wide, 1 cm deep, at the mid portion of the left parietal region. Underlying wound seen from the outside with

- a crack and a circular depression (compound fracture).
2. Stab wound. 1 cm long, .5 cm wide, 1 cm deep, located at the left lower mandibular region.
 3. Stab wound, 2.5 cm long, 1 cm wide, 6 cm deep, located at medial aspect of the mid portion of the left side of the back, 5 cm to the left of the mid spinal line.
 4. Stab wound, 2.5 cm long, 1.5 cm wide, and 8 cm deep, mid portion of the left side of the back, 8 cm left to the mid spinal line.

Cause of Death:

Shock, Massive hemorrhage due to: Compound fracture on the left parietal region. Stab wounds on the left side of the back.

A Certificate of Death was likewise issued by Dr. Cecilio R. Macaraeg, Jr., M.D. (Exhibits "B" and "B-1")."[8]

The version of the accused-appellant, meanwhile, is as follows:

The accused anchored his defense on self defense. He claimed that on December 29, 1989 at 5:30 o'clock in the afternoon, he was beside the house of Filomena Portugal located along the railroad track at Barangay Canda, Sariaya, Quezon waiting for a transportation bound to Antipolo, Rizal. While waiting for a ride, seven (7) persons, namely: Alejandro Magadia, Marcelino Cabutihan, Felipe Mojica, Jr., Rustico Lontoc, Ernesto Resurreccion, Jr., Marcelino Querubin and Marcelino Acinas, each carrying bladed weapons, arrived. On the right hand of Alejandro Magadia was a "gulukan" while on the left hand was an icepick. When Alejandro Magadia attacked him at a distance of 1-1/2 meters, he picked-up a stone and threw it to Alejandro Magadia which hit Magadia's chin and made him unconscious. Accused further claimed that when he retreated from the place of the incident, Alejandro Magadia continued to attack him. Thereafter, accused grabbed the right hand of Alejandro Magadia and they struggled for the possession of the "gulukan". The icepick which Alejandro Magadia was holding in his left hand fell to the ground. While the accused and the victim were grappling for the possession of the "gulukan", the said "gulukan" hit the abdomen of Alejandro Magadia, through and through. Accused suddenly rose up and went to the town proper of Sariaya, Quezon and at the Municipal Building of Sariaya, Quezon, he reported the incident to the Station Commander, as a result of which, accused was put in jail.[9]

On March 21, 1997, a decision was rendered with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ALBERTO CONDINO Y PEREZ guilty beyond reasonable doubt, as principal, of the crime of Murder, defined and punished under Article 248 of the Revised Penal Code and, in the absence of any aggravating and mitigating circumstances, said accused is hereby sentenced to suffer the

penalty of reclusion temporal in its maximum period to reclusion perpetua, and to pay the heirs of the victim, Alejandro Magadia, the amount of P50,000.00 as indemnity and to pay the costs.

SO ORDERED.^[10]

In the instant appeal, the accused-appellant raised the following assignment of errors:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER CONSIDERING THAT THE LATTER IS EXEMPTED FROM CRIMINAL LIABILITY, BEING INSANE AT THE TIME OF THE COMMISSION OF THE FELONY.

II

NOTWITHSTANDING THIS, THE COURT A QUO COMMITTED REVERSIBLE ERROR IN ACCORDING WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES, FELIPE MOJICA AND MARCELINO CABUTIHAN, DESPITE THEIR LACK OF CREDIBILITY.

III

THE DECISION RENDERED BY THE COURT A QUO IS QUESTIONABLE IN THE LIGHT OF THE FACT THAT ALTHOUGH THE PONENTE, THE HON. ISMAEL B. SANCHEZ, OPENLY ADMITTED THAT HE WAS NOT ABLE TO ASSESS THE EVIDENCE ADDUCED BY BOTH PARTIES FOR HIMSELF, HE MADE IT APPEAR THAT HE WAS THE ONE WHO CALIBRATED THE CREDIBILITIES OF THE SAME.

IV

IN THE EVENT THAT THE ACCUSED-APPELLANT'S GUILT IS AFFIRMED, THE COURT A QUO ERRED WHEN IT FAILED TO TAKE INTO CONSIDERATION THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND ILLNESS AS WOULD DIMINISH THE WILL-POWER OF THE ACCUSED-APPELLANT WITHOUT ALTOGETHER DEPRIVING HIM OF CONSCIOUSNESS OF HIS ACTS.^[11]

Counsel for the accused-appellant asserts that his client was insane at the time of the commission of the felony and is, therefore, entitled to the exempting circumstance enumerated under Article 12 of the RPC which states:

ART. 12. *Circumstances which exempt from criminal liability.*-The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

x x x

Considering that there is no dispute that the accused-appellant was confined at the National Center for Mental Health and was found to be psychotic and out of his mind, it is contended that the accused-appellant's mental illness was already existing at that time the accused-appellant killed the victim. Since in criminal cases, every doubt is resolved in favor of the accused, this circumstance favoring the innocence of the accused-appellant must be considered. Accused-appellant should, therefore, be exempt from criminal liability.

The contention is untenable.

For the exempting circumstance of insanity to be taken into account, there must be complete deprivation of intelligence *at that time* of the commission of the crime. In *People v. Austria*,^[12] it was explained that:

We have stated that when insanity of the defendant is alleged as a ground of defense or reason for his exemption from responsibility, the evidence on this point must refer to the time preceding the act under prosecution or at the very moment of its execution. In such case, it is incumbent upon defendant's counsel to prove that his client was not in his right mind or that he acted under the influence of a sudden attack of insanity or that he was generally regarded as insane when he executed the act attributed to him. In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of his mental condition during a reasonable period before and after. Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. A person's mind can only be plumbed or fathomed by external acts. Thereby his thoughts, motives and emotions may be evaluated to determine whether his external acts conform to those of people of sound mind. To prove insanity, clear and convincing circumstantial evidence would suffice.

The law presumes every man to be sane. A person accused of a crime who pleads the exempting circumstance of insanity has necessarily the consequent burden of proving it.^[13] While he was observed to be out of his mind during the scheduled arraignment on July 5, 1990 and subsequently confined at the National Center for Mental Health for treatment, it does not necessarily follow that the accused-appellant was already suffering from psychosis at that time of the commission of the crime. Well-settled is the rule that an inquiry into the mental state of the accused-appellant should relate to the period immediately before or at the very moment the act was committed.^[14] Unfortunately, no evidence was presented by the defense to show that the accused-appellant was insane before or at that time he inflicted the fatal wounds on the victim. The medical records do not even show that the accused-appellant had a history of any aberrant behavior. On the other hand, the prosecution presented convincing evidence that the accused-appellant treacherously waited for the victim at the dance party and killed him. He was even sane enough to flee from the scene and go to the police to report the incident.^[15]

There is sufficient proof that the accused-appellant killed the victim based on the positive identification of the prosecution witnesses.

Felipe Mojica testified, to wit: