

EN BANC

[G.R. No. 137277, December 20, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO ALMENDRAS, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

Appellant Alfredo Almendras was charged with the murder of his uncle's common-law wife, Criselda Manidlangan, in an information reading:

That on or about June 4, 1996, in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill and armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one Criselda Manidlangan thereby inflicting upon her wounds which caused her death and further causing actual, moral and compensatory damages to the heirs of the victim.

The commission of the foregoing offense is, likewise, attended by the aggravating circumstance of nighttime.

CONTRARY TO LAW.^[1]

When arraigned on January 20, 1997, appellant entered a plea of "not guilty" to the above charge.^[2]

The prosecution offered the testimonies of four witnesses, namely, Diana Manidlangan, Dr. Ma. Connie Perez, Dr. Lilibeth Villanueva and Genady Manidlangan.

The victim's nine-year old daughter, Diana Manidlangan, testified that at 1:00 in the morning of June 4, 1996, she accompanied her mother to the toilet outside their house. Three or four persons took her mother Criselda from the toilet. The bright moonlight allowed Diana to identify the men. She named two of them as Alex Opsimar and appellant Alfredo Almendras. She recognized the face of another but she did not know his name. Opsimar smelled of *Tanduay*. Two of the men dragged Criselda to the road, seven to ten meters from the house, while appellant stood by a coconut tree.

As Criselda was dragged to the road, she shouted, "*Hindi ako sasama sa iyo.*" (I will not go with you.) Criselda also ordered Diana to go to sleep ("*Diana, katulog na.*").

Diana obeyed her mother's command and went to bed. She did not tell her brothers or sisters about the incident that had just transpired for they were already asleep.

She did not hear any more cries from her mother.

When Diana awoke the next day, Elena, her stepfather's niece, informed her that her mother was dead. Diana immediately went near the coconut tree where appellant had stood earlier that morning. She found her dead mother lying on her back. Diana saw wounds on her mother's neck and on the head, just above the ear. Her mother was just 31 years of age.^[3]

A policeman asked Dr. Ma. Connie Perez, a resident physician in the Samal District Hospital, to conduct a post-mortem examination on the deceased because the Municipal Health Officer was on leave. The family of the deceased was advised to bring the remains to the hospital but, for some reason, they refused. The Sanitary Inspector thus conducted the examination.^[4] The Municipal Health Officer, Dr. Lilibeth Villanueva, subsequently reviewed his findings. The report^[5] on said examination reveals that the deceased suffered 17 wounds.

Genady Manidlangan, the victim's brother, testified to prove the civil aspect of the case. Of the victim's seven children, four were in Genady's custody since Criselda's death. As such, Genady supposedly incurred expenses for the support of the children.

After having presented the testimonies of Dr. Perez and Diana Manidlangan but before the offer of the testimony of the other witnesses for the prosecution, the accused changed his plea to "not guilty." He likewise invoked three mitigating circumstances, namely, voluntary surrender, plea of guilty, and passion and obfuscation. The trial court thereafter conducted an examination of the accused.

The accused testified that he was at the house of his uncle, Leoncio Almendras, at 4:00 in the morning of June 4, 1996 to confront him. Leoncio was the younger brother of the accused's late father. The accused claimed that Leoncio, without permission, opened the tomb of his (the accused's) father, put aside the bones and replaced them with the remains of his (Leoncio's) wife. His uncle left the bones of the accused's father on the ground. The accused discovered this alleged desecration of his father's remains when he went to the cemetery on June 1, 1996 and found the bones outside the tomb. The accused told his uncle, "*Tay*, just return the bones of my father into the tomb." Leoncio promised to return the bones.

On June 4, 1996, the accused went to his uncle's house to talk to him again about it but Leoncio immediately boxed the accused, hitting him on the face. The accused fell. Someone advanced towards him with a piece of wood about three inches long and about one-and-a-half inch in diameter. Thinking that it was his uncle, the accused immediately stood up and, several times, stabbed the person approaching him. As the person fell, the accused suddenly realized that he hit not his uncle Leoncio but Leoncio's common-law wife, Criselda Manidlangan.

The accused ran to his cornfield in Tibal-og and stayed there for "quite sometime." Later, he went home to their "*bukid*" in Malabog, Davao City and surrendered to his brother, who brought him to Peñaplata.

The defense presented the accused's brother, a former CAFGU member and presently a civilian volunteer, to prove the mitigating circumstance of voluntary

surrender. On July 24, 1996, Arnulfo Almendras was in San Pablo, Fatima, Paquibato District, Davao City. His elder brother Alfredo confessed to him that he had killed someone in Limao. Arnulfo advised him to surrender and then accompanied him to the PNP Headquarters in Malabog, Paquibato District. SPO1 Juan Penaso was in the station and the accused surrendered to him. The fact of the accused's surrender was entered into the Daily Records of Events of Police Precinct No. 7, Davao City Police Office as Entry Nos. 225 to 227, page 39, dated July 24, 1996 and Entry No. 228, page 39, dated July 25, 1996.

Thereafter, the trial court rendered judgment convicting the accused and sentencing him to suffer the death penalty, thus:

WHEREFORE, the Court finds that the accused, ALFREDO ALMENDRAS, is guilty beyond reasonable doubt of the crime of MURDER, and hereby sentences him to suffer the supreme penalty of death and to indemnify the heirs of Cresilda Manidlangan the sum of FIFTY THOUSAND (P50,000.00) Pesos by way of damages and SEVENTEEN THOUSAND FIVE HUNDRED FIFTY TWO (P17,552.00) PESOS for the expenses of burial, attorney's fees and food for the heirs of the late Cresilda Manidlangan.^[6]

The trial court did not appreciate the mitigating circumstances of plea of guilty and passion and obfuscation. While it held that voluntary surrender was present, this was purportedly offset by the aggravating circumstance of nighttime. Moreover, the trial court ruled that the crime was attended by abuse of superior strength and cruelty.

The decision of the trial court is now on automatic review.

The Court entertains no doubt that appellant killed Criselda Manidlangan. Appellant himself admitted killing Criselda when he testified before the Court. Although his testimony alludes to self-defense - appellant claiming that he was attacked by his uncle and that he mistakenly killed the victim in the process of retaliation - the Court rejects this claim to this justifying circumstance.

As a rule, the prosecution has the *onus probandi* of establishing the guilt of the accused (*People vs. Sayat*, 223 SCRA 285 [1993]). However, when the accused pleads self-defense and owns up to the killing, the burden of evidence shifts to him. He must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence (*People vs. Gutua*, 254 SCRA 37 [1996]).

The requisites of self-defense are as follows: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (*People vs. Bernal*, 254 SCRA 659 [1996]; *People vs. Gregorio*, 255 SCRA 380 [1996]).^[7]

Appellant has not presented any evidence other than his testimony to overcome this burden and establish the foregoing requisites.

Appellant faults the trial court for appreciating the qualifying circumstances of

treachery and evident premeditation and, ultimately, for convicting him of murder. He also questions the trial court's finding regarding the presence of the other aggravating circumstances. The Solicitor General agrees with appellant and recommends that the latter be convicted of homicide only.

The Court concurs with appellant's position and the Solicitor General's recommendation.

There is nothing to suggest that either treachery or evident premeditation attended the killing.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. Two elements are, therefore, necessary, namely: (1) that the malefactor employed means of execution that affords the person attacked no opportunity to defend himself or to retaliate; and (2) the said means of execution was deliberately or consciously adopted.^[8] Treachery must be proven as indubitably as the killing itself and it cannot be deduced from mere presumption or sheer speculation.^[9]

The requisites of evident premeditation are: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.^[10] Evident premeditation should not be appreciated where "there is neither evidence of planning or preparation to kill nor the time when the plot was conceived.^[11] The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable are insufficient.^[12]

In sum, to properly appreciate evident premeditation and treachery, there must be proof of the elements of such aggravating circumstances and such proof must be as clear as the evidence of the crime itself.^[13] Such proof is wanting in this case.

Neither was the aggravating circumstance of nocturnity or nighttime established. The mere fact that the offense was committed at night will not suffice to sustain a finding of nocturnity. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when: (1) it is specially sought by the offender; or (2) it was taken advantage of by him; or (3) it facilitates the commission of the crime to insure his immunity from capture. In the case at bar, other than the time of the occurrence of the felony, nothing else suggests that it was consciously resorted to by appellant to facilitate the commission of the crime or that it was availed of for the purpose of impunity.^[14]

Although the information alleged the foregoing aggravating qualifying and generic circumstances, appellant, by merely pleading guilty, did not admit to the presence of these circumstances. The plea of guilty of an accused cannot stand in place of the

evidence that must be presented and is called for by Section 3, Rule 116 of the Rules of Court, which previously provided:

SEC. 3. *Plea of guilty to capital offense; reception of evidence.* - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.^[15]

Trial courts should not assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are required to demand that the prosecution should prove the exact liability of the accused.^[16]

The trial court further held that "extreme cruelty is clearly evident from the seventeen (17) wounds the helpless Cresilda [*sic*] suffered."

We cannot agree.

First, Exhibits A to C detailing the 17 wounds that the victim allegedly suffered are all hearsay and, hence, has no probative value.^[17] The Sanitary Inspector, who supposedly examined the remains, was never called upon to testify and identify the exhibits. Neither Dr. Perez nor Dr. Villanueva, who testified for the prosecution, actually examined the body. Dr. Perez testified:

Q By the way, Dra. what was the condition or physical condition of the subject when she was brought to you?

A No, the victim was not brought to the hospital.

Q But you went to the victim?

A No, I was on duty, so I cannot leave. So, it was the Sanitary Inspector who examine[d] the victim.

Q So, you are not the one who physically examine[d] the victim?

A Yes, it was the Sanitary Inspector.

Q So, what did you do with this? What is rule[d] here?

A The family was advised to bring the victim to the hospital, but [because] of some reasons they refused, instead they caused arrest of the sanitary inspector will [*sic*] did the examination to be given to the police.

Q So, never physically examine[d] the victim?

A No, sir.

Q What is that Sanitary Inspector?

A Mr. Eduardo Pareñas.

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Q Is he authorized to conduct a post mortem examination or by law?

A They have a working arrangement between the Municipal Health Officer that in her absence the Sanitary Inspector . . .