

EN BANC

[G.R. No. 119309, August 01, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAGDALENA MAGNO, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, J.:

Before us on automatic review is the decision of Branch 43 of the Regional Trial Court of the 5th Judicial Region stationed in Virac, Catanduanes, in its Criminal Case No. 2052, finding accused-appellant Magdalena Magno guilty of the crime of murder and imposing on her the extreme penalty of death.

In an Information filed on February 24, 1994, by the Second Assistant Provincial Fiscal of Virac, Catanduanes, Magdalena Magno was charged with murder, allegedly attended by treachery and evident premeditation.

After trial, following a plea of not guilty, the trial court, disbelieving and rejecting the defense of the accused, convicted her in its decision dated December 19, 1994, disposing as follows:

WHEREFORE, in view of the foregoing, the prosecution having proved the guilt of the accused, Magdalena Magno of the crime of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7639, she is hereby sentenced to suffer the penalty of death, to indemnify the heirs of the victim the amount of P50,000.00 and to pay the costs.

(pp. 13-14, Rollo.)

Hence, the instant mandatory review.

The facts established by the prosecution woven together mainly from the testimony of prosecution witnesses Judy Beraquit, Dr. Antonio Romano, and Ariel Oliveros, are as follows:

On January 22, 1994, at around 8:30 in the evening, accused-appellant went to the house of her cousin, Judy Beraquit at Mayngaway, San Andres, Catanduanes and asked to be accompanied to buy cornicks (yanyan) from a nearby store owned by one Miguel Huit, and together, they did go to the store. On their way home, Beraquit and accused-appellant saw the victim Wilma Oliveros walking ahead of them, some 8 meters away. Accused-appellant upon seeing the victim suddenly ran towards her and stabbed her at the back with an ice pick. The victim was taken aback by the sudden attack and started to run but accused-appellant pursued her. Beraquit, who was left behind then proceeded home. On reaching the vicinity of the church, Beraquit saw the victim lying on the ground, and accused-appellant was standing

beside her. She then asked accused-appellant why she stabbed the victim. Accused-appellant answered that she did it in retaliation because the victim stabbed accused-appellant on November 25, 1993.

In the meanwhile, Ariel Oliveros, the victim's brother was informed by one Oscar Monjardin that his sister, was found dead behind the church of Mayngaway. Ariel Oliveros immediately went to the place, and rushed the victim to the hospital where she was declared dead on arrival.

The medico legal certificate (Exhibit A) as well as the death certificate (Exhibit B) issued by Dr. Antonio Romano, who examined the cadaver of the victim, show that the victim suffered a "stabbed wound, scapular region, right." Dr. Romano also pointed to the Court, the wound on the right portion of the back.

In her defense, accused-appellant claims she stabbed the victim in self-defense. Her version is that on the date and time indicated in the Information, while she and Judy Beraquit were going home after buying cornicks from Huit's store, they met the victim, Wilma Oliveros, who berated her. She answered back and a heated argument between them followed. Beraquit pacified them but when accused-appellant turned her back, the victim boxed her. She turned to face the victim and the latter boxed her again, hitting her on the face. She embraced the victim and they grappled at each other. She fell to the ground face up. At this point, the victim choked her with both hands. She tried to free herself and as she struggled she felt some thing tucked in the victim's waist. She pulled it out and stabbed the victim at the back.

Accused-appellant further declared that prior to January 22, 1994, she bore a grudge against the victim because the latter stabbed her sometime in November 1993.

The principal issues for consideration before us are:

1. Whether treachery and evident premeditation attended the offense and were duly proved; and
2. Whether the death penalty was correctly imposed on accused-appellant.

Accused-appellant contends that the killing of Wilma Oliveros was not qualified by treachery. She claims that she and the victim fought each other, face to face, both equipped or armed with ice picks and that she stabbed the victim while the latter was choking her.

The evidence, however, unquestionably supports the findings of the trial court that treachery undoubtedly attended the killing of Oliveros.

Treachery exists when the offender commits any of the crimes against the person employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution without risk to himself arising from the defense which the offended party might make. (2nd par. No. 16, Art. 14, Revised Penal Code; People vs. Tamparong, Jr., 249 SCRA 584 [1995]; People vs. de Leon, 248 SCRA 609 [1995])

In the case under review, it is clear from the testimony of eyewitness Judy Beraquit, that when she and accused-appellant saw the victim walking about 8 meters away, the accused-appellant ran towards the victim from behind and without the slightest warning or without uttering any word, stabbed the victim at the back and pursued the victim when the latter tried to run away (TSN, pp. 6-9, Hearing of August 9, 1994).

This is confirmed by the findings of Dr. Antonio Romano, in the medical and death certificates of the victim he issued that the wound sustained by the victim was located on the right portion of the back.

The sudden, unexpected, synchronal attack of the victim from behind by accused-appellant, without the slightest warning, taking the victim completely by surprise, defenseless, and helpless, could but disclose the treacherous nature of the attack upon the victim by accused-appellant.

There is treachery when the attack on the victim was sudden and unexpected and from behind and without warning, with the victim's back towards his assailant as when the attack was so sudden and unexpected that the victim was unable to defend herself, thus insuring the execution of the criminal act without risk to the assailant. (People vs. Boniao, 217 SCRA 653, 671 [1993]).

The conclusion, therefore, is unescapable that the attack on the victim was perpetrated with alevosia, thus qualifying the killing to murder.

We, however, agree with the Solicitor General that the killing was not attended by evident premeditation or, for that matter, by any other aggravating or any mitigating circumstances.

The case at bar is similar to the case of People vs. Saliling (G.R. 117732, October 10, 1995), where we observed:

The following requisites must concur before evident premeditation may be appreciated: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to his determination; and (c) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act (People vs. Rodriguez, 193 SCRA 231 [1991]; People vs. Boniao, 217 SCRA 653 [1993]; People vs. Estrella, 221 SCRA 543 [1993]; People vs. Rivera, 221 SCRA 647 [1993]; People vs. Cayetano, 223 SCRA 770 [1993]). The prosecution omitted or failed to present any evidence to show (a) the time when accused-appellant made the determination to commit the crime, (b) any act to indicate that he persisted in his determination, or (c) sufficient lapse of time between the determination and execution.

We thus find that the killing although qualified by treachery was not attended by evident premeditation, or any other aggravating circumstance. Neither was there any mitigation thereof. In consequence, the penalty must be reduced to the indivisible penalty of reclusion perpetua in line with People vs. Lucas (240 SCRA 66 [1995]) where we had occasion to hold through Justice Davide: