

SECOND DIVISION

[G.R. No. 211159, March 18, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO OLOVERIO, ACCUSED-APPELLANT.**

D E C I S I O N

LEONEN, J.:

Passion and obfuscation as a mitigating circumstance need not be felt only in the seconds before the commission of the crime. It may build up and strengthen over time until it can no longer be repressed and will ultimately motivate the commission of the crime.

This is a review of the Decision^[1] dated January 29, 2013 of the Court of Appeals which affirmed the conviction of accused-appellant Marcelino Oloverio (Oloverio) of murder and sentenced him to *reclusion perpetua* and the payment of civil indemnity and damages.

An Information was filed charging Oloverio with the crime of murder.^[2] The Information reads:

That at around 2:00 o'clock, in the afternoon of October 2, 2003, at Brgy. Belen, Palompon, Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused met the victim, DOLFO GULANE, while the latter was walking on his lonesome, and with treachery, did then and there willfully, unlawfully and feloniously, stab the said victim using a sharp-pointed bolo, which the accused has provided for the purpose, thereby hitting and inflicting mortal wounds on the different parts of the body of the aforesaid victim causing his instantaneous death.

CONTRARY TO LAW.^[3]

Oloverio was arraigned on January 25, 2005, where he pleaded not guilty. Trial on the merits ensued.^[4]

According to the prosecution, on October 2, 2003, at around 3:00 p.m., Rudipico Pogay (Pogay) and Dominador Panday (Panday) saw Rodolfo Gulane walking about five (5) meters away from them with Oloverio trailing behind him. Oloverio allegedly tapped Gulane's right shoulder and hacked him on the chest and extremities with a *bolo* until Gulane collapsed on the ground. Oloverio then allegedly took Gulane's money from his pocket.^[5]

Pogay heard Oloverio shouting the words, "*Patay na ang datu sa Brgy. San Pablo!*" ("The rich man in San Pablo is already dead!") Gulane managed to tell Oloverio, "*Man luba ka man, Ling?*" ("Ling, why did you stab me?") After, Gulane died. Panday proceeded to inform Gulane's family of the incident.^[6]

In his defense, Oloverio alleged that at the time and day of the incident, Gulane had been accusing him of having an incestuous relationship with his mother. He allegedly kept his cool and told Gulane to go home, but the latter continued to mock him by asking in a loud voice, "How many times did you have sexual intercourse with your mother?" He allegedly asked Gulane to go home again but the latter angrily replied, "Who are you to tell me to go home?"^[7]

Gulane allegedly attempted to draw his *bolo* but Oloverio stopped him by drawing his own *bolo*. They grappled with it, and eventually, Oloverio ended up stabbing Gulane, which resulted in the latter's death. Accompanied by a *barangay tanod*, Oloverio went to the municipal hall to surrender to the authorities. He admitted that he stabbed Gulane because he could no longer bear the insulting remarks against him.^[8]

Romulo Lamoste (Lamoste), then Barangay Captain of Barangay Belen, Palompon, Leyte, alleged that Gulane and Oloverio had an altercation before the incident. He alleged that Oloverio's daughter had once confided to Oloverio that Gulane wanted to touch her private parts. About a month later, he allegedly heard Gulane ask Oloverio "in a joking manner about his incestuous relationship with his mother."^[9] Oloverio allegedly got mad and they ended up fighting, but Lamoste was able to subdue them. He, however, admitted that he was not present during the incident.^[10]

On January 29, 2010, Branch 17 of the Regional Trial Court of Palompon, Leyte rendered its Decision^[11] finding Oloverio guilty beyond reasonable doubt of murder.

The trial court ruled that the mitigating circumstance of passion and obfuscation was not present in this case since it could not co-exist with the presence of treachery. The only mitigating circumstance it found present was of voluntary surrender. As murder was punishable by *reclusion perpetua* to death, it imposed the lesser penalty of *reclusion perpetua*.^[12] The dispositive portion reads:

Wherefore, as to the proffer of mitigating circumstances of Passion and Obfuscation as defined by Art. 13 of the Revised Penal Code cannot be appreciated, what can be appreciated only is the voluntary surrender which is covered by Art. 13 par. 7 of the Revised Penal Code.

So from the evidence extant from the records, the court finds the accused Marcelino Oloverio, GUILTY of the crime of Murder as the evidence proved the guilt of the accused beyond reasonable doubt that he committed the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and therefore sentences him to suffer the penalty of Reclusion Perpetua. The voluntary surrender is none availing as reclusion perpetua is not a divisible penalty as defined by the Revised Penal Code.

The accused Marcelino Oloverio is also ordered to pay Fifty Thousand (P50,000.00) Pesos damages to the heirs of Rodolfo Gulane.

SO ORDERED.^[13]

The case records were forwarded to the Court of Appeals on May 6, 2010.^[14]

On January 29, 2013, the Court of Appeals rendered its Decision^[15] affirming the conviction. It found that Oloverio failed to establish with clear and convincing evidence that Gulane "committed an unlawful act which sufficiently caused him to act with passion and obfuscation."^[16]

The Court of Appeals found that Gulane's act of insulting Oloverio before the stabbing was unsupported by evidence.^[17] Instead, it found that treachery was present since Gulane was unsuspecting when Oloverio suddenly attacked him. The court also noted that Gulane was already 83 years old and might not have had a chance to defend himself.^[18]

The Court of Appeals also affirmed the trial court's imposition of the lesser penalty of *reclusion perpetua* in view of Oloverio's voluntary surrender.^[19] It, however, modified the award of damages to include moral, temperate, and exemplary damages.^[20] The dispositive portion reads:

WHEREFORE, in view of the foregoing, the appeal is **DENIED**. The Decision dated January 29, 2010 of the RTC, Branch 17, of Palompon, Leyte in Criminal Case No. P-1163 finding appellant guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with the **MODIFICATION** that with respect to the trial court's award of Php50,000.00 damages, this should be understood to represent the civil indemnity. Appellant is further ordered to pay the heirs of Rodolfo Gulane Php50,000.00 as moral damages, Php25,000.00 as temperate damages, and Php30,000.00 as exemplary damages. All damages shall be subject to interest at the legal rate of 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.^[21] (Emphasis in the original)

On March 18, 2013, Oloverio filed his Notice of Appeal,^[22] which was favorably acted upon by the Court of Appeals.^[23]

In compliance with this court's Resolution^[24] dated April 2, 2014, Oloverio and the Office of the Solicitor General separately manifested that they were no longer filing their supplemental briefs before this court since they have already stated their arguments in their briefs before the Court of Appeals.^[25]

Upon review of the case records, this court resolves to modify the Decision of the

Court of Appeals.

Accused-appellant Marcelino Oloverio is guilty only of homicide under Article 249 of the Revised Penal Code. He is entitled to the mitigating circumstances of passion and obfuscation and of voluntary surrender.

I

Murder is the act of killing a person under the circumstances mentioned in Article 248 of the Revised Penal Code. The provision states:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of article 246^[26] shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone,, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

To be able to sustain a conviction for murder, the prosecution must prove the following elements:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.^[27]

For murder or homicide, the prosecution must also be able to prove the accused had the intent to kill.^[28]

The witnesses, Panday and Pogay, positively identified accused-appellant as the one who stabbed Gulane with a *bolo*.

Panday stated:

Q: When you saw Rodolfo Gulane walking alone towards Brgy. San Pablo, Palompon, Leyte, do you recall of any untoward incident that took place?

A: Yes, sir, I saw the incident.

Q: *What was that incident?*

A: *Rodolfo Gulane was killed by [a] certain Marcelino Oloverio.*

Q: Now, you said that Rodolfo Gulane was killed by Marcelino Oloverio, what was used by Marcelino Oloverio in killing the deceased?

A: Abolo.

Q: *Now, you said that Rodolfo Gulane was killed by Marcelino Oloverio with the use of this bolo, would you describe to this Honorable Court, how and in what way did Marcelino Oloverio killed [sic] Rodolfo Gulane?*

A: *Yes, while Rodolfo Gulane was walking, Marcelino Oloverio held the right shoulder of Rodolfo Gulane then stabbed him many times and there was striking [sic] the victim Rodolfo Gulane.*^[29] (Emphasis supplied)

Pogay also testified:

Q: When you reached Brgy. Belen, what have you observed?

A: I observed Lino stabbed Dolpo [sic] Gulane and when Dolfo Gulane fell down, he said "Patay na ang datu sa Brgy. San Pablo."

. . . .

Q: If you can recall, how many times did Marcelino Oloverio stab Rodolfo Gulane?

A: Many times and there was also a hacking blow.^[30]

Their testimonies were consistent with the medico-legal findings that Gulane died due to multiple stab wounds. Both the trial court and the Court of Appeals also found that the witnesses had no ill motive to testify against accused-appellant.^[31]