

EN BANC

[G.R. No. 132392, January 18, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MARCOS Y MON, ACCUSED-APPELLANT.

DECISION

PUNO, J.:

Before this Court on automatic review is a decision of the Regional Trial Court of Burgos, Pangasinan, Branch 70, in Criminal Case No. B-055, dated January 7, 1998, finding accused-appellant Cesar Marcos y Mon guilty beyond reasonable doubt of the crime of murder and imposing upon him the supreme penalty of death.

In an Information^[1] dated October 11, 1996, accused-appellant Cesar Marcos y Mon was charged with the crime of Murder, committed as follows:

"That on or about August 19, 1996, at noon, in Brgy. Bayambang, Municipality of Infanta, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously hack Virgilio Marcos y Mon, his elder brother with a bolo hitting on the right side of head, back of neck and other parts of his body, inflicting upon him injuries, to wit:

- Hacking wound, right, temporo-parietal, 2 ½ inches
- Avulsion, right, temporo-parietal area, about one inch below the first wound, about 5x3 inches
- Hacking wound, 5x3 inches, occipital area
- Hacking wound, 2 inches, submandibular area
- Hacking wound, right, elbow joint area, 4x2 inches

which caused his instantaneous death as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code."

During the arraignment, accused-appellant pleaded not guilty to the offense charged and hence, trial ensued. On January 7, 1998, the trial court rendered a decision^[2] the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused Cesar Marcos y Mon guilty beyond reasonable doubt of the crime of Murder punishable under Art. 248 of the Revised Penal Code and sentences him to suffer the supreme penalty of Death. Likewise, the accused is hereby ordered to indemnify the heirs of the victim the sum of Fifty One Thousand Pesos (P51,000.00)

as actual damages and Fifty Thousand Pesos (P50,000.00) as moral damages."

Accused-appellant Cesar Marcos (Cesar) and the victim Virgilio Marcos (Virgilio) are brothers and they live in the same house at Bayambang, Infanta Pangasinan.

Evidence for the prosecution shows that on August 19, 1996 at about 12:00 noon, Fernando Marcos, Jr. (Fernando) was resting under a mango tree a few meters away from the house of the Marcoses. After a while, his uncle Virgilio arrived and proceeded to the artesian well (jetmatic) located just at the back of the house. Virgilio bent down to put on the ground the tools he was carrying. It was at this precise moment that Fernando saw his uncle Cesar come out of the kitchen door with a bolo in hand and suddenly hacked the unsuspecting Virgilio from behind. Virgilio was hit on the nape of the neck which caused him to fall to the ground. Then Cesar hacked him again and this time Virgilio was hit on the right side of the head. Fernando rushed to his uncle Cesar and asked why he did that, to which Cesar replied "You go away if you do not want to get involved." Out of fear, Fernando could only watch helplessly at Virgilio as the latter was asking him for help. Then Fernando heard Cesar tell Virgilio "Your life is not enough to pay the money you squandered."

Fernando ran to the house of Kagawad Solomon del Fierro (Solomon) to ask for assistance. After learning of the hacking incident, Solomon went with Fernando to go to the Marcoses' house. On the road, they met the Chief of the Civilian Voluntary Organization, Catalino Custodio (Catalino), heading towards the same direction. When they reached the house, they saw Cesar seated inside the sala where a bloodied bolo lay on top of the table beside Cesar.

Solomon then asked Cesar where the victim was and he motioned towards the back of the house. When they saw the bloodied Virgilio sprawled on the ground near the artesian well, they shifted him to a more comfortable position. Catalino was about to leave to look for a car that would bring Virgilio to the hospital when the policemen arrived and went inside the house. Cesar surrendered his bolo to SPO1 Oscar Lagasca and, without uttering a word, allowed himself to be hauled into the police car together with the body of Virgilio. Solomon and the son of Virgilio went with them. On the way to the police station, Solomon asked Cesar why he hacked his brother, to which the latter answered "That's good for him." Solomon tried to explain to Cesar that he can be jailed for what he did but Cesar simply replied "Even if I will be jailed." Then Cesar turned to the son of Virgilio and said "Now you see what happened to your father." When they reached the police station, Virgilio was already dead. Cesar was immediately detained.

Dr. Genaro Merino who conducted a post mortem examination on the body of Virgilio testified that the victim died due to hemorrhage or loss of blood, secondary to multiple hacking wounds. He surmised that by the nature of the wounds sustained, the same could have been caused by a bolo. He claims that considering that majority of the wounds inflicted were located on the right side of the victim, it is possible that the assailant was standing just behind the victim on his left side. He discounted the possibility that the assailant and the victim could have been facing each other because a person could not be hacked in front.

Accused-appellant gave a different version of what happened. According to him, in the afternoon of August 19, 1996 he was on his way out of the house when he was

met by Virgilio near the artesian well who suddenly unsheathed his bolo and tried to hack him. Cesar was able to get hold of Virgilio's arm and they grappled for the bolo. In the course of the struggle, Virgilio tripped and fell to the ground thereby hitting his head with the bolo. When Cesar saw that Virgilio was already wounded, he went inside the house and sat on the bamboo bed near the door where he stayed until the policemen arrived. According to Cesar, the police retrieved the bolo from Virgilio who was then holding it. He likewise testified that he agreed to go to the police station because he was asked by the police to accompany his brother. However upon reaching the police station, he was immediately detained, and several days thereafter, a criminal complaint was filed against him. According to Cesar, Virgilio tried to hack him because he left Virgilio behind when he went out fishing the night before.

Accused-appellant raises as his lone assignment of error the issue of whether or not the trial court correctly imposed the penalty of death. It is argued that although the aggravating circumstance of evident premeditation was raised in the information, the prosecution failed to prove the same and hence, accused-appellant can only be sentenced to *reclusion perpetua*, citing in support thereof the rulings in the cases of People vs. Lucas (240 SCRA 68) and People vs. Saliling (249 SCRA 185). In the latter case, the Court held that where the killing although qualified by treachery was not attended by evident premeditation or any other aggravating circumstance, and neither was there any mitigating circumstance, the penalty must be reduced to *reclusion perpetua*.

The Solicitor General countered that the presence or absence of evident premeditation should not come to fore simply because it was never appreciated by the trial court in its questioned decision nor was it considered in determining the penalty to be imposed. It submits that appellant's blood relationship with the victim as an aggravating circumstance, in addition to the qualifying circumstance of treachery, warrants the imposition of the death penalty.

The two conditions before treachery may be considered a qualifying circumstance are: (a) the employment of means, methods, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim; and (b) the deliberate adoption by the offender of such means, methods, or manner of execution.^[3] It is well-established that treachery, to be considered a qualifying circumstance, must be proven as clearly and indubitably as the crime itself, and it may not be simply deduced from presumption.^[4] In the case at bar, prosecution witness Fernando Marcos gave an eyewitness account of how appellant attacked the victim. He testified that appellant, armed with a bolo, suddenly attacked the victim from behind and while the latter was in a stooping position, thereby depriving the hapless, unarmed and unsuspecting victim a chance to repel or offer any defense of his person. And when the victim fell to the ground, accused hacked him again guaranteeing that the victim would not survive the attack. This undoubtedly constitutes treachery for the means employed by the accused ensured the execution of his nefarious design upon the victim without risk to himself arising from any defense which the offended party might have made.^[5] The aggravating circumstance of treachery qualifies the crime to murder.

It is not disputed that the aggravating circumstance of evident premeditation, although alleged in the information, was not duly proven by the prosecution and