

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RAUL BASBANIO, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. L-16489. January 31, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

Raul Basbanio, Reynaldo Alimodian and Deroetrio Alimodian are charged with the crime of murder with assault upon an agent of a person in authority committed in the language of the information filed by the Assistant Fiscal of Iloilo, as follows:

That on or about March 28, 1958, in the municipality of Barotac Viejo, province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, conspiring and working together, armed with a. butcher's knife, with treachery and evident premeditation and with a decided purpose to kill, did then and there wilfully, unlawfully and feloniously, attack, assault and stab several times one Policeman Gonzalo Avanceña of the Police Force of Barotac Viejo, Iloilo, while the latter was in the performance of his official duty, inflicting upon the said Gonzalo Avanceña wounds on the different parts of his body which caused his death thereafter.

Contrary to law. (crim. case No. 6866)

After trial, the court found the three defendants guilty beyond reasonable doubt as charged and sentenced each of them to suffer the maximum penalty of death, the accessories of the law, to indemnify the heirs of the deceased corporal Gonzalo Avanceña in the sum of six thousand pesos, and to pay the costs.

From the verdict and. sentence, the three defendants have appealed.

On 28 March (Friday) 1958, a market day in the barrio of Calaigang, Barotac Viejo, Iloilo, at about 11:00 and before 12:00 o'clock noon, a woman "tuba" vendor in the public market of the barrio approached Dionisio Yap, market fee collector, to complain that a young man by the name of Raul Basbanio had taken all the "tuba" she was selling to another place without paying for it and asked him to intervene to help her retrieve the beverage or be paid for it. As he was just a fee collector in the market, he told the woman to call on a policeman. Heeding the advice the woman proceeded to the police station and there preferred her complaint. A few minutes later Dionisio Yap, who was at the main gate of the market, saw corporal Gonzalo Avanceña in police uniform and Raul Basbanio pass by the gate and heard the former say to the latter: "Why are you doing that here? Are you not ashamed to the people here in Calaigang"? They walked together towards the police station but did not reach it, because upon reaching the chicken stall (point in Exhibit C) Avanceña was suddenly surrounded by the three defendants. Raul Basbanio facing Avanceña stabbed him, while Reynaldo Alimodian and Demetrio Alimodian stabbed him at the back. While the three assailants were wrestling with him for the possession of the latter's gun that was on his waist, Salustiano Bomaras, the barrio lieutenant whose house was just in front of the market across the provincial road, went down and tried to stop them by shouting: "Why are you fighting the policeman, are you not ashamed, you fools, you boys," but the latter paid no attention to the former admonition (Exhibit 1). While Dionisio Yap was standing near the place of the affray, he saw the breast of Avanceña spurting blood, his revolver

held and raised by his right hand and three other hands holding and twisting his right hand to wrest possession of the gun. Due to shock and profuse bleeding caused by several deep stab wounds inflicted in different parts of his body, Avanceña loosened his grip of the revolver, Demetrio Alimodian succeeded in snatching it from him and handed it to Basbanio. The three assailants then left the market place and proceeded to barrio San Rafael. Avanceña sagged by pressing his hands upon his breast and stomach he succeeded in rising, walked about seven meters towards the police outpost, staggered and fell to the ground, Salustiano Bomaras, the lieutenant of the barrio, who came to the place asked Avanceña who had stabbed him and the latter, fast sinking and unable to utter a word, moved three fingers of his right hand pressed on his breast, in the presence of Dionisio Yap, and then expired. Having learned from the people of the stabbing in Calaigang public market, patrolman Donato Aniversario left his beat in San Rafael to go to Calaigang and on his way he met patrolman Pedro Alimodian, together with the two sons, Reynaldo Alimodian and Demetrio Alimodian and Raul Basbanio, whose clothes were spattered with fresh blood. Patrolman Alimodian surrendered the three young men and handed to him Avanceña's revolver and Basbanio's knife (Exhibit B) and its scabbard (Exhibit B-1). Patrolman Aniversario instructed patrolman Alimodian to take the three young men to the police station of San Rafael and hold them there, as he (Aniversario) was to investigate the killing in barrio Calaigang. In the public market of Calaigang near the police outpost, Aniversario found the body of corporal Avanceña in police uniform stabbed dead. Without moving the body of the slain officer, Aniversario took the key from the pocket of the deceased's khaki pants and returned to San Rafael. Upon his arrival in barrio San Rafael, Aniversario opened the door of the detention cell, removed the knives and firearms kept therein and locked up the three accused. When the truck bound for the town arrived Aniversario put on board the truck Raul Basbanio and Reynaldo Alimodian leaving behind Demetrio Alimodian in the custody of his father, who requested that his son Demetrio be allowed to see his wife and son before going to town. After entry of the report on the police blotter (Exhibit E-1 in Exhibit 7) the two accused were detained in the municipal jail of Barotac Viejo. Upon his return to Calaigang that same afternoon Aniversario saw a PC lieutenant and some PC soldiers and a municipal police sergeant already conducting a spot investigation. A few minutes later police sergeant Villarosa ordered him to return to barrio San Rafael. At about 5:05 o'clock in the afternoon of that same day, Dr. Trinidad Lumampao, the municipal health officer of Barotac Viejo, Iloilo, examined the cadaver of the deceased and issued the following—

SUMMARY OF AUTOPSY FINDINGS

Injuries

- Seven (7) deep stab penetrating wounds as shown and numbered in the fasehnila and described below:

- (1) Angular type deep stab penetrating wound located around one inch above the right nipple around one inch in length and five inches in deep, reaching the middle lobe of the right lung.
- (2) Deep stab penetrating wound located over the right lateral side between the 8th and 10th rib cutting the 9th rib. Around one inch in length and 5 inches in deep. Penetrating the anterior lobe of the liver.
- (3) Deep penetrating stab wound located over the back around 1/2 inch lateral of the vertebral border of the left scapular bone one inch in length and 5 inches in deep cutting the 4th rib. Penetrating the left lung.
- (4) Deep penetrating stab wound located below the right inferior angle of the right scapular bone around one inch in length and 5 inches in deep penetrating the right lung.
- (5) Deep penetrating stab wound located at the back around 4 inches below the inferior angle of the right scapular bone around 3/4 inch in length and 5 inches in deep penetrating the right lung.
- (6) Deep penetrating stab wound located over the left lateral side just below the last rib around 2 1/2 inches in

length and 5 inches in deep penetrating the stomach.

(7) Deep penetrating stab wound located around 2 inches below the 6th described wound above. Around 1 1/2 inch in length and 0 inches in deep over the left lateral side.

CAUSE OF DEATH

Shock and severe hemorrhage due to deep penetrating stab wounds which injured the liver, right lung, left lung and stomach as described from the above findings. (Exhibit A)

He testified that he had examined the cadaver of the deceased Gonzalo Avanceña and that the cause of death was shock and severe hemorrhage due to seven deep and penetrating stab wounds that the same wounds that caused the instantaneous death of Avanceña could have been caused by three kinds of instruments including the knife (Exhibit B) as shown by the size, nature and position of the different wounds inflicted.

Raul Basbanio claims that he acted in self-defense when he killed corporal Gonzalo Avanceña. He testifies that in the public market of barrio Calaigang about noon after he had answered the policeman that he did not know who had taken the "tuba" of the woman vendor he was collared in front of Supersticioso store by Avanceña who assaulted him with heavy fistic blows in such, a manner that caused him (Basbanio) to urinate; that despite his entreaties not to be maltreated he was dragged to the chicken stall where he was boxed, kicked and manhandled; that when Avanceña shouted at him saying "I am going to kill you, you son of a bitch" and at the same time drawing his revolver from his waist, he held fast Avanceña's right hand holding the gun until it fired grazing his (Basbanio's) temple; that sensing that the police officer he previously had served as bodyguard would really kill him he took his butcher's knife, stabbed the officer in the breast and kept on stabbing him when everything in his mind turned black; that he alone killed the deceased officer, there being no other person who came near except Reynaldo Alimodian who tried to stop him from stabbing the officer saying "Raul what is the matter with you?"; and that believing that Reynaldo Alimodian came to help Avanceña, his father being a policeman like his adversary, he thrust at Reynaldo Alimodian with his (Basbanio's) knife that missed the mark.

Ana Mermejo, a septuagenarian defense witness, corroborated the testimony of Raul Basbanio.

Reynaldo Alimodian and Demetrio Alimodian denied complicity in the killing. Reynaldo Alimodian corroborated the testimony of Raul Basbanio. Demetrio Alimodian corroborated his brother's testimony. Abelardo Batiller, the one running the gambling table in the market, and Severino Patopatin, a farmer and merchant of said barrio, corroborated the testimony of the Alimodian brothers. Telesforo Barsanas, nephew of patrolman Alimodian's wife, corroborated the defense evidence that the deceased officer was not wearing a police uniform and badge or insignia.

The appellants' respective claims of self-defense and non-participation in the killing of the deceased corporal Gonzalo Avanceña of the municipal police cannot be given credence in the face of the clear, direct and positive testimony of the witnesses for the prosecution who were just a few meters away from the place where the crime was committed, said witnesses not having any grudge or ill-feeling towards the appellants.

The appellants' contention that corporal Gonzalo Avanceña was killed by Raul Basbanio alone in their attempt to save the other two appellants, sons of patrolman Pedro Alimodian who was a fellow officer of the deceased, cannot be sustained. Autopsy findings show that the various deep stab wounds were caused by three different weapons and that their size and position were not inflicted by only one person. The physician who performed the autopsy of the cadaver testifies that the stab wounds could have been caused by "at least three kinds of instruments * * *" (p. 8, t.s.n.).

The fact that when patrolman Donato Aniversario met the appellants he saw their shirts smeared with blood is a

positive proof the appellants had grappled and wrestled with the deceased when they tried to wrest the gun from him.

Although the victim was armed with a gun which he could have used to defend himself, yet there was treachery even if there had been none at the inception, because the sudden assault by the appellants by stabbing him in his front, side and back, holding his hands and wresting his gun rendered him, defenseless. The fact that one of the assailants held him in the front and the other two assaulted him at the back was an aggression tending directly and specially to insure its execution, without risk to the aggressors arising from any defense which the assaulted person might make.[1]

The offense committed is the complex crime of murder with assault upon an agent of a person in authority (Articles 248 and 148 of the Revised Penal Code).[2] Pursuant to article 48 of the same code, the penalty for the most serious crime should be imposed, which is death.

The mitigating circumstance of voluntary surrender by the appellants may be taken into account. The circumstance of superior strength is absorbed by the qualifying circumstance of teachery.

The Solicitor General recommends that the penalty of death be meted out to the appellants in view of the seriousness of the crime committed and in order to deter people from trampling upon and disobeying law-enforcing agents entrusted with the duty and authority to preserve peace and order in the community.

The presence of a mitigating circumstance could not reduce the penalty provided for by law for the complex crime committed by the appellants, as prescribed in article 48 of the Revised Penal Code, But for lack of sufficient number of votes as required by section 9 of Republic Act No. 296, the Judiciary Act of 1948, the penalty to be imposed, as it is hereby imposed, is reduction perpetua, the accessories of the law; and the rest of the judgment or sentence appealed from is affirmed, with costs against the appellants.

Bengzon, C. J. Bautista Angelo, Labrador , Concepcion , Reyes, J.B.L., Barrera, Parades, Dizon, Regala and Makalintal, JJ., concur.

[1]U.S. vs. Valdez , 40 Phil., 876.

[2] People vs. goode, G. R. No. L-6358, 25 May 1955.

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