

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO ABANES AND MELECIO BENITEZ, DEFENDANTS-APPELLANTS.*G.R. No. L-30609. September 28, 1976*

Ponente: CONCEPCION, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4a17336ab47b/>**CONCEPCION, JR., J.:**

Defendants were convicted of the crime of murder with the qualifying circumstance of treachery and sentenced to suffer the penalty of life imprisonment, and to indemnify the heirs of the late Eustaquio Colobong in the amount of P12,000.00, jointly and severally. From this decision, they appealed. Benitez subsequently withdrew his appeal; hence only the appeal of Abanes is before Us.

The incident in question took place in Bo. Banawang, San Roque, Agoo, La Union, on October 9, 1967. At about 5:00 o'clock in the afternoon of that day, appellant Roberto Abanes and victim Eustaquio Colobong, a half-wit, were in the yard of one Rolly Laroza. Melecio Benitez was also present, talking with Laroza. Moments later, Abanes and Colobong were seen walking together towards the north direction of Bo. Banawang, San Roque, followed by Benitez. That was the last time Eustaquio Colobong was seen alive. An hour later, his body was found near the bridge of San Roque under a bamboo tree. As shown in the autopsy report[1] of Dr. Fidel Verceles, the deceased sustained five stab wounds from which he died. The incident was reported to the police authorities who lost no time in going to the scene of the crime. With the aid of a brother of Roberto Abanes, policeman Alejandro Ulat found the fatal weapon[2] a three-bladed-edge sharp instrument, known locally in that area as "tres cantos", about ten meters from the house of appellant Abanes. Because he was one of the two persons last seen with the victim while the latter was still alive, and because of the discovery of the weapon near his house, Abanes was apprehended and brought to the municipal building for questioning. At that investigation, he admitted in writing[3] having stabbed the deceased and implicated Melecio Benitez in the commission of the crime.

How did the victim die?

The evidence of record establishes that on the day in question Abanes, Benitez and the deceased were on their way to the house of the barrio captain because the deceased had told the two of them that there were raw shrimps to be eaten thereat. Benitez was in an ugly mood, considering that before they left the yard of Laroza, he (Benitez) uttered the following words: "If somebody will make trouble in San Roque, I will kill him." While the three were thus walking along the dike with the deceased leading the way, Benitez told Abanes to ask the deceased if indeed there were raw shrimps to be eaten at the house of the barrio captain, and if the deceased was just fooling them to stab him. Without much ado, Abanes suddenly stabbed from behind the unarmed and unsuspecting Colobong who had not given any provocation whatsoever for the attack. Immediately thereafter, Benitez grabbed the weapon from Abanes and himself stabbed the victim three times without giving the latter a chance to evade the attack or make any defense whatsoever. These stab wounds were the direct and immediate cause of the victim's death.

When Abanes testified in his own behalf, he denied having signed a written confession. He stated that on the date

and time in question, while he was walking along the dike towards the house of the barrio captain with Eustaquio Colobong ahead of him and Melecio Benitez behind him, he was enticed by the latter to stab the victim if the latter was just fooling them in stating that there were raw shrimps to be eaten in the house of the barrio captain. Abanes claimed that Benitez threatened to kill him if he (Abanes) would not stab the victim; and that out of fear of Benitez whom he knew to be a tough guy and quite capable of killing him, he was forced to follow the order.

In this appeal, Roberto Abanes insists on his plea that he stabbed the deceased under the compulsion of an ir-resistible force and/or an uncontrollable fear of an equal or greater injury; and, furthermore, that if found guilty, he should be entitled to, as mitigating, the alternative circumstance of degree of instruction and education for the reason that he studied only up to Grade One.

There is nothing in the record to sustain this allegation. While Abanes claims that Benitez was armed with a brass knuckle, there is no showing that he ever tried to use it against Abanes nor did he ever lift a finger to exact the latter's cooperation in the execution of the crime. Before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It must be such that, in spite of the resistance of the person on whom it operates, it compels his members to act and his mind to obey.[4] Neither can we consider the claim of uncontrollable fear of an equal or greater injury in favor of Abanes. A mere threat of a future injury is not enough. Fear in order to be a valid defense, should be based on a real, imminent or reasonable fear for one's life or limb. In this case, the fear, if any, harbored by Abanes was imaginary and speculative. This is not the uncontrollable fear contemplated by law. Furthermore, when Benitez allegedly gave the order to stab the deceased, Abanes was armed and yet he did not offer any resistance. Neither did he warn the intended victim of the impending peril. And finally, the act of Abanes in not fleeing but instead of waiting for Benitez while the latter was stabbing the victim belies his claim of fear of Benitez.

Likewise, lack of instruction or education can not be appreciated in favor of Roberto Abanes as a mitigating circumstance. The criteria in determining lack of education is not illiteracy alone, but rather lack of sufficient intelligence.[5] The record discloses that far from his claim that he suffers from lack of education, appellant possesses an intelligence worthy of an educated man. In fact, the trial court observed that he talked as if he were a doctor.[6]

WHEREFORE, finding the appealed decision to be in accordance with the law and the evidence, we hereby affirm the same without costs. Abanes should be credited in full for the period of his preventive imprisonment, if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, with four-fifths thereof.[7]

SO ORDERED.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.

Antonio, J., did not take part.

[1] Exhibit A also Exhibit 4

[2] Exhibit B

[3] Exhibit C

[4] U.S. vs. Elicanal 35 Phil. 209

[5] People vs. Ripas, et al. 95 Phil. 63.

[6] TSN 11 Jan. 1968 p. 72.

[7] R.A. 6127.

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