

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO BASAS Y MONTALES, DEFENDANT-APPELLANT.

G.R. No. L-34251. January 30, 1982

Ponente: PLANA, J.

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PLANA, J.:

This is a mandatory review of a murder case, the accused having been found by the Trial Court guilty of killing Ricardo S. Tayubong qualified by taking advantage of superior strength and aggravated by recidivism without any mitigating circumstance to offset it, and sentenced to death.

The accused was charged before the Circuit Criminal Court, Manila, as follows:

That on or about April 26, 1970, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two others whose true names and identities are still unknown, and helping one another, with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill, and with treachery attack, assault and use personal violence upon one Ricardo S. Tayubong, by then and there stabbing him with bladed instruments and mauling him, and hitting him with blunt instruments, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

After trial, the accused as aforesaid was found guilty of murder.

It appears that on April 26, 1970 at 2:30 a.m., Ricardo Tayubong (victim) was at the intersection of Comercio and Tabora Streets, near Divisoria market, having an altercation with the accused (alias Boy Dilat), and the latter's friend and Kumpadre (Berting). Suddenly, the accused hit Tayubong on the head with an empty bottle of Coca-Cola. Tayubong fell. Thereupon, the accused rode astride Tayubong and repeatedly stabbed him, as a consequence of which the latter died after hospitalization for a couple of days.

In convicting the accused of murder, qualified by abuse of superiority, the Trial Court observed:

"It is clear from the foregoing evidence that accused armed with a bladed instrument and with the help of his companion, alias Berting, was able to hit the deceased with an empty coke bottle, kingsize, which caused him to fall and while already fallen, repeatedly stabbed him while his companion alias Berting also boxed. The fact that accused and his companions took advantage of the superiority that their number and arms afforded them is shown by the five stabbed wounds and four lacerated wounds suffered by the victim, which strongly indicate that they were able to assault the victim at will." (Rollo, pp. 58-59.)

An examination of the evidence, however, casts doubt on the finding of abuse of superior strength. Prosecution witness Romeo Esmeralda testified as follows:

"Q At around 2:30 in the morning of April 26, 1970, do you recall where you were?

A Yes, sir.

Q Where were you?

A I was drinking coffee at the corner of Tabora and Comercio Streets.

x x x x

Q Do you know a person by the name of Ricardo Tayubong?

A Yes, sir.

Q Did you see Ricardo Tayubong while you were drinking coffee at that corner of Comercio and Tabora on April 26, 1970 in the early morning?

A Yes, sir.

Q Where did you see him?

A At the corner of Comercio and Tabora.

Q What was Ricardo Tayubong doing at that time?

A He was arguing with Boy and his Kumpadre.

COURT

Q They are three?

A Yes, sir. (TSN, June 23, 1971, pp. 13-14. Emphases supplied.)

x x x x

Q You said that there were three arguing, Ricardo Tayubong, Boy Dilat and his Kumpadre Berting. Was the argument three cornered or one against the two?

A Ricardo Tayubong against Boy and his Kumpadre.

x x x x

Fiscal Herrera

Q What happened while arguing?

A I approached them and tried to pacify them.

Q Where you able to pacify the three?

A No, sir.

Q What happened after you failed to pacify them?

A Suddenly accused hit him with a bottle.

COURT

Q Hit who?

A Ricardo.

x x x x

Q What part of the body was Ricardo hit?

A His forehead. (Witness pointing to his left forehead.)

Q How many times did accused hit Ricardo?

A Once.

Q What happened to Ricardo?

A He fell.

Q And what happened after Ricardo fell?

A The accused rode on the stomach and repeatedly stabbed him.

x x x x

Q How about this kumpadre of the accused by the name of Berting, what was he doing in the meantime while accused was hitting the victim with an empty family size coke bottle?

A He repeatedly boxed him.

Q How about at the time when accused was astride the victim and stabbing the victim, where was the Kumpadre, Berting?

A He was helping Boy in stabbing the victim.

Q Where did you proceed after you ran away from the scene?

A In my place of work.

Q Did you have a chance to go back to the scene where Ricardo was stabbed?

A No, sir, I just told my companion that Ricardo Tayubong was stabbed by Boy Dilat. (TSN, June 23, 1971, pp. 14-16. Emphases supplied.)

x x x x

Q You are very positive that they were only three at that time they were having a heated discussion?

A Yes, sir.

Q Is it not a fact that you executed a statement before the police and at this time may I request that this statement be marked as Exhibit "1" for the accused, wherein you stated that there were four persons, the accused, his companions and two persons who were confronting the victim ...

Fiscal Herrera

What particular portion of the document?

Atty. Barias

Q In answer to this question-"Bigla na lang pinalo ng bote ng family size ni Boy Dilat itong si Cardo alias Hapon. Eh nuong bumagsak si alias Hapon, ay sinakyan ni Boy Dilat at pinagsasaksak niya habang nakahiga samantalang pinagsusuntok naman nila alias Berting at dalawang kasama nila." What can you say to this statement of yours?

A When you asked me a while ago I said two companions.

COURT

Q The truth is that in that place where the victim was conversing with the accused, how many persons were there all in all?

A They were five in all.

Q Namely?

A Two persons I didn't know.

x x x x

Atty. Barias

Q And these two persons whom you noticed you did not know which side they were taking during the altercation?

A They were for Boy Dilat.

Q Why did you know that they were for Boy Dilat?

A When the victim was lying, they were helping each other. (TSN, June 23, 1971, pp. 18-19)

On the other hand, Nestor Cabaluna, uncle of the deceased, testified:

Q Do you know if anything happened to Ricardo Tayubong sometime on April 26, 1970?

A On April 27, 1970, I went to the hospital.

COURT

Q Why did you go to the hospital?

A I was informed that he met an accident.

Fiscal Herrera

Q What accident?

A That my nephew was stabbed.

x x x x

Q Did you see Ricardo Tayubong when you went to the hospital?

A Yes, sir.

x x x x

Q What did you talk about?

A I asked him who stabbed and hit him?

Q Did Ricardo answer you?

A Yes, sir.

Q What did he say?

A Boy Dilat and his many companions. (TSN, June 23, 1971, pp. 9-10)

Be it noted that eyewitness Esmeralda was unsure how many adversaries the deceased had. At first he firmly said the deceased was arguing with the accused and his Kumpadre only. But when confronted with a prior statement he had made, he admitted that there were two other unidentified persons who were with the accused. Again, Esmeralda initially alleged that while the accused (Boy) was stabbing the victim, Berting was "helping Boy in stabbing the victim," although it has never been categorically alleged or established that Berting was armed. Later, however, when Esmeralda went to his place of work immediately after the incident, he declared that Ricardo Tayubong had been stabbed by Boy Dilat.

There is no convincing proof of the relative strength of the protagonists, nor evidence that the companions of the accused were armed. Indeed, there is grave doubt as to the number of companions the accused had. Neither was there indubitable evidence as to the manner in which assistance was given to the accused by his companions.

Under the circumstances, we find absent proof beyond reasonable doubt that two or four persons acted in concert to overpower the deceased. At any rate, to appreciate abuse of superiority, what should be considered is not that there were three, four or more assailants of one victim, but whether the aggressors took advantage of their combined strength to jointly consummate the offense. Superiority in number does not necessarily mean superiority in strength. It is necessary to show that the aggressors acted in concert to secure advantage from their superiority in strength. Inevitably, therefore, they must have acted as principals. Note however that in the case at bar, the alleged co-principal (Berting) does not even appear to have been indicted.

With such an inconclusive state of evidence as to abuse of superiority and taking into account the rule of interpretation in criminal law that reasonable doubts must be resolved in favor of the accused, we conclude that the finding of abuse of superiority cannot be sustained.

In the brief for the accused, it is admitted that he was responsible for the killing of the deceased. But it is averred that the killing was not attended by abuse of superior strength. Hence, the prayer that the decision of the Trial Court "be modified so that the accused be found guilty of homicide with the aggravating circumstance of recidivism." (Rollo, p. 43.) We find this posture amply supported by the evidence.

WHEREFORE, the accused is hereby found guilty of homicide attended by the aggravating circumstance of recidivism and sentenced to suffer the penalty of ten (10) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum. Cost de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, and Escolin, JJ., concur. Teehankee, J., no part. Makasiar, J., in the result. Aquino, J., see dissent.

DISSENTING OPINION

AQUINO, J.:

I dissent. At about two o'clock in the morning of Sunday, April 26, 1970, Ricardo S. Tayubong, 37, a chicken butcher who resided at the Divisoria Market, was repeatedly stabbed by four persons at the corner of Tabora and Comercio Streets, Binondo, Manila while "pacifying a group of troublemakers under the influence of liquor" (Exh. G).

He was brought to the hospital where he died six days later or on May 2, 1970. The autopsy disclosed that he had a fractured skull. He sustained four lacerated wounds in the head and five stab wounds in the chest, right arm and abdomen (Exh. E) A police medico-legal officer testified that the stab wounds could have been inflicted while the victim was standing (8 tsn., June 23, 1971).

Romeo Esmeralda, also a chicken butcher, an eyewitness, testified that in the course of an altercation, Federico Basas, 24, clobbered Tayubong's forehead with a coca-cola bottle. That blow caused Tayubong to fall on the ground. Then, Basas rode astride on Tayubong and repeatedly stabbed him. At the same time, Berting, the compadre of Basas, and two other individuals boxed and assaulted Tayubong (15, 19 tsn., June 23, 1971).

Basas was apprehended more than a year later, or on May 8, 1971, at the corner of Comercio and Tabora Streets when he was making trouble in that place (26 tsn., June 23, 1971).

After a preliminary investigation, Basas and two unidentified persons were charged with murder in an information dated May 11, 1971.

After trial, Judge Manuel R. Pamaran convicted Basas of murder qualified by abuse of superiority and aggravated by recidivism and sentenced him to death. Basas did not appeal.

Basas admitted during the trial that he was at the scene of the crime and that he was even wounded by Tayubong. Basas also admitted that he had been confined at the Welfareville Institution at the instance of his mother. He was convicted of homicide in 1962 when he was a teenager and he served sentence for four years in the New Bilibid Prison and the Davao Penal Colony. He was a member of the Sigue-Sigue-Commando gang. His compadre, Berting, was also a member of that gang.

Rafael Dinglasan, the counsel de oficio assigned to defend Basas in this automatic review of the death sentence,

did not controvert in his two-page brief the judgment of conviction. His sole assignment of error articulated in two sentences, is that the prosecution's evidence does not prove beyond reasonable doubt the qualifying circumstance of abuse of superiority and, therefore, the crime should be characterized as homicide.

That contention is not well-taken. As correctly argued by the Solicitor General, Esmeralda's testimony proves that Basas, Berting and their two companions helped each other in assaulting Tayubong. They took advantage of their combined strength in assaulting the victim.

Basas, an illiterate person, married with three children, in his letter to Chief Justice Makalintal, received in this Court on July 17, 1974, said that he was convicted of a "pagkakasala na wala akong kinalaman." He pleaded for assistance "na kung maari sana ay bumaba po ang sentensiyang ibinigay sa akin alang-alang lang po sa aking tatlong anak" (p. 87, Rollo).

I vote for the affirmance of the conviction for murder and for the imposition of reclusion perpetua since the aggravating circumstance of recidivism may be offset by intoxication. Hence, the death penalty should not be imposed.

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