

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS CAMBA Y VELASQUEZ, ACCUSED-APPELLANT.

G.R. No. L-36471. November 19, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of a decision which imposed the death penalty on CARLOS V. CAMBA.

Before the Circuit Criminal Court of Manila, Camba was accused of murder with assault upon an agent of a person in authority said to have been committed in the following manner:

"That on or about October 10, 1972, in the City of Manila, Philippines, the said accused, conspiring and confederating with Rolando Dungon y Miranda, a minor 15 years of age, who has also been charged of same offense with the Juvenile Court, and another whose identity and whereabouts are still unknown, and helping one another with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Pat. Reynaldo Gongora y Sta. Ana, a qualified and duly appointed member of the Manila Metropolitan Police and acting as such, and therefore, an agent of a person in authority, with a dagger wrapped with a comics magazine, while the latter was responding to a robbery-snatching case, thereby inflicting upon said Pat. Reynaldo Gongora y Sta. Ana a mortal wound which was the direct cause of his death thereafter." (Expediente, p. 1.)

Camba pleaded not guilty when arraigned on October 20, 1972. (Id., p. 5.) After trial, he was sentenced as follows:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery with assault upon an agent of a person in authority and there being no modifying circumstance to consider, the Court sentences him to DEATH, to indemnify the heirs of the deceased herein, REYNALDO GONGORA y STA. ANA, the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 by way of moral damages, the sum of P10,000.00 by way of exemplary damages and to pay the costs." (Id., pp. 101-102.)

A "Bluebird Bus" with plate No. 200 was on its usual Guadalupe, Makati, to Quiapo, Manila, and return run on October 10, 1972. One of those in the bus was Rodrigo Eser, a mechanic, who was tasked to service it. According to Eser who was seated at the rear, three men boarded the bus under the Quezon bridge in Quiapo on its return trip to Guadalupe. Near Tejeron street, many of the passengers debarked, including two of the three men who had boarded under Quezon bridge. A passenger shouted that his wrist watch had been snatched whereupon Patrolman Reynaldo Gongora who was in uniform and also a passenger went to the rear of the bus in order to assist the victim of the snatching but before he could do so the third man who was left behind stabbed Patrolman Gongora. The assailant was Carlos Camba who was able to escape. It was then about 5:40 p.m.

Patrolman Gongora was brought to the Makati Medical Center where he died on the same day. The post-mortem examination revealed the following:

"EXTERNAL INJURIES:

(1) Hematoma, lateral surface of the neck measuring 210 x 3.0 cm.

(2) Multiple seven (7) stab wounds located as follows:

Two (2) at the left anterior chest both penetrating and causing downward both lacerating the apex of the heart, one lacerating the left lung and liver, two lacerating the stomach.

One (1) thru and thru the left arm.

Two (2) in the right arm.

One (1) in the testicle.

One (1) at the palmar surface of the left hand.

(3) Swelling of the ankle joint.

INTERNAL FINDINGS:

Two stab wounds at the apex of the heart, one not penetrating into the chamber of the heart.

One stab wound in the lower lobe of the left lung.

One stab wound thru the diaphragm.

Two stab wounds in the stomach.

CAUSE OF DEATH:

Multiple seven (7) stab wounds lacerating the left lung, right ventricle of the heart, diaphragm and stomach."

(Exh. L.)

In the light of the foregoing, it is useful to note the comment of the court a quo as follows:

"It is the observation of the Court that the crime committed is more of robbery with homicide for the reason that Pat. Reynaldo Gongora was killed while responding to the call for help of a victim of snatch-ing and it has been held that in case of robbery with homicide, it is not necessary that the person killed is the very victim of robbery. The person killed may even be one of the robbers (People vs. Carunu-ngan, CA-G.R. 9986-R, October 17, 1957; People vs. Cardon, et al., CA 56 O.G. 3404)." (Expediente, pp. 100-101.)

The appellant claims that the trial court committed the following errors, namely:

"I. THE COURT ERRED IN CONVICTING THE ACCUSED OF THE OFFENSE CHARGED DESPITE THE FACT THAT WHAT WAS PROVEN WAS A DIFFERENT CRIME NOT NECESSARILY INCLUDED IN THE OFFENSE CHARGED NOR DOES THE OFFENSE CHARGED NECESSARILY INCLUDE THE OFFENSE PROVED.

"II. THE COURT ERRED IN FINDING THAT THE PROSECUTION WITNESSES POSITIVELY IDENTIFIED THE ACCUSED DESPITE THE NUMEROUS INCONSISTENCIES AND IMPRO-BABILITIES IN THEIR TESTIMONIES CONSE-QUENTLY DISREGARDING THE DEFENSE OF ALIBI PUT UP BY THE ACCUSED." (Brief, p. 1.)

On the first assignment of error, the appellant claims that he was charged, arraigned, tried and convicted for the crime of murder with assault upon an agent of a person in authority but the facts show that the crime committed

was different - robbery with homicide. Hence his conviction for murder with assault should be set aside.

Upon the other hand, the Solicitor General claims that there is no disparity between the offense charged and that which was proved during the trial. He insists that the charge in the information spells the crime of murder, not robbery with homicide; and the evidence shows that the former, not the latter was committed.

The first claim is partly correct; the second claim is completely wrong.

A careful scrutiny of the information will readily reveal that the charge against the appellant is robbery with homicide. This is manifest from the phrase, "while the latter (the deceased) was responding to a robbery-snatching case." In fact, the appellant's brief makes the same conclusion; it says, "a close scrutiny of the same information reveals that the crime committed is the special complex crime of Robbery with Homicide." (Brief, p. 4.) And it should be borne in mind in this connection that the label or caption in the information in respect of the crime committed is not controlling - what matters are the material allegations in the information. Also to be noted is the correct observation by the court a quo that the evidence proved that the crime committed was robbery with homicide and that there can be such a crime albeit the person killed was not the robbery victim.

Since the charge in the information is robbery with homicide and the evidence is to the same effect, the mistake in designating the crime both in the information and in the judgment is not fatal.

The second assignment of error questions the factual findings of the trial court as to the appellant's identity and as the person who caused the death of Patrolman Reynaldo Gongora.

In support of the above, the prosecution had two witnesses, namely: Rodrigo Eser and Eleazar Pangilinin. To contradict them, the appellant presented witnesses to support his alibi.

The narration of facts given above is based primarily on Rodrigo Eser's testimony so that it is not necessary to re-state it. This witness positively identified the appellant as the person who stabbed Patrolman Gongora on the basis of the following: (1) he had stared repeatedly at the three men who boarded the bus because they told the driver to stop several times but they did not alight; (2) he had seen Camba at the corner of Paz and Gregorio streets in Paco before the incident; and (3) he said that Camba had a mole on his chin which turned out to be true.

Pangilinin's testimony corroborated that of Eser. He further testified that it was he who wrested the fatal weapon (Exhibit D) from Camba. And in Pangilinin's statement (Exhibit F) he said that Camba wore a striped T-shirt and maong pants and said garments were recovered from Camba when he was apprehended in his house on October 12, 1972.

Commenting on Eser's testimony the trial court said:

"The Court has likewise observed that there is sincerity in the testimony of Eser for the reason that at 10:35 p. m. of October 10, 1972, the date of the incident, or barely five hours after the incident and before the arrest of accused, Eser already executed a statement before the police (Exhibit "G") wherein he spontaneously narrated what he testified to in Court and emphatically stated, among other things, that the one who stabbed the police officer is around 5'3" and with a mole. Upon apprehension of the accused, he was found to be around that height although he claimed to be only 5'2" and likewise with a mole on the chin." (Expediente, pp. 92-93.)

As to Pangilinin, the trial court had this to say:

"The testimony of Eser is further strengthened by the testimony of Eleazar Pangilinin who likewise declared with the same spontaneity and frankness that when the victim who was then in a policeman's uniform went towards the rear of the bus when his attention was called by the victim of snatching, he was immediately stabbed by the accused. Accused and the victim even grappled for the possession of the bladed instrument

causing the policeman to fall on the rearmost seat and thereafter, was still stabbed by the accused." (Id., p. 93.)

We are not prepared to disturb the findings of the trial court on the credibility of Eser and Pangilinson for the simple reason that it was in a better position to make the determination and there is nothing in the record to justify reversal of its findings.

Camba's defense is alibi. He said that on October 10, 1972, at about 1:00 p.m. he was at home; he "stepped out to work near Peñafrancia, Paco, Manila, less than a kilometer away;" he worked from 1:15 p.m. to 5:15 p.m. when he returned home; he wore that afternoon a pink T-shirt and cream pants; he took a snack at his house and thereafter played badminton for "less than an hour" with William Tengson and Lorna [Maria Lorna Lemosnero]. William and Lorna testified that Camba played badminton with them.

We reject the defense of alibi and quote with approval the trial court's observation in respect thereto:

"Accused interposed the defense of alibi but it is, however, a weak defense not only because of the facility with which it is fabricated but also because it is so easy for witnesses to get confused as to the dates (People vs. Ramos, L-17402-03, August 31, 1963; People vs. Esmael, et al., L-28533, February 24, 1971). It cannot prevail in the face of positive identification by prosecution witnesses (People vs. Peralta, et al., L-19019, October 29, 1968; People vs. Tanjalali Gajali, et al., No. L-28534, July 31, 1972). Moreover, for alibi to prosper, it is not enough to prove that defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time (People vs. Elmer Estrada, L-26103, January 17, 1968; People vs. Briosos, et al., L-28482, January 30, 1971).

"In this particular case, the defense of alibi of the accused does not measure up to that standard for he was positively identified by Eser and Pangilinson whom the Court considered to have passed the test of credibility because they both appeared to be natural and truthful in their behavior, giving quick, frank and straightforward answers to all material questions in an easy and fluent manner. There was no showing of physical impossibility for accused to be at the scene of the crime as he claimed that at the time of the commission of the offense, he was only in Barrio San Jose, Paco, Manila, where he lives and this Court can take judicial notice that from said place to the crime scene it will not take more than an hour to travel." (Id., pp. 97-98.)

The trial court found the appellant guilty of murder qualified by treachery but without any other modifying circumstance. The crime was compounded, according to the trial court, with assault upon an agent of a person in authority. In this light the appropriate penalty, pursuant to Art. 48 of the Revised Penal Code, is death.

If it be held as We do that the crime committed was robbery with homicide, the result will be the same for the aggravating circumstances of treachery and contempt of public authority will have to be assigned.

The death penalty, however, cannot be imposed on the appellant who was only 20 years old when he committed the crime for lack of the necessary votes.

WHEREFORE, the judgment of the court a quo is modified by reducing the sentence on the appellant to reclusion perpetua and consolidating the damages in the amount of P30,000.00. No special pronouncement as to costs.

SO ORDERED.

Teehankee, Acting C.J., Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Makasiar, J., concurs in the result.

Fernando, C.J., on official leave.

Aquino, J., In the result. The crime charged and proven was murder.

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