

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESPERIDION ALEGARBES, JR., DEFENDANT-APPELLANT.

G.R. No. L-49761. September 21, 1987

Ponente: YAP, J.

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YAP, J.:

In a decision dated December 15, 1978, the then Court of First Instance of Lanao del Norte, Branch III, Iligan City, convicted the accused Esperidion Alegarbes, Jr. for the murder of Arlington Rara and sentenced him to death, and to pay the heirs of the victim the amount of P12,000.00 by way of compensation for the death of the victim, and P10,000.00 by way of moral damages.

This case is before us on automatic review on account of the death penalty imposed on the accused.

The prosecution's version is as follows: The crime was committed at about 8:30 o'clock in the evening of April 23, 1978 right in the poblacion of Bacolod, Lanao del Norte. Earlier that evening, the victim Arlington Rara was mauled by a group of men led by a certain Gorio Balani. Rara was still lying in the middle of the road when two soldiers, in the company of some civilians who reported the incident, arrived. The two soldiers raised Rara up and led him to a store nearby where he could sit. They investigated Rara about the incident. Rara could not identify his assailants as he was not a resident of the place, so the two soldiers decided to bring Rara to their checkpoint to rest.

Before they could take Rara to the checkpoint, the accused Esperidion Alegarbes, Jr., who was then a soldier connected with the 40th Infantry Battalion and designated as Assistant Chief of the Military Police assigned in Bacolod, Lanao del Norte, arrived. Alegarbes Jr. started investigating Rara. When Rara could not identify the persons who mauled him, being a stranger to the place, Alegarbes immediately hit Rara with the back of his left hand, Causing the latter to fall to the ground. Alegarbes pulled the victim's hair with his left hand and raised him. Thereafter, Alegarbes fired his revolver at the side of Rara, but not hitting him, and again asked him for the identity of the person who mauled him. When Rara could not name his attackers, Alegarbes took off the victim's belt and whipped him with it until its buckle was taken off.

Rara knelt before Alegarbes and asked forgiveness. That act apparently angered Alegarbes and he asked the victim why he should ask for forgiveness from him when he was not God and he was not the one who mauled him. Immediately after saying this to the victim who was still kneeling before him, Alegarbes pulled his hair with his left hand and simultaneously drew his revolver with his right hand and shot the victim pointblank, hitting him on the neck. The victim fell down, sitting on the ground, with head bent downward.

One of the soldiers present approached the victim and verified where he was hit. Alegarbes must have come to his senses, for he ordered those present to take Rara to a doctor. Rara was already hovering between life and death when he was brought to the clinic of Dr. Daranan, where he died shortly thereafter despite efforts to save his life.

The victim's cadaver was brought to the Municipal Auditorium where it was autopsied by Dr. Guillermo Layos,

the Municipal Health Officer of Bacolod, Lanao del Norte. The doctor issued a post-mortem report[1] wherein he stated the following findings:

1. Wound bullet about 1/3 cm. diameter, edge inward, over the anterior aspect neck, about 1 cm. below the adam's apple, on probing it is directed slightly posteriosly upward.
2. Powder burns over the exterior aspect of neck.

According to the doctor, who testified at the trial, the presence of powder burns on the neck of the victim showed that the gun was fired only about one (1) foot away by his assailant.

The version of the defense was as follows: At 9:00 o'clock in the evening of April 23, 1978, he was on patrol in the market place of the poblacion of Bacolod, Lanao del Norte. When he was at the checkpoint, a civilian reported that a person was being mauled by a group of men. When the accused was told that a person was lying on the road, he got his service rifle (Armalite) and proceeded to the place. He was also armed with a hand grenade. He had no other firearm. When he was on his way to the place where the person was allegedly mauled, the accused heard a shot. By experience, he knew that the shot was from a .22 caliber firearm. When he arrived at the place, he was informed that five persons participated in the mauling. Then, a person passed at his back and tried to assault him, so he blocked him with his Armalite and fired a warning shot upward. Another civilian told appellant that his warning shot hit somebody and he answered that it was impossible for him to hit anybody because he fired his shot upward with his Armalite. The accused then inspected the victim and when he saw the wound in the neck, he ordered that the victim be brought to the clinic.

From the evidence adduced by the prosecution and the defense, the court a quo made the following findings: In the evening of April 23, 1978 at around 7:00 o'clock, the victim Arlington Rara, was seen lying unconscious on the road at the poblacion of Bacolod near the house of Pablita Mejorada who informed the persons in the store of Martin Pumicpic, who was her neighbor, about the man lying on the road. Two persons, namely, Damian Argao and Andres Pumicpic, who were then in the store went to the MP Detachment which was around 100 meters away to inform the soldiers of the presence of a man lying on the road. Two soldiers from the detachment responded and went to the place where the man was lying unconscious on the road and brought him to the premises of the store of Martin Pumicpic. They tried to find out from the victim who were responsible for mauling him. He answered them that he did not know. The two army men were about to bring him to the MP Checkpoint when the accused, Esperidion Alegarbes, Jr. arrived at the scene. The accused was wearing short pants and a white T-shirt. Alegarbes proceeded to investigate the victim Rara as to who mauled him. Rara could not give the identity of the person who mauled him. After repeated questioning by Alegarbes and the same answer was given by Rara that he did not know who mauled him, the former struck the latter with the back of his left hand, causing the latter to fall to the ground. Alegarbes then followed this by pulling the victim's hair up, and, taking his revolver from his waist, he fired toward the side of the victim but not hitting him. Still not getting an answer from the victim as to who mauled him, Alegarbes then got hold of the belt of the victim and whipped him 5 times at the back. The victim knelt before the accused and asked forgiveness. Alegarbes answered, "Why should you ask forgiveness from me when I am not God and I was not the one who mauled you?" Then he pulled up Rara by the hair and while doing so, he again took his revolver from his waist and shot Rara hitting him on the neck, below the Adam's apple.

The trial court did not give credence to the accused's defense that the victim tried to assault him, firstly because the victim was already groggy after having been mauled by unknown persons. Secondly, the three prosecution's eyewitnesses, namely, Damian Argao, Andres Pumicpic and Rey Salvacion, belied the claim of the accused that the victim tried to assault him.

Appellant's assigned errors are as follows:

1. Lower court erred in holding the accused responsible for the death of Arlington Rara and in convicting the accused of the crime of murder;
2. That, assuming the accused to be responsible for the death of Arlington Rara, the lower court erred in considering against the accused the qualifying circumstance of treachery;
3. That, assuming the accused to be responsible for the death of Arlington Rara, the lower court erred in considering against the accused the ordinary aggravating circumstances of abuse of public position and cruelty;
4. That, assuming the accused to be responsible for the death of Arlington Rara, the lower court erred in not considering in favor of the accused the mitigating circumstances of lack of intention to commit so grave a wrong as that committed and voluntary surrender.

We find no merit in appellant's assignments of error.

The court's finding that the killing of the victim by the appellant was deliberate, intentional, cruel and treacherous is supported by the testimonies of Damian Argao, Andres Pumicpic and Rey Salvacion, who were eyewitnesses to the incident. None of the three had reason to testify falsely against the appellant. The trial court believed the testimonies of these three witnesses, and we have no reason to disturb its findings.

On the other hand, appellant's version was not corroborated. No witnesses, including his soldier companions, testified for him.

It could not be true, as alleged by appellant, that he heard a shot when he was on his way to the checkpoint. His version made it appear that the victim was already shot at the time he arrived on the scene. But, according to the appellant, when he arrived at the scene, someone tried to attack him from behind and he fired a warning shot upwards with his Armalite, which probably hit the victim. The appellant's version is inconsistent. Besides, appellant's uncorroborated version cannot prevail over the testimonies of three eyewitnesses who narrated the true version of the incident.

Treachery was present in the killing, because the victim was not in a position to defend himself when he was unexpectedly shot by the accused. Unarmed, he was a helpless victim of the senseless assault by the accused.

The trial court likewise did not err in considering both aggravating circumstances of abuse of public position and cruelty. Appellant undoubtedly took advantage of his public position as a soldier, when he maltreated and killed a civilian victim of mauling, whom he was supposed to protect in the performance of his duties.

The cruelty inflicted on the victim before the accused shot him, boxing him, belting him with his (the victim's) own belt, threatening him by firing his pistol in the air, is abundantly clear. The victim was kneeling and helpless, and yet the appellant with abuse of superior strength, consciously and deliberately did everything to torture and intimidate him. His actuations showed the appellant to be heartless and without mercy. He knew that the deceased was not the aggressor, but was the victim of a physical assault by unknown persons, and yet for the flimsy reason that the victim could not identify those who mauled him, appellant decided to turn his inexplicable ire on him.

The mitigating circumstance of voluntary surrender cannot be considered in his favor, because it is not shown that there was a spontaneous acknowledgement by the accused of his guilt, or that he wished to save the authorities from the trouble and expense incurred in his capture. In the case at bar, appellant did not actually surrender to the police; what he did was merely to inform the police headquarters about the incident. In fact, appellant tried to mislead the authorities by claiming that he was not the one who shot the victim.

We find no reversible errors committed by the trial court in finding the accused guilty of the offense charged beyond reasonable doubt.

Accordingly, the decision appealed from is hereby affirmed, with the modification that the penalty imposed is reclusion perpetua, instead of death, in view of the provisions of the 1987 Constitution, and the indemnity is increased to P30,000.00. No costs.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] Exhibit A.

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