

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAURENZO (LORENZO) ALQUIZAR, DEFENDANT.

G.R. No. L-35369. August 21, 1979

Ponente: AQUINO, J.

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AQUINO, J.:

This is a review en consulta of the decision of the Circuit Criminal Court at Pasig, Rizal, convicting Lorenzo (Lorenzo) Alquizar of murder, sentencing him to death and ordering him to pay the heirs of Fernando Rivas an indemnity of P22,000 (Criminal Case No. 988). He did not appeal from that decision.

It is not disputed that in the afternoon of April 10, 1971, Alquizar, 31 or 32, a native of Cebu City and a prisoner in the national penitentiary at Muntinlupa, Rizal since 1963, inflicted two stab wounds on Rivas, another prisoner, while the two, together with more than eighty prisoners, were being brought from the prison kitchen to Building 13. Rivas died at the prison hospital at four-fifty-five on that same afternoon.

He sustained a fatal stab wound eleven centimeters deep in the iliac region which cut an artery and another stab wound four centimeters deep in the back below the right shoulder blade or infrascapular region.

Alquizar testified that he acted in self-defense. His version was that on that afternoon, after coming from the prison kitchen, together with around eighty prisoners and after he had reached his brigade (meaning he was out in the open) and after the prisoners were counted, Rivas, who was following him, boxed him on the right temple. That blow made him dizzy. In retaliation, he boxed Rivas.

Then, Rivas drew a bladed weapon which Alquizar grabbed from Rivas by twisting his right hand. With that weapon, he stabbed the latter in the abdomen. Rivas ran to the "bar stand" or the office of the officer of the day where he collapsed. The prison guard, Ludovico Bautista, hit Alquizar on the left ear with his club. He allegedly surrendered to Bautista. He was brought to the officer of the day. He told the officer of the day that he stabbed somebody but he did not claim that he acted in self-defense (20 tsn May 10, 1972).

The stabbing took place not inside the "gola" but near the gate of the brigade or Dormitory 13-C in the presence of more than eighty prisoners, Alquizar's "co-kitchen boys".

Rogelio Llamas, a native of Cebu City, who was convicted of estafa through falsification and was also a prisoner working in the kitchen, corroborated the testimony of Alquizar that he was boxed by somebody, that Alquizar retaliated by boxing his assailant and that the latter drew a knife and attacked Alquizar.

Antonio Rivera, a native of Cebu City, a prisoner convicted of robbery and evasion of service of sentence, the "assistant mayor" of a brigade and a member of the Oxo gang, also corroborated Alquizar's testimony that Rivas boxed Alquizar. Rivera did not know what Alquizar did to Rivas after he was boxed by the latter.

In rebuttal, prison guard Bautista testified that Llamas was not at the scene of the killing. He was not among the more than eighty prisoners who were to be brought to Dormitory 13-C.

Prison guard Nicolas Bersabe testified that Rivera in the afternoon of April 10, 1971 was confined in Dormitory 7-C and that he was not near the gate of Building 13 where the killing was perpetrated.

Certain circumstances militate against Alquizar's plea of self-defense. He made it appear that Rivas boxed him without any provocation. He did not state the motive as to why Rivas boxed him. According to his version, he did not even know Rivas by name. He did not explain why Rivas would dare to box him. He (Alquizar) had undergone training as a boxer and was a well-known boxer in prison.

It is not plausible that Rivas would box Alquizar near the gate of Building 13 in the presence of more than eighty prisoners. If Rivas had any felonious intent against Alquizar and if, according to his version, Rivas was armed with an improvised bladed weapon, then it is not probable that Rivas would merely box him initially. He would have stabbed Alquizar at the outset instead of waiting for Alquizar to strike him and then drawing his weapon after he was hit by Alquizar.

Also incredible is his testimony that he grabbed the blade of the weapon (Exh. D) but his hands were not injured. He merely sustained a slight wound in the small finger.

Moreover, right after the stabbing, Alquizar was brought to the officer of the day. He did not apprise that official that he acted in self-defense.

On the other hand, the prosecution's version was that at about three-forty in the afternoon of April 10, 1971, Bautista, the prison guard, was leaning near the window of the "gola" between "post towers" Nos. 11 and 13 of the national penitentiary in Muntinlupa, Rizal. He had just come out of the prison kitchen and had escorted eighty-five prisoners who were to be returned to their dormitory in Building 13. The kitchen was about one hundred fifty yards away from the dormitory. Bautista was waiting for the keeper of the dormitory.

He heard a shout or exclamation of pain, "Inang ko po", emanating from the direction behind his back. He turned and saw Alquizar stabbing Rivas. He approached them and hit Alquizar on the head with his club to prevent him from killing Rivas. Alquizar held the clothes of Rivas and stabbed him for the second time. Rivas ran towards the office of the officer of the day pursued by Alquizar. Bautista and Eulalio G. Solmayor, the keeper of Buildings 11 and 13, blocked the path of Alquizar. He was apprehended by the two prison employees.

We find the prosecution's version to be credible and a sufficient proof that Alquizar did not act in self-defense.

Alquizar impugned the voluntariness of his confession. His counsel de oficio contends that no probative value should be given to it. He repeatedly testified that he signed it because he was maltreated. The confession was taken about four days after the stabbing. Why it took the investigator more than seventy-two hours to take Alquizar's statement was not explained.

The confession was signed in the presence of two witnesses and it was sworn to before an administrative officer of the Bureau of Prisons. The witnesses and the swearing officer did not testify at the trial. There is no showing that the swearing officer read to Alquizar that confession.

It is in the Tagalog dialect. It does not contain any notice to the accused that he had the right to remain silent and that any statement made by him might be used against him. In that statement, it appears that when he was asked whether he knows Tagalog, his answer was: "Maka intindi, sir, pero hindi masiyadong makasalita" ("I understand it, sir, but I do not speak it well."). However, an examination of Alquizar's answers in his confession shows that he speaks Tagalog well. This may indicate that the answers therein were not in his own words. Cebuano is his native dialect.

We hold that the confession cannot be admitted as evidence against Alquizar. There is doubt as to whether it was

freely and voluntarily made. The investigator did not testify as to how he took the confession of Alquizar.

In fact, there is a discrepancy between the confession and the investigator's report which was made ten days after the stabbing. According to the confession (Exh. B), Alquizar allegedly told the investigator, Buenaventura de la Cuesta, that he stabbed Rivas because he thought that Rivas was a member of the Sigue-Sigue gang that was responsible for the killing of Alquizar's alleged cousin, Salvador Alcontin. (Alquizar denied that Alcontin was his cousin.) However, De la Cuesta in his report stated that both Alquizar and Rivas were members of the Sputnik gang.

Thus, De la Cuesta said: "Napagalaman ng tagapagsiyasat matapos mapagaralan ang mga natipong impormasyon na ang biktima (Rivas) ay nasaksak dahil (sa) ito'y napaghinalaan ng salarin (Alquizar) na kasapi sa pangkat ng Sputnik. Na kaya napaghinalaang kasapi sa nasabing pangkat ang biktima (ay) dahil sa ito'y madalas nakikitang sumasama at nakikipagusap sa mga kasapi ng Sputnik na ang pangkat na ito at ang pangkat ng mga Bisaya na kinaaaniban ng salarin (Alquizar) ay magkaalyado pa x x x" (Exh. A, p. 17, Record). The investigator was confused in assuming that Rivas and Alquizar belonged to allied prison gangs.

It was alleged in the information that the killing was qualified by treachery. No other qualifying circumstance was alleged. Treachery was not proven by means of the testimony of Bautista, the only prosecution witness who saw the stabbing. He did not witness the inception of the stabbing.

The first thing that he witnessed was that Alquizar had already inflicted the first stab wound on Rivas. He saw them because Rivas gave a cry of pain. Bautista's back was turned when Alquizar initially assaulted Rivas.

It is the confession that may prove that the assault was treacherous. But since, as already stated, no credence can be accorded to the confession, only Bautista's testimony should be taken into account as to the manner of the attack. His testimony is deficient on that point. It may be noted that since the first wound was inflicted in the abdomen, the logical conclusion would be that Rivas and Alquizar were face to face when the initial assault was made. That circumstance may negative the existence of treachery.

Therefore, there is no justification for holding that the stabbing was treacherous. The prosecution's evidence on that point is not conclusive. Counsel de oficio is correct in contending, alternatively, that the killing should be characterized as homicide.

Alquizar was a quasi-recidivist because at the time he stabbed Rivas he (Alquizar) was confined in the national penitentiary, serving sentences for (1) robbery with slight physical injuries, (2) theft and (3) evasion of service of sentence. The penalty for homicide should be imposed in its maximum period pursuant to article 160 of the Revised Penal Code.

Alquizar is not entitled to an indeterminate sentence because he escaped from confinement and evaded the service of his sentences for robbery and theft (Exh. F). The mitigating circumstance of voluntary surrender to the authorities cannot be appreciated in his favor because, when he supposedly surrendered, he was still pursuing the victim after inflicting the stab wounds. Alquizar could have surrendered after Bautista had struck him with a club. Instead of doing so, he inflicted a second stab wound and pursued the victim. Alquizar was really apprehended or arrested. He did not surrender voluntarily.

WHEREFORE, the trial court's death sentence is set aside. Alquizar is convicted of homicide and sentenced to twenty (20) years of reclusion temporal maximum. The indemnity imposed by the trial court is affirmed. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Abad Santos, De Castro, and Santos, JJ., abroad.

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