

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR OBEDA, GUMERSINDO JURIAL, AGATON JURIAL, ARCADIO SAGUINZA, SESINANDO SABARES AND MELITON SALAS, DEFENDANTS-APPELLANTS.

G.R. No. L-40150. December 19, 1980

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PER CURIAM:

Automatic review of the death sentence[1] imposed by the Court of First Instance of Cebu (Branch X, Danao City) on Cesar Obed, who was charged with the crime of direct assault with murder. Charged with him were Gumersindo Jurial, Agaton Jurial, Arcadio (also known as Leocadio) Saguinza, Sesinando Sabares and Meliton Salas who, except Meliton Salas who was acquitted, were convicted only of direct assault and did not appeal the judgment[2] which imposed upon them lighter penalties.

Appellant Cesar Obed, made no statement of facts in his brief. For the facts as established by the prosecution's evidence, which are recited quite accurately, (with page reference to the transcript) in the People's brief, We can, therefore, reliably quote the following:

"On February 15, 1969, a tragic end came to the life of Pat. Antonio Maaghop of the Police Department of the Municipality of Pilar, Cebu. He died right in the tennis court where he was detailed as security man for the public dance being held thereat as one of the highlights of the San Juan barrio fiesta celebration. From the narration made by the prosecution witnesses of the circumstances surrounding Pat. Maaghop's death, the following may be given briefly in retrospect:

"Patrolman Antonio Maaghop, accompanied by Ruperto Maaghop and Dionisio Maaghop, arrived in the tennis court of Barrio San Juan, Municipality of Pilar, Cebu, at ten o'clock in the evening of February 15, 1969 (tsn, pp. 5-8, Feb. 11, 1972; p. 7, Jan. 27 [morning session] 1971). He was in his patrolman's uniform (tsn, pp. 19-20, 85, Feb. 11, 1972; Exh. "H" [unpaged folder of exhibits]; tsn, p. 8 Jan. 27, 1971 [morning session]). Already inside the tennis court when he arrived were Gumersindo Jurial, Arcadio (also known as Leocadio) Saguinza, Cesar Obed, Sesinando Sabares, Agaton Jurial. Meliton Salas (tsn, pp. 8-11, Feb. 11, 1972) and Sulpicio Borinaga (tsn, p. 5, Jan. 27, 1971 [morning session]).

"Not long after Pat. Maaghop's arrival an altercation ensued between Gumersindo Jurial and Autropio Gocela (tsn, p. 12, Feb. 11, 1972; tsn. p. 8, Jan 27, 1971 [morning session]). Conscious of his duty and believing the commotion might disrupt the public dance going on inside the tennis court, Pat. Maaghop fired two warning shots into the air and then approached the duo for the purpose of pacifying them (tsn, p. 12, Feb. 11, 1972; tsn, p. 9, Jan. 27, 1971 [morning session]). While he was approaching them, somebody pulled the bolo tucked at the right side of Eutropio Gocela's waist and threw it to the center of the tennis court (tsn, p. 11, Jan. 27, 1971 [morning session]; tsn, (p. 13, Feb. 11, 1972). Pat. Maaghop picked up the bolo and inquired as to who owned it, but nobody answered (tsn, p. 13, Feb. 11, 1972; tsn, p. 11, Jan. 27, 1971 [morning session]). At this juncture, he was suddenly ganged up by Gumersindo Jurial, Sesinando Sabares, Arcadio (also known as Leocadio) Saguinza and Agaton Jurial (tsn, p. 15, Feb. 11, 1972). Gumersindo Jurial held Pat. Maaghop by the head and right arm (tsn, p. 11, Jan. 27, 1971 [morning session]) while Sesinando Sabares held the Patrolman

by the neck and boxed the latter simultaneously at the left side of the body. Sabares then held the patrolman's left arm which was holding the bolo he picked from the tennis court, after subjecting the peace officer to fist blows (tsn, p. 12, Jan. 27, 1971). Leocadio Saguinza also boxed the back of Pat. Maaghop's neck (tsn, p. 12, Ibid.).

"While Pat. Maaghop was being held by Gumersindo Jurial by the head and right arm and while Sesinando Sabares was holding the officer's left arm, Cesar Obeda silently approached from behind and suddenly stabbed Patrolman Maaghop at the back with a kitchen knife (tsn, pp. 15-16, Feb. 11, 1972; tsn, pp. 14-15, Jan. 27, 1971 [morning session]). The impact of the stab thrust sent Pat. Maaghop reeling to the embankment, together with Agaton Jurial and Sesinando Sabares who were tightly and resolutely holding him (tsn, pp. 15-16, Jan 27 [morning session]). Pat. Maaghop tried his very best to stand up and run towards the inner portion of the tennis court, but fell on the ground face downwards. Sesinando Sabares immediately went astride the fallen and helpless patrol-man and boxed the latter. Thereafter, Sabares grabbed the bolo from the patrol-man's hand and made movements indicative of hacking the latter, but voluntarily desisted from doing so. Meliton Salas snatched the carbine from the patrolman soon after seeing the latter fall (tsn, p. 17, Feb. 11, 1972) and began brandishing the gun (tsn, p. 18, Ibid.). Because he (Salas) was so drunk at the time, Ruperto Maaghop was able to grab the carbine from him and surrendered the same to Pablo Wenceslao, barrio Captain of San Juan (tsn, pp. 18-19, *ibid.*). Sesinando Sabares ran away from the scene of the crime bringing with him the bolo he grabbed from the fallen patrolman (tsn, pp. 16-17 [morning session] and p. 2 [afternoon session]. Jan. 27, 1971).

"Luis Gallego, an eyewitness and one of those who attended the dance, then hurriedly went to the poblacion on a bicycle and informed Carina Maaghop of what happened to her husband (tsn, p. 1, Jan. 27, 1971, [afternoon session]). Carina lost no time in proceeding to the municipal hall and informed Pat. Jose Garciano, Jr. about the incident (tsn, p. 3, Jan. 27, 1971 [afternoon session]; tsn, p. 83, Feb. 11, 1972). Pat. Garciano, in turn, went to the house of the Chief of Police and informed the latter of the incident related to him by Carina (tsn, pp. 4-5, Jan. 27, 1971 [afternoon session]). Dr. Fernandez, the municipal health officer of Pilar was also informed (tsn, p. 5, *ibid.*, [afternoon session]; tsn, p. 1, Aug. 11, 1970).

"Accompanied by some members of the police department of Pilar, Dr. Fernandez went to the scene of the crime. He found the lifeless body of Pat. Maaghop on the tennis court (tsn, p. 1, August 11, 1970). Upon Dr. Fernandez's instructions, the body of Pat. Maaghop was brought to the municipal building where it was subjected to a post-mortem examination (t.s.n, p. 1, *ibid.*). Dr. Fernandez found in Pat. Maaghop's body the following injuries: 'Swelling of the upper lip; abrasion about 1/2 inch in size over the left molar bone with slight swelling; wound, diagonal, about 1 1/2 inches in length gaping at the level of the 3rd lumbar vertebrae located at the left side of the vertebral column with the lower end about 1 inch from the midline and the upper end about 1 1/2 inches from the midline, directed forward, slightly upward and laterally, about 3 1/2 inches in depth injuring the lower pole of the left kidney about 1/2 inch into the kidney parenchyma; that the last mentioned wound was 'fatal, and that death was caused by internal hemorrhage.' (tsn, pp. 2-5, Aug. 11, 1970; Exh. 'A' [unpagged folder of exhibits]; tsn, p. 84, Feb. 11, 1972)."[3]

Appellant formulated the following issues which, as he discussed them, would reflect the errors he would assign against the lower court:

"I.

Were the testimonies of Luis Gallego and Ruperto Maaghop sufficient and credible enough such as to erase any reasonable doubt as to its truth and reliability, considering that one was a nephew of the deceased Patrolman Antonio Maaghop and was a companion of the latter on that occasion?

"II.

Was Patrolman Antonio Maaghop performing the function or duties of an agent of a person in authority when

he was stabbed by Cesar Obeda?

"III.

Was not Cesar Obeda acting in self defense and in defense of strangers when he stabbed Patrolman Maaghop?"[4]

In assailing the credibility of the two star witnesses of the prosecution, Luis Gallego and Ruperto Maaghop, appellant would fault the lower court's finding of guilt against appellant, alleging that the law requires conviction to be based not on the weakness of the evidence of the de-fense but on the strength of the evidence of the prosecution. However, with his admission of having stabbed the deceased to death, the burden of proving the justifying circumstance of defense of self and that of strangers which appellant invoked shifts to him.[5]

From the version of the prosecution, the deceased was never the aggressor. He merely fired two warning shots in the air with his carbine when a heated altercation broke out in the midst of the dancing perimeter. He was there precisely on assignment to maintain order and prevent any disturbance of the peace in the area where people had gathered for the festive celebration.

The wound sustained by Leocadio Saguinza is, however, alleged as having been inflicted by Pat. Maaghop, and is pointed to as proof of the unlawful egression committed by the deceased, which is the basic element of appellant's plea of self-defense and/or defense of strangers. From the defense version, Pat. Maaghop was the aggressor from the beginning, swinging the bolo as people tried to approach him, as, in fact, Leocadio Saguinza was hit by Pat. Maaghop, inflicting a wound on his abdomen. Appellant himself was similarly struck at, but appellant evaded the blow and then stabbed the deceased as the latter swirled with the force with which he tried to strike at appellant.

While the wounding of Leocadio Saguinza might have been by the deceased, and before he received the fatal stab from appellant, it must have been while he was struggling to free himself from the hold of those who ganged on him. The deceased was then not in the act of actually committing an unlawful aggression against anybody when appellant stabbed him at the back. Appellant can, therefore, not successfully plead self-defense or defense of stranger with the indispensable element of unlawful aggression not being present.[6]

What evidently happened is that when Pat. Maaghop fired two warning shots, people got scared and started to scamper away. The announcer at the mike requested the altercation to be settled outside the dancing area, so as not to disturb the dancing. The request having been unheeded, appellant and his co-accused approached Pat. Maaghop to lead him outside of the tennis court, there to settle the heated argument for which he fired the two warning shots. This act must have pricked his pride for appearing as if he was the troublemaker to be pacified, instead of him being there to preserve peace and order. He must have then arrogantly refused to budge an inch from where he was, in a desire to show and assert his authority as a peace officer, prompting those who went near him to hold him on the hands and on the head, and wrest the bolo from him, but not before he hit, more by accident than by a deliberate hit, in his struggle to free himself of the hold of those who ganged on him. The person hit turned out to be Leocadio Saguinza.

From the above portrayal of what, in the highest degree of probability, happened, with how both testimonies of pro-secution and defense witnesses could be reconciled in those portions thereof which appear fairly credible, appellant's plea for acquittal on the justifying circumstances he has invoked cannot be upheld. Appellant's attack against the deceased was motivated, more to chasten a proud and stubborn man who, to him, appeared as the one causing trouble instead of one expected to maintain peace and order, than to defend himself or strangers from the deceased's unlawful aggression. The homicidal instinct that seems very strong in appellant, having been previously punished for homicide, must have been aroused to a high pitch with what met his eyes - an armed policeman not properly doing his duty, and instead posing a real danger to the safety of the mass of people

gathered to amuse themselves joyfully during a festive occasion, thereby breaking the peace himself. This is because, as the defense witnesses were unanimous in declaring, the deceased was drunk, and displayed an overbearing attitude and an unruly behaviour that caused more disturbance than what he was supposed to quell as a policeman. As pointed out in appellant's brief (pp. 6-7), the deceased exceeded himself in firing two warning shots instead of just blowing his whistle as provided for in the Police Manual, there being no "extreme emergency" that calls for firing shots in the air. The evidence does not disclose that he even talked to the protagonists in the verbal argument.

At the most, appellant can be allowed the mitigating circumstance of passion and obfuscation, angered by the sight of a policeman disturbing, rather than helping in, the peaceful enjoyment of the barrio folks on the occasion of their yearly local festivity. This mitigating circumstance, however, is offset by recidivism appellant having been previously convicted and punished for homicide.

Having been attended with treachery because appellant deliberately stabbed the deceased at the back, when the latter was entirely helpless to defend himself being then held in both hands, and also at the head, by appellant's co-accused when he delivered the thrust at the victim, as testified to by the state witnesses, the killing was murder, not simple homicide. Complexed with direct assault, murder would call for the imposition of the death penalty, the maximum penalty of the graver of the component crimes.^[7]

Appellant's contention that Pat. Maaghop may not be said to be in the performance of his police function when he was stabbed because instead of properly discharging his duties as a policeman in accordance with what the Police Manual directs, he was violating it, merits no serious consideration. No matter how faulty or erratic Pat. Maaghop may have performed his duty, the fact remains that he had no other intention or purpose in intervening when a heated verbal altercation broke out among the people in the dancing court, than to restore order which he was called upon to do as his official duty and responsibility under his special detail for that particular time and place. There can be no better showing to establish this fact than how appellant's co-accused accepted the verdict against them punishing them precisely for no other crime than that of direct assault.

WHEREFORE, the Court holds that appellant was correctly found guilty of direct assault with murder by the lower court and the imposition of the death penalty therefore is in accordance with law. The judgment appealed from is thus affirmed in toto, with costs de oficio.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs with the separate opinion of Justice Teehankee that the penalty imposed should be reclusion perpetua. There is no sufficiency of the ten votes required for the imposition of the death penalty. Accordingly, the sentence is one of reclusion perpetua.

Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion.

[1] Decision, p. 29, Rollo.

[2] Ibid.

[3] pp. 5-10, II, p. 303, Rollo.

[4] p. 12, II, p. 303, Rollo.

[5] People vs. Verzola, 80 SCRA 600; People vs. Quintab, 16 SCRA 146; People vs. Libed, 14 SCRA 410.

[6] *People vs. Tesorero*, 71 SCRA 579; *People vs. Apolinario, et al.*, 58 Phil. 586.

[7] Article 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period (as amended by Act No. 4000). The Revised Penal Code.

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