

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORO RODIL, DEFENDANT-APPELLANT.

G.R. No. L-35156. November 20, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Accused Floro Rodil was found guilty, beyond reasonable doubt, of the crime of murder by the Circuit Criminal Court of Pasig, Rizal, for the death of Lt. Guillermo Masana of the Philippine Constabulary. Accordingly, he was sentenced to death, to indemnify the heirs of the deceased in the amount of P12,000.00, to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages, and to pay the costs.

The information alleges:

"That on or about April 24, 1971, in the Municipality of Indang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a double-bladed dagger, with evident premeditation and treachery, and with intent to kill, did, then and there, wil-fully, unlawfully, and feloniously, attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties, inflicting upon him stab wounds on the different parts of his body which directly caused his death.

"Contrary to law."

From the evidence adduced by the prosecution, We glean the following facts:

At about 1:00 o'clock in the afternoon of April 24, 1971, the deceased, PC Lt. Guillermo Masana, together with PC soldier Virgilio Fidel, Philippine Coast Guard serviceman Ricardo Ligsa, and Patrolman Felix Mojica of Indang, Cavite, was having lunch inside a restaurant in front of the Indang market (pp. 2, 3, t.s.n., Oct. 30, 1971; pp. 10, 19, t.s.n., Nov. 22, 1971; p. 21, t.s.n., Jan. 20, 1972). While they were eating, they saw, through the glass panel of the restaurant, appellant outside the restaurant blowing his whistle. Their attention having been drawn to what appellant was doing, Lt. Masana, then in civilian clothing, accom-panied by PC soldier Virgilio Fidel, went out of the restaurant, approached appellant and asked the latter, after identifying himself as a PC officer, whether the gun that was tucked in his waist had a license. Instead of answering the question of Lt. Masana, appellant moved one step backward and attempted to draw his gun. PC soldier Virgilio Fidel immediately grabbed appellant's gun from appellant's waist and gave it to Lt. Masana. After that, Lt. Masana told the appellant to go inside the restaurant. PC soldier Virgilio Fidel followed. Lt. Masana and the appellant occupied a separate table about one and one-half (1½) meters from the table of Lt. Masana's three companions -- Fidel, Ligsa and Mojica (p. 10, t.s.n., Nov. 22, 1971). After the two were already seated, Lt. Masana placed appellant's gun on the table. After that Lt. Masana pulled out a piece of coupon bond paper from his pocket and wrote thereon the receipt for the gun, and after signing it, he asked appellant to counter-sign the same, but appellant refused to do so. Instead, he asked Lt. Masana to return the gun to him. Lt. Masana rejected appellant's plea, telling the latter that they would talk the matter over in the municipal building of Indang, Cavite. When Lt. Masana was about to stand up, appellant suddenly pulled out a double-bladed dagger and with it he stabbed Lt. Masana several times, on the

chest and stomach causing his death several hours thereafter (pp. 4, 5, 6, 7, 8, t.s.n., Oct. 30, 1971; pp. 10, 11, 12, t.s.n., Nov. 22, 1971).

While the stabbing incident was taking place, the three companions of Lt. Masana -- PC soldier Virgilio Fidel, Coast Guard Ricardo Ligsas and police-man Felix Mojica -- who were all seated at a separate table about one and one-half (1½) meters away from that occupied by the accused and Lt. Masana, stood up to assist Lt. Masana; but Chief of Police Primo Panaligan of Indang, Cavite, who happened to be taking his lunch in the same restaurant, was quicker than any of them in going near the combatants and embraced and/or grabbed the accused from behind, and thereafter wrested the dagger from the accused-appellant. Immediately thereafter, the Chief of Police brought the accused to the municipal building of Indang, Cavite (p. 8, t.s.n., Oct. 30, 1971; pp. 19-20, t.s.n., Nov. 22, 1971; pp. 26, 28, t.s.n., Jan. 20, 1972), while the companions of Lt. Masana brought the latter to the V. Luna Hospital in Quezon City where he expired several hours later as a result of the stab wounds inflicted by the accused (pp. 21, 22, t.s.n., Nov. 22, 1971). Dr. Felicisimo del Rosario, Medico-Legal Officer of the Armed Forces of the Philippines, conducted an autopsy of the cadaver of Lt. Masana and made the following findings, which are embodied in his Report, Exhibits "D" and "D-1" (pp. 88-89, rec.), and which reads as follows:

"Postmortem findings.

"General:

"Fairly developed and nourished male subject in rigor mortis with postmortem lividity over the dependent portions of the body. Pupils are dilated. Finger and toe tips are pale. There is an exploratory laparotomy incision at the abdomen, measuring 21 cm. long, 3 cm. left of the anterior midline, with eighteen (18) stitches applied. There are surgical incisions at the left and right abdomen, measuring 2 cm. long, 9 cm. from the anterior midline and 2 cm. long, 6.5 cm. from the anterior midline with two (2) stitches applied and a rubber drain stick-ing out of each, respectively.

"TRUNK:

"(1) Stab wound, left chest, measuring 0.9 by 0.4 cm., 5 cm. from the anterior midline, 128 cm. above the heel, 1 cm. deep, directed posteriorwards and slightly upwards, passing superficially between muscles and tissues.

"(2) Stab wound, left chest, measuring 1.2 by 0.4 cm., 9 cm. from the anterior midline, 121 cm. above the heel, 5.5 cm. deep, directed posteriorwards, downwards and to the left, lacerating the muscles at the 4th intercostal space.

"(3) Stab wound, abdomen, measuring 0.9 by 0.2 cm., just left of the anterior midline, 96 cm. above the heel, 11 cm. deep, directed posteriorwards, upwards and to the left, perforating the greater curvature of the stomach and the gastric vessels, grazing the liver, perforating the diaphragm and infero-medial border of the lower lobe of the right lung.

"(4) Impact abrasion, right scapular region, measuring 2 by 0.2 cm., 12 cm. from the posterior midline, 127 cm. above the heel.

"UPPER EXTREMITIES:

"(5) Incised wound, anterior aspect of the distal third of the left arm, measuring 3 by 0.5 cm., just medial to its anterior midline.

"(6) Incised wound, posterior aspect of the proximal phalange of the right index finger, measuring 1 by 0.2 cm., just medial to its posterior midline.

"Five hundred (500) cc. blood and blood clots accumulated in the thoracic cavity.

"There are four (4) sutures applied at a lacerated wound at the greater curvature of the stomach.

"There is nothing remarkable in the unaffected organs internally.

"REMARKS:

"Cause of death is cardio-respiratory arrest due to severe shock and intrathoracic hemorrhage as a result of multiple stab wounds of the body, perforating the stomach, gastric vessels, liver, diaphragm and lower lobe of the right lung."

Claiming self-defense, the accused, on the other hand, maintains and relies on the following facts:

At about 1:00 o'clock in the afternoon of April 24, 1971, the accused and his wife were in a restaurant near the market place of Indang, Cavite, in order to take their lunch. They had just come from Mandaluyong, Rizal where they reside (pp. 21, 22, t.s.n., Dec. 10, 1971). Inside the restaurant, the accused saw three persons to his right, eating, while to his left he saw a person whom he later learned to be Lt. Guillermo Masana drinking beer alone. While the accused and his wife were waiting for the food to be served, Lt. Masana approached him and asked him whether he was Floro Rodil and whether he was a member of the Anti-Smuggling Unit. After receiving an affirmative answer, Lt. Masana invited the accused to join him in his table. The accused accepted the invitation, so the two moved over to the officer's table where the deceased offered beer to the accused who, however, refused saying he was still hungry. In the course of their conversation, Lt. Masana told the accused not to report any matter about smuggling to the PC. The accused informed the officer that he had not reported any smuggling activity to the authorities. Lt. Masana then asked the accused for his identification card as a member of the Anti-Smuggling Unit, which the latter did by showing his ID card, Exhibit "1", bearing his picture and indicating that he was an officer of the Anti-Communist League of the Philippines (pp. 62-68, t.s.n., Dec. 7, 1971).

Thereupon, Lt. Masana told the accused that the latter's ID was fake, and after the accused insisted that it was genuine, Lt. Masana tried to take it away from the accused when the latter was about to put it back in his pocket. Because of his refusal to give his ID card to Lt. Masana, the latter got mad and, in an angry tone of voice, demanded: "Will you give it to me or not?" (p. 71, Ibid). Still the accused refused to surrender his ID to Lt. Masana. Thereupon, the latter pulled a gun from his waist and hit the accused on the head with its handle two (2) times. Immediately, blood gushed from his head and face. When Lt. Masana was about to hit the accused for the third time, the latter parried the right hand of the officer, pulled his "pangsaksak" and stabbed the officer two or three times and then pushed him away from him and ran out of the restaurant (pp. 74, 75, 79, Ibid).

The accused went in the direction of the municipal building of Indang, Cavite, where he intended to surrender to the authorities. But on his way, he met Primo Panaligan, the Chief of Police of Indang, Cavite. The Chief of Police asked him why his head and face were bloody and he answered that he was hit by Lt. Masana on the head with a gun (pp. 86, 89, t.s.n., Ibid). Thereupon, the Chief of Police asked somebody to accompany the accused to the municipal building. Arriving there, one Victor, a policeman of Indang, Cavite, accompanied him to Dr. Ruben Ochoa, whose clinic was just across the street where the municipal building is located (p. 9, t.s.n., Ibid; p. 4, t.s.n., Dec. 15, 1971). After he was given first aid treatment, he was brought back by the Indang policeman to the municipal building, where he was detained for two days before he was picked up by the Philippine Constabulary operatives and transferred to the 121th PC Headquarters in Tagaytay City (pp. 90-91, t.s.n., Ibid; pp. 4, 39, 40, t.s.n., Dec. 10, 1971; p. 6, t.s.n., Dec. 15, 1971; p. 5, t.s.n., Jan. 20, 1972).

After due trial, the court a quo rendered a decision sentencing the accused as heretofore stated.

I

Self-defense is an affirmative allegation that must be proven by clear, sufficient, satisfactory and convincing evidence (People vs. Libed, 14 SCRA 410, 413; People vs. Mendoza, 13 SCRA 11, 17; People vs. Solaña, 6 SCRA 60, 65-66; People vs. Davis, 1 SCRA 473, 477; People vs. Paras, 80 Phil. 149, 152; People vs. Berio, 59 Phil. 533, 536; People vs. Gimena, 59 Phil. 509, 514). Moreover, to prove justification, the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing (People vs. Llamera, 51 SCRA 48, 57; People vs. Talaboc, 30 SCRA 87; People vs. Navarra, 25 SCRA 491, 496; People vs. Solaña, 6 SCRA 60, 65-66; People vs. Espenilla, 62 Phil. 264, 270; People vs. Apolinario, 58 Phil. 586-588; People vs. Ansoyon, 65 Phil. 772). The rationale for this jurisprudence is that, having admitted the wounding or killing of the victim, the accused must be held criminally liable for the crime unless he establishes to the satisfaction of the court the fact of legitimate self-defense.

In the case at bar, the accused contends that it was the deceased, Lt. Guillermo Masana, who committed unlawful aggression when the latter hit him on his head with the handle of his gun after he refused to surrender his (accused's) ID to him.

This claim does not merit belief.

The accused claims that after he refused to give his ID to the deceased because the same was his and he also spent money for it, the latter hit him with the handle of his (deceased's) gun. WE cannot perceive how this refusal of the accused could have provoked or enraged the deceased to the extent of initiating the aggression by drawing his pistol and hitting the accused with its butt, knowing that the accused was no longer armed after the latter's gun had earlier been taken away from him. Besides, an agent of authority, like the deceased, ordinarily is not authorized to use force, except in an extreme case when he is attacked, or subject to active resistance, and finds no other way to comply with his duty or cause himself to be obeyed by the offender. Furthermore, the records reveal an unrebutted fact to the effect that the deceased was unarmed when the incident happened, he being then on leave. As a matter of fact, he was then in civilian clothing (pp. 29-30, t.s.n., Jan. 20, 1972). WE are, therefore, inclined to believe that it was the accused who had every reason to be resentful of the deceased and to be enraged after the deceased refused to heed his plea that his gun be returned him; because he might be prosecuted for illegal possession of firearms. Accordingly, We are constrained to draw the ines-capable conclusion that it was the accused, not the deceased, who initiated the aggression which ended in the fatal wounding of the deceased resulting in his death.

The accused further claims that he was hit twice by the deceased before he parried the third blow. This claim is belied by the record. During the trial, the court a quo asked the accused to show the scar produced by the injuries inflicted by the deceased when he refused to give his ID, thus -?

"Court

"Q Where is that scar?

(Witness showing his right side of the head to the Court)"

[pp. 86, 88, t.s.n., Dec. 7, 1971].

Dr. Ruben Ochoa who treated the injuries of the accused corroborated the foregoing testimony in his medical findings, Exhibit "3", which reads:

"Injuries: (1) lacerated wound, ½ inch, parietal region

(2) lacerated wound, 1½ inches, rt. ear lobe

(3) contusion, right mastoid area" [Exh. "3"; p. 116, rec.].

The record reveals that the deceased was a right-handed person (pp. 76, 77, t.s.n., Dec. 7, 1971). It also shows that before the stabbing incident took place, the deceased and the accused were facing each other. If that was the case, and considering that the deceased was, according to the accused, holding the gun with his right hand, why was the accused hit on the right side of his head and on his right earlobe? WE find that this parti-cular claim of the accused that it was the deceased who first hit him twice with the handle of his gun before parrying the third blow and then stabbing the latter is definitely belied not only by the location of the scar but also by the medical finding of Dr. Ochoa aforequoted. Indeed, if the protagonists were facing each other, and it appearing that they were both right-handed (p. 13, t.s.n., Nov. 22, 1971), the blow given by one, if not parried by the other, would perforce land on the left, and not on the right, side of the body of the recipient of the blow. WE, therefore, reject such claim for being improbable, the same being contrary to the natural course of human behavior.

The fact of the matter, however, as testified to by state witness PC soldier Virgilio Fidel, is that the victim parried with both hands the thrust of the appellant with such force that appellant bumped his head on the edge of the table causing blood to ooze from the resulting injury on his head.

When the accused allegedly met the Chief of Police of Indang, Cavite, on his way to the municipal building from the scene of the stabbing incident pur-portedly to surrender to the authorities, he claims that he told the Chief of Police that Lt. Masana hit him on his head with the handle of his (Masana's) gun. On his return from the clinic of Dr. Ochoa where his injuries were treated, he was detained in the municipal building of Indang, Cavite for two days before he was transferred to the Tagaytay PC Headquarters. During all this time, he did not give any written statement, much less inform any PC or other police agency that he stabbed Lt. Masana in self-defense. It was only on July 8, 1971, after the lapse of more than two and one-half (2½) months that he claimed self-defense during the preliminary investigation of the case before the municipal judge of Indang, Cavite (p. 44, t.s.n., Dec. 10, 1971). If the accused had really acted in self-defense, he would surely have so informed the Chief of Police at the first oppor-tunity. He only allegedly told the Chief of Police, who allegedly asked him why his head and face were bloody, that Lt. Masana hit him with a gun. He did not tell the Police Chief that he was surrendering for stabbing the deceased in self-defense. This claim of the accused made before the municipal judge of Indang, Cavite, on July 8, 1971 aforesaid constitutes an exculpatory statement made so long after the crime was committed on April 24, 1971. Such claim does not deserve credence since the same is obviously an afterthought, which cannot overthrow the straightforward testimony of prosecution witnesses PC soldier Virgilio Fidel and Coast Guard serviceman Ricardo Ligsa, both disinterested and unbiased witnesses, whose testimony as peace officers, in the absence of any showing as to any motive that would impel them to distort the truth, must be afforded full faith and credit as a whole.

The fact that the chief of police detained the accused that same day after he was treated by Dr. Ochoa, confirms the testimony of the state witnesses that the police was present during the incident between the appellant and the victim and that the police chief embraced appellant and grabbed the knife from appellant, whom he thereafter brought to the municipal building.

II

Was the crime committed murder or homicide merely or murder or homicide complexed with assault upon an agent of authority?

According to the Solicitor General, the crime committed was murder because "it was established by the prosecution that during the stabbing incident, appellant suddenly and without giving the victim a chance to defend himself, stabbed the latter several times with a dagger, inflicting upon mortal wounds on the chest and stomach. x

x x Needless to say, such a sudden and unexpected attack with a deadly weapon on an unarmed and unsuspecting victim, which made it impossible for the latter to flee or defend himself before the fatal blow is delivered, is alevosia or treachery" (p. 14, Appellee's brief).

In support of his contention, the Solicitor General cited the cases of U.S. vs. Cornejo (28 Phil. 475); People vs. Palomo (43 O.G. No. 10, 4190).

WE do not agree with the Solicitor General. Alevosia or treachery is belied by the following testimony of Virgilio Fidel, star witness for the prosecution:

"COURT

"Q What is the truth?

"A The truth is that when I saw that Floro Rodil stabbed Lt. Guillermo Masana, Masana parried him and his head (Rodil's head) bumped on the edge of a table; that is why he sustained an injury and blood oozed from his head" (pp. 8-9, t.s.n., Jan. 20, 1972; underscoring supplied).

Then, on cross-examination, the same witness testified:

"ATTY. MUÑOZ

"Q You said that Floro Rodil's head was bumped on the edge of a table, and you saw blood oozing from his head, is that correct?

"A Yes, sir.

"Q Who bumped the head of Rodil on the table?

"A When Masana parried his stab with his hands he accidentally bumped his head on the table.

"Q Is it not a fact that Floro Rodil is much bigger than Lt. Masana?

"A Yes, sir.

"Q You mean, by simple parrying, Floro Rodil was pushed to the extent that he bumped his head on the table?

"A The force of Lt. Masana might have been strong in parrying.

xx xx xx xx

"Q When the head of Rodil bumped on the table, was Lt. Masana already stabbed?

"A It could be that he was already stabbed or he was not yet stabbed."

[Pp. 30-31, 33, t.s.n., Jan. 20, 1972; emphasis added].

After a thorough analysis of the aforequoted portions of the testimony of Virgilio Fidel, one of the prosecution witnesses, WE can only conclude that the assailant and the victim were indeed face to face when the stabbing took place. As such the attack was not treacherous because the victim was able to ward off the same with his hand. As a matter of fact, the force he used in warding off the attack was so strong that the accused bumped his head on a table nearby, causing injuries to him which necessitated medical treatment. In short, the attack on the victim was made on the spur of the moment. The suddenness of the attack does not by itself suffice to support a finding of treachery (People vs. Torejas, et al., 43 SCRA 158, 167). Besides, the record failed to show that the accused made any preparation to kill his victim so as to insure the commission of the crime, making it at the same time impossible or hard for the victim to defend himself or retaliate (People vs. Saez, 111 Phil. 546, 553, citing the

case of *People vs. Tumaob*, 83 Phil. 738). Neither does it show that the accused employed means directly and specially tending to insure the killing without risk to himself. On the contrary, it shows that the accused was easily within striking distance of his three companions, two of whom were police officers. Furthermore, there was an altercation between the accused and the victim about the confiscation by the latter of the gun belonging to the former, and at the moment when the victim was about to stand up, the accused drew a knife from his pocket and with it stabbed the victim in the chest. Clearly, therefore, the impelling motive for the attack by appellant on his victim was the latter's performance of official duty, which the former resented. This kind of evidence does not clearly show the presence of treachery in the commission of the crime. Alevosia is not to be presumed, but must be proved as conclusively as the act which it qualifies (*People vs. Abril*, 51 Phil. 670, 675). This is so because in the explicit language of the Revised Penal Code, alevosia or treachery exists when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make [Art. 14, par. 16, Revised Penal Code].

While the evidence definitely demonstrated that appellant knew because the victim, who was in civilian clothing, told him that he was an agent of a person in authority; he cannot be convicted of the complex crime of homicide with assault upon an agent of a person in authority, for the simple reason that the information does not allege the fact that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority. The information simply alleges that appellant did "attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties, x x." Such an allegation cannot be an adequate substitute for the essential averment to justify a conviction of the complex crime, which necessarily requires the imposition of the maximum period of the penalty prescribed for the graver offense. Like a qualifying circumstance, such knowledge must be expressly and specifically averred in the information; otherwise, in the absence of such allegation, the required knowledge, like a qualifying circumstance, although proven, would only be appreciated as a generic aggravating circumstance. Applying this principle, the attack on the victim, who was known to the appellant as a peace officer, could be considered only as aggravating, being "in contempt of or with insult to the public authorities" (Par. [2], Art. XIV of the Revised Penal Code), or as an "insult or in disregard of the respect due the offended party on account of his rank, x x x" (Par. 3, Art. XIV, Revised Penal Code).

It is essential that the accused must have knowledge that the person attacked was a person in authority or his agent in the exercise of his duties, because the accused must have the intention to offend, injure, or assault the offended party as a person in authority or agent of a person in authority (*People vs. Villaseñor*, 35 SCRA 460 [1970]; *People vs. Rellin*, 72 Phil. 1038 [1947]; *US vs. Alvear, et al.*, 35 Phil. 626 [1916]).

In the case of *People vs. Balbar* (21 SCRA 1119, Nov. 29, 1967), it was held that failure to expressly allege in the information that the accused had knowledge that the person attacked was a person in authority does not render the information defective so long as there are facts alleged therein from which it can be implied that the accused knew that the person attacked was a person in authority. Thus, the information for Direct Assault upon a person in authority reads as follows:

"The undersigned Assistant Provincial Fiscal accuses Tiburcio Balbar of the crime of Assault upon a Person in Authority, committed as follows:

"That on or about the 29th day of August, 1960, in Barrio Cumba, Municipality of Lian, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously assault Miss Ester Gonzales, a public school teacher in the school building of Lian, duly qualified and appointed as such and while in the performance of her official duties or on the occasion therefor, by then and there pulling his dagger, embraced and kissed, and repeatedly trying to embrace and kiss the said teacher, Miss Ester Gonzales. That the crime was committed with the aggravating

circumstances of having committed it inside the school building and during school classes.

"Contrary to law."

And the ruling of the Court was:

"Direct assault is committed 'by any person or persons who, without a public uprising, x x shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance' (See Art. 148, Revised Penal Code).

"By express provision of law (Com. Act No. 578, now part of Article 152 of the Revised Penal Code, as amended by Republic Act No. 1978), 'teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities shall be deemed persons in authority, in applying the provisions of Article 148.' This special classification is obviously intended to give teachers protection, dignity, and respect while in the performance of their official duties. The lower court, however, dismissed the information on the ground that there is no express allegation in the information that the accused had knowledge that the person attacked was a person in authority. This is clearly erroneous.

"Complainant was a teacher. The information sufficiently alleges that the accused knew that fact, since she was in her classroom and engaged in the performance of her duties. He therefore knew that she was a person in authority, as she was so by specific provision of law. It matters not that such knowledge on his part is not expressly alleged, complainant's status as a person in authority being a matter of law and not of fact, ignorance thereof could not excuse non-compliance on his part (Article 3, Civil Code). This article applies to all kinds of domestic laws, whether civil or penal (De Luna vs. Linatoc, 74 Phil. 15) and whether substantive or remedial (Zulueta vs. Zulueta, 1 Phil. 254) for reasons of expediency, policy and necessity."

But, in the case of *People vs. CFI of Quezon, Branch V* (68 SCRA 305, Nov. 28, 1975), the information for Direct Assault reads:

"That on or about the 17th day of January, 1974, at Barrio Languyin, Municipality of Polillo, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Ernesto Busto, Paulo Coralde, Dony Grande and Jose Astejada, each of whom was armed with a piece of wood, except Paulo Coralde, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, box and strike with said pieces of wood one Rufino Camonias, a councilman of barrio Languyin of said municipality, duly elected and qualified as such while said councilman was engaged in the actual performance of his duties."

The trial court dismissed the same on the ground that:

"Of importance in this case is the lack of allegation in the complaint or in the information that the offended party was an agent of a person in authority and that such fact was known to the accused. The absence of such allegation is fatal in this case."

The People appealed to this Court through a petition for review on certiorari.

This Court held that the fiscal's proper course of action is not a petition for review on certiorari but the refiling of a valid information against the accused, for the following considerations:

"The Solicitor General in his comment of November 4, 1975 duly observed that '(I)t is patent that the acquittal of the accused herein is not on the merits. There is want of factual finding upon which their conviction or acquittal could have been based.

"It need only be observed that contrary to the fiscal's contention, the information was deficient in that it did not allege an essential element of the crime of direct assault that the accused had knowledge of or knew the position of authority held by the person attacked, viz. that of a barrio councilman (and hence the agent of a

person in authority under Article 152 of the Revised Penal Code as amended by Republic Act No. 1978) [See U.S. vs. Alvear, 35 Phil. 626; People vs. Rellin, 77 Phil. 1038; Vol. II, Padilla's Revised Penal Code, 10th Ed., p. 225].

"What was held in People vs. Balbar, 21 SCRA, 119, 1123, cited by the fiscal is that it is sufficient that the information alleged that the accused knew the position of authority, held by the offended party, in that case a public school teacher, then engaged in the performance of her official duties, and that it is not necessary to allege further that the accused also knew that such position was that of a person in authority, since 'this is a matter of law' thus:

'Complainant was a teacher. The information sufficiently alleges that the accused knew that fact, since she was in her class-room and engaged in the performance of her duties. He therefore knew that she was a person in authority, as she was so by specific provision of law. It matters not that such knowledge on his part is not expressly alleged, complainant's status as a person in authority being a matter of law and not of fact, ignorance whereof could not excuse non-compliance on his part (Article 3, Civil Code). This article applies to all kinds of domestic laws, whether civil or penal (De Luna vs. Linatoc, 74 Phil. 15) and whether substantive or remedial (Zulueta vs. Zulueta, 1 Phil. 254) for reasons of expediency, policy and necessity.'

"Since the 'decision' of acquittal was really a mere dismissal of the information for failure to charge an offense and was not a decision on the merits with factual findings as per the trial judge's own disavowal, it is patent that the fiscal's proper course is not the present petition but the refiling of a valid information against respondents-accused, as here-in indicated.

"ACCORDINGLY, the petition is dismissed, without prejudice to the refiling of a valid information against respondents-accused as hereinabove indicated" (underscoring supplied).

The ruling in the aforementioned case of People vs. CFI of Quezon, etc., supra, applies to the instant case; because the information in the former is strikingly similar to the information in the latter and does not allege facts from which inference can be deduced that the accused knew that the person assaulted is a person, or an agent of a person, in authority.

The aggravating circumstance of disregard of rank should be appreciated because it is obvious that the victim, PC. Lt. Mesana, identified himself as a PC officer to the accused who is merely a member of the Anti-Smuggling Unit and therefore inferior both in rank and social status to the victim.

The term "rank" should be given its plain, ordinary meaning, and as such, refers to a high social position or standing as a grade in the armed forces (Webster's Third New International Dictionary of the English Language Unabridged, p. 1881); or to a graded official standing or social position or station (75 CJS 458); or to the order or place in which said officers are placed in the army and navy in relation to others (Encyclopedic Law Dictionary, Third Edition, Walter A. Shumaker and George Foster Longsdorf, p. 90); or to the designation or title of distinction conferred upon an officer in order to fix his relative position in reference to other officers in matters of privileges, precedence, and sometimes of command or by which to determine his pay and emoluments as in the case of army staff officers (Bouvier's Law Dictionary, Third Edition, p. 2804); or to a grade or official standing, relative position in civil or social life, or in any scale of comparison, status, grade, including its grade, status or scale of comparison within a position (Vol. 36, Words and Phrases, Permanent Edition, p. 100).

Thus, rank aggravated the killing of a staff sergeant by his corporal (People vs. Mil, 92 SCRA 89, 105-106, July 30, 1979), the killing of the Assistant Chief of Personnel Transaction of the Civil Service Commission by a clerk therein (People vs. Benito, 62 SCRA 351, 357-358, Feb. 13, 1975), the murder by a pupil of his teacher (U.S. vs. Cabling, 7 Phil. 469, 474; People vs. Aragon & Lopez, 107 Phil. 706, 709), the murder of a municipal mayor

(People vs. Lopez de Leon, et al., 69 Phil. 298), the murder of a city chief of police by the chief of the secret service division (People vs. Hollero, 88 Phil. 167), assault upon a 66-year old District Judge of the Court of First Instance by a justice of the peace (People vs. Torrecarreon, CA 52 OG 7644), the killing of a Spanish consul by his subordinate -- a mere chancellor (People vs. Godinez, 106 Phil. 597, 606-607), and the killing of an army general (People vs. Torres, et al., L-4642, May 29, 1953).

As explained by Mr. Justice Mariano Albert, then of the Court of Appeals, those "generally considered of high station in life, on account of their rank (as well as age or sex), deserve to be respected. Therefore, whenever there is a difference in social condition between the offender and the offended party, this aggravating circumstance sometimes is present" (Albert M.A. -- The Revised Penal Code Annotated, 1946 Ed., p. 109).

The difference in official or social status between a P.C. lieutenant and a mere member of an anti-smuggling unit, is patent.

If the accused herein were charged with the complex crime of murder with assault against an agent of a person in authority, and not merely murder, then the aggravating circumstance of disregard of rank or contempt of or insult to public authority cannot be appreciated as aggravating because either circumstance is inherent in the charge of assault against a person in authority or an agent of a person in authority. But in the case at bar, the appellant is accused of murder only. Consequently, either aggravating circumstance should be considered in the imposition of the penalty.

Thus, in the following cases where the charge was merely murder or frustrated murder, the aggravating circumstance of disregard of rank was appreciated:

- (1) People vs. Benito, supra -- the appellant, a clerk in the Civil Service Commission, was charged with and convicted of the murder of the assistant chief of the personnel transaction of the said Commission;
- (2) People vs. Torres, et al., supra -- the appellants were charged with and convicted of murder for the death of Army Col. Valentin Salgado and attempted murder for the injuries inflicted on Army Gen. Mariano Castañeda;
- (3) People vs. Valeriano, et al. -- appellants were accused and convicted of robbery with homicide for the killing of District Judge Bautista of the Court of First Instance of Pampanga [90 Phil. 15, 34-35]; and
- (4) People vs. Hollero, supra -- where the accused chief of the Secret Division of the Bacolod City Police Department was convicted of murder for the killing of the chief of police.

The aggravating circumstance of contempt of, or insult to, public authority under paragraph 2 of Article 14 of the Revised Penal Code can likewise be appreciated in the case at bar.

The evidence of the prosecution clearly established that Chief of Police Primo Panaligan of Indang was present as he was taking his lunch in the same restaurant when the incident occurred.

As a matter of fact, the said chief of police was the one who embraced or grabbed the accused from behind, wrested the dagger from him and thereafter brought him to the municipal building of Indang. And appellant admittedly knew him even then as the town chief of police, although he now claims that he went to the municipal building to surrender to the chief of police who was not allegedly in the restaurant during the incident.

While it is true that in the cases of U.S. vs. Rodriguez, et al. (19 Phil. 150, 157-158), People vs. Siojo (61 Phil. 307, 317), and People vs. Verzo (21 SCRA 1403), this Court ruled that the term public authority refers to a person in authority and that a PC lieutenant or town chief of police is not a public authority but merely an agent of a person in authority; there is need of re-examining such a ruling since it is not justified by the employment of the term public authority in aforesaid paragraph 2 of Article 14 instead of the term person in authority which is

specifically used in Articles 148 and 152 of the Revised Penal Code. There is no extended reasoning of the doctrine enunciated in the aforesaid three (3) cases why the phrase public authority should comprehend only persons in authority. The lawmaker could have easily utilized the term "persons in authority" in the aforesaid paragraph 2 of Article 14 in much the same way that it employed the said phrase in Articles 148 and 152. The lawmaker must have intended a different meaning for the term public authority, which may however include, but not limited to persons in authority.

Under the decided cases, a municipal mayor, barrio captain, barrio lieutenant or barangay captain is a person in authority or a public authority. Even a public school teacher is now considered a person in authority under CA 578 amending Article 152 of the Revised Penal Code (*Sarcepudes vs. People*, 90 Phil. 228). So is the town municipal health officer (*People vs. Quebral, et al.*, 73 Phil. 640), as well as a nurse, a municipal councilor or an agent of the Bureau of Internal Revenue (*People vs. Yosoya*, CA-GR No. 8522-R, May 26, 1955; *People vs. Reyes, et al.*, O.G.S. 11 p. 24).

The chief of police should therefore be considered a public authority or a person in authority; for he is vested with jurisdiction or authority to maintain peace and order and is specifically duty bound to prosecute and to apprehend violators of the laws and municipal ordinances, more than the aforementioned officials who cannot prosecute and who are not even enjoined to arrest malefactors although specifically mentioned as persons in authority by the decided cases and by Article 152 of the Revised Penal Code as amended by R.A. 1978 of June 22, 1957. The town chief of police heads and supervises the entire police force in the municipality as well as exercises his authority over the entire territory of the municipality, which is patently greater than and includes the school premises or the town clinic or barrio, to which small area the authority or jurisdiction of the teacher, nurse, or barrio lieutenant, respectively, is limited.

With two aggravating circumstances and no mitigating circumstance, the appellant should therefore be condemned to suffer the maximum period of reclusion temporal, the penalty prescribed for homicide.

WHEREFORE, HAVING BEEN FOUND GUILTY BEYOND REASONABLE DOUBT OF HOMICIDE AGGRAVATED BY CONTEMPT FOR OR INSULT TO A PUBLIC AUTHORITY OR DISREGARD OF THE RESPECT DUE THE OFFENDED PARTY ON ACCOUNT OF HIS RANK, APPELLANT FLORO RODIL IS HEREBY SENTENCED TO OFFER AN INDETERMINATE TERM OF IMPRISONMENT RANGING FROM 12 YEARS OF PRISON MAYOR AS MINIMUM TO 20 YEARS OF RECLUSION TEMPORAL AS MAXIMUM.

THUS MODIFIED, THE JUDGMENT APPEALED FROM IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

Aquino, Concepcion, Jr., Fernandez, and Guerrero, JJ., concur.

Fernando, C.J., in the result.

Barredo, J., votes with J. Teehankee in his brief concurrence.

Abad Santos and De Castro, JJ., concurs with the partial dissent of J. Melencio-Herrera.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

I believe that neither the aggravating circumstance of con-tempt of, or insult to the public authorities under Article 14, par. 2 of the Revised Penal Code, nor that of insult or disregard of the respect due to the offended party on account of his rank under Article 14, par. 3 of the same Code, is applicable to the present case.

1. For the circumstance of contempt of, or with insult to, public authorities to be considered aggravating, it is essential (a) that the crime is committed in the presence of a public authority, not a mere agent of the authorities (People vs. Siojo, 61 Phil. 307 [1935]; People vs. Verzo, et al., 21 SCRA 1403 [1967]; and (b) that the public authority is engaged in the exercise of his functions and is not the person against whom the crime is committed (People vs. Siojo, citing U.S. vs. Rodriguez, 19 Phil. 150 [1911]; Decision of the Supreme Court of Spain dated January 24, 1881, 1 Viada 310), nor the one in-jured by the commission of the offense (People vs. Pardo, 79 Phil. 568 [1947]).

In this case, Lt. Guillermo Masana of the Philippine Constabulary is not a public authority nor a person in authority as these terms are defined by Article 152, par. 1 of the Revised Penal Code for he is not directly vested with jurisdiction, that is, power or authority to govern and execute the laws or to hear and decide a cause; he is a mere agent of a person in authority as defined by Article 152, par. 2 of the Revised Penal Code, he being a member of the Philippine Constabulary which is a government military agency in charge of the maintenance of public order and the protection and security of life and property. In fact, the Decision itself calls him an agent of a person in authority (p. 13).

And even if Lt. Masana were a person in authority, this aggravating circumstance cannot be taken into account because it is he himself who is the offended party (People vs. Siojo, supra).

2. Neither can the second circumstance, that of disregard of the respect due to rank, be made to apply. It is not the existence alone of rank of the offended party that determines the presence of this aggravating circumstance. There must be a difference in the social condition of the offender and the offended party.

"El concepto de dignidad en su aspecto general no esta constituido solo por el caracter de autoridad o por la funcion publica o cargo que desempeñe el ofendido sino tambien por la diferencia de condicion social entre la victima y el ofensor x x x" (Cuello Calon, Derecho Penal, Decimotercera edicion, Tomo I, p. 554).

Where the offender and the offended party are of the same rank, this aggravating circumstance does not apply.

"Las personas constituidas en dignidad, y que por esta razon merecen mayor respeto, son las que generalmente se consideran por todo el mundo como superiores o mas elevadas que el que comete el delito: tales son los sacerdotes y las Autoridades respecto de los particulares, los maestros con relacion a sus discipulos, los guardadores respecto de sus pupilos, etc. Siempre, pues, que hay diferencia de condicion social entre el ofensor y el ofendido, concurrira la agravante de este numero; mas no cuando hay igualdad. Asi, pues, si un Sacerdote o un Magistrado calumnian a otro Sacerdote o Magistrado respectivamente, no existira la circunstancia de agravacion que comentamos." (Viada, Codigo Penal, Reformado de 1870, Tomo II, p. 316).

The provision contemplates such a difference in rank as that of a teacher where the offender is a pupil (U.S. vs. Cabiling, 7 Phil. 469 [1907]) (although a teacher is now considered a person in authority); a Judge where the offender is a private citizen (People vs. Valeriano, et al., 90 Phil. 15 [1951]); a General of the Philippine Army where the offender is a private citizen (People vs. Torres, et al., L-4642, May 29, 1953); a Chief of Police, a superior of the accused, who was chief of a division of the secret police (People vs. Hollero, 88 Phil. 167 [1951]); a ranking official of the Civil Service Commission where the offender is a clerk thereat (People vs. Benito, 74

SCRA 271 [1976]); a Consul who was killed by a chancellor in the Consulate, who is a subordinate (People vs. Martinez Godinez, 106 Phil. 597 [1959]).

In the case at bar, the difference in the social condition and rank of the victim, a Lieutenant in the Philippine Constabulary, and that of the accused, who is a member of an anti-smuggling unit and an officer of the Anti-Communist League of the Philippines, is not of such a degree as to justify consideration of disrespect of rank due to the offended party as an aggravating circumstance.

In the absence of the two aggravating circumstances discussed above or of any mitigating circumstance, the penalty imposable is reclusion temporal in its medium period, and the accused should be sentenced to an indeterminate term of imprisonment ranging from ten (10) years of prison mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur with the judgment's imposition of the maximum penalty for homicide, although I join Mme. Justice Herrera's partial dissent insofar as she holds that the aggravating circumstance of contempt of or insult to the public authorities may not be appreciated. However, disregard of rank was properly appreciated as a generic aggravating circumstance, and hence the maximum penalty for homicide is properly imposed in the absence of any mitigating circumstance.

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