

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PASCUAL BAYLON RILLORTA, WESLEY RILLORTA AND WILSON RILLORTA, DEFENDANTS-APPELLANTS.

G.R. No. 57415. December 15, 1989

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The defendants have appealed the decision dated September 24, 1980 of the Court of First Instance of Pangasinan, Branch VI, at Tayug, finding Pascual Baylon Rillorta and Wesley Rillorta guilty as principals, and Wilson Rillorta, as accomplice in the commission of the complex crime of direct assault with murder, as defined and penalized by Arts. 148 and 248 of the Revised Penal Code in relation to Arts. 48, 17 and 18 thereof, and sentencing Pascual Baylon Rillorta and Wesley Rillorta to suffer the penalty of reclusion perpetua, and Wilson Rillorta to suffer an indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of prision correccional, as maximum, with the accessories provided by law; and all the accused to indemnify, jointly and severally, the heirs of Barangay Captain Emiliano Doton in the sum of P12,000 for his death, plus FIVE THOUSAND THREE HUNDRED FIFTY (P5,350) PESOS for funeral expenses and each of them to pay ONE-THIRD (1/3) of the costs.

The prosecution evidence upon which the trial court based the conviction of the accused is summarized in its decision as follows:

At about midnight of May 7, 1979, upon the report of Edita Doton, a daughter of the victim, Sgt. Juan Serquina and Sgt. Socrates of the 151st PC Company in Tayug, Pangasinan, went to Barangobong, Natividad, Pangasinan, to investigate the death of Barangay Captain Emiliano Doton whom they found lying dead in a creek, his face down, with multiple hack wounds all over his body. They made inquiries from the persons around regarding the identities of his assailants. A bystander, Hipolito Cagio, volunteered the information that the assailants were "the Rillortas, father and sons" (pp. 83-84, t.s.n., March 28, 1980).

Sgt. Serquina went to the house of the Rillortas across the creek and called the name of the accused Pascual Baylon Rillorta who came out and surrendered a bolo with a sharp-pointed tip (Exh. C). As he did not believe that it was the only weapon that the killers used in the commission of the crime, Serquina and his companions searched the house. Sgt. Socrates recovered another bolo with a rounded tip (Exh. D) tucked in the roof of the house.

After removing the cadaver of the victim from the water and taking pictures, the PC officers took Pascual Baylon Rillorta and his son, Wesley, to the PC Headquarters where the latter (Wesley), after being apprised of his constitutional rights, gave a written statement (Exh. E) admitting that he hacked the victim. The Rural Health Physician, Dr. Bienvenido Allas, who autopsied the cadaver, found thirty-two (32) bolo wounds on the victim's head, neck, abdomen and arms.

A prosecution witness, Romy Ramos, a thresher operator, recounted that while they were threshing the palay

stock near the premises of the victim, the accused Pascual Baylon Rillorta accosted Ramos and threatened him with a gun saying "Damn you, you better go home or I'll kill you here" (p. 7, t.s.n., December 19, 1979). Rillorta resented the threshing of palay in his barrio by the Ramos' threshing party, whom he regarded as "outsiders," because he wanted the palay stocks in his barrio to be threshed in his own thresher.

On their way home to Bo. Calapugan, Ramos and his companions, Romy Elizaga and Ceferino Facon, aboard their thresher, were stopped by the three accused. Pascual Rillorta, who was armed with a bolo, warned them not to return to thresh palay in barrio Barangobong. Barangay Captain Doton, who was following behind Ramos' group, advised the accused to let the threshing party pass. The three (3) accused chased Doton. Upon overtaking him, they surrounded him and pushed him toward the creek. Pascual Rillorta hacked him with a bolo while his sons (co-accused Wesley and Wilson) held Doton's hands. Doton yelled "I'm going to die, they are going to kill me." (Patayendacon, in Ilocano.)

Pascual Rillorta denied having killed Doton. He alleged that the deceased attacked him. For his part, Wesley alleged that he simply defended his father who was attacked by Doton.

Pascual testified that when Doton accosted them for having stopped Ramos' thresher, they explained that they merely asked Ramos not to thresh in their barrio because he (Pascual) could do the threshing; that Doton allegedly answered "why, are you better than I?" Whereupon, Pascual allegedly replied "Manong, you know that I am hard up, why still get another thresher?" Doton allegedly became angry. He allegedly drew his bolo from its scabbard and hacked Pascual. However, Pascual allegedly parried the bolo with his hands injuring his right and left little fingers. Doton allegedly chased Pascual who crossed the foot bridge towards his home to get a weapon. Just when Doton was about to hack Pascual, Wesley hacked Doton on the back and when he turned his face, Wesley hacked him again. They allegedly wrestled and fell into the creek. Each time Doton rose from the creek, Wesley hacked him. Pascual could not recall how many times and on what parts of the body, Doton was wounded.

Dr. Felipe Cantor, Senior Resident Physician of the Eastern Pangasinan General Hospital, confirmed that about 1:50 o'clock in the early dawn of May 8, 1979, he treated Pascual Rillorta for a superficial cut on the tip of the right small (ring) finger and another cut in the proximal third of the left finger, severing the bone.

Wilson Rillorta's defense was an alibi. He alleged that on the night in question, he went to Tayug with one Rogel to bring a tractor tire for vulcanizing at Fred's shop, arriving there around 8:00 o'clock that evening. He left the tire at the shop to take supper with Rogel in the restaurant of Francisco Santillon in the public market. After 30 minutes, they returned to the vulcanizing shop and waited for the repair of the tire which was finished around 11:00; after that they went home. When he arrived home, he found his father Pascual Rillorta with an injured hand. Later, the PC and policemen arrived and they took his father and his brother Wesley, but left him behind. Francisco Santillon confirmed that he served to Wilson and his companions. The tireman, Victor Camisola, admitted that he repaired a tire for Wilson, as evidenced by a receipt (Exh. 1).

In their present appeal, the accused allege that the trial court erred:

1. in finding that treachery attended the commission of the crime;
2. in finding that the deceased was performing his official duties as barangay captain when attacked;
3. in finding that the motive for the killing was Pascual Rillorta's resentment against the Ramos threshing party from Tarlac;
4. in not finding that Wesley Rillorta acted in legitimate defense of his father;
5. in not finding that Wilson Rillorta had no knowledge or participation in the murder of Doton;

6. in finding that the finger wounds of Pascual Rillorta were self-inflicted; and
7. in giving more credit to the witnesses for the prosecution instead of the defense.

The first assignment of error is meritorious. The assault upon the deceased was not attended by treachery for it was preceded by a heated exchange of words between the appellants and the deceased (*People vs. Ibanez*, 56 SCRA 210; *People vs. Quiban*, 131 SCRA 459; *People vs. Visagar*, 93 Phil. 319). It cannot be said that the deceased was caught completely by surprise when the accused took up arms against him. Therefore, the killing was only homicide under Article 249 of the Revised Penal Code, not murder.

But the crime was a complex one of homicide with assault upon a person in authority under Articles 249 and 148 of the Revised Penal Code in view of the circumstance that when Doton intervened to prevent a violent encounter between the accused and Ramos' group (pp. 12, 14 & 25, t.s.n., Dec. 19, 1979), he was discharging his duty as barangay captain to protect life and property and enforce law and order in his barrio.

Under Article 152 of the Revised Penal Code and P.D. 299, a barangay captain (formerly a "barrio lieutenant") is a person in authority (*U.S. vs. Baluyot*, 40 Phil. 385).

Doton did not have any financial interest in the work of Ramos' group. Ramos himself disclosed that it was a certain Mrs. Soriano, not Doton, who invited him to thresh palay in Barrio Barangobong (pp. 14 & 15, t.s.n., *Ibid*).

Pascual Rillorta admitted his resentment against the deceased which motivated the assault against the latter:

"A - I felt bad because the barangay captain took another thresher that is the reason why I have been crying. I even told to myself I am his nephew but he still took another thresher from the foot of the mountain.

"Q - So that on May 7, 1979 at about 10:00 to 11:00 o'clock in the evening you tried to express your sentiments by stopping the thresher and ordering them to stop threshing in Barangay Barangobong, Natividad, Pangasinan?

"A - Yes, because the thresher has passed by in front of our house and they will always pass thru that place." (p. 12, t.s.n., June 13, 1980.)

The trial court did not err in rejecting Wesley Rillorta's plea that he acted in legitimate defense of his father for the deceased had not committed any unlawful aggression against Pascual. From the testimonies of the eyewitnesses, and judging from the number, location, and nature of the deceased's wounds, the appellants were the aggressors. Dr. Bienvenido Allas who autopsied the body of the victim, found 32 wounds inflicted by two or more persons (pp. 65 to 71, t.s.n., March 28, 1980). Prosecution witness Ceferino Facon also declared that the appellants were the aggressors (pp. 3-8, t.s.n., February 12, 1980).

Neither does Wilson's alibi impress us. He averred that he was at Tayug, Pangasinan, from 8:00 p.m. to 11:00 p.m. of May 7, 1979, the day of the incident, to have the tire of a tractor vulcanized, and only returned to Barangobong at about midnight (pp. 23-26, t.s.n., May 8, 1980). However, he admitted that it takes only forty (40) minutes to negotiate the distance between Tayug and Barangobong (p. 32, *Ibid*). Hence, if he went to Tayug at 8:00 p.m. to have a tractor tire fixed, it was not physically impossible for him to have returned to Barangobong at 10:00 p.m. when the barangay captain was killed. His alibi may not prevail over the positive identification made by the prosecution witness, Ceferino Facon, that he assisted in the killing of Doton (p. 8, t.s.n., February 12, 1980).

"Q - You said that you cannot name those persons but you can identify them. I asked you to look around this courtroom and please see if you can recognize anyone of those persons who stopped the thresher on May 7,

1979 and point to them?

"A - They are here sir.

"Q - Please go down, go to them, touch them on the shoulder.

"A - Witness going down from the witness stand then going to the Western table then touch the shoulder of three persons who stopped the thresher and each of them identified themselves as Pascual Baylon Rillorta, Wilson Rillorta and Wesley Rillorta.

"Q - You testified that there was one of them who said do not come here anymore, who of these three persons whom you touched on the should said those words?

"A - The first person that I have touched on the shoulder (witness referring to Pascual Baylon Rillorta).

"xxx xxx xxx

"Q - What about the three persons Pascual Baylon Rillorta, and his two other companions what did they do?

"A - They chased the captain.

"Q - Were they able to chase the captain?

"A - Yes, sir.

"Q - After they chased the captain what happened next after that?

"A - They killed him.

"Q - How did they kill him?

"A - They hacked him.

"Q - With what did they hack. Barangay Captain Emiliano Doton?

"A - A bolo, sir.

"Q - After Pascual Baylon Rillorta said do not thresh here any. . .

"Q - Who was holding the bolo?

"A - The first person that I have touched on the shoulder (witness referring to Pascual Baylon Rillorta).

"Q - How about the other two companions of Pascual Baylon Rillorta, what were they doing when Pascual Baylon Rillorta hacked the Barangay Captain?

"A - They helped.

"Q - How did they help?

"A - They took hold of the captain.

"Q - What part of the body was held by the two companions of Pascual Baylon Rillorta?

"A - The hands." (pp. 5-6, 7-8, t.s.n., Ibid; underscoring supplied.)

The trial court correctly dismissed the appellants' contention that the wound in Pascual's left little finger proves that he was attacked by the deceased, for as revealed by the prosecution witness Facon, the deceased's hands were held by Pascual's sons, Wesley and Wilson, while Pascual hacked the hapless victim (pp. 8, 17-19, t.s.n., Ibid.). The injury must have been either self-inflicted, or inflicted by Wesley Rillorta who joined his father in a rampage

of hacking and stabbing the deceased (p. 77, t.s.n., June 16, 1980).

The penalty for the complex crime of homicide with assault upon a person in authority is the maximum period of the penalty for the more serious crime - homicide (Art. 48, Revised Penal Code). That penalty is the maximum period of reclusion temporal (Art. 249, Revised Penal Code). Under the Indeterminate Sentence Law, each of the accused shall suffer an indeterminate penalty, the maximum term of which shall be within the prescribed penalty of reclusion temporal, maximum, and the minimum of which shall be within the range of the next lower penalty of prision mayor in its maximum period also (Act No. 4103).

WHEREFORE, accused-appellants Pascual Baylon Rillorta, Wesley Rillorta, and Wilson Rillorta are hereby declared guilty beyond reasonable doubt as principals in the commission of the complex crime of homicide with assault upon a person in authority. They shall each suffer an indeterminate penalty ranging from twelve (12) years of prision mayor, as minimum, to twenty years of reclusion temporal, as maximum, with the accessory penalties provided by law, and they shall jointly and severally indemnify the heirs of the deceased Emiliano Doton in the increased amount of Thirty Thousand (P30,000) Pesos for his death, plus Five Thousand Three Hundred Fifty (P5,350) Pesos for the funeral expenses, and each of them shall pay one-third (1/3) of the costs. As above modified, the appealed decision is affirmed, with costs against the appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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