

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN VELASCO, ACCUSED-APPELLANT.

G.R. No. 69492. April 13, 1989

Ponente: PARAS, J.

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PARAS, J.:

This case is before Us on automatic review of the Decision of the Regional Trial Court, Eighth Judicial District, Branch XXVII, Catbalogan, Samar, in Criminal Case No. 2455, finding appellant Glenn Velasco guilty of Murder with Direct Assault Upon a Person in Authority. The dispositive portion of the decision reads -

“WHEREFORE, and in view of all the foregoing, the Court finds accused GLENN VELASCO guilty, beyond reasonable doubt as principal by direct participation, of the complex crime of Murder with Direct Assault Upon a Person in Authority, with the attendance of the generic aggravating circumstance of taking advantage of public position and ignominy, without any mitigating circumstances in offset. Conformably with the pertinent provisions of the Revised Penal Code, the Court accordingly hereby sentences the above-named, accused to the supreme penalty of death, to indemnify the heirs of the deceased Rodolfo Labongcay in the amount of P12,000.00, and to pay the costs.”

(Decision, p. 6, annexed to Appellant's Brief, p. 103, Rollo)

The evidence for the prosecution discloses that:

At about 9:00 o'clock in the evening of November 26, 1983, in Barangay Guinsorongan, Catbalogan, Samar, Barangay Chairman Rodolfo Labongcay was seated in a bench near the store fronting the house of Glenn Velasco, the appellant. Labongcay was waiting for the appellant to arrive. Earlier that evening, appellant, a soldier in the Philippine Army stationed at Camp Lukban, Naulong, had illegally discharged his armalite rifle behind the Barangay Hall, thereby causing a commotion in the vicinity. For which reason, he was apprehended by a Barangay Tanod and taken to Barangay Chairman Labongcay (pp. 5-8, tsn, July 10, 1984). When appellant arrived, Labongcay told him to sit down and they talked to each other. Appellant was warned by Labongcay not to discharge his firearm again without any reason because such indiscriminate firing created panic and fear among the residents. Grudgingly, appellant answered "yes." Then, suddenly, appellant stood up from his seat and went straight into his house. In a loud voice he ordered his wife to get his armalite rifle. Shortly, appellant emerged from his house carrying his rifle and walked to the middle of the street. Labongcay calmly approached appellant and after declaring that he was Barangay Chairman of the area attempted to pacify him. However, instead of being pacified, appellant menacingly pointed his rifle at Labongcay and angrily said "Magdasal ka na" ("say your prayers now") (p. 4, Brief for the Appellee; p. 117, Rollo). He ordered Labongcay to kneel down and raise his arms aline with the shoulders. Labongcay offered no resistance and did as he was told. Just then, Leo Colocado, a Barangay Tanod, arrived and interceded on behalf of Labongcay. Appellant faced Colocado and told him not to interfere. Afterwards, he ordered Labongcay to kiss the cement floor and do push ups. When Colocado again butted in, appellant fired several rounds in his direction. Colocado who was grazed by ricocheting bullets and fearful for his life scampered away. Turning his ire once more on Labongcay, appellant eventually fired two

successive volleys. The first volley hit Labongcay on the thighs and when he attempted to stand up appellant let loose a second volley which hit Labongcay on the chest (tsn., pp. 9-17, July 10, 1984; tsn., pp. 105-106, September 25, 1984). Later, autopsy findings revealed that Labongcay expired from fatal gunshot wounds inflicted by appellant on his person (see Exh. A).

Appellant was thus charged with Murder with Direct Assault upon a Person in Authority. He was likewise charged in another information, lodged in the same lower court and docketed as Crim. Case No. 2456, with the crime of Frustrated Murder with Direct Assault Upon an Agent of a Person in Authority. Both cases were ordered consolidated.

On March 27, 1984, appellant was arraigned and he pleaded not guilty to both charges. Thereafter joint trial ensued with the prosecution presenting two (2) of its witnesses. During the continuation of the hearing on September 7, 1984, appellant assisted by his counsel de parte, Atty. Wayne Villarin, manifested that the accused desired to withdraw his plea of not guilty and change it to a plea of guilty. The trial court adjourned the session to give appellant sufficient time to consider his aforesaid decision. Then on September 12, 1984 appellant again thru the same counsel de parte manifested his desire to enter a plea of guilty.

Appellant was rearraigned. In Crim. Case No. 2456 he pleaded guilty to the lesser offense of Simple Direct Assault and was sentenced accordingly. In Crim. Case No. 2455, he pleaded guilty to the offense as charged - that of Murder with Direct Assault Upon a Person in Authority and was sentenced to Death. This decision is now before Us for review. Appellant now thru a counsel de oficio claims in his lone assignment of error that the trial court erred in accepting his improvident plea of guilty.

The records of this case belie the contention of appellant. The proceedings on September 12, 1984 show that the lower court took an active role in explaining to appellant the implications of a plea of guilty. Hereunder are some of the clarificatory statements of the lower court -

COURT

Q. Although the Court has explained before the meaning of the contents of the information, the Court, considering the gravity of the offense charged, will explain to you, not only the literal meaning but the legal consequences of your plea. Your pleas of guilty will not be considered as a mitigating circumstance and it will not lessen penalty imposed upon you because the prosecution has already presented a witness ... two witnesses in this case, do you understand that?

A. Yes, sir.

Q. The offense charged is a complex offense actually two grave offenses are charged in one information and under the law, the penalty that is imposable is the maximum of the graver offense charged in the information. The offenses charged are murder and assault upon a person in authority. Murder is the graver offense here. And the penalty for murder is from reclusion temporal (maximum) to death and the maximum of reclusion temporal is 17 years four months and one day to death and because the law says the penalty to be imposed is the maximum, most probably and I think the imposable penalty is death. Do you understand that?

A. Yes, sir.

Q. The information alleges that you took advantage of your public position, this means that you abused or took advantage of the ascendancy or influence which you have in virtue of your position as a member of the Armed Forces of the Philippines at the time when you committed the offense charged?

A. Yes, sir.

Q. The information also charges, as you heard when it was read, that you used treachery. Treachery means that

you used in the commission of the offense ... you employed means, methods, or forms ... in the execution of the offense charged which tended directly and especially to ensure the execution of the felony without risk to yourself in any defense from which the person whom you attack might make, do you understand that? Remember you are not being forced.

A. Yes, sir.

Q. The decision of the Supreme Court among others say that in treachery the method used must be consciously and deliberately adopted by you?

A. Yes, sir.

Q. I must remind you and you must answer on your own volition. We are trying to stick to the truth.

A. Yes, sir.

Q. The information also alleges that the crime was qualified, attended by the circumstance of evident premeditation. Under the law, it connotes the following elements, 1 – that there was a time when you decided or determined to commit the crime charged in the information, 2 – that you did acts which showed that you clung to that determination to commit the offense charged, 3 – that you were given sufficient time to meditate and cool off but you still persisted in your determination to commit the crime charged?

A. Yes, sir.

Q. You also used a superior and powerful firearm, Armalite Caliber 5.56 MM rifle?

A. Yes, sir.

Q. The person whom you killed was a barangay captain by the name of Rodolfo Labongcay. When you killed him you knew beforehand that he was a barangay captain?

A. Yes, sir, because he is the uncle of my wife.

Q. You knew the person in authority?

A. Yes, sir.

Q. Before killing him you also ordered the Barangay Captain to kneel down, both arms stretched and to kiss the cemented pavement and he obeyed and while thus kneeling and pleading not to be killed, the Barangay Captain was shot by you several times with your weapon, is it not?

A. It's not that. At that time there was vehicle that arrived and the head lights focused while we were having some altercation with him and when I looked towards the vehicle he approached me and the fact that I was surprised, I squeezed the trigger of the armalite rifle which was then pointing towards the ground and up towards the sky because the tendency of the armalite whenever squeezed is going upwards and not downwards.

Q. The information also said that you killed the Barangay Captain while he was in the performance or on the occasion of the performance of his duties as Barangay Captain because he was trying to pacify you at that time of the commission of the offense?

A. Yes, sir.

Q. You said that you did not intend to kill the victim Rodolfo Labongcay because you just accidentally squeezed the trigger of your armalite and you said before you chose that particular method of attack in order to ensure the execution. Will you explain to the court your apparently inconsistent statement?

A. Yes, sir.

Q. What is that yes sir?

A. That I shot him while he was kneeling down his arms stretched.

COURT

Q. And you admit that at the time you killed him the deceased barangay captain had his arms stretched and he was kneeling and pleading not to be killed. This is very important, do you admit it or not?

A. Yes, sir.

COURT

Enter a plea of guilty for the accused. The prosecution has already presented evidence in these cases, two witnesses. The Supreme Court has admonished Trial Courts, in the presentation of evidence even ... especially when the accused here is a high school graduate and a member of the Armed Forces of the Philippines for quite sometime and reached Private First Class in rank. The Court however will allow counsel for the defense to cross examine the witness, if it so desires. The witness for the government is available for cross examination by counsel for the defense. The record will show that the doctor ... witness, who was the doctor, Dr. Cordero, was duly cross-examined by counsel for the accused.

(tsn., pp. 54-57, Sept. 12, 1984; pp. 7-12, Brief for the Appellee, p. 117, Rollo)

On similar facts this Court has ruled that:

"xxx exercised that patience and circumspection which is enjoined of trial judges in explaining to the accused the nature and meaning of the accusation and the full-import of their plea of guilty. This injunction on trial judges in hearing a capital offense where the accused entered a plea of guilty, reiterated in the case of *People vs. Baluyot* (75 SCRA 148, 154) relied upon by appellant, appears fully complied with in the instant case. The record speaks for itself, and nothing more need hardly be said on this score." (*People vs. Pascual, Jr.* 109 SCRA 194, 204).

Of no little significance is the circumstance that appellant's decision to change his plea from not guilty to guilty was reached after the prosecution had presented two (2) witnesses, which includes an eyewitness to the killing.

Admittedly, appellant is a high school graduate who took up a two-year vocational course in radio communications. He was a member of the Armed Forces of the Philippines for quite some time and reached Private First Class in rank. He answered questions propounded to him by the lower court in English.

This Court is satisfied, therefore, that no error is imputable to the lower court in its determination that the change by the appellant of his plea from not guilty to guilty had been done knowingly, intelligently and voluntarily, with full awareness and understanding of the nature and consequences thereof.

ACCORDINGLY, the decision appealed from is hereby AFFIRMED, with the modification that the penalty imposed is reclusion perpetua^[1] 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.

Padilla, J., concur.

Melencio-Herrera, J., (Chairman), with the same reservation (Noted) as the ponente.

Sarmiento, J., with the reservations of the ponente re penalty.

Regalado, J., subject to the same reservations of the ponente.

[1] Conformably with the majority opinion in the case of *People of the Philippines vs. Munoz et al.*, G.R. Nos. L-38968-70 promulgated February 9, 1989, where the present ponente dissented insofar as the penalty imposed is concerned.

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