

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIBURCIO ABALOS, ACCUSED-APPELLANT.

G.R. No. 88189. July 09, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

In this appeal, accused-appellant Tiburcio Abalos seeks absolution from the judgment of conviction rendered by the Regional Trial Court, Branch 27, of Catbalogan, Samar which pronounced him guilty of the complex crime of direct assault with murder in Criminal Case No. 2302. His arguments in the present appeal turn on the central question of unwarranted credence allegedly extended by the trial court to the version of the criminal incident narrated by the sole prosecution witness. The totality of the evidence adduced, however, indubitably confirms appellant's guilt of the offense charged. Accordingly, we affirm.

An information filed in the trial court, dated April 21, 1983, imputed the crime of direct assault with murder to herein appellant Tiburcio Abalos, alias "Ewet," with the allegations --

"That on or about the 20th day of March, 1983, at nighttime, in the Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation and knowing fully well that one Sofronio Labine was an agent of a person in authority being a member of the Integrated National Police with station at Catbalogan, Samar, did then and there wilfully, unlawfully and feloniously attack, assault and strike said Sofronio Labine with a piece of wood, which said accused ha(d) conveniently provided himself for the purpose while said P/Pfc. Sofronio Labine, a duly appointed and qualified member of the said INP, was engaged in the performance of his official duties or on the occasion of such performance, that is, maintaining peace and order during the barangay fiesta of Canlapwas, of said municipality, thereby inflicting upon him 'Lacerated wound 2 inches parietal area right. Blood oozing from both ears and nose' which wound directly caused his death.

"That in the commission of the crime, the aggravating circumstance of nocturnity was present." [1]

At his arraignment on June 7, 1983 appellant with the assistance of counsel, entered a plea of not guilty. [2] The trial conducted thereafter culminated in the decision [3] of the trial court on February 3, 1989 finding appellant guilty as charged and meting out to him the penalty of "life imprisonment, with the accessories of the law." Appellant was likewise ordered to indemnify the heirs of the victim in the sum of P30,000.00; actual and compensatory damages in the amount of P2,633.00, with P15,000.00 as moral damages; and to pay the costs. [4]

As recounted by prosecution witness Felipe Basal, a farmer residing in Barangay Pupua, Catbalogan, Samar, appellant assaulted the victim, Pfc. Sofronio Labine, at around 8:00 P.M. of March 20, 1983, which was then the day of the barangay fiesta celebrations in Barangay Canlapwas, Catbalogan, Samar. The incident transpired near the house of appellant at the said barangay. Felipe Basal was then having a drinking session in front of the shanty of one Rodulfo Figueroa, Jr. which was situated just a few meters from the residence of appellant.

According to Basal, at about that time he noticed the father of appellant, Police Major Cecilio Abalos, scolding

his employees in his transportation business for turning in only two hundred pesos in earnings for that day. While Major Abalos was thus berating his employees, appellant arrived and asked his father not to scold them and to just let them take part in the barangay festivities. This infuriated the elder Abalos and set off a heated argument between father and son.[5]

While the two were thus quarreling, a woman shouted "Justicia, boligue kami! Adi in mag-a-aringasa," meaning, "Police officer, help us! Somebody's making trouble here." The victim, Pfc. Sofronio Labine, then appeared on the scene and asked Major Abalos, "What is it, sir?" The victim saluted Abalos when the latter turned around to face him. As Major Abalos leveled his carbine at Labine, appellant hurriedly left and procured a piece of wood, about two inches thick, three inches wide and three feet long, from a nearby Ford Fiera vehicle.

He then swiftly returned and unceremoniously swung with that wooden piece at Labine from behind, hitting the policeman at the back of the right side of his head. Labine collapsed unconscious in a heap, and he later expired from the severe skull fracture he sustained from that blow. Felipe Basal and his wife took flight right after appellant struck the victim, fearful that they might be hit by possible stray bullets[6] should a gunfight ensue.

Appellant's testimony, on the other hand, is of a different tenor. He admits having struck Labine with a piece of wood during the incident in question but claims that he did so in the erroneous belief that his father was being attacked by a member of the New People's Army (NPA). According to appellant, he was then seated inside their family-owned Sarao jeepney parked beside the store of Rodulfo Figueroa, Jr. near their home in Barangay Canlapwas when he noticed a man in fatigue uniform suddenly accost his father. At that time, appellant's father had just arrived from a trip from Wright, Samar and had just alighted from his service vehicle, a Ford Fiera.

The man tried to disarm Major Abalos of his firearm but the latter resisted and while the two were grappling for possession of the gun, appellant instinctively went to the rescue of his father. He got a piece of wood from Figueroa's store with which he then clubbed Labine whom he did not recognize at that point. When Labine fell to the ground from the blow, appellant immediately fled to Barangay Mercedes nearby, fearing that the man had companions who might retaliate. When he came to know of the identity of his victim the following morning, he forthwith surrendered to the authorities.[7]

As mentioned at the outset, the foregoing version of the factual antecedents as presented by appellant was roundly rejected by the lower court which found the same unworthy of belief. Appellant ascribes reversible errors to the trial court (a) in not giving credence to the evidence adduced by the defense, (b) in believing the evidence presented by the prosecution, (c) in relying on the prosecution's evidence which falls short of the required quantum of evidence that would warrant a conviction; (d) in finding that treachery attended the commission of the crime and failing to credit in appellant's favor his voluntary surrender; and (e) in finding appellant guilty beyond reasonable doubt of the crime charged.[8]

In the main, appellant insists that the trial court should not have given credence to the story of the lone eyewitness for the prosecution. He also contends that since the testimony of that witness bore clear traces of incredibility, particularly the fact that he could not have had a clear view of the incident due to poor visibility, the prosecution should have presented as well the woman who had called for help at the height of the incident if only to corroborate Basal's narration of the events. Appellant also assails as inherently incredible the fact that it took quite a time for witness Felipe Basal to come forward and divulge what he knew to the authorities. All these, unfortunately, are flawed arguments.

From the evidence in the case at bar, the prosecution has convincingly proved, through the clear and positive testimony of Basal, the manner in which the victim was killed by herein appellant. The record is bereft of any showing that said prosecution witness was actuated by any evil motivation or dubious intent in testifying against

appellant. Moreover, a doctrine of long standing in this jurisdiction is that the testimony of a lone eyewitness, if credible and positive, is sufficient to convict an accused.[9] There was thus no need, as appellant would want the prosecution to do, to present in court the woman who shouted for assistance since her testimony would only be corroborative in nature.

The presentation of such species of evidence in court would only be warranted when there are compelling reasons to suspect that the eyewitness is prevaricating or that his observations were inaccurate.[10] Besides, it is up to the People to determine who should be presented as prosecution witness on the basis of its own assessment of the necessity for such testimony.[11] Also, no unreasonable delay could even be attributed to Felipe Basal considering that during the wake for Pfc. Labine, Basal came and intimated to the widow of the victim that he was going to testify regarding her husband's slaying.[12]

Appellant's contention that the deceased had attacked and attempted to divest his father of his firearm is rather preposterous considering that no reason was advanced as to why the deceased patrolman would assault a police officer of superior rank. Parenthetically, the condition of visibility at the time of the incident was conducive not only to the clear and positive identification of appellant as the victim's assailant but likewise to an actual and unobstructed view of the events that led to the victim's violent death.

Basal was seated just a few meters away from the protagonists whom he all knew, he being also a long-time resident of that municipality. There was a twelve-foot high fluorescent lamppost located along the road and which, by appellant's own reckoning, was just seventeen meters away from them.[13] Notwithstanding the fact that a couple of trees partly obstructed the post, the illumination cast by the fluorescent lamp and the nearby houses provided sufficient brightness for the identification of the combatants.

Curiously enough, appellant's assertion that there was poor visibility is ironically contradicted by his testimony which is detailed on facts that one could readily recall after witnessing an event in broad daylight. While appellant considers unbelievable Basal's identification of him supposedly because of inadequate lighting, he himself, under the same conditions, could clearly see his father's assailant wearing a fatigue uniform which was different from that worn by policemen. He even asserts that he saw his father clutching the carbine with his hands holding the butt while his purported assailant held on tightly to the rifle.[14] What these facts establish is that the lights in the area at the time of the incident were enough to afford Basal an excellent view of the incident, contrary to appellant's pretense. Appellant's testimony is thus negated by the rule that evidence, to be believed, must have been given not only by a credible witness, but that the same must also be reasonably acceptable in itself.

Appellant's flight right after he had assaulted the victim is also corrosive of his testimony. For, if it were true that he had merely labored under the wrong notion that his father was being attacked by a member of the NPA, and that it was an innocent case of error in personae, he could have readily surrendered to his father right then and there. After all, Cecilio Abalos was a police major and was the Station Commander of the Integrated National Police (INP) in Wright, Samar. Further, there was no necessity at all for him to flee from the crime scene for fear of retaliation considering that he was in the company of his own father who, aside from his position, was then armed with a carbine. Appellant's explanation is, therefore, absurd and should be considered as self-serving evidence with no weight in law.

On the offense committed by appellant, the trial court correctly concluded that he should be held accountable for the complex crime of direct assault with murder. There are two modes of committing *atentados contra la autoridad o sus agentes* under Article 148 of the Revised Penal Code. The first is not a true *atentado* as it is tantamount to rebellion or sedition, except that there is no public uprising. On the other hand the second mode is the more common way of committing assault and is aggravated when there is a weapon employed in the attack, or the

offender is a public officer, or the offender lays hands upon a person in authority.[15]

Appellant committed the second form of assault, the elements of which are that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; the assault was made when the said person was performing his duties or on the occasion of such performance; and the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.[16]

Here, Labine was a duly appointed member of the then INP in Catbalogan, Samar and, thus, was an agent of a person in authority pursuant to Article 152 of the Revised Penal Code, as amended. There is also no dispute that he was in the actual performance of his duties when assaulted by appellant, that is, he was maintaining peace and order during the fiesta in Barangay Canlapwas. Appellant himself testified that he personally knew Labine to be a policeman[17] and, in fact, Labine was then wearing his uniform. These facts should have sufficiently deterred appellant from attacking him, and his defiant conduct clearly demonstrates that he really had the criminal intent to assault and injure an agent of the law.

When the assault results in the killing of that agent or of a person in authority for that matter, there arises the complex crime of direct assault with murder or homicide.[18] The killing in the instant case constituted the felony of murder qualified by alevosia through treacherous means deliberately adopted. Pfc. Labine was struck from behind while he was being confronted at the same time by appellant's father. The evidence shows that appellant deliberately went behind the victim whom he then hit with a piece of wood which he deliberately got for that purpose.

Obviously, appellant resorted to such means to avoid any risk to himself, knowing fully well that his quarry was a policeman who could readily mount a defense. The aggravating circumstances of evident premeditation and nocturnity, however, were not duly proven, as correctly ruled by the court below. On the other hand, appellant's voluntary surrender even if duly taken into account by the trial court would have been inconsequential.

The offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period. Considering that the more serious crime of murder then carried the penalty of reclusion temporal in its maximum period to death, the imposable penalty should have been death. The mitigating circumstance, in that context, would have been unavailing and inapplicable since the penalty thus imposed by the law is indivisible.[19] At all events, the punishment of death could not be imposed as it would have to be reduced to reclusion perpetua due to the then existing proscription against the imposition of the death penalty.[20]

However, the designation by the trial court of the imposable penalty as "life imprisonment" is erroneous, as the same should properly be denominated as reclusion perpetua.[21] Also, the death indemnity payable to the heirs of the victim, under the present jurisprudential policy, is P50,000.00.

ACCORDINGLY, with the MODIFICATION that the penalty imposed upon accused-appellant Tiburcio Abalos should be reclusion perpetua, and that the death indemnity is hereby increased to P50,000.00, the judgment of the court a quo in Criminal Case No. 2302 is AFFIRMED in all other respects, with costs against accused-appellant.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo, 1-2.

[2] Ibid., 4.

- [3] Per Judge Sinfioriano A. Monsanto.
- [4] Rollo, 9.
- [5] TSN, November 6, 1984, 16-23.
- [6] Ibid., id., 23-29.
- [7] Ibid., November 14, 1988, 32-36.
- [8] Brief for the Accused-Appellant, 1; Rollo, 13.
- [9] People vs. Bondoc, G.R. No. 98400, May 23, 1994, 232 SCRA 478; People vs. Paglinawan, G.R. No. 107804, June 28, 1994, 233 SCRA 494.
- [10] People vs. Comia, G.R. No. 109761, September 1, 1994, 236 SCRA 185.
- [11] People vs. Dela Cruz, G.R. No. 108180, February 8, 1994, 229 SCRA 754.
- [12] TSN, April 8, 1985, 18.
- [13] Ibid., November 14, 1988, 41.
- [14] Ibid., id., 45-47.
- [15] Aquino, R.C., The Revised Penal Code, Vol. II, 1987 ed., 146.
- [16] U.S. vs. Alvear, et al., 35 Phil. 626 (1916); People vs. Rellin, 77 Phil. 1038 (1947); People vs. Villaseñor, L-28574, October 24, 1970, 35 SCRA 460.
- [17] TSN, November 14, 1988, 45.
- [18] People vs. Cesar, L-26185, March 13, 1968, 22 SCRA 1024; People vs. Renegado, L-27031, May 31, 1974, 57 SCRA 275; People vs. Gadiano, L-31818, July 30, 1982, 115 SCRA 559.
- [19] Article 48, in relation to Art. 63, Revised Penal Code.
- [20] See 19(1), Art. III, 1987 Constitution; People vs. Muñoz, et al., L-38969-70, February 9, 1989, 170 SCRA 107.
- [21] See Administrative Circular 6-92, dated October 8, 1992, re "Correct Application of the Penalty of Reclusion Perpetua."

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