

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO VERCHEZ Y BALANE, ROMEO ALDAVE Y TATAD, VIRGILIO BALANE Y ZAPANTA, ALFREDO MAMUNTAG Y CRUZ, HECTOR MAMUNTAG Y ZUNIGA, ...

G.R. Nos. 82729-32. June 15, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the Decision of the Regional Trial Court, Branch 19, Bacoor, Cavite in Criminal Cases Nos. B-85-213 to B-85-216.

We affirm with modification the decision of the Regional Trial Court:

I

The Information in Criminal Case No. B-85-213, for murder reads as follows:

"The undersigned Assistant Provincial Fiscal accuses ROLANDO VERCHEZ Y BALANE, ROMEO ALDAVE Y TATAD, VIRGILIO BALANE Y ZAPANTA, ALFREDO MAMUNTAG Y CRUZ, HECTOR MAMUNTAG Y ZUNIGA and GILBERT ANG Y TAN of the crime of Murder, committed as follows:

That on or about the 15th day of August, 1985, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, acting jointly and mutually aiding each other, with intent to kill with treachery and evident premeditation, armed with assorted firearms, did, then and there, willfully, unlawfully and feloniously attack, assault and fire upon a group of PC/INP soldiers, hitting Sgt. Monico Norcio, on different parts of his body causing his instantaneous death, to the damage and prejudice of his family" (Rollo, p. 45).

The Information in Criminal Case No. B-85-214 for frustrated murder, reads as follows:

"The undersigned Assistant Provincial Fiscal accuses ROLANDO VERCHEZ Y BALANE, ROMEO ALDAVE Y TATAD, VIRGILIO BALANE Y ZAPANTA, ALFREDO MAMUNTAG Y ZUNIGA AND GILBERT ANG Y TAN of the crime of FRUSTRATED MURDER, committed as follows:

That on or about the 15th day of August, 1985, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, acting jointly and mutually aiding each other, with intent to kill, with treachery and evident premeditation, armed with assorted firearms, did then and there, willfully, unlawfully, and feloniously attack, assault and fire upon a group of PC/INP soldiers, hitting P/Cpl. David Noora, on different parts of his body, accused having performed all the acts of execution which would produce the crime of MURDER as a consequence but which did not produce it by reason of causes independent of his will, that is due to the able and timely medical assistance rendered to him which prevented his death, to the damage and prejudice of said P/Cpl. David Noora" (Rollo, p. 44).

The Information in Criminal Case No. B-85-215, for frustrated murder, reads as follows:

"The undersigned Assistant Provincial Fiscal accuses ROLANDO VERCHEZ Y BALANE, ROMEO ALDAVE Y TATAD, VIRGILIO BALANE Y ZAPANTA, ALFREDO MAMUNTAG Y CRUZ, HECTOR MAMUNTAG Y ZUNIGA AND GILBERT ANG Y TAN of the crime of FRUSTRATED MURDER, committed as follows:

That on or about the 15th day of August, 1985, in the Municipality of Bacoar, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, acting jointly and mutually aiding each other, with intent to kill, with treachery and evident premeditation, armed with assorted firearms, did, then and there, willfully, unlawfully and feloniously attack, assault and fire upon a group of PC/INP soldiers, hitting PFC Wilfredo Pagsanjan, on different parts of his body, accused having performed all the acts of execution which would produce the crime of MURDER as a consequence but which did not produce it by reason of causes independent of his will, that is due to the able and timely medical assistance rendered to him which prevented his death, to the damage and prejudice of said PFC Wilfredo Pagsanjan" (Rollo, pp. 44-45).

The Information in Criminal Case No. 85-216, for illegal possession of firearms and ammunitions, reads as follows:

"The undersigned Assistant Provincial Fiscal accuses ROLANDO VERCHEZ Y BALANE, ROMEO ALDAVE Y TATAD, VIRGILIO BALANE Y ZAPANTA, ALFREDO MAMUNTAG Y CRUZ, HECTOR MAMUNTAG Y ZUNIGA AND GILBERT ANG Y TAN of the crime of ILLEGAL POSSESSION OF FIREARMS AND AMMUNITIONS, committed as follows:

That on or about the 15th day of August, 1985, in the Municipality of Bacoar, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, acting jointly and mutually helping each other, did, then and there, willfully, and unlawfully and feloniously have in their possession, custody and control the following firearms to wit:

1. One (1) Armalite Rifle M16 with SN--041868
2. One (1) Baby Armalite Rifle M16 with SN--123658
3. One (1) Cal. 45 Pistol Remington with SN-2228779
4. One (1) Revolver Cal. 38 Remington with defaced serial number
5. One (1) Shotgun CA12 Squire Bingham with defaced serial number without first securing and obtaining the necessary licenses and permits from competent authority, to the damage and prejudice of the government.

A shoot-out between elements of the Special Operations Group of the Philippine Constabulary and suspected bank robbers on August 15, 1985 in Bacoar, Cavite, resulted to the death of a police officer and injuries to two other officers" (Rollo, pp. 45-46).

Upon arraignment, all the accused pleaded not guilty to the crimes charged. Trial then ensued.

The trial court rendered a decision on December 28, 1987, disposing as follows:

"WHEREFORE, foregoing considered, the Court finds:

1. In Crim. Case No. B-85-213, accused ROLANDO VERCHEZ and ROMEO ALDAVE, beyond reasonable doubt GUILTY of the crime of MURDER for the death of Sgt. Monica Norcio and after considering the aggravating circumstance in disregard of the respect due the offended party on account of his rank hereby sentences said accused to a penalty of reclusion perpetua and to indemnify the heirs of Sgt. Monico Norcio in the amount of Thirty Thousand (P30,000.00) Pesos, moral damages of Ten Thousand (P10,000.00) Pesos and

exemplary damages of Five Thousand (P5,000.00) Pesos;

2. In Crim. Case No. B-85-214, accused ROLANDO VERCHEZ and ROMEO ALDAVE, beyond reasonable doubt GUILTY of the crime of FRUSTRATED MURDER and after considering the aggravating circumstance in disregard of the respect due the offended party on account of his rank, hereby sentences said accused to a penalty ranging from 8 years of prision mayor as minimum to 14 years, 10 months and 21 days of reclusion temporal as maximum;

3. In Criminal Case No. B-85-216, accused ROLANDO VERCHEZ and ROMEO ALDAVE beyond reasonable doubt GUILTY of VIOLATION of SECTION 1 OF PRESIDENTIAL DECREE NO. 1866 resulting to Murder and hereby sentences said accused to suffer a penalty of reclusion perpetua;

4. In Criminal Case No. B-85-215, accused ROLANDO VERCHEZ and ROMEO ALDAVE are ordered ACQUITTED;

5. Accused VIRGILIO BALANE, HECTOR MAMUNTAG and ALFREDO MAMUNTAG in Crim. Cases Nos. B-85-213 (Murder); B-85-214 and 215 (Frustrated Murder) and B-85-216 for Illegal Possession of Firearms are ordered ACQUITTED of the charge.

Accused VERCHEZ and ALDAVE are ordered to pay the proportionate cost.

The promulgation of judgment of the charge against GILBERT ANG considering his absence today, notice duly served personally by the process server of this Court and on January 29, 1988 is ordered cancelled and to be included in the calendar of the Court soon (sic) upon his arrest or when he submits to the jurisdiction of the Court.

The firearms involved are ordered confiscated in favor of the government and to be disposed of in accordance with law. The car (Toyota) confiscated from accused Romeo Balane (sic) is ordered returned to the lawful owner" (Rollo, pp. 84-85).

Defendants Rolando Verchez and Romeo Aldave interposed the instant appeal, assailing the trial court's decision in Criminal Cases Nos. B-85-213 (Murder), B-85-214 (Frustrated Murder) and B-85-216 (Violation of P.D. 1866) (Rollo, pp. 165-187, 217-304).

II

On August 15, 1985, Capt. Raul Castaneda and Lt. Marcelo Garbo of the Special Operations Group (SOG) of the Central Organized Crime Task Force of the Philippine Constabulary/Integrated National Police (PC/INP) led a team of government agents in conducting a surveillance operation on a house reported to be the hideout of a gang of suspected bank robbers at Queen's Row Subdivision, Barangay Molino, Bacoar, Cavite. When a blue Toyota car came out of the subdivision, the government agents stopped it and introduced themselves to the driver of the car as police officers. Virgilio Balane, the driver, identified himself as a member of the PC. Balane was prevailed upon into accompanying the government agents to the house where his companions were staying (TSN, February 12, 1986, p. 4). The government agents, together with Balane, then proceeded to the house in four cars. In the first car were Sgts. Sangel and Monico Norcio followed by the car driven by Lt. Marcelo Garbo. The third car was driven by Capt. Castaneda while the fourth car was occupied by Sgt. Gana, Cpl. David Noora and Balane. When the first car approached the house, the lawmen were met by a heavy volley of gunfire. The police disembarked from their vehicles and after seeking cover, shouted to the occupants of the house that they were members of the PC. The occupants of the house responded with another barrage of bullets. As the government agents returned fire, a fire fight ensued. Three of the lawmen were hit. Sgt. Norcio died on the spot, while Cpl. Noora and Pfc. Wilfredo Pagsanjan sustained injuries but survived.

Lt. Garbo sought reinforcement from the Bacoor Police Department upon instructions of Capt. Castaneda. He returned with about ten lawmen, who were deployed around the hideout. The fire fight resumed. With Balane in tow, Capt. Castaneda then approached the house, and negotiated for the surrender of its occupants.

The men inside the house eventually surrendered, throwing their firearms outside the gate (TSN, January 14, 1986, p. 6). They were later identified as Rolando Verchez, Romeo Aldave, Alfredo Mamuntag, Hector Mamuntag and Gilbert Ang. Confiscated from them were one (1) baby Armalite rifle (Serial No. 123658), one (1) Armalite rifle (Serial No. 041868), one (1) cal. 45 Remington Pistol (Serial No. 222879) with ammunition, one (1) revolver, cal. .38 Squire Bingham (with defaced serial number) and empty shells of a .38 caliber pistol, one (1) shotgun 12 gauge (with defaced serial number) and five cartons of M-16 ammunitions. The police, likewise, recovered 114 empty shells of Armalite rifle bullets.

The accused were brought to the SOG headquarters at Camp Crame, Quezon City for investigation. With the assistance of Atty. Leopoldo de la Rosa, they executed their respective sworn statements (TSN, March 21, 1986, pp. 4-5). Verchez, Aldave and Balane admitted being involved in several bank heists. They, likewise, admitted that Verchez fired the first shot at the policemen, which triggered the gun battle (Exhs. "J" - "L"). All of them were then subjected to paraffin tests, the results of which (Exh. "P") showed Balane, Aldave and Verchez to be positive for nitrates while there were no traces of nitrates found from Ang, Alfredo and Hector Mamuntag.

The Firearms and Explosives Unit of the PC issued a certification (Exh. "F") to the effect that the confiscated firearms were unregistered and unlicensed. The firearms were likewise submitted to the PC Crime Laboratory for ballistics examination. The report of the examination concluded that:

X X X X X X X X

"1. The .223 cal. fired cartridge cases marked 'EM-1' to 'EM-78' were fired from the above-mentioned .223 cal. Armalite Rifle with Serial No. 041868, while those marked 'EM-79' to 'EM-114' were fired from .223 cal. Armalite Rifle with Serial No. RP-123658.

2. The .45 cal. fired cartridge cases marked 'EM-1' to 'EM-5' were fired from the above-mentioned .45 cal. Remington Rand Pistol with Serial No. 2228779" (Rollo, p. 334).

Dr. Desiderio Moraleda of the PC Crime Laboratory, who conducted an autopsy on the cadaver of Sgt. Norcio, found the latter's cause of death as "cardio-respiratory arrest due to shock and hemorrhage as a result of gunshot wound of the trunk" (Exh. "W").

III

According to the defense, Verchez invited Balane on August 15, 1985 to visit his brother, who was then living in Queen's Row Subdivision, Bacoor, Cavite. On their way, the two chanced upon Aldave, a "compadre" of Verchez' brother, who joined them. They arrived at their destination at about 2:30 P.M. but found that Verchez' brother was not at home. However, they saw Alfredo Mamuntag, the caretaker of the house, Alfredo's son, Hector, and Gilbert Ang, who were then visiting with Alfredo.

Verchez decided to wait and drink liquor at the yard. At about 3:00 P.M., Balane drove away to buy cigarettes and "pulutan." He had not driven far when a car blocked his way, with the occupants pointing their firearms at him. Then another car arrived. One of the passengers from the second car approached Balane and frisked him. Thereafter he was dragged out of the car, handcuffed and blindfolded. After he was boxed on the face and stomach, he was pushed inside a car.

Verchez saw several cars stop in front of the house. Men in civilian clothes with firearms alighted from the cars.

One of the men ordered him to open the door. Suddenly, he heard a gunshot and Aldave, who was then at the back of the house, shouted that someone took a shot at him. After the two ran inside the house, they heard more gunshots.

Verchez got a loaded M-16 Armalite rifle from one of the rooms and fired back at his attackers. Aldave looked around and found an Armalite rifle. He also fired back.

Balane, still blindfolded and handcuffed, was ordered by Capt. Castaneda to advise his companions to surrender. Hence, he shouted, "Sumuko na kayo si Vic ito." However, someone also shouted "Huwag na kayong sumurender, papatayin nalang namin kayo."

The firing continued for 15 minutes, after which the police were able to enter the house. Verchez and Aldave, together with the other occupants of the house, surrendered and were brought to Camp Crame.

Verchez and Aldave claimed that at Camp Crame, they were tortured into admitting participation in several bank robberies. They were forced into signing a prepared statement confessing their illegal activities, including having engaged the police officers in a fire fight on August 15, 1985.

In assailing the judgment convicting them, appellants contend that the court a quo erred in: (1) giving faith and credence to the testimonies of Capt. Castaneda, Lt. Garbo and Sgt. Norcio regarding the encounter between the government agents and appellants; (2) admitting in evidence these extrajudicial statements in violation of Section 12(3), Article III of the Constitution; and (3) considering against them the aggravating circumstance of disregard of respect due the offended party on account of his rank.

Well-settled is the rule that findings of the trial court pertaining to the credibility of a witness are entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand. Therefore, it could discern if such witness was telling the truth or not (*People v. De Guzman*, 216 SCRA 754 [1992]).

In giving faith and credence to the version of the police officers, the trial court held:

"On the other hand, the evidence against accused Rolando Verchez and Romeo Aldave was sufficient to hold both accused liable of the crimes imputed against them. The Court cannot give credence to their claim that when the car of the lawmen stopped in front of the house and without warning, the lawmen fired the initial volley of fires which were directed at the house occupants. In the first place, there is no showing that Capt. Raul Castaneda saw the persons inside the house in order to be sure of their target. Secondly, Capt. Castaneda and his men were not definite (sic) of the identity of the persons in the house; and thirdly, there was no motive, reason or justification for Capt. Castaneda, an experienced military combat officer having been assigned in the battlefronts in Mindanao and in the province of Cagayan, to order his men to discharge their firearms indiscriminately" (Rollo, pp. 227-228).

To our mind, the issue of whether or not the extrajudicial confessions of appellants are admissible against them is not material. As the trial court correctly ruled, there is sufficient evidence, independent of their confessions, to hold appellants guilty beyond reasonable doubt for the death of Sgt. Norcio and for the injuries sustained by Cpl. Noora.

Anent the claim of appellants that they were tortured and maltreated by the apprehending lawmen, as well as by the crime investigators, no evidence was ever presented by appellants to support it.

However, while we are adopting the factual findings of the court a quo, we are not inclined to agree with its conclusions.

In convicting appellants of murder, the trial court ruled that the killing of Sgt. Norcio was qualified by treachery

as the firing of the guns was sudden and unexpected (Rollo, p. 39). We find, however, that treachery was not sufficiently established.

For the qualifying circumstance of treachery to be present, two conditions must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) that said means of execution was deliberately or consciously adopted (*People v. Dela Cruz*, 207 SCRA 632 [1992]).

The lawmen, knowing that they were dealing with a gang of bank robbers, were prepared for any resistance that may possibly be put up. They even brought along with them Balane to facilitate the surrender of appellants. The casualties on the lawmen's side were suffered only after the first volley of fire came from the side of appellants and after the lawmen had left their vehicles and taken cover. In short, Sgt. Norcio was killed and Cpl. Noora was wounded during, and not before the gun battle.

There is no showing that appellants deliberately and consciously adopted their mode of attack. Neither is there any showing that they planned to ambush the lawmen, much less that they knew that the lawmen were coming. What is apparent is that appellants were caught by surprise by the lawmen, hence, acting on the spur of the moment, they fired back.

Absent the qualifying circumstance of treachery, appellants can only be convicted of homicide for the death of Sgt. Norcio and frustrated homicide for the wounding of Sgt. Noora.

The aggravating circumstance of disregard of the respect due the offended party on account of his rank is, likewise, unavailing. There is no showing that appellants deliberately intended to offend or insult the rank of the victim, which is the essence of said aggravating circumstance. This is so because the raiding police officers were not even in uniform.

The penalty for homicide is reclusion temporal (Revised Penal Code, Art. 249) which should be imposed in its medium period since neither aggravating nor mitigating circumstances were proven in this case. Applying the Indeterminate Sentence Law, appellants shall suffer the penalty of twelve (12) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

Following recent case law, the indemnity for Sgt. Norcio's death should be P50,000.00 (*People v. Simon*, 209 SCRA 148 [1992]).

For committing frustrated homicide, appellants should be meted a penalty one degree lower than that prescribed by law for the consummated homicide (Revised Penal Code, Art. 250) or prision mayor medium, there being no aggravating or mitigating circumstances attendant in the commission of the crime. With the application of the Indeterminate Sentence Law, the proper penalty should be six (6) years of prision correccional as minimum to ten (10) years of prision mayor as maximum.

Appellants' contention that the trial court erred in convicting them of illegal possession of firearms must also fail. Their contention is premised on the allegations that: (1) they used the firearms in legitimate self-defense; and (2) they did not own the firearms and their possession of the same "was for a fleeting moment only and the firearm was not subject to his control and management" (Rollo, pp. 215--218).

Section 1 of P.D. No. 1866 states that:

"Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunitions or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any firearms, part of firearm, ammunition or

machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed."

This provision of law is clear. What is penalized in the first paragraph is the act of a person who shall, among others, "unlawfully possess any firearm xxx (or) ammunition x x." The possession of a firearm becomes unlawful when there is no permit or license for its holding. The law does not prescribe a minimum period of time for the holding of the firearm before its possession can be illegal.

Appellants' allegation that they did not have control or management of the firearms is without merit. The records show that they knew where to find the firearms. Both Verchez and Aldave testified that they sought cover inside separate bedrooms when the lawmen fired at them. Thereafter, they retrieved the firearms from the cabinet in their respective rooms. Their story that their finding of firearms in the cabinets was a happenstance is simply incredible and not deserving the slightest consideration of this Court.

However, the trial court erred in finding appellants guilty of violating of Section 1 of P.D. No. 1866 "resulting to murder," and in sentencing said accused to suffer a penalty of reclusion perpetua" (Rollo, p. 84).

It is true that under paragraph 2 of Section 1 of P.D. No. 1866, the penalty of death shall be imposed if homicide or murder is committed with the use of an unlicensed firearm. This qualifying circumstance must, however, be alleged in the information, which was not done in Criminal Case No. B-85-216.

In *People v. Tiozon*, 198 SCRA 368 (1991) we held that because homicide or murder is a circumstance which increases the penalty under Section 1 of P.D. No. 1866, said crime qualifies the offense. The Court added:

"x x x, to justify the imposition of the increased penalty under Section 1 of P.D. No. 1866 because of the resulting crime of homicide or murder, the prosecution must allege in the information and prove by the quantum of evidence required for conviction violation of said section and, more specifically, the use of an unlicensed firearm and the commission of homicide or murder. In this regard, the information in this case is sufficient in form and substance. It alleges illegal possession of a firearm and of murder. The latter is covered by the clause 'which firearm was used with treachery and evident premeditation in shooting one Leonardo Bolima y Mesia, which caused his death.'"

The law imposes the penalty of reclusion temporal maximum or 17 years, 4 months and 1 day to reclusion perpetua for the unqualified offense of illegal possession of firearms. There being neither aggravating nor mitigating circumstances, the penalty which shall be imposed is the medium period or 18 years, 8 months and 1 day to 20 years of reclusion temporal (Revised Penal Code, Arts. 64 and 65). Applying the Indeterminate Sentence Law, the minimum penalty that can be imposed is from 17 years, 4 months 1 day to 20 years of reclusion temporal. Under the said law, as amended by Act No. 4225, "if the offense is punished by any other law (than the Revised Penal Code or its amendments), the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same."

WHEREFORE, the appealed Decision is AFFIRMED, with the following modifications:

1. In Criminal Case No. B-85-213, appellants are found GUILTY beyond reasonable doubt of Homicide and are SENTENCED to ten (10) years of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

Appellants shall jointly and severally indemnify the heirs of Sgt. Monico Norcio in the amount of fifty thousand pesos (P50,000.00).

2. In Criminal Case No. B-85-214, appellants are found GUILTY beyond reasonable doubt of Frustrated Homicide and are SENTENCED to three (3) years of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.

3. In Criminal Case No. B-85-216, appellants are found GUILTY of Violation of P.D. 1866 (Illegal Possession of Firearms) and are SENTENCED to seventeen (17) years, four (4) months and one (1) day as minimum to twenty (20) years of reclusion temporal as maximum.

These penalties shall be served by appellants in accordance with Article 70 of the Revised Penal Code.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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