

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX ABITONA, DEFENDANT-APPELLANT.*G.R. Nos. 96943-45. January 20, 1995*

Ponente: ROMERO, J.

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At around 7:00 o'clock in the evening of September 27, 1984, as Arsenito Dagacay and his family were having supper at their house in Linangcayan, Naawan, Misamis Oriental, they heard agitated sounds of the pigs outside. One of the five children, nine-year old Arcie, noticed the nozzle of a gun resting on the rail of the wall pointed at his father. Before he could react, a burst of gunfire suddenly exploded and the whole family crouched on the floor. Arcie and his sister Gina were wounded, but Arsenito was slain.

Although hit in the head, Arcie managed to rise to seek help from his grandfather, Felix Dagacay, who lived a mere 100 meters away. As he was passing through the kitchen door, he saw three armed persons coming from below their house. The moon was out and all the lights in the house were on. From a distance of about seven meters, one of the men glanced at him sideways. He recognized this man as Alex Abitona, known to him by face because they sometimes met at the Naawan municipal hall and by name because his father once described Abitona as one of the bodyguards of then Naawan mayor Sulpicio Laranjo. Abitona was carrying an armalite rifle. He omitted to inform his "Tatay" Felix of the suspect's identity but he did tell his mother, Conchita, that Alex Abitona was responsible for the shooting.

The shots were heard by the neighbors of the victims.

Felix Dagacay was resting at his balcony when the shots rang out. After a while, his grandson Arcie, drenched in blood, came asking for help. Arsenito was already dead when they found him. Thereupon, Felix sought the assistance of Barangay Captain Tirso Perpetua, whose wife, Leonisa, accompanied him to the police detachment at the municipal hall of Naawan to report the incident. Inasmuch as the police did not take any action, he proceeded instead to the parish church to borrow a vehicle to be used in conveying Arcie and Gina to the hospital at Iligan City.

Another neighbor, Lydia Dagiapos, was already hiding after hearing the shots when she saw three armed persons coming from the direction of the shots, that is, from the house of Arsenito Dagacay. One of the men was walking casually, while the other two, whom she identified as Abitona and Lito Cruz, were hurriedly walking. Although she helped in bringing the children to the hospital, she did not tell anyone about what she saw earlier. It was only after Arsenito was buried that she told Felix what she observed that fateful night. That was the first time that Felix learned of the identity of the suspects.

Felix's attempts to follow up his complaint were futile as Chief of Police Hilario Badal did not act on it. This police inaction prompted Felix to seek assistance from the National Bureau of Investigation. The complaints were filed on July 14, 1986 by NBI Agent Justiniano O. Parras, but the informations for murder and two frustrated murders were filed only on October 16, 1987.

Abitona denied any participation in the shooting of Arsenito, Arcie, and Gina Dagacay. He claimed that at the time of the incident he and co-accused Lito Cruz were at the municipal building of Naawan, a mere two kilometers from Linangcayan which, by the account of the other defense witnesses, may be reached by jeep within ten minutes. Cruz, a member of the Civilian Home Defense Force, and Abitona, a stay-in utility man, were among those required to remain in the municipal building at that time because of a standing threat of attack by New People's Army insurgents. Abitona also denied that he was Mayor Laranjo's bodyguard, yet he admitted that he was allowed to carry firearms and go with the army, police, or PC to critical areas.

Two witnesses - Chief of Police Hilario Badal and then Naawan mayor Sulpicio Laranjo, who were both billeted at the municipal building at that time owing to the red alert situation - corroborated Abitona's alibi.

After trial on the merits, Judge Alejandro M. Velez of the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 20, rendered a decision dated April 19, 1990, the dispositive portion of which reads thus:

"Considering the foregoing reasons and observations, accused Alex Abitona is hereby found guilty beyond reasonable doubt of the crimes charged in the three (3) foregoing informations for Murder, Frustrated Murder and Frustrated Murder, there being no mitigating or (sic) aggravating circumstances present and hereby sentences the accused Alex Abitona to the penalty of Life Imprisonment on the crime of Murder in Criminal Case No. 7963 because of the abolition of the death penalty under the new constitution and on the crimes of two Frustrated Murders, he is further(,) separately in Criminal Cases Nos. 7964 and 7965(,) sentenced to two penalties of Reclusion Temporal in its medium period. Applying the [I]ndeterminate [S]entence [L]aw, the range of the imposable penalty is from eight (8) years and one (1) day of prison mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. This is clearly understood to mean that the penalty in Criminal Cases Nos. 7964 and 7965 against accused Alex Abitona are separate penalties although similar in degree of severity and all these three penalties must be served by the accused Alex Abitona successively under Art. 70 of the Revised Penal Code unless he has been detained for other crimes or pardoned.

Accused Alex Abitona is further ordered to indemnify the heirs of the deceased Arsenito Dagacay in the sum of P30,000.00 and furthermore to indemnify the victim Gina Dagacay in Criminal Case No. 7964 in the sum of Five (P5,000.00) Thousand pesos and to indemnify the victim Arcie Dagacay in Criminal Case No. 7965 in the sum of Five Thousand (P5,000.00) pesos. (Peo. vs. Almario, G.R. 69374, 16 March, 1989).

In the case of accused Lito Cruz, for failure of the prosecution to prove his guilt beyond reasonable doubt, he is hereby acquitted from any criminal or civil liability from the charges in Criminal Cases Nos. 7963, 7964 and 7965.

SO ORDERED."

In this appeal, Abitona claims that he should be acquitted on the basis of the exoneration of his co-accused Lito Cruz, since the evidence relied upon by the court in convicting him was the same as that used in acquitting Cruz. He adds that he was never seen firing a gun and argues that Arcie's testimony should not have been given much weight on account of the tender age of the boy at the time of the incident and the lapse of four years before he actually testified. Finally, Abitona contends that the prosecution failed to establish intent to kill Arcie and Gina Dagacay as well as the fact that they sustained gunshot wounds.

These arguments are untenable.

It needs no stressing that this Court has, time and again, deferred to the factual findings of the trial judge, for his appreciation of the evidence is first-hand, having personally heard and observed the witnesses when they testified and thus, he is not confined to the records.

The court a quo found Arcie a credible witness. We agree that Arcie's age at the time of the incident did not cloud the veracity and accuracy of his testimony. In fact, he showed a presence of mind rarely seen in boys of his age when, after being hit in the initial burst of gunfire and ignoring the threat of further shooting, he was still the one who ran to his "Tatay" Felix for help. Such attitude amid danger only lends more credence to his testimony. The Court has also constantly maintained that children make the best witnesses because of their power of observation and recall, as well as their innocence. As long as they fully understand the import of an oath, their narration of events they witnessed should be given absolute acceptance. [1]

Abitona denied any role in the shooting, and his alibi was corroborated by the police chief and the former mayor of Naawan. Yet, such defense must fall in the light of the testimony of Arcie and Dagiaposo placing him at the crime scene immediately after the shooting, and the admission by all the defense witnesses that the municipal building where Abitona and Cruz supposedly were during the shooting was only two kilometers from the crime scene, a mere ten-minute ride by jeep, which fact makes it not quite impossible for him to have been at the place of the incident at around 7 o'clock in the evening of September 27, 1984.

While it is true that nobody saw Abitona actually firing a gun, it remains undisputed that he was seen by two witnesses fleeing from the scene of the crime, "hurriedly walking" immediately after the shooting, coming from the lower portion of Arsenito Dagacay's house at the back, and carrying a long firearm, an "armalite," in the words of Arcie. These observations, taken in their natural and rational order as an unbroken chain of circumstances, are enough to establish Abitona's participation in the offenses charged.

"In cases where the facts or circumstances which are proved are not only consistent with the guilt of the defendant, but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court." [2]

Intent to kill has been adequately established in this case with the use by the accused-appellant of a high-powered automatic weapon upon an unsuspecting family. It is also clear from the combined testimonies of the prosecution witnesses that Gina and Arcie Dagacay were indeed wounded as a result of the shooting. The fact that, other than the said testimonies, no evidence was presented to prove that they sustained gunshot wounds, and that Gina was never put on the stand, does not mean that no crime was committed against them. Hence, we sustain the trial court's finding that Gina and Arcie Dagacay were, along with their father Arsenito, victims of a senseless and gruesome shooting.

We note that the only qualifying circumstance indicated in the three informations was evident premeditation, which was not proven in this case. It has, however, been shown that several other circumstances are present here which may affect the penalty to be finally imposed upon the accused-appellant.

The crimes were committed with treachery, that is, with the use of a method especially designed to insure their execution without risk to the offenders: Arsenito Dagacay and his family were eating supper when the perpetrators, hiding under cover of night, suddenly and unexpectedly shot them with an automatic rifle. Their bloody deed done, they still took advantage of nighttime in trying to flee from the scene of the crime undetected; it was purely by chance that at least one of them, accused-appellant Abitona, was identified by two witnesses. In using a high-powered automatic weapon, the offenders clearly took advantage of their superior strength. Not only were the targets unarmed, they were also caught unawares by the attack. Nighttime and superior strength are, however, absorbed in treachery which may be treated now only as a generic aggravating circumstance because it was not alleged in the informations. [3]

Another circumstance which attended these crimes is dwelling, for the shooting was committed in violation of the sanctity of the victims' house, even though the offenders may have been outside at the time. [4]

These aggravating circumstances being merely generic, accused-appellant Abitona can only be convicted of homicide, punishable by reclusion temporal in its maximum period, and two counts of frustrated homicide, each punishable by reclusion temporal in its medium period.

WHEREFORE, the appealed decision is hereby MODIFIED as follows:

1) In Criminal Case No. 7963, for the death of Arsenito Dagacay, accused-appellant Alex Abitona is hereby found guilty of HOMICIDE and, in view of the attendance of the aggravating circumstances of treachery and dwelling and applying the Indeterminate Sentence Law, is hereby meted the indeterminate penalty of twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum. He is further required to indemnify the heirs of Arsenito Dagacay in the amount of P50,000.00 instead of P30,000.00, in keeping with the present policy of this Court;

2) In Criminal Cases Nos. 7964 and 7965, for the wounding of Gina and Arcie Dagacay, accused-appellant Alex Abitona is hereby found guilty of FRUSTRATED HOMICIDE and, in view of the attendance of the aggravating circumstances of treachery and dwelling and applying the Indeterminate Sentence Law, is hereby meted the indeterminate penalty of six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum for each of these two criminal cases. The award of P5,000.00 each to Gina and Arcie Dagacay is hereby AFFIRMED.

It is understood that these sentences shall be successively served under the provisions of Article 70 of the Revised Penal Code.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] People v. Pedrosa, G.R. No. 56457, January 27, 1989, 169 SCRA 545; People v. Mesias, G.R. No. 67823, July 9, 1991, 199 SCRA 20.

[2] Bowie v. State, 185 Ark. 834, 49 S.W. (2d) 1049, 83 A.L.R.

[3] People v. Pascual, G.R. No. 42769, December 5, 1991, 204 SCRA 618, citing People v. Mori, 55 SCRA 382.

[4] People v. Ompad, 136 Phil. 114.

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