

## THIRD DIVISION

[ G.R. No. 183449, March 12, 2012 ]

**ALFREDO JACA MONTAJES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Assailed in this petition for review on *certiorari* are the Resolutions dated September 21, 2007<sup>[1]</sup> and May 19, 2008<sup>[2]</sup> of the Court of Appeals (CA) issued in CA-G.R. CR No. 00410 which dismissed the petition for review filed by petitioner Alfredo Jaca Montajes for being filed out of time, and denied reconsideration thereof, respectively.

In an Information<sup>[3]</sup> dated June 5, 2003, petitioner was charged with the crime of Direct Assault before the Municipal Trial Court (MTC) of Buenavista, Agusan del Norte, the accusatory portion of which reads:

That on or about the 8<sup>th</sup> day of December, 2002, at 1:00 early morning, more or less, in Purok 10, Barangay Abilan, Buenavista, Agusan del Norte, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously attack, assault, and hack one JOSE B. RELLON, an elected Punong Barangay, while in the performance of his duties, and accused fully know that Jose B. Rellon is a Barangay Official, to the damage and prejudice of said Jose B. Rellon.

CONTRARY TO LAW: Article 148 of the revised Penal Code.<sup>[4]</sup>

When arraigned, petitioner pleaded *not guilty* to the charge.<sup>[5]</sup>

Thereafter, trial ensued.

The evidence of the prosecution and the defense is summarized by the MTC as follows:

To substantiate the alleged commission of the crime of direct assault by the accused, complaining witness Jose B. Rellon declared *inter alia*, that he has been the Barangay Captain of Barangay Abilan, Buenavista, Agusan del Norte since the year 2002. On December 8, 2002, at about 1:00 o'clock in the early morning, he was at the benefit dance sponsored by the *Sangguniang Kabataan* at Purok 4, Barangay Abilan, Buenavista,

Agusan del Norte. He met accused Alfredo Montajes who uttered to him the words "YOU'RE A USELESS CAPTAIN." Other words of similar import were likewise uttered by the accused against him which he could no longer recall. After uttering the said words, the accused then drew his bolo locally known as "lagaraw" and approached him. He then moved backward, but the accused came near to him and struck him once with the "lagaraw." Luckily, complainant was not hit as he managed to move backward. Complainant's daughter named Vilma Dector and his wife, approached him and brought him home. Many people, including two (2) CVO (Rodelio Laureto and Victorio Trinquite), witnessed the incident.

During the mediation in the barangay hall, an investigation was conducted. The accused, according to the complainant, asked for forgiveness from him which he declined, as he was of the impression that the law must be applied and the accused should instead ask for forgiveness in court.

As proof that the accused asked for forgiveness, complainant presented a document (Exh. "B") to that effect.

Complainant had the incident blotted at the police station as evidenced by an extract thereof.

On cross-examination, complainant testified that he went to the benefit dance to stop it since it was already 1:00 o'clock in the early morning and the benefit dance was still going on when it was supposed to end at 12:00 o'clock midnight as the permit he gave was only up to 12:00 o'clock midnight. As a result of the stoppage of the benefit dance, many persons got angry, and he heard that the house of the accused was stoned which made the accused angry. In fact, he saw the accused murmuring as his house was stoned by unknown persons. When the accused came near to him, the former did not ask for assistance from him.

Prosecution witness Rodelio Laureto corroborated the declaration of the complainant that it was the accused who hacked the complainant with the use of a "lagaraw," but failed to hit him.

Accused Alfredo Montajes testified that in the evening of December 7, 2002, he was at home listening to the disco as there was a benefit dance near their house. The benefit dance started at 7 o'clock in the evening and ended at 1 o'clock in the early morning of December 8, 2002 when it was stopped by Barangay Captain Jose Rellon. It was then that trouble started because many of those who have paid but were not anymore allowed to dance complained to the Barangay Captain and requested that they be given one more music so that they could avail for what they have paid for on that benefit dance, as they were not refunded with their payments. When this protest went on, the CVO's reacted by clubbing them using their jackets. Then a stoning incident followed. One of those hit by stones was his house. This made him wild prompting him to get his "lagaraw" to look for the people responsible for stoning his house. While looking for these persons along the road, he saw Barangay Captain Jose

Rellon who was then two (2) meters away from him, and he responded by telling him that he was looking for those persons responsible for the stoning of his house. The complainant wanted to get the "lagaraw" from him but he refused.

The accused explained, when confronted with a document (Exh. "B") wherein it was stated that he asked for apology from the Barangay Captain during the barangay level conciliation, that it was for the sole purpose of not elevating this case and that they would settle amicably.

The accused also vehemently denied the accusation that he attacked the barangay captain.

Defense witness Luis A. Cajeles, Jr., a Barangay Kagawad of Barangay Abilan, Buenavista, Agusan del Norte, testified that at about 1:00 o'clock in the early dawn of December 8, 2002, he heard of stoning and shouting, in fact the window grill of his house was hit and he heard the people in panic. As a barangay kagawad assigned to the Peace and Order Committee, he went out immediately from his house and went to the road across the basketball court where the stoning was. He then saw accused Alfredo Montajes holding a bolo. The accused was shouting that he was looking for the persons who stoned his house. He also witnessed that the barangay captain asked the accused why he was bringing a bolo and the accused replied that he was looking for the persons who stoned his house. He did not know what else happened because he tried to drive the teenagers to their homes, because it was already very late in the evening.

On cross-examination, he declared that the accused asked for forgiveness during the confrontation at the Barangay because of the disturbance he made to the barangay captain and to the community because some people were in panic as he was bringing a bolo, and not for attacking the Barangay Captain.

Anatolio Lozada Bangahon, another defense witness, testified that he saw the accused coming out from his house carrying a bolo, and when he asked him why he was bringing a bolo, the accused replied that he was going to look for the persons who stoned his house. The accused was roaming around to look for the persons who stoned his house, but he was not looking after the Barangay Captain.<sup>[6]</sup>

On December 29, 2005, the MTC issued its Judgment<sup>[7]</sup> finding petitioner guilty of the crime of direct assault. The dispositive portion of the judgment reads:

WHEREFORE, the Court finds accused ALFREDO MONTAJES y JACA guilty beyond reasonable doubt of the crime of Direct Assault as defined and penalized under Art. 148 of the Revised Penal Code and hereby sentences him to suffer an indefinite prison term of FOUR (4) MONTHS AND ONE DAY of *arresto mayor* in its maximum period, as minimum, to FOUR (4) YEARS, NINE MONTHS AND TEN DAYS of *prision correccional* in its

medium period, as maximum, there being no mitigating or aggravating circumstance attending the commission of the offense charged. The accused is likewise ordered to pay a fine of ONE THOUSAND PESOS (P1,000.00) Philippine Currency, without subsidiary imprisonment in case of insolvency.<sup>[8]</sup>

On appeal, the Regional Trial Court (RTC), Branch 3, Butuan City, rendered its Decision<sup>[9]</sup> dated January 23, 2007 affirming *in toto* the judgment of the MTC.

Petitioner filed a motion for reconsideration which the RTC denied in an Order<sup>[10]</sup> dated May 4, 2007.

Petitioner filed with the CA a petition (should be motion) for extension of time to file petition for review under Rule 42 of the Rules of Court praying for an extended period of 15 days from May 21, 2007, or until June 5, 2007, within which to file his petition. Petitioner subsequently filed his petition for review on June 5, 2007.

On September 21, 2007, the CA issued its assailed Resolution dismissing the petition outright for being filed out of time. In so ruling, the CA said:

As borne by the records, the petitioner received the copy of the resolution denying his motion for reconsideration on May 4, 2007, Thus, the 15-day reglementary period within which to file a petition for review expired on May 21, 2007 (Monday) considering that the last day fell on a Saturday, May 19, 2007. It appears that petitioner reckoned the extension from May 21, 2007 (Monday) and not from May 19, 2007 (Saturday). Petitioner should have reckoned the 15-day extension from May 19, 2007 and not from May 21, 2007. It is well settled that when the day of the period falls on a Saturday, Sunday, or a legal holiday, and a party is granted an extension of time, the extension should be counted from the last day which is a Saturday, Sunday or legal holiday.<sup>[11]</sup>

Petitioner's motion for reconsideration was denied in a Resolution dated May 19, 2008.

Petitioner is now before us on the issue of whether the CA erred in denying due course to his petition for review for being filed out of time.

Petitioner argues that he filed the motion for extension of time to file a petition for review with the CA pursuant to Section 1, Rule 22 of the Rules of Court; that based on such provision, if the last day to file a petition falls on a Saturday, the time shall not run until the next working day. Here, the last day of the reglementary period within which to file the said petition for review with the CA fell on a Saturday, thus, the last day to file the petition was moved to the next working day which was May 21, 2007, Monday. Hence, he was not wrong in asking the CA to give him 15 days from May 21, 2007 to file the petition and not from May 19, 2007, Saturday. Nonetheless, petitioner asks for liberality in the interest of justice taking into consideration the merit of his petition claiming that his conviction was not supported by the evidence on record. Moreover, he claims that his petition for review was filed