

FIRST DIVISION

[G.R. NO. 173479, July 12, 2007]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN CABBAB, JR., ACCUSED-APPELLANT.

DECISION

GARCIA, J.:

Before the Court on automatic review is the decision^[1] dated February 22, 2006 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00968* which affirmed, with modification, an earlier decision of the Regional Trial Court (RTC) of Bangued, Abra, Branch 2, in Criminal Case No. 687, finding appellant Juan Cabbab, Jr., guilty beyond reasonable doubt of the crime of Robbery with Homicide and Attempted Murder and sentencing him to suffer the penalty of *reclusion perpetua*.

Pursuant to our pronouncement in *People v. Mateo*^[2] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this case was earlier^[3] referred to the CA, whereat it was docketed as *CA-G.R. CR-H.C. No. 01978*, for appropriate action and disposition.

The Case

In the court of origin, appellant Juan Cabbab, Jr., along with his cousin-in-law Segundino Calpito, was charged with the crimes of Double Murder and Attempted Murder with Robbery in an Information^[4] alleging, as follows:

That on or about April 22, 1988, in Sitio Kayawkaw, Barangay Kimmalasag, Municipality of San Isidro, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the intent to kill, treachery and evident premeditation, while armed with a firearm (not-recover), conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously assault, attack and shot from ambush WINNER AGBULOS and EDDIE QUINDASAN, consequently inflicting thereby multiple gunshot wounds on the different parts of their bodies, killing Winner Agbulos on the spot and causing the death of Eddie Quindasan shortly thereafter, then and there willfully, unlawfully and feloniously, with intent to kill, shot William Belmes, said accused having commenced the execution of Murder by overt acts but were unable to perform all the acts of execution, which would have produced the crime of Murder as a consequence thereof, due to alertness of victim William Belmes to roll and poor marksmanship of the accused thus prevented his death, then and there willfully and unlawfully and feloniously, with the intent of gain, take, steal and carry away the money of Winner Agbulos in the amount of Twelve Thousand

Pesos (P12,000.00), Philippine currency..

ALL CONTRARY TO LAW with the aggravating circumstance of: (1) uninhabited place.

On arraignment, appellant Juan Cabbab, Jr. and accused Segundino Calpito separately entered their pleas of "Not Guilty" to the crimes charged. Thereafter, trial on the merits ensued, in the course of which the prosecution presented the oral testimonies of M/Sgt. Godofredo Tubadeza, a police investigator at Camp Villamor, Bangued, Abra; PO William Belmes, a member of the Integrated National Police at the Villaviciosa Police Station; Vidal Agbulos, father of the victim Winner Agbulos; Dra. Leona Garcia-Beroña, medico-legal officer who conducted an autopsy on the body of Winner Agbulos; and Dr. Godofredo Gasa, a physician at the Abra Provincial Hospital.

For its part, the defense presented the appellant himself; accused Segundino Calpito; and George de Lara, a Forensic Chemist of the National Bureau of Investigation (NBI).

The Evidence

The People's version of the incident is succinctly summarized by the Office of the Solicitor General (OSG) in its Appellee's Brief,^[5] to wit:

In the morning of 22 April 1988, father and son Vidal Agbulos and Winner Agbulos, together with Eddie Quindasan, Felipe Abad and Police Officer (PO) William Belmes, went to Barangay Kimmalasag, San Isidro, Abra to attend a "fiesta" celebration. Upon arrival in the area, they found out that the fiesta celebration was already over, thus, they decided to go home in Villaviciosa, Abra. Since it was already lunchtime, the group took their lunch at Sitio Turod, located in the same area of Barangay Kimmalasag. After taking their lunch and on their way home, they were met by accused-appellant Juan Cabbab, Jr. and Segundino Calpito who invited them to play "pepito," a local version of the game of "russian poker."

Only Winner Agbulos and Eddie Quindasan played "pepito" with the group of accused-appellant. Winner Agbulos played the dealer/banker in the game while accused-appellant and Segundino Calpito acted as players therein. Around 3:00 o'clock p.m., PO William Belmes told Winner Agbulos and Eddie Quindasan that they should be going home after three (3) more deals. About 3:30 p.m., Winner Agbulos's group wrapped-up the game and were set for home together with his group. Winner Agbulos won the game.

While walking on their way home from Sitio Turod, PO William Belmes, who was behind Winner Agbulos and Eddie Quindasan picking-up guava fruits from a tree, saw accused-appellant, accused Segundino Calpito and a companion running up a hill. Suddenly, he heard gunshots and saw Winner Agbulos and Eddie Quindasan, who were then walking ahead of the group, hit by the gunfire.

By instant, PO William Belmes dove into a canal to save himself from the

continuous gunfire of accused-appellant. PO William Belmes ran towards Vidal Agbulos and Felipe Abad, who were walking behind the group, and informed the two that Winner Agbulos and Eddie Quindasan were ambushed by accused-appellant and Segundino Calpito. The three (3) proceeded to the crime scene where they saw the dead body of Winner Agbulos together with Eddie Quindasan whom they mistook for dead. The three sought help from the police authorities of Pilar, Abra and returned to the scene of the crime where they found Eddie Quindasan who was still alive and who narrated that it was Juan Cabbab, Jr. and Segundino Calpito who ambused them and took the money, estimated at P12,000.00, of Winner Agbulos which he won in the card game. Eddie Quindasan was brought to the Abra Provincial Hospital but died the following day.

Postmortem examination of Winner Agbulos showed that the cause of his death was "cardio respiratory arrest secondary to hemorrhage due to multiple gunshot wounds." On the other hand, Eddie Quindasan's cause of death was "cardio respiratory arrest secondary to hypovolemic shock due to multiple gunshot wounds."

For the defense, appellant himself took the witness stand claiming that in the morning of April 22, 1988, he went to Palao, Baddek, Bangued, Abra to visit his friends Romeo, Demetrio and Restituto, all surnamed Borreta. He stayed there almost the entire day and left only at around 5:00 p.m. He arrived home in Kimmalasag, San Isidro, Abra at around 5:30 p.m. He declared that his co-accused Calpito was not with him that day. He likewise averred that he did not know prosecution witnesses PO William Belmes and Vidal Agbulos nor did he know of any motive for them to testify against him.

Appellant's co-accused Calpito denied having committed the crimes charged. He testified that at around 8:30 a.m. of April 22, 1988, he went fishing at Kimmalasag, San Isidro, Abra until 4:00 a.m. of the following day.

George de Lara, Forensic Chemist of the NBI, testified that he conducted an examination on the paraffin cast taken from appellant to determine the presence of gunpowder residue or nitrates on appellant's hands. The results of the said examination showed that appellant was negative of nitrates. He opined that certain factors may affect the result of the test such as perspiration, wind velocity, humidity or the type of gun used. He also theorized that a paraffin test would yield a negative result if fertilizers or cosmetics are applied to the hands before the cast is taken.

The Trial Court's Decision

In a decision^[6] dated August 26, 1997, the trial court acquitted Segundino Calpito but found appellant Juan Cabbab, Jr. guilty of two crimes, i.e. (1) robbery with double homicide and (2) attempted murder. Dispositively, the decision reads:

WHEREFORE, the court finds accused Juan Cabbab, Jr. guilty beyond reasonable doubt of double murder with robbery or better put, robbery with double homicide and attempted murder as defined in Art. 248 of the Revised Penal Code in relation to Art. 294 of the same Code or robbery with double homicide defined and penalized under Art. 248 in relation to

Art. 6 of the Same Code with aggravating circumstance of uninhabited place with no mitigating circumstances and sentences him with the penalty of *reclusion perpetua* for each of the killing of Winner Agbulos and for robbing the said victim after killing him and for the killing of Eddie Quindasan. The court likewise finds the accused Juan Cabbab, Jr. guilty beyond reasonable doubt of the attempted murder defined and penalized in Art. 48 in relation to Art. 6 of the Revised Penal Code. These offenses attended by the aggravating circumstance of uninhabited place with no mitigating circumstances and sentence him to suffer an indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of *arresto mayor* as minimum to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as maximum.

He is hereby ordered to pay the heirs of the victims P50,000.00 for each of them plus P20,000.00 also for each of them as actual expenses and finally, the amount of P100,000.00 also for each of them as moral and exemplary damages and to pay the costs of this suit.

Accused Segundino Calpito is acquitted for insufficiency of evidence.

SO ORDERED.

The records of the case were then transmitted to this Court on automatic review. As stated at the onset hereof, the Court, in its Resolution^[7] of January 17, 2006 and pursuant to its ruling in *People v. Mateo*,^[8] referred the case and its records to the CA for appropriate action and disposition, whereat it was docketed as CA-G.R. CR-H.C. No. 00968.

In a decision dated February 22, 2006, the CA modified the trial court's decision and found appellant guilty of the special complex crime of Robbery with Homicide and imposed upon him the penalty of *reclusion perpetua*. The CA also affirmed appellant's conviction, as well as the penalty imposed, for the separate crime of attempted murder.

From the CA, the case was then elevated to this Court for automatic review. In its Resolution^[9] of September 20, 2006, the Court resolved to require the parties to submit their respective supplemental briefs.

In a *Manifestation* dated November 16, 2006, the OSG, in behalf of appellee People, informed the Court that it is no longer filing a supplemental brief and was merely adopting its appellee's brief before the CA as its supplemental brief.

Appellant, on the other hand, filed on December 18, 2006 his supplemental brief on the lone assigned error, that:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED-APPELLANT, DESPITE THE FACT THAT THE VERSION IS MORE CREDIBLE AND SUPPORTED BY EVIDENCE.

Insisting that the prosecution failed to prove his guilt beyond reasonable doubt, appellant pleads for acquittal. He avers that the witnesses for the prosecution failed

to positively identify him as the perpetrator of the crime as they did not actually see him shoot the victims. Appellant also relies on the results of the paraffin test showing that he was negative of gunpowder nitrates.

The appeal must fail.

Appellant's contention that the witnesses for the prosecution failed to identify him as the perpetrator of the crime is belied by the testimony of PO William Belmes, who was with the victims when the incident happened. We quote from the transcripts of the stenographic notes:

William Belmes on Re-direct Examination

FISCAL FLORES

Q. Mr. Witness, when you gave your statement on April 30, 1988, exactly eight (8) days after the incident when the incident wherein you were investigated upon still very very fresh in your mind (sic). Now, in your statement which you gave to the investigator, Pat. Tubadeza, you stated that you saw the persons shot at Winner Agbulos and Eddie Quindasan and after the two (2) had fell down then you also likewise saw them shot at you at the time you were rolling to the ground. Do you affirm and confirm this statement of yours which you subscribed before Fiscal Ricarte Valera?

ATTY. YANURIA:

Your Honor, it is misleading, we object, in so far as the shooting of Eddie Quindasan and Winner Agbulos was not seen. He only saw the persons who were firing at him namely: Juan Cabbab and Segundino Calpito.

COURT:

In his testimony before the court he testified before the court that he saw Juan Cabbab and Segundino Calpito shot at Eddie Quindasan and Winner Agbulos. Reform the question.

FISCAL FLORES

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Q. However, you saw these two (2) accused, Juan Cabbab and Segundino Calpito shoot at you?

A. Yes, sir.

Q. Will you tell the court if how far were these two (2) accused when they were firing at you?

A. Eight (8) meters, sir.

Q. And therefore what time is it when they were firing at