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FIRST DIVISION

[G.R. No. L-46265. February 28, 1978]

DOMINADOR ABRIL, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES**, *respondent*.

SYLLABUS

CRIMINAL LAW; CRIMINAL LIABILITY; THREATENING ANOTHER WITH DEADLY WEAPON. — Where the accused had no intention to carry and conceal in his body a bolo, but used it to drive away and chase his tormentor, and for this act he was convicted of threatening another with a deadly weapon as defined and punished in paragraph 1, Article 285 of the Revised Penal Code, he cannot for that same act be convicted of violation of Presidential Decree No. 9, for carrying and concealing in his body a bladed deadly weapon.

APPEARANCES OF COUNSEL

Rolando R. Restor for petitioner.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eulogio Raquel-Santos and Solicitor Teodoro G. Bonifacio for respondent.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition to review the decision of the Court of First Instance of Leyte, Branch IX, in Criminal Case No. Bn-1099 entitled "*People of the Philippines versus Dominador Abril,*" convicting the petitioner of the crime of illegal possession of deadly weapon as defined and penalized by Presidential Decree No. 9.[1]

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[1] Record, Criminal Case No. Bn-1099, pp. 80-110.

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On November 26, 1975, Dominador Abril was charged with illegal possession of deadly weapon in the following:

"INFORMATION

The undersigned Provincial Fiscal accuses DOMINADOR ABRIL of the crime of Illegal Possession of Deadly Weapon, committed as follows:

That on or about 21st day of May, 1975, in the Municipality of Burauen, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously carry and conceal in his body and have in his possession and control a bladed deadly weapon, without the permit or authority to carry the same, said deadly weapon not being used as necessary tool or implement to earn a livelihood, nor used in connection therewith.

CONTRARY TO LAW.

Tacloban City, November 20, 1975.

ROMUALDO R. MENDIOLA
Provincial Fiscal"[2]

The case was tried jointly with Criminal Case No. Bn-1076 for attempted homicide. The trial court rendered a joint decision dated February 8, 1977, the dispositive part of which reads:

"WHEREFORE and in view of the foregoing, the Court finds accused Dominador Abril in Criminal Case No. 1076, guilty beyond reasonable doubt of threatening another with a weapon as defined and punished in paragraph 1 of Article 285 of the Revised Penal Code, and hereby sentences him to pay a fine of FIFTY PESOS (₱50.00) with subsidiary imprisonment not to exceed fifteen days in case of insolvency and to pay the costs.

In Criminal Case No. 1099, the Court finds accused Dominador Abril guilty beyond reasonable doubt of carrying a bolo outside of his residence in violation of Presidential Decree No. 9 (par. 3) and hereby sentences him to an indeterminate penalty of from FIVE YEARS as minimum to SIX YEARS and EIGHT MONTHS as maximum and to pay the costs.

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[2] *Idem.*, p. 25.

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SO ORDERED.

Government Center, Palo, Leyte, February 8, 1977.

TEMISTOCLES B. DIEZ
Judge"[3]

The petitioner contends that Presidential Decree No. 9 does not apply to the offense of which he was charged because:

"It can safely be stated here that PD 9 was issued by His Excellency, the President of the Republic of the Philippines as an offshoot of Proclamation No. 1081, otherwise known as the Martial Law Proclamation. Said Proclamation No. 1081 was declared by the President in view of the situation then attending in our country. In other words, there was reason of primary national interest which led to the said proclamation. And to add more teeth to the same, the President issued Presidential Decree No. 9 which was to repel rebellion, insurrection and sedition then becoming widespread in this country or to prevent at least the further spread of the same. So that, it can be said and admitted that the issuance of PD 9 was based on Proclamation No. 1081.

We quote hereunder the WHEREASES of Presidential Decree No. 9 for the purpose of showing that the reason of the President in so decreeing the same was political in nature to better attain the political purposes for which Proclamation No. 1081 was proclaimed.

'WHEREAS, pursuant to Proclamation No. 1081 dated September 21, 1972, the Philippines has been placed under a state of martial law;

'WHEREAS, by virtue of said Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and General Order No. 7 dated September 23, 1972, have been promulgated by me;

'WHEREAS, subversion, rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly weapons; x x x'

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[3] *Rollo*, pp. 109-110.

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Taking therefore, into consideration the aforequoted portion of the law under which, to repeat, accused had been convicted, we can safely conclude that the purpose of the President in passing this oft-repeated decree was not just to punish anybody having no political motive or design.

The Honorable Court agreed with the accused 'that his carrying of the bolo outside of his residence was not in the furtherance or for the purpose of subversion, rebellion, or insurrection, x x x.' (p. 2 order of Mar. 9, 1977). In other words, there was no political motive of the accused when he committed the act for which he was here convicted and this being so, it took him out of the sphere of PD 9. It was correct for the trial court to say that 'the primary objective of the President was not only to suppress subversion, rebellion or insurrection, but also *lawless violence*, *criminality*, chaos and public disorder' (p. 3 Order, Mar. 9/77). However, lawless violence and criminality here must be considered in relation to the attending circumstances which were present in our midst and which impelled the President to declare Martial Law and eventually to issue PD 9. In other words, it must be in the light of the chaos and political disorder in the country then obtaining that the facts of this case be equated."[4]

According to the trial court, the testimony of the accused Dominador Abril, petitioner herein, is:

"The last witness for the defense was the accused himself, DOMINADOR ABRIL, 60 years old, married, barber, resident of Burauen, Leyte. He testified that at about seven o'clock in the morning of May 21, 1975, while he was sweeping the yard of his house, Sabino Abril his cousin passed by and left his bolo with him. He told Sabino Abril to place the bolo behind the mirror in the barber shop. After placing the bolo behind the mirror, Sabino Abril went to the market. At about eight o'clock in the morning, his grandson was crying. He asked him why and his grandson told him that Bobet, the son of Esteban Venezuela poured water on him. So he brought his grandson to Esteban Venezuela who was in front of their (Esteban Venezuela's) store next to his house. When he informed Esteban Venezuela about it, Esteban Venezuela said, 'You bring him (Esteban Venezuela's son Bobet) to your house and beat him.' He replied, 'No wonder that all your neighbors are your enemies because you cover the fault of your

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[4] *Rollo*, pp. 18-21.

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son.' So he turned to go home while Esteban Venezuela went to his house. After taking two steps back to his house, Esteban Venezuela threw a piece of iron at him, hitting him at the back, left side and when he turned around he was hit again by another piece of iron thrown at him by Esteban Venezuela. This time he was hit at the back of his head. The piece of iron was about nine inches long. It was a broken leaf spring of a jeep or a car. So he ran to his house, got the bolo which was placed behind the mirror in his barber shop. Esteban Venezuela kept saying to him, 'You come out you old man. I'll kill you.' So he went out with the bolo and chased Esteban Venezuela who ran up to the front of the vice-mayor's house. Esteban Venezuela threw at him another piece of iron and he was hit at the finger after the piece of iron hit the bolo he was holding. He chased Esteban Venezuela for about twenty meters and it was at this moment that Patrolman Dominador Cabus intercepted him and told him to put down his bolo. He put down his bolo and he was brought to the municipal building. The tip of the bolo was bent due to the fact that it was hit first by the piece of iron thrown at him by Esteban Venezuela. He was not able to bring the piece of iron because he was brought to the municipal building. In the municipal building he requested that he be brought to the hospital for treatment of his injuries. He was brought to the hospital and was treated by Dr. Adelfa A. Bugho. He wanted to file a case against Esteban Venezuela but Esteban Venezuela was able to file a case ahead of him. He went to the CIS to file a case but the case was referred to the Fiscal's Office and when he went to the Fiscal's Office, he was told that the case will be attended to after this case."[5]

It is the considered view of the trial court "that the account given by Dominador Abril is the true picture of what really happened that morning of May 21, 1975, substantially that is, because there are likewise exaggerations in the accused's story."[6]

It is not necessary to decide whether or not Presidential Decree No. 9 penalizes only an act committed by a person having political motive as contended by the accused.

The information charges that the petitioner did "wilfully, unlawfully and feloniously carry and conceal in his body and

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[5] Record. Criminal Case No. Bn-1099. pp. 92-94.

[6] *Idem*.. pp. 101-102.

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have in his possession and control a bladed deadly weapon, without the permit or authority to carry the same, said deadly weapon not being used as necessary tool or implement to earn a livelihood, nor used in connection therewith."

The established facts show that the accused did not carry and conceal in his body the bolo. Neither was there an intention on the part of the accused to possess said bolo. The petitioner happened to see the bolo behind the mirror in his barber shop at the precise moment when Esteban Venezuela who was outside in front of his barber shop, kept saying to the petitioner "You come out you old man. I'll kill you." The petitioner got the bolo and chased Esteban Venezuela who ran in front of the vice-mayor's house. The petitioner had no intention whatsoever to carry and possess the bolo concealed in his body for the purpose of committing lawless violence, criminality or public disorder. The use of the bolo was purely incidental and was only used to drive away Esteban Venezuela who kept challenging and threatening to kill the petitioner.

For chasing Esteban Venezuela with the bolo, the petitioner had already been convicted of threatening another with a weapon as defined and punished in paragraph 1, Article 285 of the Revised Penal Code, and was sentenced to pay a fine of fifty pesos (₱50.00). Under the established circumstances, the accused cannot be convicted of violation of Presidential Decree No. 9 for carrying and concealing in his body a bladed deadly weapon, a bolo.

WHEREFORE, the decision appealed from is hereby reversed and the petitioner is acquitted of the crime charged in Criminal Case No. Bn-1099 of the Court of First Instance of Leyte, Branch IX, with costs *de oficio*.

SO ORDERED.

Teehankee (Chairman), Makasiar, Muñoz Palma, and *Guerrero, JJ.*, concur.