

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BLANDINO SAN MIGUEL Y BELGAR, ALIAS “EDUARDO MENDEZ Y  
BELGAR”, PETER DOE, ALIAS “ALBERT ADIN, JR.”, JOHN DOE ALIAS  
&#8220;BALUT&#8221;...**

*G.R. No. L-39746. September 27, 1983*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

In Criminal Case No. Q-3378 of the defunct Court of First Instance of Rizal, BLANDINO SAN MIGUEL, ALBERT ADIN, JR. and JOHN DOE alias BALUT were accused of homicide in an information which reads as follows:

"That on or about the 2nd day of October, 1972, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously with intent to kill and without any justifiable motive, attack, assault and employ personal violence upon the person of one LUIS TARUM Y BINAG by then and there stabbing him, thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Luis Tarum y Binag, in such amount as may be awarded to them under the provisions of the Civil Code." (Expediente, p. 1.)

Only Blandino was arrested and tried. The trial court pronounced the following sentence:

"WHEREFORE, the Court finds the defendant Blandino San Miguel guilty beyond reasonable doubt of the crime of Murder and although there is one aggravating circumstance of treachery without any mitigating circumstance to offset the same, the Court hereby merely imposes a penalty of RECLUSION PERPETUA instead of DEATH.

"The Court hereby further sentences the defendant Blandino San Miguel to pay to the heirs of the deceased P12,000.00 as indemnity for the death of Luis Tarum, P10,000.00 as moral damages, and P99,360.00 as loss of earning, without any subsidiary liability in case of insolvency, and to pay one-third of the costs." (Expediente, pp. 49-50.)

Under consideration is the appeal of Blandino from the foregoing judgment.

The evidence for the prosecution as summarized by the trial court is as follows:

"At about 6:00 o'clock on the morning of October 2, 1972, Luis Tarum was sleeping under a mosquito net inside his house located at the squatter's area at 7th Street, Broadway, Quezon City. His wife Lolita Tarum was in front of the stairway. Suddenly the three defendants arrived. One of them, Junior, went up the house. He suddenly stabbed Luis Tarum and dragged him outside the house where the two other defendants Blandino San Miguel and "Balut" were waiting. The three defendants simultaneously attacked Luis Tarum with a club and bladed weapons. Blandino San Miguel stabbed Luis Tarum three times and also clubbed him three times at the back of his neck with an iron pipe three feet long and one inch in diameter. One of the stab wounds inflicted by

Blandino San Miguel landed above the heart. While Blandino San Miguel was clubbing Luis Tarum, Junior and Balut were also simultaneously stabbing him. During the attack "Balut" said: "Nobody must interfere!"

"After inflicting several wounds on Luis Tarum all the defendants ran away together. Lolita Tarum, wife of Luis Tarum, brought her husband to the hospital, but Luis Tarum died before he arrived at the hospital. All in all the deceased received nine stab wounds, and abrasions and other incised wounds found by Dr. Prospero Cabanayan, who conducted a postmortem examination of the deceased. (Exhibit "A"). The cause of death was 'hemorrhage, severe, secondary to stab wounds, multiple'. (Exhibit "A-1").

"At the time of his death Luis Tarum was in good health, earning P7.50 a day as security guard and he used to deliver every fifteen days to his wife the amount of P115.00." (Expediente, pp. 42-43.)

Upon the other hand, Blandino who testified alone in his defense claimed that:

"At about 6:00 o'clock on the morning of October 2, 1972, he (Blandino San Miguel) went to the house of Junior to ask whether the latter would be reporting for work. Junior did not answer but instead he went down from their house and went to the house of Pedring which is only a few meters away. After a while, Junior went out of the house of Pedring carrying with him a bolo. After arming himself with a bolo, which he took from the house of Pedring, Junior went next to the house of another neighbor, Luis Tarum y Binag. Blandino San Miguel followed Junior but stayed only at the door of the house. Suddenly, Blandino San Miguel heard a commotion inside the house of Luis Tarum. After sometime Junior fell downstairs from the house of Luis Tarum. Luis Tarum followed him downstairs with a bolo in his hand. When Luis Tarum reached the ground he boloed Junior who was not hurt because he could parry the blow. Then Luis Tarum and Junior grappled for the bolo. While they were grappling for the possession of the bolo the wife of Luis Tarum asked Blandino San Miguel to pacify them. So Blandino went near them and called to Luis Tarum: 'That is enough. That is enough.'

"Apparently, Luis was startled by the voice of Blandino San Miguel and so he began attacking the latter with his bolo. Blandino was not hit because he ran and sought cover under a neighboring house where he got hold of a pipe and then returned to Luis Tarum. When Blandino emerged from under the house Luis Tarum again attacked Blandino with a bolo which the latter parried. After parrying the blow Blandino struck Luis Tarum with the iron pipe. But Luis Tarum persisted in attacking Blandino who thereupon inflicted a second blow on the neck of Luis Tarum, who thereafter felt groggy and proceeded in a weak condition to his house. On the way to his house "Balut", who is a brother of Junior stabbed Luis, who immediately fell upon receiving the stab wound. Then "Balut" picked up Luis Tarum's bolo which had fallen to the ground and gave it to Junior. Thereafter "Balut" and Junior repeatedly stabbed Luis Tarum.

"According to Blandino San Miguel, he immediately instructed the wife of Luis Tarum to call the police. Then he went to a Metrocom officer's house to report the incident." (Expediente, pp. 43-44.)

The appellant admits having struck the deceased twice with an iron pipe. But he claims that he did so in self-defense. His claim is not impressed with merit.

According to the appellant he started out as a peace-maker between the deceased and Junior only to become one of the protagonists afterwards. Here is his testimony:

"Q. [Atty. Viterbo Tagarda]

What did you do while you saw they were grappling for the bolo?

A At that moment the wife of Luis was shouting and she was asking for help and for me to pacify them.

Q What did you do when you heard the wife of Luis calling for help?

A I went near them and then I called Luis, saying, that is enough, that is enough.

Q And when you said calling the attention of Luis, that is enough, that is enough, what happened next?

A Maybe he was a little bit surprised when I called him because I was quite near him and he tried to strike me with the bolo which he got from Junior.

Q Were you hit when Luis Tarum struck you with the bolo?

A No, sir, I was able to retreat and went inside the house.

Q After you retreated, what did you do?

A I was able to get hold of a pipe under the house.

Court:

Whose house was that where you got a pipe?

A I do not know, sir.

Atty. Tagarda:

Q Then after that, after holding that pipe, what did you do?

A I went out, sir, from under the house.

Q After going out from under the house, what happened next?

A He boloed me again.

Q Were you hit?

A No, sir, I was able to parry it. So I hit him at the head. (Witness indicating).

Interpreter:

The witness indicating the back of his head.

Q When you hit him at his head, what happened next?

A None, sir. When I hit him on the head, after hitting him on the head he faced me again, and struck me again. At that moment I again hit him.

Q Where was the second blow land when you hit him?

A Here, at the head, sir. (Witness indicating)." (TSN, Sept. 25, 1974, pp. 2-3.)

If it is true that the deceased turned on the appellant, what the latter should have done was simply to run and get away as far as possible. Instead, he got hold of a pipe, confronted the deceased and struck him twice with the pipe. The circumstances do not paint a picture of self-defense.

Upon the other hand, the trial court said, "after considering all the facts and the circumstances of the case, as well as the demeanor or the witnesses during the trial, [the court] is more inclined to accept the version of Lolita Tarum, who was the lone witness for the prosecution." We have no reason to disturb this factual finding of the court a quo which was in a better position to appreciate the credibility of witnesses.

The appellant was charged with homicide only but the trial court adjudged him guilty of murder. The appellant complains with justification that the trial court treated him harshly.

The trial court rationalized its action as follows:

"The legal question is: What crime has been committed? While treachery obviously attended the commission of the offense, it can be taken into account only as a generic aggravating circumstance because it is not alleged in the information.

"However, it will be observed that while in the information, the fiscal designated the crime as Homicide, yet, the information alleges acts which show that the defendants took advantage of superior strength and that the crime was committed with the aid of armed men, circumstances which qualify the killing into Murder.

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"In the opinion of the Court, the acts alleged in the information sufficiently show that at least the defendants took advantage of superior strength. The averment that the three accused conspired together, confederated with and mutually helped one another in inflicting the stab wounds sufficiently alleges the qualifying circumstance of taking advantage of superior strength and that the killing was done with the aid of armed men. To sufficiently allege 'abuse of superior strength,' or 'with the aid of armed men,' the information does not have to use the language of the statute. Different words or phrases equally describing the same facts may be used." (Expediente, pp. 46-47.)

The People agree with the appellant. The People brief submits:

"The words 'conspiring together, confederating with and mutually helping one another' contained in the information, simply convey the allegation of conspiracy. Otherwise, as the defense rightly argues, 'every charge of cons-piracy to commit homicide, would result in a charge of murder'. There should be some other allegation in the information showing that the accuse did take advantage of superior strength and/or with the aid of armed men." (Brief, p. 9.)

The common opinion of the appellant and the appellee has jurisprudential support in *People vs. Bautista*, L-23303, May 20, 1969, 28 SCRA 184, which held that if the circumstance of abuse of superior strength is not alleged in the information, it may only be considered as a generic aggravating circumstance in the imposition of the corresponding penalty. (See also *People vs. Jovellano*, L-32421, March 27, 1974, 56 SCRA 156.)

The trial court did not err when it concluded that there was abuse of superiority. For as the People say:

"Considering that three assailants, all armed with bladed weapons, simultaneously and repeatedly stabbed and clubbed the defenseless victim, the killing was thereby attended by the aggravating circumstances of abuse of superior strength and with the aid of armed men." (Brief, p. 8.)

Neither did the trial court err in awarding damages. The in-demnity of P12,000.00 is jurisprudential; the award of P10,000.00 as moral damages is justified by the Civil Code; and the award of P99,360.00 for loss of earnings was arrived as follows:

"With respect to the civil liability, it appears that at the time of the death of Luis Tarum he was 25 years old, and that he used to turn over to his wife the amount of P115.00 every fifteen days or P230.00 a month. Had Luis Tarum not been killed by the defendants, his remaining life expectancy is computed by the following formula:  $2/3 (80 \text{ minus } 25)$ , which is the age of the deceased at the time of his death, which gives 36 years as the remaining life expectancy of the deceased. Thus, by his untimely death, his family lost an expected earning in the amount of P99,360.00. (*Villa-Rey vs. Court of Appeals*, L--25499, February 18, 1970)." (Expediente, p. 49.)

WHEREFORE, the judgment of the trial court is modified in that the appellant shall be convicted for the crime of homicide only and sentenced to an indeterminate penalty of eight (8) years of prision mayor, as minimum, to eighteen (18) years of reclusion temporal, as maximum. The appealed judgment is affirmed in all other respects. Costs against the appellant.

**SO ORDERED.**

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.  
De Castro, J., on sick leave.

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