

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VENANCIO FRANCISCO Y BERNALDO ALIAS “MABINI” AND ERNIE MANSAMAD ALIAS “NONO”, ACCUSED-APPELLANTS.

G.R. No. 130490. June 20, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The instant case was forwarded to this Court by the Court of Appeals pursuant to its Decision, dated 29 July 1997,[1] upon finding that the proper penalty imposable on accused-appellants Venancio Francisco and Ernie Mansamad in Criminal Case No. C-4567 for the crime of murder is reclusion perpetua. This Court accordingly accepted the appeal of accused-appellants in its Resolution, dated 1 December 1997.

Accused-appellants were charged with and convicted for the crimes of murder and attempted murder by the Regional Trial Court, Branch 40 of Calapan, Oriental Mindoro. The Information filed against accused-appellants for murder, docketed as Criminal Case No. C-4567, reads:

That on or about the 21st day of April, 1994, at around 1:00 o'clock in the morning, in Barangay Evangelista, Municipality of Naujan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and taking advantage of the darkness of the night, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault, stab and hack with a [sic] sharp-pointed and sharp-bladed instruments one DANILO MENDOZA thereby inflicting upon the latter several mortal wounds on the different parts of his body, as a result thereof, the said DANILO MENDOZA died instantly.

That in the commission of the aforecited offense, the qualifying circumstances of treachery and known premeditation were attendant.

Contrary to Article 248 of the Revised Penal Code.[2]

The Information against accused-appellants for attempted murder, docketed as Criminal Case No. C-4588, reads:

That on or about the 21st day of April, 1994, at around 1:00 o'clock in the morning, in Barangay Evangelista, Municipality of Naujan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and taking advantage of the darkness of the night, did then and there willfully, unlawfully and feloniously attack, assault and wound with a [sic] sharp-pointed and sharp-bladed instruments one JOSEFINA MONTTOYA-MENDOZA thus commencing the commission of the crime of Murder directly by overt acts, and did not perform all the acts of execution which should produce the said felony by reason of some cause or accident other than their own spontaneous desistance, that is, the said accused ran away after killing [the] victim's husband, DANILO MENDOZA, who was also being attacked and assaulted at that time.

Contrary to Articles 248, 6 and 51 of the Revised Penal Code.[3]

At their arraignment, accused-appellants pleaded "not guilty" to both charges. Upon agreement of the prosecution and defense, the two (2) cases were jointly tried as the criminal charges against accused-appellants arose out of the same incident.

The prosecution presented Josefina Montoya-Mendoza, Supremo Macatangay and Baldomero Gonzales as witnesses. Josefina Montoya-Mendoza, widow of the victim Danilo Mendoza, testified[4] that on 21 April 1994, at around one o'clock in the morning, she and her husband Danilo, together with their four-year old son Rico, were on their way home. They just came from Barangay Evangelista, Naujan, Oriental Mindoro, which was then celebrating its barangay fiesta.

While they were walking along the road, husband and wife were conversing with each other. Accused-appellant Francisco suddenly appeared in front of them shouting "putang ina mo, patay kayo sa amin." He immediately stabbed Danilo in his belly. Reeling from the attack, Danilo leaned and embraced accused-appellant Francisco who then stabbed the victim's back several times. While stabbing the victim, accused-appellant asked his companion, accused-appellant Mansamad, for the bolo muttering, "Ernie, gulok!" Accused-appellant Mansamad then hacked the victim with the bolo.

Josefina tried to pull away her husband from accused-appellants. She was, however, unable to do so because accused-appellant Francisco likewise stabbed her several times. She sustained three (3) stab wounds in her stomach, leg and at her back. The knife or "balisong" used by accused-appellant Francisco to stab both husband and wife was recovered by Josefina as it was left in her leg. Fortunately, their son, Rico, was unharmed. Josefina readily recognized accused-appellants as the assailants because there was sufficient light from the illumination of the moon. Moreover, she was able to beam her flashlight at accused-appellants' faces.

After accused-appellants had fled, Baldomero Gonzales, ex-barangay captain of Evangelista, happened to pass by the scene of the crime. He narrated[5] that he was on his way home when he saw Danilo lying on the road lifeless. He also saw Josefina, who was wounded, and their son. Josefina asked for Gonzales' help who forthwith went to the police authorities in Barangay Aurora. He came back with the Detachment Commander and four (4) members of the CAFGU. They immediately conducted an investigation. Josefina was brought to the provincial hospital while Danilo was taken to the Alcancia Funeral Parlor in Barcenaga, Naujan, where his body was autopsied.

When it was his turn to take the witness stand, Supremo Macatangay substantially corroborated the testimony of Josefina.[6] On that fateful day, at around one o'clock in the morning, Macatangay was also on his way home after attending the festivities in Barangay Evangelista. On the road, he noticed that the people ahead of him were scampering away. He saw Danilo being ganged up by two men. One of them was stabbing Danilo with a "balisong". The other hacked him with a bolo. Macatangay also saw Josefina desperately trying to separate her husband from his assailants.

Macatangay recognized accused-appellants as the assailants because when the incident transpired, he was only three (3) meters away from them. He was able to see their faces by pointing his flashlight at them. After witnessing the assault on Danilo, Macatangay hurriedly left the place for fear that accused-appellants would turn their attention on him.

The testimonies of Drs. Angelita Legaspi and Marlon dela Rosa were dispensed with after accused-appellants' counsel admitted the authenticity of their autopsy report[7] and medical certificate,[8] respectively. The postmortem findings revealed that Danilo died of "hypovolemic shock; blood and chemical peritonitis secondary to penetrating perforating stabbed wound of the abdomen." [9] He sustained the following injuries:

EXTERNAL FINDINGS:

Head and Neck: No pertinent findings.

Chest: (Posterior) 1.) Stabbed wound 2.5 Cm long (Superficial-subcutaneous) over the (L) lateral border of left scapular area directed medially and inferiorly towards lesion number 2.

2.) Stabbed wound 1.5 Cm long (Point of exit) - left infra-scapular area.

3.) Stabbed wound 2.5 Cm long 10 Cm deep directed slightly upwards and anteriorly (L) posterior lumbar area penetrating abdomen.

4.) Stabbed wound 2 cm. long and 1 Cm deep (L) inguinal area.

5.) Incised wound 5 cm, long and 1 cm. Deep medial area of left ankle joint.

Abdomen and Extremities has [sic] no pertinent findings.

INTERNAL FINDINGS:

Head and Neck: No pertinent findings.

Chest: No pertinent findings.

Abdomen: Penetrating stabbed wound (L) lobe of the liver inferior or border. Penetrating perforating stabbed wound on the posterior border of the body of the stomach. More than 1 & ½ liter clotted and non-clotted sanguinous material with spillage of food particles on the peritoneal cavity.

Extremities: No pertinent findings.[10]

The medical certificate of Josefina, on the other hand, showed that she sustained the following injuries:

1. Incised wound, 2 cm. left leg.
2. Incised wound, 5 cm. left iliac region.
3. Incised wound, 5 cm. left lumbar area.
4. x x x.[11]

For its part, the defense presented as witnesses accused-appellant Francisco, Alberto Gonzales and Dr. Marlon dela Rosa. Accused-appellant Mansamad did not take the witness stand. Accused-appellant's version of what transpired on 21 April 1994 at around one o'clock in the morning is as follows:[12] He was walking on his way home from the barangay fiesta in Evangelista, Naujan. Out of nowhere, Danilo appeared with a bolo and hacked him on the left shoulder. When accused-appellant turned his head, Danilo hacked him on the right shoulder. Thereafter, Danilo and accused-appellant Francisco grappled for the possession of the bolo. As a result thereof, the bolo was thrown away. Josefina then picked it up and hacked accused-appellant Francisco on his head.

Accused-appellant Francisco managed to run away from Danilo and Josefina. After about ten (10) minutes, he met accused-appellant Mansamad and Alberto Gonzales who brought him to the hospital. Accused-appellant Francisco admitted to killing Danilo but claimed that he did so only as an act of self-defense.

Accused-appellant Francisco intimated that prior to the incident, he and Danilo were not in good terms with each other. Three years ago, Danilo stoned accused-appellant Francisco's house and hit him on the left brow.

There was also a time when the victim and his son challenged accused-appellant Francisco to a fight but the latter ignored them. Their serious quarrel, however, occurred when accused-appellant Francisco drained the excess water in his land which flooded the land of Danilo and Josefina. To prevent their house from being flooded as

well, the Mendozas closed the culvert. The closure of the culvert caused the water to flood accused-appellant Francisco's one-hectare land. Consequently, most of the palay on said lot was destroyed. He used to harvest forty (40) cavans of palay but because of the flood, he was able to harvest only twelve (12) cavans.

Alberto Gonzales testified[13] that he was walking home with accused-appellant Mansamad on 21 April 1994 at around one o'clock in the morning. He saw Josefina hack accused-appellant Francisco. She hit him on his head and on his back. He (Gonzales), accused-appellant Mansamad and one Ireneo Cabales brought accused-appellant Francisco to the Oriental Mindoro Provincial Hospital. He averred that they did not report the matter to the police authorities.

Dr. Marlon dela Rosa appeared as a witness for the defense.[14] He attested to the authenticity and genuineness of the medical certificate he issued in connection with the wounds inflicted on Josefina. A sharp pointed instrument was used to inflict these wounds. As stated in the medical certificate, wound no. 2 (Incised wound, 5 cm. left iliac region) was inflicted on the left side of Josefina's body below her waist. Wound no. 3 (Incised wound, 5 cm. left lumbar area) was inflicted on the same side of her body but above the waist. The location of these wounds showed that the assailant could have been in front of Josefina. Upon the other hand, the assailant could have been at the back of Josefina when wound no. 1 (Incised wound, 2 cm. left leg) was inflicted on her.

After trial, the lower court rendered judgment the dispositive portion of which reads:

In Crim. Case No. C-4567

WHEREFORE, premises considered, this Court finds both accused guilty beyond reasonable doubt of the crime of Murder punishable under Art. 248 of the Revised Penal Code in consonance with Sec. 21 of R.A. 7659. Applying the provisions of the Indeterminate Sentence Law, this Court hereby sentences both accused to suffer imprisonment from 17 years, 4 months and 1 day of Reclusion Temporal Maximum as minimum to 33 years & 4 months of Reclusion Perpetua Medium as maximum. By way of indemnity, both accused shall pay the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00). The accused, who are both under preventive imprisonment, shall be credited in the service of their sentences consisting of deprivation of liberty, with the full time of imprisonment, subject to the conditions prescribed in Article 29 of the Revised Penal Code.

In Crim. Case No. C-4588

WHEREFORE, premises considered, this Court finds the accused Venancio Francisco guilty beyond reasonable doubt of the crime of Attempted Homicide, punishable under Art. 249 of the Revised Penal Code. Applying the Indeterminate Sentence Law, this court hereby sentences him to suffer imprisonment from 6 months of arresto mayor as minimum to 6 years of prision correccional as maximum.

Further, this Court hereby declares accused Ernie Mansamad innocent of the crime charged herein.

SO ORDERED.[15]

On appeal, the CA affirmed the conviction of accused-appellants for the crime of murder in Criminal Case No. C-4567 but modified the penalty imposed therein to reclusion perpetua. In Criminal Case No. C-4588, the CA absolved accused-appellants of the crime of attempted murder. The CA held therein that only accused-appellant Francisco is liable for slight physical injuries, defined and penalized under Article 266 of the Revised Penal Code. The dispositive portion of the CA Decision reads:

WHEREFORE, the appealed decision is hereby modified in that:

(A.) In Criminal Case No. C-4588, Venancio Francisco y Bernaldo is hereby found GUILTY beyond reasonable doubt of the crime of slight physical injuries, defined and penalized under Art. 266 of the Revised

Penal Code and there being no mitigating nor aggravating circumstances present, he is hereby sentenced to suffer the penalty of ELEVEN (11) DAYS of arresto menor. Accused Ernie Mansamad y Empayan is hereby AQUITTED.

(B) In Criminal Case No. C-4567 pursuant to Art. 8, Section 5 of the 1987 Constitution of the Philippines, which provides:

"The Supreme Court shall have the following powers:

xxx xxx xxx

d. All criminal cases to which the penalty imposed is reclusion perpetua or higher."

and the above-quoted language of Section 13, Rule 124, 1985 Rules on Criminal Procedure, and finding appellants Venancio Francisco y Bernaldo and Ernie Mansamad y Empayan GUILTY beyond reasonable doubt of the crime of MURDER, as defined and penalized under Art. 248 of the Revised Penal Code as amended by R.A. 7659, in its minimum period of reclusion perpetua, we certify this case to the Supreme Court for final determination and appropriate action (See *People vs. Demecillo*, 186 SCRA 161, 164).

SO ORDERED.[16]

As mentioned earlier, in view of its finding that the proper penalty imposable on accused-appellants for murder is reclusion perpetua, the CA correctly refrained from entering judgment and certified the case to this Court. Upon acceptance of the appeal, the Court required the parties to file their respective supplemental briefs. In compliance therewith, the People, through the Office of the Solicitor General, manifested that in lieu of filing a supplemental brief, it is adopting the Appellee's Brief it earlier filed with the CA.[17] Accused-appellants, in their letter, dated 21 January 1998, informed the Court that "they are no longer interested in pursuing the appeal" because they could no longer afford the services of a counsel.[18] Acting thereon, the Court designated the Public Attorney's Office (PAO) as counsel de oficio for accused-appellants.[19]

In their Appeal Brief filed with the CA, accused-appellants made the following assignment of errors:

I

THAT THE HONORABLE TRIAL COURT, SPEAKING WITH DUE RESPECT, ERRED IN DISREGARDING VENANCIO FRANCISCO'S CLAIM OF SELF-DEFENSE;

II

THAT THE HONORABLE COURT A QUO ERRED IN FAILING TO GIVE DUE CONSIDERATION TO THE MEDICAL CERTIFICATE OF VENANCIO FRANCISCO SHOWING THE INJURIES SUSTAINED BY HIM IN CONNECTION WITH THESE CASES;

III

THAT THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THERE WAS CONSPIRACY ON THE PART OF HEREIN ACCUSED IN THE KILLING OF DANILO MENDOZA; and

IV

THAT THE HONORABLE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF JOSEFINA MENDOZA.[20]

Moreover, in their Supplemental Appellants' Brief filed with this Court, accused-appellants raised the following assignment of errors:

I

THE COURT A QUO ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANTS AS THE

VICTIMS OF AN UNPROVOKED ATTACK BY DANILO AND JOSEFINA MENDOZA.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[21]

Underlying the foregoing assignment of errors is the crucial contention of accused-appellants that they acted in self-defense. Thus, the fundamental issue that needs to be resolved is whether accused-appellants' claim of self-defense is worthy of credence.

The appeal must fail.

Article 11, paragraph 1 of the Revised Penal Code provides:

Article 11. Justifying circumstances. The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself.

It is well-settled in our criminal jurisprudence that when the accused invokes self-defense, it is incumbent upon him to prove the existence of the following requisites: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The most decisive of these is the requisite that the victim was guilty of unlawful aggression.[22] Absent clear and convincing evidence of a prior unlawful and unprovoked attack by the victim, the claim of self-defense cannot be given credence.

Accused-appellant Francisco claims that it was the victim, Danilo, who attacked and hacked him with a bolo. This claim was corroborated by Gonzales who testified that he saw Josefina hack accused-appellant Francisco on the head. These claims, however, are belied by several attendant factual circumstances. First, the autopsy report of the victim showed that he sustained four (4) stab wounds and an incised wound. Three (3) of these stab wounds were inflicted on the victim's back.[23] The number and location of such wounds inflicted on the victim effectively negate accused-appellants' claim of self-defense.

Second, accused-appellants' assertion that he himself sustained wounds is unsupported by evidence. As found by the trial court and subsequently affirmed by the CA, the medical certificate presented by accused-appellant Francisco to prove his wounds is of doubtful authenticity as it was not identified by the physician who examined him. Further, said physician did not affix his signature thereon. The scars which accused-appellant Francisco showed to the trial court when he took the witness stand may have been sustained on a different occasion. Granting accused-appellant Francisco did sustain injuries from said incident, the same may have been inflicted by Josefina when she tried to help her husband.

Third, accused-appellant Francisco's allegation that it was Danilo who attacked him is incredulous. At the time of the incident, the victim was with his wife and their four-year old son. It is utterly inconceivable and against human nature for a man to bring with him his family, including a helpless child, and unnecessarily endanger their lives, to commit a dastardly crime.

Under the given circumstances, accused-appellants miserably failed to convince this Court that the killing of Danilo was an act of self-defense on their part.

Upon the other hand, the Court finds no reason to deviate from the general rule that "factual findings of the trial court deserve respect and are not disturbed on appeal, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, and would otherwise materially affect the disposition of the case." [24]

In this case, the trial court correctly gave credence to the clear, categorical and straightforward testimony of Josefina as she recounted the events on that fateful day, thus:

Q Mrs. Witness, do you recall the 21st day of April, 1994?

A Yes, sir.

Q Where were you at around 1:00 in the morning of April 21, 1994?

A We were on our way home from a barrio fiesta we attended.

Q You said "we". Who were your companions at that time?

A My husband whom they killed and my youngest child, sir.

Q Mrs. Witness, you said that on said time and date, you, your husband and your youngest child were walking towards your house. Who, if any, were also walking on that road you were then traversing at that time?

A I did not notice if there was any, sir.

Q While you, your husband and your son were walking on your way home, what happened if any?

A While we were walking and conversing with each other, Venancio Francisco and Ernie Mansamad suddenly appeared on the road, sir.

Q By the way, Mrs. Witness will you please tell this Honorable Court what kind of road were you then traversing at that time?

A Wide road, sir.

Q And how wide is this road?

A Five (5) meters more or less, sir.

Q You said that while you were walking on your way home, accused Venancio Francisco and Ernie Mansamad suddenly appeared. From where did they come from?

A In front of us at the right side of the road, sir.

Q When you saw accused Venancio and Ernie for the first time on that particular moment, how far were they from you?

A Maybe less than a meter away from us, sir.

Q When the two (2) accused suddenly appeared in front of you, what happened after that?

A Venancio Francisco uttered "Putang ina mo, patay kayo sa amin!"

Q After Venancio Francisco uttered "Putang ina mo, patay kayo sa amin!", what did you do, if any?

A He immediately stabbed my husband, sir.

Q Was your husband hit by the stab blow delivered by Venancio Francisco?

A Yes, sir.

Q In what part of the body was your husband hit by the stab blow delivered by Venancio Francisco?

A Below the belly, sir.

Q After your husband was hit below the belly, what , happened next?

A My husband leaned and embraced Venancio Francisco while Venancio Francisco at that time was delivering several stab blows in my husband's body.

Q You said that after your husband was hit by the stab blow below the belly, he embraced Venancio Francisco while the latter was delivering stab blows several times more, in what particular part of the body was your husband hit?

A At the back, sir.

Q How many times did Venancio Francisco stab your husband at the back?

A Many times, sir.

Q While Venancio Francisco was stabbing your husband, where was accused Ernie Mansamad?

A While Venancio Francisco was stabbing my husband, he asked Ernie Mansamad for the bolo, saying: "Ernie, gulok!"

Q Then what happened next?

A Ernie Mansamad hacked my husband, sir.

Q Was your husband hit by the hacking blow delivered by accused Ernie Mansamad?

A Yes, sir.

Q While accused Venancio Francisco was stabbing your husband and accused Ernie Mansamad hacking him, what did you do, if any?

A I tried to pull my husband away from them, sir.

Q While you were trying to pull your husband away from them, what happened?

A As I was pulling my husband, Venancio Francisco stabbed me also, sir.

Q How many times did Venancio Francisco stab you?

A Several times, sir, but only three (3) landed on my body.

Q In what particular part of your body were you hit by the stab blows of Venancio Francisco?

A On my stomach, at the back and in my leg, sir.

Q Will you please show to this Honorable Court the scars or injuries you sustained in front of your body?

WITNESS:

(Showing the stab in her lowest left rib about 2 inch-long and at the back about 2 1/2 inch-long).

Q You said you also sustained injury in your leg. Will you please show that injury to the Honorable Court?

WITNESS:

(Showing the scar in her leg).

Q Mrs. Witness, you said that while accused Venancio Francisco was stabbing your husband, accused Ernie Mansamad was also hacking him, will you please tell this Honorable Court the kind of weapon used by Ernie Mansamad in hacking your husband?

A A bolo, sir.

Q And how long was that bolo used by Ernie Mansamad in hacking your husband?

A Not long and not short, sir.

Q You said that your husband was stabbed several times by accused Venancio Francisco and you were also stabbed by Venancio Francisco. Will you please inform this Court the kind of weapon used by Venancio Francisco in stabbing you and your husband?

A "balisong", sir.

Q Why do you know that a "balisong" or a knife was used by Venancio Francisco in stabbing you and your husband?

A Because I was able to retrieve that "balisong" or knife he used in stabbing me and my husband.

Q How were you able to recover the knife Venancio Francisco used in stabbing you and your husband?

A Because Venancio left it in my leg, sir.

Q Will you be able to identify that "balisong" if you'll see it now?

A Yes, sir.

PROS. SEÑOREN:

May we request for the production of that knife, your Honor.

(At this juncture, the subject "balisong" or knife cannot be located).

Q Mrs. Witness, you testified a while ago that at that particular moment when you and your husband were assaulted by the accused, you were together with your son. What is the name of your son?

A Rico Mendoza, sir.

Q And how old is Rico Mendoza?

A Four years, sir.

Q At that time that your husband was assaulted by accused Venancio Francisco and Ernie Mansamad, where was your son Rico?

A I was holding him by the hand, sir.

Q While you and your husband were being assaulted by the accused, who were the persons present, if any other than you, your husband, your son and the 2 accused?

A I noticed someone who was carrying a flashlight, sir.

Q And how far was this person from you?

A Just near, sir.

Q What did this person do, if any while you and your husband were being assaulted by the accused?

A He ran away after beaming his flashlight to us.

Q Mrs. Witness, it was 1:00 in the morning when this particular incident happened. How were you able to recognize that Venancio Francisco and Ernie Mansamad were the ones who assaulted you and your husband?

A Aside from the moon, I was then carrying a flashlight and I was able to focus on them.

Q After you were stabbed by Venancio Francisco, what did he and Ernie Mansamad do, if any after that?

A I noticed the coming of that man carrying a flashlight and then they ran away, and Ex-Barangay Captain arrived at the scene of the crime.

Q After the accused stabbed and hacked your husband, what happened to your husband?

A He died, sir.

Q You said that after the two (2) accused ran away, an ex-barangay captain arrived. Who was this ex-barangay captain?

A Ex-Barangay Captain Baldomero Gonzales, sir.

Q And he was a former barangay captain of Evangelista?

A Yes, sir.

Q What happened after the arrival of Ex-Barangay Captain Gonzales?

A I asked help from him so he went to the police detachment.

Q Police Detachment of what?

A Barangay Aurora, sir.

Q After that, what happened, Mrs. Witness?

A The ex-barangay captain and the police he fetched arrived and they conducted an investigation.

Q What happened after that?

A I was brought to the provincial hospital while my husband was taken by the funeral car to Barcenaga, Naujan for autopsy.[25]

Supremo Macatangay, an eyewitness to the incident, corroborated the testimony of Josefina on its material points, including the identity of accused-appellants as the assailants, thus:

Q After you have witnessed that the people ahead of you were running or scampering, what did you do?

A I observed what incident was the people being afraid of.

Q And what did you observe, if any?

A I saw that Danilo Mendoza was being ganged-up and someone was stabbing him and someone was hacking him.

Q Who was stabbing Danilo Mendoza?

A Venancio Francisco, sir.

Q Do you personally know Venancio Francisco who according to you was stabbing Danilo Mendoza on said time and date?

A Yes, sir.

Q How long have you known him prior to April 21, 1994?

A For almost 5 years already, sir.

Q Would you be able to recognize Venancio Francisco if you would see him now?

A Yes, sir.

Q If he is inside the courtroom, please point to him.

A (Witness pointing to accused Venancio Francisco inside the courtroom.)

Q You mentioned the name Danilo Mendoza as the one being ganged-up by Venancio Francisco and his companion. Do you personally know Danilo Mendoza?

A Yes, sir.

Q How long have you known Danilo Mendoza prior to April 21, 1994?

A For about 15 years already, sir.

Q By the way, where is Danilo Mendoza now?

A Already dead, sir.

Q Do you know the cause of his death?

A Because of the stabbing incident.

Q You said that another person was hacking Danilo Mendoza, who was this person?

A (The other man, witness pointing to the man sitted on the left side of Venancio Francisco.)

Q Do you know the name of that man who according to you hacked Danilo Mendoza on said time and date?

A No, sir.

PROS. SEÑOREN:

May we request the Clerk of Court to ask the name of that man sitted on the left side of accused Venancio Francisco and identified by the witness as the other person who hacked Danilo Mendoza, the victim in this case.

CLERK OF COURT:

(To the accused sitted on the left side of accused Venancio Francisco.)

Please stand up, what is your name?

ACCUSED:

Ernie Mansamad, sir.[26]

Contrary to accused-appellants' contention, the fact that Josefina is the wife of the victim does not make her testimony less believable. No law disqualifies a person from testifying in a criminal case in which [her] relative is

involved if the former was really at the scene of the crime and witnessed the execution of the criminal act.[27] In this case, Josefina did not only witness the killing of her husband by accused-appellants; she was a victim herself as accused-appellants likewise hacked her when she tried to pull her husband away from them.

For the death of Danilo, the trial court correctly convicted accused-appellants for murder. The essence of treachery is that the attack comes without a warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[28] In this case, accused-appellants, armed with a bolo and balisong, launched a surprise attack on the victim, who was innocuously walking with his wife and four-year old son. The victim was caught unaware and had no chance of putting up any defense. Clearly, treachery attended the commission of the crime since the attack, although frontally, was no less sudden and unexpected, giving the victim no opportunity to repel it or offer any defense of his person.[29]

As observed by the CA, however, the trial court erroneously imposed on accused-appellants the penalty of imprisonment from "17 years, 4 months and 1 day of reclusion temporal maximum, as minimum, to 33 years and 4 months of reclusion perpetua medium, as maximum" for murder. In imposing said penalty, the trial court applied the Indeterminate Sentence Law stating that Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes) made the penalty of reclusion perpetua indivisible. This is incorrect. Notwithstanding R.A. No. 7659, the penalty of reclusion perpetua remains an indivisible penalty. In this Court's En Banc Resolution, dated 9 January 1995,[30] it was explained that "[a]fter deliberating on the motion and re-examining the legislative history of R.A. No. 7659, the Court concludes that although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty." [31] The CA thus correctly imposed the indivisible penalty of reclusion perpetua on accused-appellants for the crime of murder.

With respect to Criminal Case No. C-4588, the Court fully agrees with the findings of the CA that only accused-appellant Francisco is liable therein and only for the crime of slight physical injuries. The CA explained, thus:

In the wounding of Josefina, it must be noted she was stabbed by Venancio only when she approached him while he and Danilo were wrestling with each other, and tried to pull her husband away. Obviously, the stabbing of Josefina was not simultaneous with the initial attack on Danilo much less sudden. Before that, she and their four-year-old son were never assaulted by the two appellants. As correctly held by the court a quo, there was no treachery.

The environmental circumstances of Josefina's wounding make Venancio solely liable and only for slight physical injuries. Ernie did nothing prior to and in the course of Venancio's knifing Josefina. With his "gulok" he could have joined Venancio in attacking Josefina. There is no evidence whatsoever that Ernie did, or for that matter, what he did as Josefina was being stabbed. Conspiracy by its legal consequences must be established like the crime itself by proof beyond reasonable doubt.

From the nature of the three wounds inflicted (Exh. B), superficial as they are, requiring just less than nine days to cure and under the facts proven, intent to kill is not clearly manifested. A personal assault must be characterized according to its consequences and the harm done to the victim (Aquino, *The Revised Penal Code*, 1976 Ed., Vol. II, Book II, p. 1309). At any rate, the teaching is, in case of doubt, the accused should be convicted of the lesser offense of lesiones, instead of attempted or frustrated murder, homicide or parricide.[32]

WHEREFORE, the decision of the Court of Appeals modifying the decision of the Regional Trial Court is AFFIRMED. Accused-appellants are found guilty of murder (Criminal Case No. C-4588) and, accordingly,

sentenced to suffer the penalty of reclusion perpetua. The award of damages to the heirs of the deceased Danilo Mendoza in the amount of P50,000.00 as civil indemnity is likewise AFFIRMED. Further, accused-appellant Venancio Francisco is found guilty of slight physical injuries (Criminal Case No. C-4588) and, accordingly, sentenced to suffer the penalty of eleven (11) days of arresto menor.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Penned by Justice Buenaventura J. Guerrero.

[2] Records, Criminal Case No. C-4567, p. 1.

[3] Records, Criminal Case No. C-4588, p. 1.

[4] TSN, Testimony of Josefina Montoya-Mendoza, 3 August 1994, pp. 3-23.

[5] TSN, Testimony of Baldomero Gonzales, 1 August 1994, pp. 33-41.

[6] TSN, Testimony of Supremo Macatangay, 1 August 1994, pp. 5-20.

[7] Exhibit "D", Criminal Case No. C-4567.

[8] Exhibit "E", Criminal Case No. C-4567.

[9] Exhibit "D-2", Criminal Case No. C-4567.

[10] Exhibits "D" and "1", Criminal Case No. C-4567.

[11] Exhibit "H", Criminal Case No. 4588.

[12] TSN, Testimony of Venancio Francisco, 16 September 1994, pp.21-42.

[13] TSN, Testimony of Alberto Gonzales, 29 August 1994, pp. 3-22.

[14] TSN, Testimony of Dr. Marlon dela Rosa, 16 September 1994, pp. 3-11.

[15] Joint Decision, Rollo, p. 40.

[16] CA Rollo, pp. 16-17.

[17] Rollo, pp. 3-4.

[18] Id., at 8.

[19] Id., at 13.

[20] Appellant's Brief, pp. 1-2; Records of the CA, pp. 27-28.

[21] Supplemental Appellant's Brief, p. 1; Rollo, p. 23.

[22] People vs. Mendoza, G.R. No. 133382, 9 March 2000, pp. 10-11; People vs. dela Cruz, G.R. No. 130608, 26 August 1999, p. 14; People vs. Bautista, G.R. No. 96092, 17 August 1999, p. 8;

[23] See Exhibit "F", Criminal Case No. C-4567.

[24] People vs. Alagon, G.R. No. 126536-37, 10 February 2000, p. 9; People vs. Quinanola, 289 SCRA 710

(1998).

[25] See Note 4, at 7-19.

[26] See Note 6, at 7-10.

[27] People vs. Andales, G.R. No. 130637, 19 August 1999, pp. 6-7; People vs. Nitcha, 240 SCRA 283 (1995).

[28] People vs. Aranjuez, 285 SCRA 466 (1998); People vs. Zamora, 278 SCRA 60 (1997).

[29] Id.; People vs. Apongan, 270 SCRA 713 (1997).

[30] People vs. Lucas, 240 SCRA 66 (1995).

[31] Id., at 69.

[32] See Note 16, at 14-15.

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