

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELITO VICENTE Y FIGO, REY BALLERA Y BERSABAL AND
CARLOS BERSABAL Y BINAS, ACCUSED-APPELLANTS.**

G.R. No. 142447. December 21, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On 13 September 1998, at around eight o'clock in the evening, Melvyn Matibag, a resident of Pinagsama Village, Western Bicutan, Taguig, Metro Manila, invited Jerry Fajardo, a neighbor, to ride with him in his tricycle and cruise around the neighborhood. Everything went smoothly for a couple of minutes until they reached a bend when a group of five (5) men apparently inebriated suddenly blocked their way, prompting Melvyn to remark, "Pare, nakakarami na yata kayo, ah." He did not realize that his statement would cost him his life.

Piqued by the remark, accused-appellant Carmelito Vicente, one of the five, sarcastically replied, "Wala kaming pakialam sa humaharang sa amin," afterwhich he punched Melvyn on the nape. Melvyn retaliated and the rest of the group joined in the fray. Jerry alighted from the tricycle to help Melvyn but at that moment he saw accused-appellant Rey Ballera pull out a balisong from his pocket. Sensing danger, Jerry retreated and scampered away. He ran towards his house but as he looked back he saw Rey following him with Melvyn, now wounded, trailing farther behind. When Jerry looked back again he saw Melvyn collapse on the ground. Stunned, Rey simply watched Melvyn as the latter was lifted off the ground by his wife Venus, his eight (8)-year old son John Lyndon and some tricycle drivers.

Meanwhile, the entire neighborhood summoned several barangay tanods to stop the fight. Tanod Eddie Andrada responded but was confronted by the aggressors one of whom struck him with a bolo. Eddie parried off the attacks with his bare arms. He remembers accused Carlos Bersabal menacingly moving towards him with two (2) lead pipes chained together. His co-councilmen went to his rescue and immediately took him to the hospital. Rolando Constantino and Ramir Garciano, the other tanods who responded, were told by the milling crowd to proceed to a certain house where the aggressors had ensconced themselves.

Rolando and Ramir immediately went after the group with Jerry leading the way. They were met outside by a certain Violeta Coros who introduced herself as the owner of the house. Whereupon Rolando and Ramir asked her to tell the aggressors hiding inside to come out and go with them. A few minutes later, accused-appellants Rey, Carmelito and Carlos surfaced. Jerry immediately pointed to Carmelito as one of the assailants. They then proceeded to the BCDA Police Station where Jerry identified Rey Ballera as the one who chased him when he scurried away from the commotion. Rey, Carmelito and Carlos were later transferred to the Taguig Police Station and placed behind bars.

While being brought to the hospital, Melvyn succumbed to his wounds.

An Information for the murder of Melvyn Matibag qualified by abuse of superior strength was accordingly filed on 16 September 1998 against Rey Ballera, Carmelito Vicente and Carlos Bersabal.[1]

The prosecution presented Venus Matibag, wife of Melvyn, and John Lyndon Matibag, their eight (8)-year old son, as eyewitnesses, together with Jerry Fajardo, Rolando Constantino, Ramir Garciano, Dr. Emmanuel Aranas, and Police Officers Dennis Dacanay and Pedro Abrigo to bolster the eyewitness account of Venus and John Lyndon.

Specifically, Venus Matibag testified that on 13 September 1998, at around eight o'clock in the evening, her husband Melvyn together with their next-door neighbor Jerry left home to test-drive his newly-repaired tricycle. Fifteen (15) minutes later she heard a commotion which prompted her to investigate the matter. While she stood outside her house, she saw Jerry being chased by accused-appellants with her husband Melvyn following behind. She noticed that her husband could barely control his steps. She was distracted by Jerry who shouted to his wife, "Mama akin na `yung itak dyan." When she looked at her husband again she saw him being stabbed by a fleeing man whom she identified as accused-appellant Rey Ballera. She ran to where her husband fell and witnessed how her son John Lyndon courageously plucked a hunting knife embedded in his father's left chest. Thereafter, she rushed him to the hospital where he was pronounced "dead on arrival." [2]

John Lyndon Matibag, eight (8)-year old son of the deceased, testified that he saw the actual stabbing of his father. He said that at around eight o'clock in the evening of 13 September 1998 he was asked by his mother to buy a few sticks of cigarette at a nearby sari-sari store. On the way home he saw across the street his father sauntering, wounded and bleeding. Then he saw another man whom he identified as Rey Ballera stab his father at the left chest. He rushed towards his father who was already gasping for breath, apparently conscious of an impending death as he was heard to be saying, "Oh Lord, sana mabuhay pa ako." His father pleaded that the knife stuck deep into his chest be removed. As he sobbed John Lyndon extricated the knife from his father's chest with his bare hands and threw it beside a trash can. His mother wept as they carried his father's body in a tricycle to take him to the hospital. [3]

Jerry Fajardo also identified accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal as among those who ganged up on Melvyn. [4] According to Jerry, as he exchanged blows with the aggressors he noticed that Melvyn had been stabbed by one of them. However, he scampered away when he saw accused-appellant Rey Ballera draw a fan knife from his pocket. When he looked behind him he saw the same accused-appellant and the deceased Melvyn both running towards him. After taking a couple of steps he looked back again and saw Melvyn collapse to the ground. He later accompanied the barangay tanods searching for the aggressors. But not before he identified accused-appellants Rey, Carmelito and Carlos as among those who attacked him and Melvyn. [5]

Dr. Emmanuel Aranas, Medico-Legal Officer of the Western Police District Crime Laboratory, testified that on 13 September 1998 he conducted an autopsy on the body of Melvyn Matibag. In his necropsy report Dr. Aranas identified the following wounds on the body of Melvyn, to wit: (a) one (1) stab wound on the right mammary region piercing the lower lobe of the right lung; (b) one (1) stab wound on the left mammary region piercing the lower lobe of the left lung; and, (c) a stab wound on the left forearm. He opined that a single bladed instrument could have been used in inflicting the wounds although it was also possible that two (2) different persons could have stabbed the deceased. [6]

The defense presented accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal as well as Samuel Vicente, Analyn Coros, Evelyn Rodrigo and Violeta Coros.

Accused-appellant Rey Ballera confirmed that his group had a physical confrontation with Melvyn and Jerry at the street corner but denied having started the fight. According to him, at around three o'clock in the afternoon of 13 September 1998 he went to the house of his Aunt Violeta to celebrate the birthday of a cousin-in law. When he arrived his cousin Alvin Coros was busy entertaining some guests. His cousins Carlos Bersabal and Carmelito

Vicente, his co-accused, and Samuel Vicente, Albert Vicente, Alvin's friends Avelino Real and Benito Galdenero were in a corner drinking beer and gin. He did not join them; instead, he simply ate the food served him by the birthday celebrant. He then spent his time exchanging stories with his sister-in-law Marilou. At eight o'clock in the evening, he accompanied Samuel Vicente in taking Carmelito home. As they crossed the street a tricycle suddenly blocked their way prompting Carmelito to holler. Instead of apologizing, Melvyn and Jerry alighted from the tricycle and assaulted them. Carmelito fell on a ditch and lost consciousness. He ran back to his aunt's house to ask his cousins for help. Alvin and his friends Avelino and Benito responded, but he himself stayed home. A few minutes later, Carmelito arrived wounded and bleeding. He helped Carmelito change his clothes and then waited for a while for further developments.

As they waited, several barangay tanods arrived and told Rey, Carmelito and Carlos to surrender. According to Rey, he volunteered to come out with his cousins as he pitied Carmelito. At the barangay hall, Carlos and Carmelito were locked up in a small cell and later taken to the police station where he was identified by Jerry as the person who went after him. While in the police station, they were threatened by the police with summary execution. Eventually, they were put behind bars. When Venus, wife of the deceased Melvyn, visited them there, she even told them that unless they surrendered Benito, Avelino and Alvin, they would have to pay for Melvyn's death.

Accused-appellant Rey Ballera denied ever possessing a knife that day; instead, in the evening of the scuffle he saw Benito carrying a knife in his waist. Rey disowned any participation in the stabbing saying that he could not have killed Melvyn as he was at his aunt's house waiting for the commotion to die down.[7]

On his part, accused-appellant Carmelito Vicente testified that at around five o'clock in the afternoon of 13 September 1998 he went to his in-laws' house for a birthday celebration. As soon as he arrived there, he drank beer with the guests. By eight o'clock in the evening, his brother Samuel and cousin-in-law Rey decided to take him home. When they went out a tricycle suddenly blocked their path and the two (2) occupants alighted and started punching him. He fell into a ditch and bruised his knees and forehead. Too drunk to defend himself, Carmelito went back to the house of his in-laws to change his clothes and rest. His cousin Rey treated his wounds. At about this time, the barangay tanods arrived and took them to the barangay outpost and later transferred them to the BCDA Police Station.[8]

Accused-appellant Carlos Bersabal also denied any participation in the killing. According to him, on 13 September 1998 he went to his Aunt Violeta's house to get a letter from his mother. When he arrived there he joined his cousins in their drinking spree until he became drowsy. Moments later, he was awakened by a commotion outside. Still a little later, to his surprise, the barangay tanods arrived and took him and his cousins into custody and then to the police station where, according to him, he heard Eddie Andrada tell the police officer on duty that it was another man and not anyone of them who stabbed Melvyn.[9]

Analyn Coros, daughter of Violeta, was presented apparently to prove the alibi of accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal. According to her, on 13 September 1998 her relatives arrived in their house to celebrate the birthday of her sister-in-law Teresa Monter. She claimed that at around eight o'clock in the evening her brother-in-law Carmelito left in the company of her cousin Rey and Carmelito's brother Samuel. A few minutes after they left, Rey returned and reported to them that they had been mauled. So Violeta instructed everyone not to leave the house. To have a good view of the melee she decided to go upstairs and sit by the window. Peering outside, she saw Benito and Avelino at a distance of fifteen (15) meters exchanging blows with two (2) other men whom she did not know. Suddenly Benito stabbed one them and then ran away.[10]

On 17 December 1999 the trial court rendered its Decision finding accused-appellant Rey Ballera guilty of murder

qualified by treachery. But accused-appellants Carmelito Vicente and Carlos Bersabal were convicted only of slight physical injuries purportedly for mauling Melvyn in the course of a scuffle.[11]

In its Decision, the trial court divided the commission of the crime into three (3) stages: first, the scuffle at the street corner; second, Rey's pursuit of a fleeing Jerry; and third, the culmination of the tragedy with Rey stabbing Melvyn. The trial court then went on to note that as there was no showing of gross physical disparity between the protagonists in the course of the struggle, the qualifying circumstance of abuse of superior strength could not be appreciated.

The court a quo likewise rejected the prosecution theory that there was conspiracy since there was no proof that the three (3) accused conspired with each other in killing Melvyn. According to the trial court, Carmelito and Carlos had no foreknowledge of Rey's plan to stab Melvyn. As such, only accused-appellant Rey was held responsible for the murder of Melvyn qualified not by abuse of superior strength but by treachery.

Accordingly, accused-appellant Rey Ballera was sentenced by the trial court to reclusion perpetua and ordered to indemnify the heirs of the deceased Melvyn Matibag P31,500.00 as actual damages and P50,000.00 as civil indemnity, and to pay the costs of suit. On the other hand, accused-appellants Carmelito Vicente and Carlos Bersabal were each sentenced to a straight prison term of thirty (30) days of arresto mayor and to pay the costs.

Accused-appellants Carmelito and Carlos immediately filed an Ex-Parte Motion for Release alleging that they had more than served their respective sentences having been in prison for more than a year.[12] With the conformity of the prosecution, accused-appellants Carmelito Vicente and Carlos Bersabal were forthwith ordered released by the trial court.[13]

In this appeal accused-appellant Rey Ballera attempts to exculpate himself by insisting that it was not he but Benito Galdinero who fatally stabbed Melvyn. He also takes issue with the trial court for giving credence to the testimonies of Venus and John Lyndon who are the wife and son, respectively, of the deceased. Accused-appellant Rey Ballera also posits that he cannot be convicted for murder inasmuch as the qualifying circumstance of treachery, which was appreciated by the trial court, was not alleged in the Information.[14]

For their part, accused-appellants Carmelito Vicente and Carlos Bersabal fault the court a quo for convicting them of slight physical injuries despite the fact that there was no allegation in the Information to this effect nor any physical evidence to show that they inflicted injuries on the body of the deceased.[15]

From his arguments alone, accused-appellant Rey Ballera has not shown why the testimonies of Venus and John Lyndon should be discarded. That Venus is the wife of the deceased and John Lyndon is his son do not detract from their credibility. In the absence of any improper motive to testify on the part of these witnesses, their testimonies are not affected by their relationship to the victim. Relationship per se does not give rise to a presumption of ulterior motive nor does it ipso facto tarnish the credibility of a witness. On the contrary, a relative's natural interest in securing the conviction of the guilty would deter him from implicating persons other than the culprits for then the blameworthy would gain immunity.[16] Besides, while it may be true that Venus thirsted for revenge it does not necessarily follow that her wrath would be directed indiscriminately so as to include even the innocent.

As to the supposed "glaring and material" inconsistency between Venus' testimony before the court and her sworn statement given to the police, we find such discrepancy to be more apparent than real. It appears that while in her testimony before the court Venus affirmed having seen accused-appellant Rey Ballera stab Melvyn, she stated in her sworn statement that onlookers charged accused-appellants with having aided one another in clobbering her husband. Certainly, we see no inconsistency or contradiction between these two (2) declarations.

Besides, it must be remembered that a sworn statement will not always disclose all the facts of the offense charged and sometimes even incorrectly describe some of the material occurrences narrated. A sworn statement is hardly accurate, if not incomplete, as it is invariably prepared by a third person who customarily rewords and rephrases statements given to him by the affiant.[17] In any case, the seeming inconsistency was satisfactorily explained by Venus who testified that she was very confused following the senseless death of her husband, perhaps mulling over the premature orphanhood of her very young children.

The defense also tried, but failed, to establish that Venus and her son John Lyndon knew that it was not Rey but a certain Benito who stabbed Melvyn. In support of his assertion, accused-appellant Rey Ballera presented the testimony of his cousin Analyn who narrated that she saw Benito stab Melvyn while the two (2) were engaged in a brawl. Even if Analyn's story is to be believed, this does not debilitate against Venus' and John Lyndon's testimonies identifying Rey as the assailant who plunged the knife into Melvyn's left chest. Even assuming *arguendo* that Benito stabbed Melvyn on the chest while they were fighting, it must be remembered that Melvyn suffered two (2) fatal chest wounds - one (1) on his left and the other on his right. Venus and John Lyndon positively indicated the left chest wound as that inflicted by Rey. Evidently, instead of damaging the theory of the prosecution, Analyn's testimony supports the prosecution's explanation that there were two (2) different persons who inflicted the two (2) fatal wounds on Melvyn's chest.

The trial court convicted Rey of murder qualified by treachery. However, a cursory reading of the Information against him shows that treachery was not alleged therein. Consistent with Sec. 8, Rule 10 of the Revised Rules of Criminal Procedure an aggravating circumstance be it qualifying or generic must be alleged in the information and may not be proved unless alleged.[18] Certainly these new rules would apply to the present case since procedural rules are applicable to actions pending and undetermined at the time they were approved.[19] Moreover, they are more favorable to the accused. Consequently, Rey can only be convicted of homicide.

Neither are we impressed with the profession of innocence of Carmelito and Carlos. Carlos was positively identified by Jerry and the barangay tanods as the person who terrified the whole neighborhood with his two (2) lead pipes, while Carmelito's injuries resulting from the melee destroyed his alibi.

But we agree with the trial court that there was no conspiracy among accused-appellants. Conspiracy transcends companionship and the fact alone that Carlos and Carmelito fought against the deceased moments before the fatal stabbing cannot support a conclusion that they shared in the criminal intent of Rey. Beyond cavil, in the absence of any previous plan or agreement to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective.[20] It is clear from the evidence presented that neither Carmelito nor Carlos knew that Rey would purposely run after their victims with the intent of slaying Melvyn. Only a conspiracy would qualify Carmelito's and Carlos' act of boxing the deceased to homicide but such a conspiracy was not proved as indubitably as the killing itself.

However, contrary to the protestations of accused-appellants Carmelito and Carlos, although the charge in the instant case is for murder, a finding of guilt for the lesser offense of slight physical injuries may be made considering that the latter offense is necessarily included in the former since the essential ingredients of slight physical injuries constitute and form part of those constituting the offense of murder.[21] In the same manner, an accused may be convicted of slight, less serious or serious physical injuries in a prosecution for homicide or murder, inasmuch as the infliction of physical injuries could lead to any of the latter offenses when carried to its utmost degree despite the fact that an essential requisite of the crime of homicide or murder - intent to kill - is not required in a prosecution for physical injuries.

The liability therefore of Carlos and Carmelito falls under the provisions of The Revised Penal Code on physical

injuries. Nonetheless, apart from the testimony of Jerry, the evidence for the prosecution is bereft of any physical proof that the deceased had been boxed and beaten. The necropsy examination conducted upon Melvyn revealed that he sustained only three (3) stab wounds, one (1) on the left forearm and two (2) fatal wounds on his chest. The left wound on his chest was satisfactorily shown to have been inflicted by Rey while the derelict who caused the two (2) other wounds was not identified.

Under par. 3, Art. 256, of The Revised Penal Code when the offender shall ill-treat another by deed without causing any injury, he shall be punished with *arresto menor* in its minimum period, ranging from one (1) to ten (10) days of imprisonment or a fine not exceeding P50.00. As such, Carmelito and Carlos can only be held liable for slight physical injuries and maltreatment punishable by imprisonment of not more than ten (10) days or a fine of P50.00 pesos or below.

In light of the foregoing, the penalties imposed upon accused-appellants should be modified. Insofar as accused-appellant Rey Ballera is concerned, under Art. 249 of The Revised Penal Code the penalty for homicide is *reclusion temporal* in any of its periods, the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstance as treachery was not alleged in the Information, the maximum of the penalty to be imposed on the accused shall be taken from the medium period of *reclusion temporal*, the range of which is fourteen (14) years, four (4) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree, which is *prision mayor*, the range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods.

For accused Carmelito Vicente and Carlos Bersabal, although they appear on record to have been released from jail considering that they were convicted by the trial court for slight physical injuries and imposed a straight prison term of thirty (30) days of *arresto menor* maximum and having been detained already for more than a year, nevertheless, for the record, their prison term of thirty (30) days of *arresto menor* maximum should be reduced to *arresto menor* minimum the range of which is one (1) day to ten (10) days.

WHEREFORE, the Decision of the Regional Trial Court of Pasig, Br. 265, finding accused-appellant REY BALLERA y BERSABAL guilty of MURDER and sentencing him to *reclusion perpetua* as well as finding accused-appellants CARMELITO VICENTE y FIGO and CARLOS BERSABAL y BINAS guilty of SLIGHT PHYSICAL INJURIES and sentencing them to thirty (30) days of *arresto menor* maximum is MODIFIED. Accordingly, accused-appellant REY BALLERA is found guilty of HOMICIDE and sentenced to an indeterminate prison term of six (6) years two (2) months and ten (10) days of *prision mayor* minimum as minimum, to fourteen (14) years eight (8) months and twenty (20) days of *reclusion temporal* medium as maximum.

Accused-appellants Carmelito Vicente and Carlos Bersabal are each sentenced to a prison term of ten (10) days of *arresto menor* minimum. But having served for more than ten (10) days, in fact for more than a year according to the order of the trial court of 15 February 2000, their release pursuant thereto is declared final.

The portion of the appealed Decision ordering accused-appellant REY BALLERA to pay the heirs of Melvyn Matibag P31,500.00 as actual damages and P50,000.00 as civil indemnity is AFFIRMED.

Costs de oficio.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

Buena, J., on official business.

[1] Original Records, pp. 1-3.

[2] TSN, 3 June 1999, pp. 1- 81.

[3] TSN, 17 June 1999, pp. 1-50.

[4] While there were supposedly five (5) men who engaged in a fistfight with Jerry and Melvyn, Jerry failed to identify the two (2) others; see Note 1, p. 142.

[5] TSN, 7 June 1999, pp. 3-31.

[6] Exh. "L;" see Note 1, pp. 151-152.

[7] TSN, 22 July 1999, pp. 1-26.

[8] Id., pp. 27-37.

[9] TSN, 29 July 1999, pp. 1-28.

[10] TSN, 13 September 1999, pp. 1 - 45.

[11] Penned by Judge Edwin A. Villasor, RTC-Br. 265, Pasig City; Original Records, pp. 194-218.

[12] See Note 1, pp. 223-225.

[13] Id., p. 228.

[14] See Note 16, pp. 55-77.

[15] Ibid.

[16] People v. Carillo, G.R. No. 129528, 8 June 2000, 333 SCRA 338; People v. Villanueva, G.R. No. 122246, 29 January 1999, 302 SCRA 380; People v. Macagaling, G.R. Nos. 109131-33, 3 October 1994, 237 SCRA 300.

[17] People v. Bumidang, G.R. No. 130630, 4 December 2000; People v. Silvestre, G.R. No. 127573, 12 May 1999, 307 SCRA 68; People v. Jaberto, G.R. No. 128147, 12 May 1999, 307 SCRA 93.

[18] Pursuant to A.M. No. 00-5-03-SC, The Revised Rules of Criminal Procedure took effect on 1 December 2000.

[19] Robern Development v. Tutain, G.R. No. 135042, 23 September 1999, 315 SCRA 150; Laguio Jr. v. Gamet, G.R. No. 74903, 21 March 1989, 171 SCRA 392.

[20] People v. Elijorde, G.R. No. 126531, 21 April 1999, 306 SCRA 188; People v. Biñas, G.R. No. 121630, 8 December 1999, 320 SCRA 22.

[21] Section 5, Rule 120 of the Revised Rules of Criminal Procedure provides: "An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter."

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