

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PERLITO MONDIGO Y ABEMALEZ, APPELLANT.

G.R. No. 167954. January 31, 2008

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-167954/>

CARPIO, J.:

The Case

This is an appeal from the Decision[1] dated 16 March 2005 of the Court of Appeals convicting appellant Perlito Mondigo y Abemalez (appellant) of Murder and Frustrated Murder.

The Facts

The prosecution evidence showed that in the morning of 27 September 1998, appellant, Damaso Delima (Damaso), Damaso's son Delfin Delima (Delfin) and three other unidentified individuals were having a drinking spree in Ligas, Malolos, Bulacan. At around noon, Damaso's other son, Anthony Delima (Anthony), joined the group. At around 6:00 p.m., appellant, using a "jungle bolo," suddenly hacked Anthony on the head, causing him to fall to the ground unconscious. Appellant next attacked Damaso. A witness who was in the vicinity, Lolita Lumagi (Lumagi), hearing shouts coming from the scene of the crime, rushed to the area and there saw appellant repeatedly hacking Damaso who was lying on his back, arms raised to ward off appellant's blows. Damaso later died from the injuries he sustained. Anthony sustained a 15.25-centimeter long lacerated wound on his left temporal area.

Appellant was charged before the Regional Trial Court of Malolos, Bulacan, Branch 78 (trial court) with Murder (Criminal Case No. 2001-M-99) and Frustrated Murder (Criminal Case No. 1993-M-99) qualified by treachery, evident premeditation, and taking advantage of superior strength.

Appellant invoked self-defense. According to him, a quarrel broke out between him and Anthony during their drinking spree. Damaso and Delfin arrived and ganged-up on him. He ran home, followed by Anthony, Damaso, and Delfin. Upon reaching his house, he got hold of a "flat bar" and whacked Anthony's head with it. Damaso attacked him with a bolo but Damaso lost hold of the weapon which fell to the ground. Appellant retrieved the bolo and used it to hack Damaso.

The Ruling of the Trial Court

In its Decision dated 15 February 2002, the trial court found appellant guilty of Murder for the killing of Damaso and Serious Physical Injuries for the hacking of Anthony, mitigated by intoxication.[2] The trial court gave credence to the testimonies of prosecution witnesses Anthony and Lumagi, and correspondingly found unconvincing appellant's claim of self-defense. The trial court also held that treachery qualified Damaso's killing which was done swiftly, giving him no opportunity to make a defensive stance and protect himself from the attack, thereby insuring the commission of appellant's aggressive act.

Petitioner appealed to this Court, contending that (1) the testimonies of the prosecution witnesses on the manner of the attack on Anthony, the presence of other individuals at the site of the incident, and the identity of the individual who shouted during the attack are contradictory; (2) Lumagi's failure to execute a sworn statement before taking the witness stand renders her testimony unreliable; (3) the nature of the wound Anthony sustained, as indicated in the medical certificate, belies his claim that he was hacked by a bladed weapon; and (4) treachery did not attend the killing of Damaso as mere suddenness of an attack does not suffice to show *alevosia*, not to mention that neither Anthony nor Lumagi saw how appellant initiated the attack against Damaso.

In its appellee's brief, the Office of the Solicitor General (OSG) recommended the modification of the trial court's judgment by holding appellant liable only for Homicide for the killing of Damaso.

We transferred the case to the Court of Appeals following the ruling in *People v. Mateo*.^[3]

The Ruling of the Court of Appeals

In its Decision of 16 March 2005, the Court of Appeals affirmed the trial court's ruling with the modification that appellant was liable for Frustrated Murder for the hacking of Anthony.^[4] The Court of Appeals held that (1) the testimonies of the prosecution witnesses are credible despite the inconsistencies appellant noted as these had nothing to do with the central question of whether appellant attacked Anthony and Damaso with a bolo; (2) the lack of motive for appellant to attack the victims does not negate the commission of the crimes in question as motive becomes material only when the identity of the assailant is in doubt; and (3) Damaso's killing was attended by treachery as appellant launched his attack without any warning, leaving the victims no chance to defend themselves.

Hence, this appeal. In separate manifestations, the parties informed the Court that they were no longer filing supplemental briefs and accordingly agreed to submit the case for resolution based on the points raised in their briefs filed with the Court of Appeals.

The Issue

The issue is whether appellant is guilty of Murder and Frustrated Murder, as charged.

The Ruling of the Court

We find appellant guilty of Homicide and Frustrated Murder.

Appellant Failed to Prove Self-defense

By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes.^[5] Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (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.^[6]

As the Court of Appeals observed, appellant's version of how Damaso and Anthony ganged-up on him, wholly uncorroborated, fails to convince. Appellant does not explain why a flat bar, which he claims to have used to whack Anthony on the head, conveniently lay outside his house. Further, the nature of the wound Anthony sustained, a 15.25-centimeter long laceration, could only have been caused by a bladed weapon and not by a blunt-edged instrument such as a flat bar. As for Damaso's alleged unlawful aggression, assuming this claim is true, such aggression ceased when Damaso lost hold of the bolo. Thus, there was no longer any reason for appellant to pick-up the bolo and attack Damaso with it.

In contrast, the prosecution witnesses' testimonies that appellant, without any provocation, attacked two of his drinking companions with a bolo ring true and are consistent in their material points. After reviewing their testimonies, we find no reason to disturb the lower courts' findings giving full credence to the testimonies of the prosecution witnesses.

Appellant is Guilty of Frustrated Murder and Homicide

Treachery Attended the Attack Against Anthony

As the Court of Appeals correctly held, the location and nature of the wound inflicted against Anthony and the manner by which appellant carried out his attack show intent to kill and treachery. Contrary to appellant's claim, treachery attended the attack as the evidence showed that while the group was in the midst of their drinking spree, appellant slipped out, went to his house to get the bolo, and while Anthony was sitting among the group, appellant took out his bolo and hacked Anthony on the left side of the head, causing a 15.25-centimeter long laceration. Treachery is present when the offender commits the crime employing means, methods or forms in its execution which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make.[7] Anthony, totally unprepared for what was to befall him, was completely defenseless.

Appellant is Guilty of Homicide for the Killing of Damaso

We find merit in the OSG's recommendation that appellant is only liable for Homicide for the killing of Damaso. None of the prosecution witnesses saw how the attack on Damaso commenced. Anthony testified that after he regained consciousness, he saw his father, with multiple stab wounds, crawling towards their house.[8] For her part, Lumagi testified that after hearing shouts coming from the scene of the crime, she ran towards that direction and saw appellant hacking Damaso who was lying on his back, arms raised to ward off appellant's blows.[9] This evidence fails to meet the requirement that for treachery to be appreciated, the prosecution must show how the criminal act commenced, developed and ended.[10] That treachery may have attended the attack against Anthony does not follow that the same also attended the assault against Damaso as treachery must be shown in the performance of the acts of execution against each of the victims.

Intoxication as Mitigating Circumstance not Proven

The trial court erred in crediting appellant with the circumstance of intoxication as having mitigated his crimes because "the stabbing incident ensued in the course of a drinking spree." [11] For the alternative circumstance of intoxication [12] to be treated as a mitigating circumstance, the defense must show that the intoxication is not habitual, not subsequent to a plan to commit a felony and the accused's drunkenness affected his mental faculties. [13] Here, the only proof on record on this matter is appellant's testimony that before Damaso, Anthony, and Delfin attacked him, he drank "about 3 to 4 bottles of beer." [14] The low alcohol content of beer, the quantity of such liquor appellant imbibed, and the absence of any independent proof that appellant's alcohol intake affected his mental faculties all negate the finding that appellant was intoxicated enough at the time he committed the crimes to mitigate his liability.

The Penalty Applicable for Homicide

Homicide under Article 249 of the Revised Penal Code is punishable by reclusion temporal. Applying the Indeterminate Sentence Law, the range of the penalty imposable on appellant is 6 years and 1 day to 12 years of prision mayor, as minimum, to 12 years and 1 day to 20 years of reclusion temporal, as maximum. In the absence of any mitigating or aggravating circumstance, we find it proper to impose upon appellant a prison term of 8 years and 1 day of prision mayor, as minimum, to 14 years and 8 months of reclusion temporal, as maximum. Appellant

is also liable to pay the heirs of Damaso civil indemnity of P50,000 and moral damages of P50,000 which are awarded automatically.[15]

WHEREFORE, we AFFIRM the Decision dated 16 March 2005 of the Court of Appeals, with the MODIFICATION that appellant Perlito Mondigo y Abemalez is found GUILTY of Homicide for the killing of Damaso Delima. Appellant Perlito Mondigo y Abemalez is sentenced as follows:

- In Crim. Case No. 1993-M-99, eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum;
- In Crim. Case No. 2001-M-99, eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. Appellant Perlito Mondigo y Abemalez is further ordered to pay the heirs of Damaso Delima civil indemnity of P50,000 and moral damages of P50,000.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., Concur.

[1] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Salvador J. Valdez, Jr. and Mariano C. Del Castillo, concurring.

[2] The dispositive portion of the ruling provides (CA rollo, pp. 22-23):

WHEREFORE, this Court hereby finds accused Perlito Mondigo GUILTY beyond reasonable doubt:

- In Crim. Case No. 1993-M-99, the crime of Serious Physical Injuries, as defined and penalized under Art. 263 par. 4 of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of thirty (30) days of arresto menor as minimum to 2 years 4 months of prision correccional minimum as maximum and to pay the costs; and
- In Crim. Case No. 2001-M-99, the crime of Murder, as defined and penalized under Art. 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of Reclusion Perpetua with all its accessory penalties; to pay the heirs of victim Damaso Delima the sum of P50,000.00 as civil indemnity; P50,000.00 as moral damages; and to pay the costs.

[3] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[4] The dispositive portion of the ruling provides (Rollo, pp. 13-14):

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant PERLITO MONDIGO y ABEMALEZ is hereby found GUILTY of frustrated murder in Crim. Case No. 1993-M-99 and sentenced to suffer the indeterminate penalty of Eight (8) Years and One (1) Day of prision mayor, as minimum, to Fourteen (14) Years and Eight (8) Months of reclusion temporal, as maximum.

[5] People v. Ignacio, 337 Phil. 173 (1997); People v. Mindac, G.R. No. 83030, 14 December 1992, 216 SCRA 558.

[6] People v. Astudillo, 449 Phil. 778 (2003).

[7] Article 14(16), Revised Penal Code.

[8] TSN (Anthony Delima), 17 November 2000, pp. 3-4.

[9] TSN (Lolita Lumagi), 19 February 2001, pp. 3-4.

[10] See *People v. Mationg*, 407 Phil. 771 (2001).

[11] CA rollo, p. 66.

[12] Article 15, Revised Penal Code.

[13] I Reyes, *The Revised Penal Code* 465, 467 (14th ed.).

[14] TSN (Perlito Mondigo), 4 June 2001, p. 2.

[15] *People v. Delim*, 444 Phil. 430 (2003); *People v. Cabacan*, 436 Phil. 397 (2002).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.