

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCOS ASUELA, JUANITO ASUELA, ALBERTO ASUELA, ROGER ASUELA, TEOFILO “BOYET” CAPACILLO, JUN-JUN ASUELA (AT LARGE) AND MIGUEL ASUELA (AT ...

G.R. Nos. 140393-94. February 04, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Where the evidence fails to show conclusively that the wounds inflicted on the offended party were fatal or serious and where the medical treatment -- which lasted less than nine days in the present case -- were merely first aid in nature, appellants may be convicted only of slight physical injuries, not frustrated murder.

The Case

Before us is an appeal from the July 20, 1999 Decision[1] of the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Criminal Cases Nos. 3365 and 3366. The assailed Decision disposed as follows:

“WHEREFORE, premises considered, Judgment is hereby rendered in these cases as follows:

“1) In Crim. Case No. 3366, finding accused Juanito Asuela, Marcos Asuela, Alberto Asuela, Roger Asuela, and Teofilo ‘Boyot’ Capacillo GUILTY beyond reasonable doubt of the crime of murder, as defined and penalized under Art. 248 of the Revised Penal Code, and sentencing each of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of Wilfredo Villanueva in the amount of P50,000.00 and to pay the costs.

“2) In Crim. Case No. 3365, finding accused Juanito Asuela, Marcos Asuela, Alberto Asuela, and Teofilo ‘Boyot’ Capacillo GUILTY beyond reasonable doubt of the crime of frustrated murder as defined and penalized under Art. 248 of the Revised Penal Code and sentencing each of them to suffer imprisonment of fourteen (14) years, eight (8) months and one (1) day of reclusion temporal and to pay the costs.

“As against accused Jun-jun Asuela and Miguel Asuela, who have, to date, remained at-large, let a warrant of arrest be issued against them and let these cases be, in the meantime, sent to the archives without prejudice to their reinstatement upon apprehension of the said accused.”[2]

This case originated from the September 24, 1997 Information[3] signed by Third Assistant Prosecutor Nestor V. Gapuzan, charging Appellants Marcos Asuela, Juanito Asuela, Alberto Asuela, Rogelio “Roger” Asuela and Teofilo “Boyot” Capacillo[4] with frustrated murder, allegedly committed as follows:

“That on or about the 7[th] day of September 1997 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with a lead [pipe] and pieces of wood, with intent to kill and with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack assault and stab one ANTHONY A. VILLANUEVA on his body, thus performing all

the acts of execution which could have produced the crime of murder as a consequence but nevertheless did not produce it by reason of cause independent of his will, that is, due to the timely and able medical attendance rendered to said ANTHONY A. VILLANUEVA which prevented his death.”[5]

That same day, the same prosecutor filed against appellants another Information,[6] this time for murder, as follows:

“That on or about the 7[th] day of September 1997 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with a lead [pipe] and pieces of wood, with intent to kill employing means to weaken the defense of the victim, one WILFREDO VILLANUEVA, by spraying him with [tear gas] in the eyes and taking advantage of their superior strength did then and there wilfully, unlawfully and feloniously attack, assault and stab one WILFREDO VILLANUEVA, thereby inflicting upon the latter mortal wounds which directly caused his death.”[7]

When arraigned on separate dates, appellants pleaded not guilty.[8] After trial in due course, the RTC convicted them.

The Facts

Version of the Prosecution

In its Brief,[9] the Office of the Solicitor General summarized the prosecution’s version of the facts in this wise:

“In the early evening of September 7, 1997, prosecution eyewitness-victim Anthony Villanueva was in their house at Valleyview Subdivision, Gulod Malaya, San Mateo, Rizal, with his brother Mark, his sister Hayen, and their mother Magdalena Villanueva. They were at that time celebrating the birthday of their father, Wilfredo Villanueva. While his father Wilfredo was cooking food, Anthony saw appellants and the accused Jun-jun Asuela and Miguel Asuela in a drinking spree in front of the house of appellant Juanito Asuela, situated at about five (5) meters away from the house of the Villanuevas. Appellants and their co-accused were later joined by their neighbors.

“At about 6:30 o’clock in the evening of the same day, Anthony heard and saw appellant Juanito call up his father. Thereafter, Anthony saw his father being pulled near the gate of their house and x x x appellants Marcos Asuela, Alberto Asuela, Roger Asuela, Teofilo ‘Boyot’ Capacillo, Juanito Asuela and co-accused Jun-jun Asuela and Miguel Asuela stabbed and/or struck with a knife and a blunt instrument Wilfredo Villanueva. Appellant Boyot Capacillo sprayed [tear gas] on the eyes of Wilfredo; appellant Juanito stabbed Wilfredo’s eyes and cheek him eight (8) times with a knife; Roger hit three (3) times Wilfredo’s back with a lead pipe; co-accused Jun[-]jun stabbed Wilfredo’s chest four (4) times with a knife; appellant Alberto stabbed Wilfredo with a pointed bamboo while the latter lay on the ground; appellant Marcos also hit him at the back with a lead pipe; and co-accused Miguel stabbed Wilfredo four (4) times with a knife.

“In further details, Anthony stated that when appellant Juanito stabbed Wilfredo, appellant Boyot was at the back of Juanito. Then, appellant Boyot sprayed [tear gas] on the eyes of Wilfredo and thereafter, appellant Roger went [behind] Wilfredo and hit the latter with a lead pipe. At that precise moment, co-accused Jun-jun went in front of Wilfredo and immediately hit him on the chest with the knife. Then, appellant Marcos, instead of going to the barangay office for assistance, picked up a lead pipe and hit Wilfredo. Co-accused Miguel who positioned himself as the lookout, also stabbed Wilfredo in reaction to the inquiry of appellant Roger if Wilfredo was still alive; and when appellants and the two (2) co-accused left the scene of the crime, appellant Alberto went back and stabbed Wilfredo with a pointed bamboo pole. Anthony knew that appellant Alberto is the father of accused Miguel, and Alberto’s brothers are appellants Juanito, Marcos, Roger, and co-accused Jun-jun. Appellant Boyot Capacillo is their brother-in-law, Boyot’s wife being the sister of the Asuela brothers. When his father Wilfredo was being ganged up[on] by appellants and their co-accused, Anthony tried to help his father but Anthony fell down from the sudden blow on his back.

“While on the ground, Anthony was hit on the head with a lead pipe by appellants Roger and Marcos and then appellant Juanita hit Anthony three (3) times at his left eyebrow, right side of his neck, and at the left side of his body in between his left armpit and left nipple. Before Anthony could run for his safety, accused Jun-jun and Miguel stabbed him with a knife. Roger chased him, while appellant Alberta was looking for him with a pointed bamboo. Anthony was treated of his injuries at the Amang Rodriguez Hospital by Dr. Aladdin Bongco who issued a medico-legal certificate. He was also medically attended to at the Health Center of Gulod Malaya. Anthony Villanueva further stated that from a distance of five (5) meters, he saw appellant Alberto arrive at the scene of the crime and stab Wilfredo with a pointed bamboo while the latter was still lying prostrate on the gutter of the street. Appellant Alberta also spat on the body of Wilfredo.

“Prosecution eyewitness Hayen Villanueva, daughter of Wilfredo Villanueva, testified that at about 7:30 o’clock in the evening of September 7, 1997, she was with her father in the kitchen of their house. Her mother, brothers, sisters, and her sister-in-law were also in their house. It was her father’s birthday and the latter was cooking food for the occasion. Then, Hayen heard and saw appellant Juanito call up her father. While her father was at the gate of their yard, Hayen saw from the distance of seven (7) meters, appellant Juanito stab her father. [From] the same distance, Hayen also saw appellant Boyet Capacillo spray [tear gas] on the eyes of [her] father. Hayen fully corroborated the testimony of her brother Anthony on how appellants and their co-accused fatally ganged up on their father. She said that appellant Alberta Asuela tried to stab her with a pointed bamboo; however, she was able to run away. Then, Hayen saw appellants Alberto and Marcos throw stones at their house until the police authorities arrived. Hayen also saw Anthony trying to help their father but was chased by appellants Marcos, Roger, and co-accused Jun-jun. She clearly saw the incident because the scene of the crime was illuminated by fluorescent bulbs from the well owned by the Asuelas (situated at a distance of about six (6) arms-length from the crime scene), from the Santos residence (situated at about seven (7) arms-length away) and from the residence of the [Evangelios], (situated at about nine (9) arms-lengths away).

“Prosecution eyewitness Magdalena Villanueva, widow of victim Wilfredo Villanueva, corroborated her children’s testimonies. According to her, while she peeped through the window of their house and saw the criminal incident, as it transpired from a distance of four (4) arms-length.

“Dr. Ma. Cristina B. Freyra, medico legal officer of PNP Crime Laboratory, Camp Crame, Quezon City, conducted an autopsy examination on the cadaver of Wilfredo Villanueva. Dr. Freyra issued Medico-legal Report No. M-1291-97 on the results of the examination. In the course of her examination, Dr. Freyra found that Wilfredo sustained twelve (12) wounds, seven (7) of which were fatal; that the stab wounds could have been caused by four (4) bladed instruments considering the difference in the measurements of the wounds; the lacerated wound at the right leg of the victim could have been caused by a pointed sharp bamboo; that the fractured bones at the head could have been caused by a lead pipe or a piece of wood. She opened the victim’s skull and found fractures and bleeding below and above the brain. She also found that the victim’s right eyeball was destroyed and have been caused by stabbing with the use of [a] pointed instrument. Dr. Freyra issued a death certificate stating therein, among others, that the cause of death was hemorrhage due to multiple stab wounds, x x x.

“Prosecution witness Dr. Jose Aladin Bongco, resident physician of the Amang Rodriguez Medical Center, examined and treated Anthony Villanueva of his injuries on September 7, 1997. Dr. Bongco reduced his findings in a medico-legal certificate. He found that Anthony Villanueva sustained a wound on the left frontal parietal and lacerated wound at the right frontal. Dr. Bongco also found a stab wound at the nipple area. He closed the wounds to stop the bleeding. He stated that the lacerated wounds could have been caused by a blunt or any sharp object or by a lead pipe, and the stab wound by a sharp blunt object. The three (3) wounds could have been fatal if not for the medical treatment given.”[10] (Citations omitted)

Version of the Defense

In their Brief,[11] appellants submit their version of the events in these words:

“All herein accused-appellants except accused Juanito Asuela interposed self-defense[.]

“MARCOS ASUELA testified that on 07 September 1997 at around 6:00 pm, a commotion occurred in Barangay Gulod, Malaya, San Mateo, Rizal between the Asuelas and Villanuevas; that he saw Mark Villanueva and Juanita Asuela talking in front of the store of Aling Betty Santos, [a] distance of around 10 meters from the place; that he did not hear what they were talking about but certainly, they conversed for a while when Anthony Villanueva arrived and instructed Mark to leave the place but the latter refused; [a] few moments later, Wilfredo Villanueva arrived with a 'karet' and suddenly brushed/pushed his two Sons aside, and hacked Juanito Asuela with a 'karet' inflicting in[j]uries on the latter's head which prompted him to immediately call the attention of barangay official[s] for assistance, but when he returned together with Alberta Asuela, Kagawad Doromal, Police Officer Rabina and Barangay Tanod Eddie Santos Wilfredo Asuela was already dead; that he personally knows Julius Villanueva, son of the victim, who was involved in a carjacking incident, and it was accused Juanita Asuela who tipped Atty. Pozon, owner of the vehicle, of Julius['] participation, hence, the latter was put behind bars; that when he came back [to] the scene of the incident he saw Juanito Asuela a[l]so injured; that he helped/assisted the policemen in carrying [to] or placing the cadaver of Wilfredo Villanueva in the van; that he also helped Magdalena Villanueva and Hayen Villanueva [in] boarding the vehicle; that he denied having hit Anthony Villanueva with a lead pipe; that he went [to the] barangay hall on the following day, 08 September 1997[;] however SPO4 Armando Santiago told him to stay in that place and when he (Santiago) returned accompanied by Magdalena Villanueva and her daughter Hayen, they pointed to him as the one who hit Wilfredo Villanueva at the latter's back for there were no other persons inside the hall except him so he was immediately placed under arrest under the pretext of custodial investigation[.]

“Accused ALBERTO ASUELA, SR. testified that on 07 September 1997 at around 7:00 pm, he was in the house of Purok Leader Mang Dodong which [was] 500 meters away from the house of [the] Villanuevas, attending to the birthday celebration of the latter's son Raffy together with [K]agawad Doromal, Mang Dodong and Policeman Rabina; that he vehemently denied the accusations leveled against him; that the incident happened on Sunday where Boyet and the latter's wife were regularly selling religious articles at the St. Joseph Church; that at noon of 07 September 1997, he met Anthony Villanueva and they even played tong-its, after which he proceeded to Dodong's place to have a drinking spree; that he denied having struck Wilfredo Villanueva with a bamboo [pole] nor did he chase Anthony Villanueva for he was at Dodong's place when the incident happened.

"Accused TEOFILO CAPACILLO alias Boyet testified that on 07 September 1997 x x x [h]e was at St. Joseph Church, Quezon City, helping his wife [sell] religious articles and cigarettes; that there were persons who saw him in that very evening selling said articles and named them as Sps. Elizabeth and Richard Martin. As a security guard, he was issued a .38 caliber and was not issued any [tear gas]; that the accusations levelled against him by Anthony, Magdalena and Hayen Villanueva were [a] bunch of lies; that he only met Juanito Asuela with several companions at the St. Joseph Church at around 9:00 pm on 07 September 1997 with blood oozing from his head; that his wife even gave Juanito money for treatment.

“Accused ALBERTO ASUELA, JR. testified that on 07 September 1997 he was at Vicky Santos' place when the incident happened; that he heard and noticed Juanito Asuela and Mark Villanueva conversing about the apprehension of Julius Vilanueva in [a] carjacking case, and he heard Anthony Villanueva [confront] Juanita Asuela uttering the words: [M]ay sama ako ng loob sa iyo at ito'y matatapos lamang kung mailalabas mo si Julius sa kulungan', and [a] few moments later, Wilfredo Vil[l]anueva arrived and brushed aside his [two] sons (Mark and Anthony), and thereafter hit Juanito Asuela with a karet'; that he saw Juanito r[u]n towards his house already bloodied on the head closely followed by Wilfredo Villanueva then [a] scuffle ensued between the duo; that at the time [of] the incident, he did not see Marcos Asuela, Jun-jun Asuela [or] Boyet Capacillo except his father.

“Accused ROGELIO ASUELA alias Roger testified that on 07 September 1997 at around 7:30 pm., while he together with his family were inside his house watching a championship game in basketball between Alaska and Gordon Gins somebody knocked at the door, and when his son Domingo opened the door, he saw one of his nieces crying and informed him that her father, Juanito Asuela was full of blood, so he immediately proceeded to Juanito’s house and saw him full of blood sitting on the sofa; that when he asked Juanito what really happened, Juanito did not answer instead he pointed to him a certain direction which prompted him to go to the place pointed by Juanita and there he saw Wilfredo Villanueva lying on the ground already dead and his kumadre Magdalena Villanueva crying; and that when he approached his kumare Magdalena, the latter uttered: ‘[M]ga hayop kayo, pagbabayaran ninyong lahat ito.’

“Accused JUANITO ASUELA alias Fernando Bonifacio, averred that on 07 September 1997 at about 7:00 pm., he was buying cigarette at the store of Mrs. Santos when Mark Villanueva approached and talked to him regarding the carnapping case of the latter’s brother Julius Villanueva whom he reported to Atty. Pozon to be the one responsible for the carnapping of his car. Minutes later, Anthony Villanueva arrived and shouted to Mark not to talk to him and uttered: ‘[M]asyado kang mapapel. Kung gusto mong magkaareglohan tayo, ilabas mo ang kapatid ko sa kulungan.’ Suddenly and without any warning, Wilfredo Villanueva who was drunk attacked him but was pacified by [the] latter’s son Mark who requested his father and Anthony to go home; that Anthony boxed him on the head, and when Wilfredo arrived, he suddenly pushed aside his two Sons and hacked him on the head with a ‘karet’; that when he ran towards his house, he accidentally slipped and fell to the ground, and when he saw Wilfredo about to attack him again, he picked a stone and threw it [at] the face of Wilfredo; that he wrest[le]d the ‘karet’ from Wilfredo to avoid further injury, and in the process, he felt a knife on the waist of Wilfredo, and he took it and used [it] in stabbing Wilfredo several times; at this juncture, he saw Anthony coming out of their house with a lead pipe about to hit him so he embraced Anthony and also stabbed the latter; that at the time of the incident, his co-accused were not present, and he was alone defending himself; that at the time he left the scene he noticed the karet’ still in the hand of Wilfredo; that because of his bloodied head, he went home and thereafter, with his sisters went to Boyet Capacillo at the St. Joseph Church. The following day, he went to the Antipolo General Hospital where his wounds were treated by Dr. Edwin Borja who issued a medical certificate marked as Annex ‘10’.”[12]

Ruling of the Trial Court

The trial court gave full faith and credence to the prosecution witnesses because they were at the crime scene, and their declarations were consistent in describing the participation of appellants in the crimes charged. Despite their relationship to the victims, these witnesses were not disbelieved, because no improper motive for testifying falsely against appellants was proven. Also established was appellants’ conspiracy in killing Wilfredo Villanueva and in fatally injuring his son Anthony.

The RTC also rejected the contention of Juanito that he had acted in self-defense -- he had stabbed the victim even after being able to subdue the latter; therefore, unlawful aggression had ceased. Neither was there any reasonable necessity for Juanito to stab Anthony, who was allegedly moving towards the former.

Moreover, the court a quo debunked the alibi of the other appellants, because they had failed to show that it was physically impossible for them to be at the crime scene. Finally, the qualifying circumstance of abuse of superior strength in killing Wilfredo and seriously injuring Anthony was appreciated because of the gross physical disparity between the versions of appellants and the victims in terms of their number, the weapons used and the force employed.

Hence, this appeal.[13]

Issues

Appellants submit the following assignment of errors for our consideration:

I

“The trial court erred in concluding that there was conspiracy on the part of all the accused-appellants, and in disregarding the justifying circumstance of self defense of accused Juanito Asuela;

II

“The trial court erred in totally disregarding the evidence of the defense and finding all the accused guilty of the offenses charged beyond reasonable doubt;

III

“The lower court erred in finding the accused guilty of murder by appreciating abuse of superior strength as a qualifying circumstances.”[14]

For purposes of clarity, we deem it wise to restate the assigned errors as follows: (1) sufficiency of the prosecution evidence; (2) efficacy of self-defense, denial, alibi and conspiracy; and (3) abuse of superior strength as a qualifying circumstance. We will discuss them in that order.

This Court’s Ruling

The appeal is partly meritorious.

First Issue:

Sufficiency of Prosecution Evidence

Appellants contend that the trial court erred in according full faith and credence to the testimonies of Prosecution Witnesses Anthony, Hayen and Magdalena - all surnamed Villanueva -- because they had allegedly contradicted one another. Hayen said that Boyet Capacillo had sprayed tear gas on the eyes of her father, Wilfredo, before Juanito Asuela and his cohorts ganged up on the old man. On the other hand, Magdalena maintained that the accused had first surrounded the deceased before his eyes were sprayed by Capacillo with tear gas.

We are not convinced. Appellants’ attack on the credibility of the prosecution witnesses is misplaced. Nothing is more well-settled in law than the principle that the trial court’s evaluation of the testimony of witnesses is accorded the highest respect, even finality, because it had the direct opportunity to observe them on the stand and to determine if they were telling the truth.[15] In the present case, the discrepancy between the two versions on the sequence of the attack on the deceased does not disprove the material fact that appellants did attack, maul and kill him. Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance, the veracity or the weight of the testimony.[16]

Preposterous is the contention of appellants that the Villanuevas filed the charges against them because Juanito Asuela had implicated Julius Villanueva, one of Wilfredo’s sons, in a carnapping incident. It is highly unlikely that the Villanuevas would place the members of their family at risk in order to get Julius out of prison. In the absence of proof that an improper motive impelled the witnesses to wrongly implicate the accused in the commission of the crime, a court cannot refuse to give due weight and probative value to their testimonies.[17]

Second Issue:

Self-Defense, Denial, Alibi and Conspiracy

Self-Defense

Appellant Juanito Asuela claims self-defense.[18] Together with the other appellants, he further alleges that Anthony confirmed his story: that the deceased had followed him to Mrs. Santos’ store, which was 10 to 11

meters away from the gate of the Villanuevas' home; that Anthony had confronted him at the store regarding the case of the former's brother; and that it was Wilfredo who had attacked him with a sickle.

Juanito also alleges that he was boxed on the head by Anthony. The former further alleges that his two sons -- Anthony and Mark - were pushed aside and his head hacked with a sickle by Wilfredo. Injured by the attack, Juanito ran towards his house, but slipped and fell to the ground. Wilfredo caught up and wrestled with him for the sickle. In the process, Juanito felt, on the waist of Wilfredo, a knife which the former used to stab the latter several times and also to stab Anthony, thereby getting an opportunity to flee. Juanito then went home and got his sisters to accompany him to St. Joseph Church to find Boyet Capacillo.

We are not persuaded. Juanito's testimony is self-serving and is not corroborated by the evidence on hand. His allegations are easy to concoct, but difficult to verify.

Besides, for the resort to self-defense to succeed, the following elements must be proven: (1) unlawful aggression, (2) reasonable necessity of the means employed to prevent or repel the aggression, and (3) lack of sufficient provocation on the part of the one defending oneself.[19] Self-defense must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[20] Such evidence is sorely lacking in this particular case. Without adequate proof of unlawful aggression, self-defense cannot stand.

Denial

The other appellants deny their involvement in the crimes, because the altercation was between Juanito and the deceased. Appellant Marcos Asuela insists that he immediately called for the assistance of barangay officials when the deceased hacked Juanito's head with a sickle. The rest contend that they were somewhere else when the commotion occurred: Alberto was supposedly in the house of a certain Mang Dodong, the purok leader, together with Kagawad Doromal and Policeman Rabina; Teofilo "Boyet" Capacillo, at St. Joseph Church in Quezon City where, together with his wife, he was selling religious items; and Rogelio Asuela, at home watching a championship basketball game on television.

We are not convinced. Appellants' denials cannot overcome the positive identification by the three prosecution witnesses.[21] The latter's testimonies clearly show the former's participation in the mauling and the killing of Wilfredo. Besides, unsubstantiated denials are negative, self-serving and have no weight in law. They cannot be given greater evidentiary value than that given to testimonies of credible witnesses on affirmative matters.[22]

Alibi

Alberto and Roger Asuela proffer the defense of alibi which is not tenable, either, because they have failed to show by clear and convincing evidence that it was physically impossible for them to have been at the scene of the crimes.[23]

Clearly, appellants' alibis are tenuous. Mang Dodong's house, where Alberto Asuela was allegedly engaged in a drinking spree, was only 500 meters from the crime scene;[24] Roger Asuela's house, only 30-40 meters away.[25] Because they were not able to show that the crime scene was inaccessible from St. Joseph Church, they therefore failed to establish that they were somewhere else when the crimes took place, and that it was impossible for them to have been present at the situs of the crimes at the time they were committed.[26]

We affirm the RTC's ruling that appellants' alibi and denial cannot prevail over the affirmative testimonies of the prosecution witnesses.[27]

Conspiracy

We also hold that the trial court did not err in finding that conspiracy had attended the crimes.

Surrounding and, in a concerted fashion, assaulting the unarmed victim proved that appellants had intentionally and voluntarily acted together for the realization of a common criminal intent to kill the victim.[28] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident.[29]

Criminal Case No. 3366-97

The conviction of appellants for the murder of Wilfredo Villanueva is sufficiently supported by the evidence. On direct examination, Hayen narrated how appellants collectively and individually mauled and killed her father, as follows:

“Q

Now, you said [a while] ago that you remember there was an unusual or untoward incident that transpired[;] kindly inform this Honorable Court what was that unusual incident that transpired[.]

A

Juanito Asuela called my father, stabbed and tear[-] gased my father and they helped each other, sir.

Q

Where was Juanita Asuela when he called your father?

A

He was outside our yard, in the street, sir.

Q

And when your father was called by Juanito Asuela, did your father approach Juanito Asuela?

A

Yes, sir.

Q

And in what place did Juanita Asuela stab your father, was it in the street or somewhere else?

A

He stabbed my father in the gate of our yard, sir.

Q

You stated [a while] ago that he was tear[-]gas[s]ed, do you still remember?

xxx xxx xxx

Q

By the way, x x x what part of your father's body was tear[-]gased by Boyet Capacillo?

A

His eyes, sir.

Q

And how many times did Juanito Asuela stab your father, if you saw it?

A

As I remember, there were many stab blows, sir.

Q

And was your father hit with those several stab blows by Juanito Asuela?

A

Yes, sir.

Q

Where was your father hit?

A

He was hit on his chest, sir.

Q

Were you able to see that instrument used by Juanito Asuela in stabbing your father?

A

Yes, sir.

Q

What kind of instrument did he use?

A

A knife, sir.

Q

What kind of knife was it, a kitchen knife, a balisong or what?

A

A kitchen knife, sir.

Q

And you also stated awhile ago in Tagalog, 'At siya po ay pinagtulungan,['] do you still affirm that?

A

Yes, sir.

Q

Kindly inform this Honorable Court who were those other persons who ganged up [on] your father?

A

Marcos Asuela, Jun-Jun Asuela, Roger Asuela, Boyet Capacillo, Miguel Asuela and Alberto Asuela, sir.

Q

What did this Marcos Asuela do to your father?

A

He hit my father with a lead pipe, sir.

PROS. RAMOLETE:

May I make it of record that my witness is crying.

xxx xxx xxx

Q

Was your father hit with those blows delivered by Marcos Asuela with the use of a lead pipe?

A

Yes, sir.

Q

Where was your father hit?

A

In his head, sir.

Q

Kindly point to your head where your father was hit with those blows delivered by Marcos Asuela?

A

Here on his forehead, sir.

Q

How many times did this Marcos Asuela club your father with that lead pipe?

A

Many times, sir.

Q

What part of his body was hit with those [that were] several times delivered by Marcos Asuela [with the use of] that lead pipe?

A

On his body, on his chest, sir.

xxx xxx xxx

Q

What about this Roger Asuela, what did Roger Asuela do to your father?

A

He hit my father with a lead pipe, sir.

Q

How many times did this Roger Asuela hit your father with a pipe?

A

Many times, sir.

Q

And was your father hit with those blows delivered by Roger Asuela with that lead pipe?

A

Yes, sir.

Q

Where was your father hit?

A

On the different parts of his body, sir.

Q

Where in particular?

A

He was hit on the upper part of his hip and left eyebrow, sir.

Q

And where was this Roger Asuela positioned in relation to the position of your father when he clubbed your father with that pipe?

A

He was also in front of my father, sir.

Q

Were you able to see this Roger Asuela[? W]here did he get that pipe which he used in clubbing your father?

A

No, sir, because when they approached my father they were already carrying with them those instruments, sir.

Q

What about Marcos Asuela, were you able to see x x x where he got that lead pipe which he used in clubbing your father?

A

Yes, sir.

Q

Where did he get that lead pipe?

A

He got the lead pipe from the artesian well because the pipe there is detachable, sir.

xxx xxx xxx

Q

What about this Alberto Asuela, what did he do to your father?

A

My father was already dead then when Alberto Asuela got a pointed bamboo and stabbed the right foot of my father and he even uttered bad words, sir.

Q

Were you able to hear those bad words which Alberto Asuela uttered?

A

Yes, sir, and he said, 'Wala iyan, mahina iyan, sisiw pala iyan', and he even spit on my father, sir.

Q

And how far were you when these Marcos Asuela, Juanita Asuela, Boyet Capacillo, Jun-Jun Asuela, Roger Asuela, Miguel Asuela and Alberto Asuela were doing this to your father?

A

I was inside our house, sir.

Q

How far?

A

About six (6) arms[-]length, sir.

xxx xxx xxx"[30]

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The Court is also convinced that appellants collectively and individually attacked and injured Anthony, who

testified as follows:

“Q

Now, upon seeing your father being ganged up [on] by these seven (7) accused, what did you do?

A

When I saw my father being ganged up [on] by them, I went near them to help my father but Boyet said: ‘Hayan pa ang isa.’

Q

And what else transpired, Mr. witness?

A

When Boyet said ‘hayan pa ang isa’, suddenly, I felt that somebody hit me at my back, sir.

Q

And what else transpired, Mr. witness?

A

When I was hit, I fell down, sir.

Q

And then?

A

When I fell down, Roger hit me with a lead pipe on my head, sir.

Q

And then, what else?

A

Marcos also hit me with a lead pipe on my head, sir.

Q

And what else transpired?

A

I fell down and Juanito stabbed me on my neck, and also on the left side of my body, sir.

FISCAL:

In between his left armpit and left nipple with visible scars, your Honor please.

Q

How many times did Juanito Asuela stab you?

A

Three (3) times, sir.

Q

Where were you hit, in what part of your body were you hit by that stabbing blow delivered by Mr. Juanita Asuela[? A]gain, will you point to this Court the exact position where you were hit by that stabbing blow?

FISCAL:

Witness, you[r] Honor please, is pointing to his left eyebrow, right side of his neck with a scar visible, and the other one at the left side of his body in between his left armpit and left nipple with visible scars.

Q

And after that, Mr. Witness, after Marcos Asuela hit you with that lead pipe hitting you on your head and Roger also hitting you with that lead pipe on your head and Juanito Asuela stabbing you 3 times, what else transpired, Mr. Witness?

A

When I fell down and they were being pacified by my brother Mark Villanueva, that was the time that I was able to run and Jonjon, Miguel and Roger chased me, sir.”[31]

However, we are not convinced that appellants should be held liable for frustrated murder. The evidence presented by the prosecution failed to show conclusively that the wounds inflicted on Anthony were fatal or serious. Dr. Jose Aladin Bongco, the doctor who had attended to Anthony at the Amang Rodriguez Medical Center, opined that all of the latter’s wounds “can be fatal,”[32] implying that the former was not sure of their gravity. The extent of the medical treatment Dr. Bongco gave the victim was limited to first aid -- stopping the flow of blood from the wounds -- as the latter had refused further medical examination and treatment. On cross-examination, the doctor declared:

“Q You stated that any of the three (3) wounds, you considered fatal, is that correct?

A It could be fatal, sir.

Q And you attest also below that the duration is less than nine (9) days, is that correct?

A Yes, sir.

Q Doctor, [a while] ago, you stated among others that the patient refuses to [have] further treatment, is that correct?

A Yes, sir.

xxx xxx xxx

Q We noticed that below the medico-legal findings, Dr. Bongco, that [to] the patient Anthony Villanueva, you recommended that the condition of his wounds may last x x x nine (9) days [or less] unless [a] complication arises. Do you agree with me that the wounds were slight injuries only?

A Externally, the wounds look like non-penetrated [sic] because of the limitation of further work out[.] I can't tell [if] the patient is having penetrating injuries but based on the external signs of the injuries, sir.”[33] [Italics supplied]

He even reported his findings in the Medico-Legal Certificate as follows:

“Lacerated wound 4 cms left fronto parietal
Stab wound 3 cm 4th ICS AAL left
Lacerated wound 3 cms right frontal
Positive alcoholic breath

xxx xxx xxx

The above mentioned conditions may last [for] x x x nine days [or less] unless complications [arise].”[34]

In the absence of more convincing evidence, we hold that the prosecution failed to prove that appellants had fatally wounded Anthony Villanueva. Thus, they should be held liable only for slight physical injuries under Article 266 of the Revised Penal Code.[35] This is because his injuries lasted less than nine days.

Third Issue:

Abuse of Superior Strength

From the testimony of the prosecution witnesses, it is clear that appellants abused their superior strength. They used excessive force out of proportion to the means for self-defense available to the person they attacked.[36] Aside from being numerically superior to the unarmed ‘Wilfredo and his son Anthony, the assailants were also armed with knives, pointed bamboo poles, tear gas and lead pipes. And, equally important, they used their superior number and weapons to their great advantage in methodically attacking their prey.

Proper Penalty

The solicitor general contends that the trial court erred in refusing to impose on appellants an indeterminate sentence for the murder of Wilfredo Villanueva.

We disagree. Section 2 of the Indeterminate Sentence Law (Act No. 4103, as amended) provides that it shall “not apply to persons convicted of offenses punished with death penalty or life imprisonment; x x x.” It must be noted that appellants were convicted of murder which is punishable with reclusion perpetua to death under the Revised Penal Code. Thus, in the absence of any proven aggravating circumstance, they were correctly sentenced by the trial court to reclusion perpetua.

WHEREFORE, the appeal is PARTLY GRANTED. The Decision in Criminal Case No. 3366-97 is AFFIRMED, while that in Criminal Case No. 3365-97 is MODIFIED; appellants are found GUILTY of SLIGHT PHYSICAL INJURIES and are hereby SENTENCED to twenty days of ARRESTO MENOR.

SO ORDERED.

Melo, (Chairman), Vitug, and Sandoval-Gutierrez, JJ., concur.
Carpio, J., abroad on official business.

[1] Penned by Judge Jose C. Reyes Jr.; rollo, pp. 37-51.

[2] Rollo, pp. 50-51; records, pp. 326-327.

[3] Docketed as Crim. Case No. 3365-97.

[4] Co-accused Jun-jun Asuela and Miguel Asuela remain at large.

[5] Rollo, p. 13; records, p. 1.

[6] Crim. Case No. 3366-97.

[7] Supplemental records, p. 1.

[8] Assisted by Atty. Hector Centeno, Marcos Asuela was arraigned on December 19, 1997 (Crim. Case No. 3365-97; records, p. 48); and Teofilo Capacillo, on December 19, 1997 (Crim. Case No. 3366-97; records, p. 7). Assisted by Atty. Alfonso Capacillo, Roger Asuela was arraigned on April 7, 1998 (Crim. Case No. 3365-97; records, p. 99); Juanito, on May 29, 1998 (records, p. 116); and Alberto, on November 18, 1998 (records, p. 187).

[9] Appellee’s Brief was signed by Sol. Gen. Simeon V. Marcelo, Asst. Sol. Gen. Maria Aurora P. Cortés and Carminda O. Punzalan-Gaite for Sol. Evaristo M. Padilla.

[10] Appellee’s Brief, pp. 4-10; rollo, pp. 124-130.

[11] Signed by Atty. Eduardo C. Vallejo of Lapeña and Associates.

[12] Appellants’ Brief, pp. 8-12; rollo, pp. 82-86.

[13] This case was deemed submitted for resolution on April 5, 2001, upon receipt by this Court of appellee’s Brief. Appellants’ Brief was received by the Court on November 7, 2000. The filing of a Reply Brief was deemed waived, as none had been submitted within the reglementary period.

[14] Rollo, p. 12.

[15] People v. Obello, 284 SCRA 79, 88, January 14, 1998; People v. Cabiles, 284 SCRA 199, 212, January 16, 1998; People v. Alfeche, 294 SCRA 352, 375, August 17, 1998; People v. Liaguno, 285 SCRA 124, 135, January 28, 1998; People v. Villamor, 292 SCRA 384, 394, July 10, 1998.

[16] People v. Obello, supra, p. 89; People v. Alfeche, supra, p. 370; People v. Llaguno, supra, p. 140; People v.

Tulop, 289 SCRA 316, 333, April 21, 1998.

[17] *People v. Lacatan*, 295 SCRA 203, 213, September 7, 1998; *People v. Lapay*, 298 SCRA 62, 77-78, October 14, 1998.

[18] Ironically, appellants' Brief (p. 8) seems to disclaim this defense when it states: "All herein accused-appellants except accused Juanito Asuela interposed self-defense." And yet, the text (pp. 13-17) of the Brief discusses Juanito's claim of self-defense.

[19] *People v. Vermudez*, 302 SCRA 276, 284, January 28, 1999; *People v. Santillan*, 308 SCRA 104, 114, June 9, 1999.

[20] *People v. Sanchez*, 308 SCRA 264, 284, June 16, 1999; *People v. Bitoon Sr.*, 309 SCRA 209, 217-218, June 28, 1999.

[21] *People v. Obello*, supra; *People v. Cabiles*, supra, p. 217.

[22] *People v. Villamor*, supra, p. 395; *People v. Liaguno*, supra, p. 139; *People v. Tumaob Jr.*, 291 SCRA 133, 141, June 22, 1998; *People v. Atop*, 286 SCRA 157, 174, February 10, 1998.

[23] *People v. Galido*, 326 SCRA 187, 195, February 22, 2000.

[24] TSN, January 12, 1999, p. 4.

[25] TSN, February 11, 1999, p. 3.

[26] *People v. Reduca*, 301 SCRA 516, 534, January 21, 1999; *People v. Villanueva*, 302 SCRA 380, 393, January 29, 1999; *People v. Verde*, 302 SCRA 690, 705, February 10, 1999.

[27] *People v. Reduca*, supra; *People v. Banela*, 301 SCRA 84, 93, January 18, 1999; *People v. Hilado*, 307 SCRA 535, 554, May 24, 1999; *People v. Macahia*, 307 SCRA 404, 420, May 19, 1999.

[28] *People v. Gallo*, 318 SCRA 157, 165, November 16, 1999.

[29] *People v. Bitoon Sr.*, supra, p. 220; *People v. Hernando*, 317 SCRA 617, 625, October 28, 1999.

[30] TSN, March 27, 1998, pp. 4-9.

[31] TSN, February 13, 1998, pp. 13-14.

[32] TSN, February 6, 1998, p. 7.

[33] *Ibid.*, pp. 7-10.

[34] Exh. "A," *Crim. Case No. 3365-97*; records, p. 153.

[35] Article 266(1) provides:

"ART. 266. Slight physical injuries and maltreatment. — The crime of slight physical injuries shall be punished:

- By *arresto menor*, when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.

xxx xxx xxx"

[36] *People v. Agsunod Jr.*, 306 SCRA 612, 630, May 3, 1999; *People v. Ocumen*, 319 SCRA 539, 564, December 2, 1999.

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