

EN BANC

[G.R. No. 130598, February 03, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENITO MIER Y VISTAL, ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

Before us on automatic review is the Decision^[1] in Criminal Case No. 9582 of the Regional Trial Court of Tagbilaran City, Bohol, Branch 47, dated May 29, 1997 finding Benito Mier y Vistal guilty of murder for the killing and beheading of Pablito Laguros y Tasic and sentencing him to suffer the supreme penalty of death.

Appellant Benito Mier was charged with the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, in an Information^[2] which reads:

"The undersigned, Second Assistant City Prosecutor, on detail, hereby accuses Benito Mier y Vistal alias Nenic of Bagtic, Catigbian, Bohol of the crime of Murder, committed as follows:

"That on or about the 28th day of September, 1995 in the municipality of Catigbian, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long sharp pointed bolo, with intent to kill and with evident premeditation, treachery and cruelty did then and there wilfully, unlawfully and feloniously hack several times and behead one Pablito Laguros y Tasic, hitting the victim several times at the back of his body which caused the instantaneous death of said victim; that not contented with what he had done, said accused beheaded and thereafter carried away the head of the said victim; thereby deliberately and inhumanly augmenting the pain and suffering of the victim and outraging or scoffing at the person or corpse of the said victim.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659."

On one hand, the evidence adduced by the prosecution showed that on September 28, 1995, at about 6:00 o'clock in the evening, prosecution witness Perfecto Cabrereros and a certain Romy Banga were drinking liquor in front of the cooperative store in Barangay Baang, Catigbian, Bohol when appellant Mier, together with Rolando Zapatos, Ramie Zapatos, and a certain Segundino, arrived at the store in order to redeem his Kulafu crown. They were all armed with bolos. For lack of Kulafu stocks, the salesboy, Eugenio Silangan, declined to change the Kulafu crown of appellant.

Consequently, appellant bought one pocket-size Tanduay rum and drank with his companions. He also asked money from prosecution witness Cabreros to buy softdrinks, and the latter gave him P5.00 out of fear inasmuch as Mier and his companions were carrying bolos.

At around 7:30 in the evening, prosecution witness Cabreros and Romy Banga went home leaving behind appellant Mier and company.^[3]

At about 9:00 o'clock in the evening, prosecution eyewitnesses Danilo Quindao and Alberto Agad, both residents of Barangay Bagtic, Catigbian, Bohol, went to the house of Pedro Eboa, which was about 150 meters from the cooperative store, to hire his motorcycle which is locally known as "habal-habal". Prosecution eyewitnesses Agad and Quindao worked for a bus owner named Aurelio Dinorog as driver and conductor, respectively. The bus earlier broke down due to mechanical defect. They then decided to hire the "habal-habal" of Pedro Eboa to take them to the poblacion and to contact Aurelio Dinorog in Tagbilaran City to inform the latter that his bus broke down.^[4]

While Agad was negotiating with Pedro Eboa in front of his house, Quindao was standing nearby. Appellant approached Quindao and asked him if he knew the person who was picking trouble with him at the cooperative store. Quindao answered that he did not know inasmuch as he had just arrived.^[5]

Thereafter, appellant approached the victim, Pablito Laguros, who was by the roadside about fifteen (15) meters away from the house of Pedro Eboa. Appellant likewise asked him if he knew the person who was picking trouble with him at the cooperative store. After answering in the negative, Laguros started to leave. However, appellant followed Laguros and persisted on asking the same question to which Laguros kept replying that he knew nothing about the matter. Appellant then unsheathed his bolo and immediately hacked Laguros from behind the shoulder.^[6] Laguros, who was unarmed, attempted to run but appellant chased him and hacked Laguros two more times at the back.^[7] Prosecution witness Quindao clearly saw the incident inasmuch as the place was lighted by a 20-watt fluorescent lamp.^[8]

Quindao and Agad went inside the house of Pedro Eboa for fear that appellant might also hack them. Later that evening, Quindao and Agad saw the decapitated body of Laguros, which was still clad in the same white t-shirt and brown short pants, on the road about fifteen (15) meters from the house of Pedro Eboa with its head nowhere in the vicinity.^[9]

Meanwhile, prosecution witness Claro Suarez was in the house of a certain Alicia Udtohan in Brgy. Baang, Catigbian, Bohol on September 28, 1995. At about 9:00 o'clock in the evening, he observed people running and passing by the house of Alicia Udtohan. He then went upstairs to observe. From the window, he saw a person around thirty (30) meters away in the act of hacking another person who was already lying on his side near a lamp post. Subsequently, the attacker picked up something that turned out to be a human head. He passed by the house of Alicia Udtohan and came as close as five (5) meters. Prosecution witness Suarez failed to recognize the person carrying the decapitated human head. However, he testified

that the same person had more or less the same body built and height of appellant Benito Mier.^[10]

Prosecution witness Dr. Vito B. Inting, M.D., Municipal Health Officer of Catigbian, Bohol, testified in court that he conducted post mortem examination on the body of the victim at the Catigbian District Hospital on September 29, 1995 upon the request of SPO3 Modesto Renoblas of the Catigbian Municipal Police. His findings are embodied in his Post Mortem Report,^[11] to wit:

1. Decapitation - Head was separated at the level of the neck. Head was allegedly taken by the suspect.
2. Hacking wound - shoulder, right - The wound is about 3 inches in length. All the muscular layer are involved.
3. Hacking wound - Scapular area, right, following the medial border of the scapula is a wound about 5 inches in length. The wound is up to the scapular bone.
4. Hacking wound - Scapular area, right, about one inch laterally from wound No. 3 is a wound about 6 inches in length. The wound is up to the scapular bone.
5. Hacking wound - at the deltoid area, right, is a wound about 2 ½ inches in length. The muscular area is involved.
6. Hacking wound - Spinal column, lumbo sacral area is a wound about 3 ½ inches in length. The bone of the spinal column is exposed.
7. Hacking wound - Wrist, left. The hand is nearly separated from the forearm except for a flap of skin.
8. Hacking wound - Knee, left, is a perpendicular wound about 2 ½ inches in length. The knee bone is split.

CAUSE OF DEATH - Irreversible shock secondary to massive hemorrhage secondary to decapitation and multiple hacking wounds."

Dr. Inting also testified that from the nature of the wounds sustained by the victim, he believed a sharp bladed weapon was used by the attacker and that two (2) of those wounds which were sustained by the victim on the scapular area, measuring about five (5) and six (6) inches, respectively, were inflicted from behind by the attacker and were fatal.^[12]

Prosecution witness SPO3 Modesto Renoblas, Chief of Police of Catigbian, Bohol, testified that he led the police team from Catigbian, in coordination with other police teams from the Municipality of Batuan and Tagbilaran City, in effectuating the arrest of appellant on January 24, 1996. The three (3) police teams were armed with a warrant of arrest^[13] dated October 20, 1995 which was issued by Judge Aldrico Melicor of the 20th Municipal Circuit Trial Court, Catigbian, Bohol. Among the articles seized from the appellant during his arrest were a long sharp bolo believed to have been used in killing Pablito Laguros, a .22 caliber rifle and a fragmentation grenade which had no safety pin.^[14]

On February 4, 1996, appellant Benito Mier, upon the advice of his father, Samuel Mier, drew a sketch of the place where he allegedly buried the head of Pablito Laguros. After obtaining the said sketch from appellant's father, prosecution witness SPO3 Renoblas, PO3 Eborra and PO2 Ramirez, together with some relatives of the

victim and the accused, proceeded to the spot situated between two mahogany trees near the house of the appellant in Sitio Behind the Clouds, Barangay Casingi, Batuan, Bohol as indicated in the sketch, and dug up the skull of the victim.^[15]

On the other hand, the defense invoked self-defense. Appellant Benito Mier testified that he arrived at the house of his mother-in-law in Barangay Bagtic, Catigbian, Bohol, in the afternoon of September 28, 1995 and that about 7:00 o'clock in the evening, he went to the cooperative store in Barangay Baang, which is adjacent to Barangay Bagtic, in order to redeem his Kulafu crown and also to buy kerosene and some spices. Upon his arrival at the store, he heard the four (4) persons who were drinking liquor there say, "Ato ning birahin," which means, "We will assault this person." After hearing the remark, appellant retraced his way to the road to avoid any untoward incident but the four (4) persons followed and told appellant to wait because they have something to ask him. As the four (4) got close, one (1) of them tried to stab him. But since appellant was able to parry the thrust with the umbrella which he was carrying, the tip of the weapon merely grazed the lower right portion of his breast just below the nipple. Appellant attempted to run but he stumbled. As he rose to his feet, one of the pursuers stabbed him on his left thigh. This time appellant retaliated by hacking the said attacker several times with his bolo, but he denied having beheaded said attacker. Thereafter, he fled toward his house in Sitio Behind the Clouds, Batuan, Bohol, located nine (9) kilometers from Barangay Baang, Catigbian, Bohol, where his wounds were treated by his mother and his wife.^[16]

The testimony of appellant was corroborated by Uldarico Milar who is his neighbor in Sitio Behind the Clouds, Batuan, Bohol. Defense witness Milar testified that he was in Barangay Baang, Catigbian, Bohol at around 7:00 o'clock in the evening on September 28, 1995 to borrow some rice from Isabel Otom. Before he reached the house of Isabel Otom, he saw appellant being pursued by four (4) persons who were carrying bolos. Upon catching up with him, they attacked appellant who retaliated by hacking one (1) of his pursuers.^[17]

Subsequently, defense witness Milar proceeded to the house of Isabel Otom where he passed the night. On the following day, Milar visited appellant in his house and saw the latter's wife treating his wounds on the right chest and left leg. When asked by Milar about the incident the night before, appellant related that he was ganged up by four (4) persons.^[18]

Eusebia and Regina Mier, mother and wife of the appellant, respectively, testified that on September 28, 1995 appellant arrived bloodied at 11:00 o'clock in the evening. Appellant, according to them, was allegedly stabbed when four (4) persons ganged up on him. They did not bring the appellant to the doctor for treatment. Likewise, they did not report the incident to the barangay captain or to the police for fear that the appellant might be arrested.^[19]

After evaluating the evidence, the trial court convicted appellant as charged. It ruled, thus:

"The court can not give credence to the claim of the accused that at the time of the incident there were four persons (including the one whom he killed - apparently referring to the victim) who pursued him were armed

with bolos considering that until the accused testified in his behalf he never reported to any law enforcer the fact that the victim at the time of the incident, was armed with [a] bolo. Neither did the accused present the alleged bolo of the victim as his evidence in this case nor explain why the alleged bolo of the victim could not be presented as evidence. The failure to account for the non-presentation of the bolo allegedly used by the victim is fatal to the plea of self-defense xxx.

The accused testified that he could not recall how many times he hacked the victim although he admitted that he hacked the victim twice and thereafter hacked him again and many times thereafter, as indicated in the Post Mortem Report xxx.

Although the accused did not categorically admit that he was responsible in inflicting all the seven (7) wounds suffered by the victim, he impliedly admitted having inflicted all the said wounds. This is further bolstered by the testimony of Danilo Quindao, an eyewitness who testified that there was no other person who helped Benito Mier in hacking the victim. The testimony of Danilo Quindao is corroborated by the testimony of Alberto Agad, another eyewitness.

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The evidence for the prosecution has established the qualifying aggravating circumstance of treachery. Prosecution eyewitness Danilo Quindao demonstrated before the court the respective positions of the victim Pablito Laguros and accused Benito Mier at the time the latter hacked the former. The victim was standing, folding his two (2) arms around his breast and the accused was at the back of the victim not able to evade the first hacking blow because he was not aware that he would be hacked and was thereafter hit on the back portion xxx of his right shoulder. This was corroborated by prosecution eyewitness Alberto Agad xxx. It is abundantly clear that the prosecution was able to establish treachery on the part of the accused as defined in Art. 14, No. 16, of the Revised Penal Code. xxx. The victim could not do anything to defend himself except to run away as he did not have a weapon at the time of the incident. The accused must have been irritated by the repeated "I do not know" of the victim on his repeated questions as to the identity of the persons who were allegedly making trouble with him at the Cooperative Store of Baang, Catigbian, Bohol. But this will not serve as a warning of an impending danger on the victim as he was hacked on the back and was entirely defenseless risking nothing to accused from any retaliation the victim might have xxx.

The accused chased the victim when he tried to run away from the accused. This fact was testified to by eyewitness[es] Quindao and Agad. xxx.

It was also established by direct evidence supported by a series of circumstantial evidence of the prosecution that the accused was the one responsible for beheading the victim as the testimony of prosecution eyewitnesses Quindao and Agad disclosed that there was no other person