

## **SECOND DIVISION**

**[ G.R. No. 167954, January 31, 2008 ]**

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

### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case**

This is an appeal from the Decision<sup>[1]</sup> 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.<sup>[2]</sup> 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*.<sup>[3]</sup>

### **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.<sup>[4]</sup> 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.<sup>[5]</sup> 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.<sup>[6]</sup>

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.<sup>[7]</sup> 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