

## EN BANC

[ G.R. No. 135065, August 08, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENNY CABANGCALA Y ABRASIA, RENATO CABANGCALA Y ABRASIA ALIAS "RENE", AND DANILO CABANGCALA Y ABRASIA ALIAS "DANNY", ACCUSED-APPELLANTS.**

### DECISION

**MELO, J.:**

Before this Court on automatic review is the judgment rendered by Branch 51 of the Regional Trial Court of the First Judicial Region stationed in Tayug, Pangasinan, sentencing to death two of herein accused-appellants, as well as the appeal of the third accused-appellant who was still a minor at the time of the commission of the crime of murder.

The Information charged as follows:

That on or about the 7th day of February, 1997, in the evening, at Brgy. Pangangaan, municipality of Umingan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bamboo, and with the use of superior strength and evident premeditation, and taking advantage of nighttime, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously, strike, maul, box and hit one DIONISIO PASCUAL, inflicting upon the latter mortal wound on his head and different parts of his body which caused his instantaneous death, to the damage and prejudice of the heirs of DIONISIO PASCUAL.

CONTRARY to Article 248 of the Revised Penal Code.

(Record, p. 1.)

The antecedent facts are summarized as Counterstatement of the Facts in the People's Brief in this wise:

On February 7, 1997, at around 2:00 o'clock in the afternoon, Rovellano Abrasia, fifteen years old, testified that he and his first degree cousins, the Cabangcala brothers, Benny, Rene and Danny (appellants herein), had just finished cutting cogon in the mountains of Barangay Ricos, Umingan, Pangasinan. He [Rovellano] accompanied Danny to the barber shop of Merced Abrasia in Barangay Pangangaan of the same municipality

(pp. 2-6 & 8, tsn. Aug. 14, 1997; pp. 2-3, tsn., Sept. 5, 1997).

While having his haircut, Danny saw the victim Dionisio "Isio" Pascual drinking gin with Anciong Abrasia and Quisot Camacho in front of the house of Corazon Morante (pp. 4-6, tsn., Aug. 14, 1997). Thereupon, Danny pointed to the victim and told Rovellano " that man is Isio Pascual" (pp. 7-8, *Ibid.*).

Later, Rovellano and Danny went to the latter's house, some 100 meters from Morante's place, where they drank gin together with Benny and Rene (pp. 13-14, tsn. Sept. 1, 1997; pp. 5 to 5-A; tsn., Sept. 3, 1997). There, Rovellano overheard the Cabangcala brothers talking about the victim (p. 14, tsn., Sept. 1, 1997). Rovellano recalled that a week before, Mario Cabangcala, appellant's younger brother, told him that he had a quarrel with the victim's son (p. 13, tsn., Sept. 2, 1997). At around 5:00 o'clock in the afternoon, that same day, Benny announced a plan to kill the victim (p. 20, *ibid.*) The four continued drinking until 10:00 o'clock in the evening during which period Danny would occasionally go out to verify if the victim was still at Morante's place (pp. 2, 6 to 8, tsn. Sept. 3, 1997). Danny reported to the group that the victim was still there lying down while his drinking buddies Anciong and Quisot had already gone home (pp. 5 to 7, *ibid.*).

The Cabangcala brothers then proceeded to execute their plan and, together with Rovellano, waited for the victim at a place halfway within the 100 meter distance between the house of Morante and the Cabangcalas, along a footpath where the expected victim would use in going home (p. 8, *id.*). When the group spotted the victim, the latter was bidding goodbye to Morante saying, "Mare, I will go home now" (p. 7, *id.*) Immediately, Benny and Danny went downhill to cut a piece of bamboo about one (1) meter long (p. 9, *id.*).

As the victim was approaching, Rovellano run and hid behind a " buri palm" (p. 14, tsn. Sept. 5, 1997). The Cabangcala brothers positioned themselves under a bamboo groove around five (5) meters away from Rovellano (p. 10, tsn. Sept. 3, 1997; p. 14, tsn. Sept. 5, 1997.)

The victim stopped on the rice paddy about four [4] meters from Rovellano (pp. 13 to 14, tsn. Sept. 5, 1997). Rovellano noticed that the victim had a companion whom he did not recognize but who immediately fled perhaps sensing danger from the encounter (pp. 9 to 10, & 14, tsn. Sept. 3, 1997). Benny approached the victim and struck him twice with the bamboo hitting the latter on the left cheek and the neck (p. 15, tsn. Aug. 14, 1997). The victim fell, after which Danny and Rene joined Benny in mauling the victim (pp. 15 to 16, *ibid.*).

The victim pleaded for his life saying "Please have mercy on me. Don't kill me" (p. 17, tsn. Aug. 14, 1997). But the mauling continued. At one point Danny uttered "Nagado nga ammomon. No saan nga diay anak mo nga pinangpakpak na kaniak saanak nga agibales"; meaning "Nonsense, had not your son clubbed me I would not avenge" (*ibid.*).

When the victim was rendered unconscious, Rene carried him towards the field east of Danny's house (pp. 17 & 19, *tsn. id.*). There, the victim was mauled further with the piece of bamboo carried by Benny (p. 5, *tsn. Sept. 5, 1997*). Thereafter, Rovellano accompanied Danny in getting a sled where they loaded the victim and brought him to the mountain of Barangay Ricos (p. 19, *tsn. Aug. 14, 1997*). Using shovels, the Cabangcala brothers dug a pit where they dumped the victim and covered it with soil (pp. 20 to 21, *ibid.*). Thereafter, they all went home (p. 21, *id.*).

On March 14, 1997, the victim's brother, Fulgencio, and daughter Jennifer, went to the Umingan Police Station and reported to the police that the victim had been missing since February 7, 1997 (p. 3-4, *tsn. Oct. 6, 1997*). SPO1 Jeremias Fernandez conducted an investigation in Luna Este but failed to obtain favorable results (p. 5, *id.*).

However, ten (10) days thereafter, on March 24, 1997, Fulgencio returned to the station with a certain Danilo Abrasia who disclosed that he saw the victim sometime in February 1997 in Barangay Pangangaan being mauled by the Cabangcala brothers (*id.*). Hence, SPO1 Fernandez went to Barangay Pangangaan where a secret informant told him that a certain Rovellano Abrasia had knowledge about the missing person (p. 6, *id.*). SPO1 Fernandez found Rovellano that night at a certain bakery in the poblacion of Tayug, Pangasinan (*id.*). When confronted by the police, Rovellano admitted that he was with the Cabangcala brothers when the latter killed the victim in Barangay Pangangaan (pp. 6- 7, *id.*). The police, thereafter, invited Rovellano to the police station where he executed his statement at around 4:00 o'clock in the morning the following day, March 25, 1997 (pp. 7 to 8, *id.*; Exh. A., pp. 11-12, Record).

On March 25, 1997, upon being told by Rovellano of the exact place where the victim was buried, SPO1 Fernandez proceeded there together with Rovellano, Fulgencio Pascual, some members of the Umingan Police, and Barangay officials of the mountainous area of Barangay Ricos and reached the place at around 11:00 o'clock in the morning (pp. 8-9, *tsn. Oct. 6, 1997*). A cadaver was exhumed with the face still complete which Fulgencio identified as that of his brother Dionisio (p. 9, *id.*, see also pictures in pp. 41, 42 & 43, Record). The cadaver was thereafter brought to the municipal hall and thereafter to the cemetery for autopsy (p. 10, *id.*).

Immediately, SPO1 Fernandez went to the house of Benny Cabangcala with the Barangay Captain of Barangay Pangangaan (pp. 20 & 21, *id.*) SPO1 Fernandez saw the three (3) appellants in the house of Benny about to leave because there were (3) traveling bags and said appellants were selling a carabao to a buyer from Barangay Prado (p. 22, *id.*). With the coordination of the said barangay captain, SPO1 Fernandez was able to invite the Cabangcala brothers to the police station to shed light on the killing of Dionisio Pascual (p. 20, *id.*).

The next day, on March 26, 1997, SPO1 Fernandez prepared a Special Report on his investigation (Exh. E, p. 14, Record). At around 5:00

o'clock in the afternoon of that same day, Dr. Thelma Busto, Rural Health Physician of Umingan, Pangasinan, examined the cadaver and prepared the following post-mortem findings:

Post-Mortem Findings:

1. Head -multiple fracture of the skull
2. Other parts of the body was in state of decomposition.

CAUSE OF DEATH:

Cerebral Hemorrhage sec. to fracture of the skull.

(Exhibit C, p. 16, Record)

Dr. Busto noted that when the cadaver was brought to her the skin was still intact although it was soft, tearing and moist. However, the face was still recognizable (p. 5, tsn. Oct 1, 1997). She prepared a schematic diagram showing multiple fractures with skull, 10 at the back, 4 to 5 at the frontal crown, and 2 on each parietal area (pp. 5-7, *id.*; Exh. D, p. 15, Record).

The victim's family thereafter took care of his funeral and burial (pp. 3 to 6, tsn. Sept. 26, 1997; p. 26, tsn. Sept. 16, 1997).

Jennifer Pascual Espiritu, one of the victim's daughters, recalled that the last time she saw her father alive was on February 7, 1997. The day before it, on February 6, 1997, the victim came to her house in Barangay Luna Este and went fishing with her neighbor. At night, the victim slept in her house (p. 25, tsn. Sept. 16, 1997). In the morning of February 7, she saw the victim going home to Barangay L Paz taking the route of Barangay Pangangaan (pp. 25 to 26, *id.*). When she saw her father again was on March 26, 1997, his remains were already in a coffin (p. 26, *id.*).

Dinisio Pascual, Jr. never saw his father again after he left their place on January 8, 1997 (p. 12 to 13, tsn. Oct. 10, 1997). He had to leave for Manila and stay there for about four (4) months because he knew that the Cabangcala brothers planned to kill him (p. 12, *id.*) on account of his violent encounters with them on December 25, 1996 during the wedding party of a certain Josephine Cabanting in Barangay Luna Este where Dionisio, Jr. had boxed Mario Cabangcala, appellants' younger brother because the latter tried to hit him with a bottle of " beer grande" when he refused to buy beer for them (pp. 4 to 6, *id.*). Dionisio, Jr. felt very strongly that the he was the reason why the Cabangcala brothers killed his father.

(Rollo, pp. 149-157.)

On the basis of the foregoing facts, the trial court rendered the judgment of conviction, disposing thusly:

WHEREFORE, guilt having been proved beyond reasonable doubt, the Court hereby convicts the herein accused of the crime of evidently premeditated MURDER defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No.7659, .with the circumstances of abuse of superior strength and nighttime aggravating the offense.

Accordingly, and pursuant to Article 63 of the same code, the Court hereby sentences the accused BENNY CABANGCALA and RENATO CABANGCALA to suffer the penalty of DEATH.

In regard to the accused DANILO CABANGCALA alias "Danny," the Court applies section 22 of Republic Act 7659 and Article 68, paragraph 2 of the Revised Penal Code, in relation to the Indeterminate Sentence Law, and hereby sentences him to suffer the penalty of from 12 years of prision mayor maximum as MINIMUM to 17 years and one day of reclusion temporal maximum as MAXIMUM.

The subject accused are further hereby ordered to SOLIDARILY indemnify the heirs of deceased DIONISIO PASCUAL for damages in the amount of P50,000.00 for his death, and to pay the costs.

SO ORDERED.

(Record, pp. 225.)

In the automatic review of this case, appellants assign the following errors:

THE HONORABLE TRIAL COURT ERRED IN CONCLUDING THAT THE PERSON EXHUMED ON MARCH 26, 1997 (sic), IS THAT OF DIONISIO PASCUAL.

THE HONORABLE COURT ERRED IN GIVING CREDIT TO THE BELATED TESTIMONY OF DANILO ABRASIA THAT WITNESS SAW THE INCIDENT.

THE HONORABLE COURT ERRED IN GIVING CREDIT TO THE TESTIMONY OF ROVELLANO ABRASIA.

THE HONORABLE COURT ERRED IN NOT ACCEPTING THE DEFENSE OF ALIBI ADVANCED BY THE ACCUSED.

The Court affirms the conviction of all three accused-appellants.

Firstly, accused-appellants heavily bank on the possibility that the body exhumed by the police authorities upon information disclosed by Rovellano Abrasia on March 25,