

SECOND DIVISION

[G.R. No. 142447, December 21, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELITO VICENTE Y FIGO, REY BALLERA Y BERSABAL AND
CARLOS BERSABAL Y BINAS, ACCUSED-APPELLANTS.**

DECISION

BELLOSILLO, J.:

On 13 September 1998, at around eight o'clock in the evening, Melvyn Matibag, a resident of Pinagsama Village, Western Bicutan, Taguig, Metro Manila, invited Jerry Fajardo, a neighbor, to ride with him in his tricycle and cruise around the neighborhood. Everything went smoothly for a couple of minutes until they reached a bend when a group of five (5) men apparently inebriated suddenly blocked their way, prompting Melvyn to remark, "*Pare, nakakarami na yata kayo, ah.*" He did not realize that his statement would cost him his life.

Piqued by the remark, accused-appellant Carmelito Vicente, one of the five, sarcastically replied, "*Wala kaming pakialam sa humaharang sa amin,*" after which he punched Melvyn on the nape. Melvyn retaliated and the rest of the group joined in the fray. Jerry alighted from the tricycle to help Melvyn but at that moment he saw accused-appellant Rey Ballera pull out a *balisong* from his pocket. Sensing danger, Jerry retreated and scampered away. He ran towards his house but as he looked back he saw Rey following him with Melvyn, now wounded, trailing farther behind. When Jerry looked back again he saw Melvyn collapse on the ground. Stunned, Rey simply watched Melvyn as the latter was lifted off the ground by his wife Venus, his eight (8)-year old son John Lyndon and some tricycle drivers.

Meanwhile, the entire neighborhood summoned several *barangay tanods* to stop the fight. *Tanod* Eddie Andrada responded but was confronted by the aggressors one of whom struck him with a *bolo*. Eddie parried off the attacks with his bare arms. He remembers accused Carlos Bersabal menacingly moving towards him with two (2) lead pipes chained together. His co-councilmen went to his rescue and immediately took him to the hospital. Rolando Constantino and Ramir Garciano, the other *tanods* who responded, were told by the milling crowd to proceed to a certain house where the aggressors had ensconced themselves.

Rolando and Ramir immediately went after the group with Jerry leading the way. They were met outside by a certain Violeta Coros who introduced herself as the owner of the house. Whereupon Rolando and Ramir asked her to tell the aggressors hiding inside to come out and go with them. A few minutes later, accused-appellants Rey, Carmelito and Carlos surfaced. Jerry immediately pointed to Carmelito as one of the assailants. They then proceeded to the *BCDA Police Station* where Jerry identified Rey Ballera as the one who chased him when he scurried away from the commotion. Rey, Carmelito and Carlos were later transferred to the *Taguig Police*

Station and placed behind bars.

While being brought to the hospital, Melvyn succumbed to his wounds.

An *Information* for the murder of Melvyn Matibag qualified by abuse of superior strength was accordingly filed on 16 September 1998 against Rey Ballera, Carmelito Vicente and Carlos Bersabal.^[1]

The prosecution presented Venus Matibag, wife of Melvyn, and John Lyndon Matibag, their eight (8)-year old son, as eyewitnesses, together with Jerry Fajardo, Rolando Constantino, Ramir Garciano, Dr. Emmanuel Aranas, and Police Officers Dennis Dacanay and Pedro Abrigo to bolster the eyewitness account of Venus and John Lyndon.

Specifically, *Venus Matibag* testified that on 13 September 1998, at around eight o'clock in the evening, her husband Melvyn together with their next-door neighbor Jerry left home to test-drive his newly-repaired tricycle. Fifteen (15) minutes later she heard a commotion which prompted her to investigate the matter. While she stood outside her house, she saw Jerry being chased by accused-appellants with her husband Melvyn following behind. She noticed that her husband could barely control his steps. She was distracted by Jerry who shouted to his wife, "*Mama akin na `yung itak dyan.*" When she looked at her husband again she saw him being stabbed by a fleeing man whom she identified as accused-appellant Rey Ballera. She ran to where her husband fell and witnessed how her son John Lyndon courageously plucked a hunting knife embedded in his father's left chest. Thereafter, she rushed him to the hospital where he was pronounced "dead on arrival."^[2]

John Lyndon Matibag, eight (8)-year old son of the deceased, testified that he saw the actual stabbing of his father. He said that at around eight o'clock in the evening of 13 September 1998 he was asked by his mother to buy a few sticks of cigarette at a nearby *sari-sari* store. On the way home he saw across the street his father sauntering, wounded and bleeding. Then he saw another man whom he identified as Rey Ballera stab his father at the left chest. He rushed towards his father who was already gasping for breath, apparently conscious of an impending death as he was heard to be saying, "*Oh Lord, sana mabuhay pa ako.*" His father pleaded that the knife stuck deep into his chest be removed. As he sobbed John Lyndon extricated the knife from his father's chest with his bare hands and threw it beside a trash can. His mother wept as they carried his father's body in a tricycle to take him to the hospital.^[3]

Jerry Fajardo also identified accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal as among those who ganged up on Melvyn.^[4] According to Jerry, as he exchanged blows with the aggressors he noticed that Melvyn had been stabbed by one of them. However, he scampered away when he saw accused-appellant Rey Ballera draw a fan knife from his pocket. When he looked behind him he saw the same accused-appellant and the deceased Melvyn both running towards him. After taking a couple of steps he looked back again and saw Melvyn collapse to the ground. He later accompanied the *barangay tanods* searching for the aggressors. But not before he identified accused-appellants Rey, Carmelito and Carlos as among those who attacked him and Melvyn.^[5]

Dr. Emmanuel Aranas, Medico-Legal Officer of the Western Police District Crime Laboratory, testified that on 13 September 1998 he conducted an autopsy on the body of Melvyn Matibag. In his necropsy report Dr. Aranas identified the following wounds on the body of Melvyn, to wit: (a) one (1) stab wound on the right mammary region piercing the lower lobe of the right lung; (b) one (1) stab wound on the left mammary region piercing the lower lobe of the left lung; and, (c) a stab wound on the left forearm. He opined that a single bladed instrument could have been used in inflicting the wounds although it was also possible that two (2) different persons could have stabbed the deceased.^[6]

The defense presented accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal as well as Samuel Vicente, Analyn Coros, Evelyn Rodrigo and Violeta Coros.

Accused-appellant *Rey Ballera* confirmed that his group had a physical confrontation with Melvyn and Jerry at the street corner but denied having started the fight. According to him, at around three o'clock in the afternoon of 13 September 1998 he went to the house of his Aunt Violeta to celebrate the birthday of a cousin-in law. When he arrived his cousin Alvin Coros was busy entertaining some guests. His cousins Carlos Bersabal and Carmelito Vicente, his co-accused, and Samuel Vicente, Albert Vicente, Alvin's friends Avelino Real and Benito Galdenero were in a corner drinking beer and gin. He did not join them; instead, he simply ate the food served him by the birthday celebrant. He then spent his time exchanging stories with his sister-in-law Marilou. At eight o'clock in the evening, he accompanied Samuel Vicente in taking Carmelito home. As they crossed the street a tricycle suddenly blocked their way prompting Carmelito to holler. Instead of apologizing, Melvyn and Jerry alighted from the tricycle and assaulted them. Carmelito fell on a ditch and lost consciousness. He ran back to his aunt's house to ask his cousins for help. Alvin and his friends Avelino and Benito responded, but he himself stayed home. A few minutes later, Carmelito arrived wounded and bleeding. He helped Carmelito change his clothes and then waited for a while for further developments.

As they waited, several *barangay tanods* arrived and told Rey, Carmelito and Carlos to surrender. According to Rey, he volunteered to come out with his cousins as he pitied Carmelito. At the *barangay* hall, Carlos and Carmelito were locked up in a small cell and later taken to the police station where he was identified by Jerry as the person who went after him. While in the police station, they were threatened by the police with summary execution. Eventually, they were put behind bars. When Venus, wife of the deceased Melvyn, visited them there, she even told them that unless they surrendered Benito, Avelino and Alvin, they would have to pay for Melvyn's death.

Accused-appellant Rey Ballera denied ever possessing a knife that day; instead, in the evening of the scuffle he saw Benito carrying a knife in his waist. Rey disowned any participation in the stabbing saying that he could not have killed Melvyn as he was at his aunt's house waiting for the commotion to die down.^[7]

On his part, accused-appellant *Carmelito Vicente* testified that at around five o'clock in the afternoon of 13 September 1998 he went to his in-laws' house for a birthday celebration. As soon as he arrived there, he drank beer with the guests. By eight o'clock in the evening, his brother Samuel and cousin-in-law Rey decided to take

him home. When they went out a tricycle suddenly blocked their path and the two (2) occupants alighted and started punching him. He fell into a ditch and bruised his knees and forehead. Too drunk to defend himself, Carmelito went back to the house of his in-laws to change his clothes and rest. His cousin Rey treated his wounds. At about this time, the *barangay tanods* arrived and took them to the *barangay* outpost and later transferred them to the *BCDA Police Station*.^[8]

Accused-appellant *Carlos Bersabal* also denied any participation in the killing. According to him, on 13 September 1998 he went to his Aunt Violeta's house to get a letter from his mother. When he arrived there he joined his cousins in their drinking spree until he became drowsy. Moments later, he was awakened by a commotion outside. Still a little later, to his surprise, the *barangay tanods* arrived and took him and his cousins into custody and then to the police station where, according to him, he heard Eddie Andrada tell the police officer on duty that it was another man and not anyone of them who stabbed Melvyn.^[9]

Analy Coros, daughter of Violeta, was presented apparently to prove the alibi of accused-appellants Rey Ballera, Carmelito Vicente and Carlos Bersabal. According to her, on 13 September 1998 her relatives arrived in their house to celebrate the birthday of her sister-in-law Teresa Monter. She claimed that at around eight o'clock in the evening her brother-in-law Carmelito left in the company of her cousin Rey and Carmelito's brother Samuel. A few minutes after they left, Rey returned and reported to them that they had been mauled. So Violeta instructed everyone not to leave the house. To have a good view of the melee she decided to go upstairs and sit by the window. Peering outside, she saw Benito and Avelino at a distance of fifteen (15) meters exchanging blows with two (2) other men whom she did not know. Suddenly Benito stabbed one them and then ran away.^[10]

On 17 December 1999 the trial court rendered its Decision finding accused-appellant Rey Ballera guilty of murder qualified by treachery. But accused-appellants Carmelito Vicente and Carlos Bersabal were convicted only of slight physical injuries purportedly for mauling Melvyn in the course of a scuffle.^[11]

In its *Decision*, the trial court divided the commission of the crime into three (3) stages: *first*, the scuffle at the street corner; *second*, Rey's pursuit of a fleeing Jerry; and *third*, the culmination of the tragedy with Rey stabbing Melvyn. The trial court then went on to note that as there was no showing of gross physical disparity between the protagonists in the course of the struggle, the qualifying circumstance of abuse of superior strength could not be appreciated.

The court *a quo* likewise rejected the prosecution theory that there was conspiracy since there was no proof that the three (3) accused conspired with each other in killing Melvyn. According to the trial court, Carmelito and Carlos had no foreknowledge of Rey's plan to stab Melvyn. As such, only accused-appellant Rey was held responsible for the murder of Melvyn qualified not by abuse of superior strength but by treachery.

Accordingly, accused-appellant Rey Ballera was sentenced by the trial court to *reclusion perpetua* and ordered to indemnify the heirs of the deceased Melvyn Matibag P31,500.00 as actual damages and P50,000.00 as civil indemnity, and to pay the costs of suit. On the other hand, accused-appellants Carmelito Vicente and