

## THIRD DIVISION

[ G.R. No. 116616, November 26, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICARDO EMBERGA Y MIGUEL AND ROMEO EMBERGA Y MIGUEL,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

Accused-appellants Ricardo Emberga and Romeo Emberga were charged with murder in an Information<sup>[1]</sup> that reads as follows:

That on or about the 28th and 29th of October, 1991 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, and without justifiable cause, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and stab one RAFAELITO NOLASCO Y SARMIENTO with a bladed instrument on the different parts of the body, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.

CONTRARY TO LAW.

In a Decision dated March 3, 1994, the Regional Trial Court of Caloocan City<sup>[2]</sup> convicted accused-appellants of the crime of murder. The dispositive part of the decision states:

WHEREFORE, the prosecution evidence having established the guilt of the accused, ROMEO EMBERGA and RICARDO EMBERGA, beyond reasonable doubt for the crime of Murder, with one aggravating circumstance and without any mitigating circumstance, the Court hereby imposes a penalty of *reclusion perpetua* for each of the said accused and for each of them to indemnify the heirs the sum of Fifty Thousand (P50,000.00) Pesos and the sum of Seventeen Thousand Five Hundred (P17,500.00) Pesos for actual or compensatory damages, and to pay the costs.

The prosecution presented four witnesses, namely: Milagros Resulta, sister-in-law of the victim and eyewitness to the crime; Dr. Ricardo Ibarrola, medico-legal officer of the National Bureau of Investigation who conducted an autopsy of the victim's body; Erlinda Resulta Nolasco, wife of the victim who testified on the claim of the victim's family for actual damages; and Vivencio Gamboa, the police officer who investigated this case.

Milagros Resulta testified that she came home from work at around 11:00 in the evening of October 28, 1991, and was resting in her house at 155 Socorro Street,

Caloocan City when she heard a commotion outside. She looked out of her window and saw accused-appellants and their father chasing her brother-in-law, Rafaelito Nolasco. The place was well-lit by a bulb outside the store in front of her house. She heard her brother-in-law shout, "Bino, awatin mo ang mga anak mo." Resulta said that she felt afraid and sat on her bed. When she looked out the window again, she saw Rafaelito Nolasco lying on the ground, being stabbed by the accused-appellants. She sat on her bed again, and after a while, someone knocked on her door and told her that Rafaelito Nolasco was stabbed. She then went to her sister's house in Dalisay Street, also in Caloocan City, and informed her of the stabbing of her husband. That same night, she went to the Caloocan police station and reported that she witnessed the stabbing incident.

Milagros also stated that it was only on that fateful night that she saw both accused-appellants for the first time, and that she came to know of their names only in court.

Dr. Ricardo Ibarrola testified that there were 25 stab wounds found on the victim's body, caused by one double-bladed weapon and one single-bladed weapon. The wounds inflicted by the double-bladed weapon were found on the left side of the head behind the ear, the upper left side of the chest, the abdomen, the left buttock, the right arm, and the left forearm. The single-bladed instrument was used to inflict stab wounds on the right middle aspect of the back. Dr. Ibarrola observed that there were about the same number of wounds on the front and back of the victim's body. The wounds on the back, caused by the single-bladed instrument, were "non-penetrating and non-fatal", while the wounds inflicted by the double-bladed instrument and located on the front part of the body were fatal.<sup>[3]</sup> Vital organs were hit, such as the diaphragm, left kidney, large intestine, spleen and pancreas.<sup>[4]</sup> The cause of death, as pointed out by Dr. Ibarrola, was massive loss of blood due to multiple stab wounds.<sup>[5]</sup>

Dr. Ibarrola further observed that the presence of wounds on the victim's arms, which he called "defensive wounds", as well as an incise wound on the left side of the neck<sup>[6]</sup>, were indicative of a struggle between the assailants and the victim.

Vivencio Gamboa testified that he was the police officer who went to the scene of the crime at about 12:00 to 1:30 in the morning of October 29, 1991 to investigate the stabbing incident. He interrogated the people milling around the area and found out from a certain SPO3 Ibe that the suspected perpetrators were the Emberga brothers. After trying, without success, to locate the Emberga brothers, he went back to the police station to prepare his report and found Milagros Resulta, who claimed to be a witness to the incident, at the station. He said that he interviewed Milagros Resulta but was unable to put her statement in writing because there was a "brownout" after the interrogation. Thus, he sent Resulta home. On November 13, 1991, on reporting to duty, he learned that accused-appellants were surrendered by their parents to the Pasay police station, and were later on taken to the Caloocan police headquarters. Gamboa testified that he was the one who interrogated accused-appellants and prepared their statements on the incident. On testimony, he declared that accused-appellants admitted their guilt to him. On the same day, he also took the statements of Gary Robinas and Danilo Ablaza, two alleged eyewitnesses to the incident who later testified in the trial as defense witnesses. He was also the same officer who prepared the statement of Erlinda Nolasco, the wife

of the victim.<sup>[7]</sup>

Erlinda Nolasco testified to the amount of actual damages, corresponding to lost income and burial expenses, suffered by the family of Rafaelito Nolasco as a result of his death. She stated that she and the victim had five children, aged 19, 18, 16, 14 and 8 years, respectively. She estimated the income of her late husband, who was a vendor, at P200.00 a day. She declared the following funeral expenses: P10,000.00 for the casket, P1,000.00 per day for wake expenses which lasted five days, and P500.00 per day for funeral parlor services.

Meanwhile, the defense had four witnesses: accused-appellants Ricardo and Romeo Emberga, Gary Robinas and Danilo Ablaza. Accused-appellant Romeo Emberga admits to the killing of the victim, but he claims that he did so in defense of his brother, accused-appellant Ricardo Emberga. He recounted that at around 12:00 midnight on October 29, 1991, he and his brother Ricardo were walking home from the "peryahan" with two co-workers, Gary Robinas and Danilo Ablaza, when they passed by the victim, Rafaelito Nolasco, at Silangan Street. Allegedly, the victim attacked Ricardo Emberga unexpectedly and without warning, cursed him and stabbed him with a "veinte y nueve" knife. Ricardo Emberga ran away, while Romeo Emberga picked up a stone and a sharp piece of steel from the sidewalk and threw the stone at the victim, hitting him on the head. They ran towards Socorro Street and as the victim faced him he picked up another stone and threw it at the victim, this time hitting him on the chest. This caused the victim to drop the "veinte y nueve" knife that he was holding. Romeo Emberga lunged for the knife, and thrust it into the victim's body. "Nagdilim ang aking pag-iisip" was how he described his mental state during the incident, and he said that he could no longer remember how many times he stabbed the victim.<sup>[8]</sup>

On re-cross examination, however, Romeo Emberga departed from the above story and said that when he got hold of the victim's knife, the victim tried to grab the knife from him, and attacked him and punched him successively. It was at that point that he stabbed the victim.<sup>[9]</sup>

Accused-appellant Ricardo Emberga corroborated the above testimony by saying that he ran away as soon as Rafaelito Nolasco stabbed him. He said that he went home and had his wounds treated by his mother, and claims no further knowledge in respect of the killing of Rafaelito Nolasco that night.

Ricardo Emberga further stated that he sustained two wounds by virtue of the incident: one on the left side of his chest and another on his back. On testimony, he showed to the trial court two scars, on the left side of his chest and on his back, as proof of his injuries.<sup>[10]</sup> No medical certificate was presented, and Ricardo Emberga admitted that he did not submit himself to medical treatment, as the wounds were only "gasgas", or abrasions.<sup>[11]</sup> Neither did he report the matter to the police.<sup>[12]</sup>

In his testimony, Romeo Emberga said that he fled to the province after the stabbing incident, and that his brother Ricardo followed him there a day after, upon instructions of their father to fetch him and for the two of them to surrender to the police.<sup>[13]</sup> Ricardo Emberga, however, denies having gone to the province, and insisted that he remained in Caloocan City after the incident.<sup>[14]</sup>

Gary Robinas and Danilo Ablaza are co-workers of accused-appellants in the local "peryahan". During the investigation of the case, they executed sworn statements to the effect that they witnessed the killing of Rafaelito Nolasco by accused-appellants. [15] In their affidavits, they also stated that it was Ricardo Emberga who stabbed Rafaelito Nolasco in Silangan Street, contrary to the declarations of both accused-appellants that it was Nolasco who initially attacked Ricardo Emberga. [16]

During the trial, however, Gary Robinas and Danilo Ablaza appeared as witnesses for the defense, and the testimonies they rendered were in direct contravention of their earlier affidavits. Robinas testified that on October 29, 1991 at around 12:30 in the morning, he, Ablaza, and accused-appellants were walking along Silangan Street on their way home when Rafaelito Nolasco suddenly stabbed Ricardo Emberga. [17] After stabbing Ricardo Emberga, Nolasco fled and Romeo Emberga ran after him. [18] Robinas then said that he saw nothing else because at that point, he went home. [19]

Danilo Ablaza also stated that he saw Rafaelito Nolasco stab Ricardo Emberga, after which Ricardo Emberga ran away and Romeo Emberga faced Nolasco. [20] Ablaza then left to look for a *barangay tanod*. When he could not find one, he went back to the scene of the crime and saw that several persons have arrived and were standing about. He then decided to go home. [21]

Robinas and Ablaza swear by the truth of their testimonies, and alleged that their accounts in the affidavits dated November 13, 1991 were vitiated and rendered under duress. They also said that they did not voluntarily go to the police station to give their statements on the incident, but were arrested by the police. According to Robinas, a policeman made him state in his sworn statement that it was the Emberga brothers, and not Romeo Emberga alone, who stabbed the victim. [22] Robinas, however, could not identify this policeman who allegedly threatened him. [23] Ablaza also said that he was merely threatened by the victim's brother-in-law, Rolly Manalo, into signing his affidavit [24], and that the allegations in his affidavit were merely copied by the investigating officer from the affidavit of Robinas. [25]

The trial court meted out its judgment of conviction on the basis of Milagros Resulta's positive identification of both accused-appellants as the perpetrators of the crime. It also accorded great weight to the autopsy findings, respecting the number and location of the stab wounds, in arriving at the conclusion that the stabbing of the victim could have only been inflicted by two assailants in concerted action. [26] It likewise found implausible accused-appellant Romeo Emberga's theories of self-defense and defense of relative. Accused-appellants' flight to the province was also read by the trial court as indicative of their consciousness of guilt.

Before us, accused-appellants assign the following errors:

## I

The trial court erred in giving credence to the conflicting, unreliable and incredible testimony of the prosecution witness Milagros Resulta.

## II

The trial court erred in convicting Ricardo Emberga despite clear and convincing evidence presented by the defense that he was no longer present when his co-accused, Romeo Emberga, stabbed and killed Rafaelito Nolasco.

### III

Despite clear and convincing evidence presented by the defense, the trial court failed to consider the exempting circumstance of self-defense in favor of the accused-appellants.

Anent the first assignment of error, the defense questions the credibility of Milagros Resulta's testimony of her behavior upon witnessing the killing of her brother-in-law. The records bear out that upon seeing her brother-in-law being chased by three men, she felt afraid and sat on her bed, and when she peeped out of the window again and saw the victim being stabbed by accused-appellants, she sat on her bed again and rose only when someone knocked on her door.<sup>[27]</sup> The defense argues that a person under the same circumstances would have shouted for help, instead of just looking helplessly at the victim being stabbed by the two men.<sup>[28]</sup>

This Court has repeatedly held that there is no standard form of behavioral response to a strange, startling and frightful event, and there is no standard rule by which witnesses to a crime must react.<sup>[29]</sup> That Milagros Resulta's reaction upon witnessing the killing of her brother-in-law does not conform with the expectations of the defense does not in any way undermine her credibility, or destroy the essential integrity of her testimony. Besides, to our mind, there is nothing unusual or suspect about her claim to have been reduced to a fearful and confused silence upon witnessing the chase and killing, especially since the incident took place a mere ten meters away from her and victimized a member of her family.

Moreover, Milagros Resulta's credibility is bolstered by her forthrightness in volunteering her knowledge on the killing to the authorities a few hours after the incident. That in the succeeding investigation, her statement was not taken down in writing and sworn to before an officer authorized to administer oath does not impede her being subsequently presented as a prosecution witness. There is no law which requires that the testimony of a prospective witness should be reduced into writing in order that his or her declaration in court may be believed.<sup>[30]</sup>

Next, the defense contends that the trial court erred in convicting accused-appellant Romeo Emberga inspite of clear and convincing evidence that he was no longer present when his fellow accused-appellant Ricardo Emberga stabbed and killed the victim. The evidence submitted by the defense anent this matter consisted of the testimonies of the two accused-appellants, and the corroborating testimonies of Gary Robinas and Danilo Ablaza.

The supposition that Romeo Emberga had no participation in the subsequent killing of Nolasco, having come from Romeo Emberga himself and from his brother and fellow accused-appellant, Ricardo Emberga, amounts to nothing more than a denial which is self-serving and cannot prevail over the positive identification of a credible witness, Milagros Resulta.<sup>[31]</sup>