

## **SPECIAL FIFTEENTH DIVISION**

**[ CA-G.R. CR-H.C. No. 06037, May 29, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MELVIN PEREIRA Y MONTALBO, ACCUSED-APPELLANT.**

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

**CASTILLO, M., J.:**

On appeal before Us is the Decision dated February 5, 2013<sup>[1]</sup> rendered by the Regional Trial Court, Branch 217, Quezon City finding the accused Melvin Pereira y Montalbo guilty of the offense of murder.

On March 30 21, 2009, the accused Melvin Pereira y Montalbo *a.k.a* "Bulik" was charged in an Amended Information<sup>[2]</sup> for Murder, the accusatory portion of which reads:

"That on or about the 18<sup>th</sup> day of January 2009, at Quezon City, Philippines, the above-named accused, with intent to kill and with the qualifying aggravating circumstances of evident premeditation and treachery as well as the generic aggravating circumstance of dwelling, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ARNEL BAGAN y SIMPLINA, by then and there barging into the home of the victim and then repeatedly stabbing the victim therein in the chest with the use of a kitchen knife, thereby inflicting upon the said ARNEL BAGAN y SIMPLINA, serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said victim.

The above attendant circumstances were present in the commission of the crime because accused planned the commission of the crime prior to its execution until its commission consciously adopting the means or methods of attack, done suddenly and unexpectedly in order that the victim will not be able to defend himself and to ensure the commission of the crime without risk to the accused.

Contrary to law."

On July 27, 2009, the accused, assisted by his counsel, pleaded "not guilty" to the offense charged during the arraignment.<sup>[3]</sup> On August 18, 2009, the pre-trial conference was terminated and trial on the merits ensued.<sup>[4]</sup>

The prosecution, in support of the allegations in the information, presented four (4) witnesses, namely; Virgie Bagan, PNP Medico-legal officer, P/CInsp. Paul Ed Ortiz, Florencio Cabalquinto, and P/Insp. Joseph Carlos Madrid. The defense presented the accused, Melvin Pereira, and his mother, Leonila Pereira.

The version of the prosecution is summarized as follows:

Virgie Bagan, the wife of the victim, testified<sup>[5]</sup> that on January 18, 2009, at around 7:00 o'clock in the evening, she was inside their house at 49 Sto. Cristo St., Balignasa, Balintawak, Quezon City with her husband, their ten year old daughter and their neighbor, Rhea, watching a show on TV, Rumble in the Bronx starring Jackie Chan.<sup>[6]</sup> They were focused on the movie when the screen door, which was unlocked, suddenly opened and accused Melvin Pereira entered the house. Pereira approached Virgie's husband who was seated on the floor. Virgie testified that the door was located at the right side of her husband, around five steps away while she was seated at the left side of her husband. She demonstrated in court how accused approached her husband from behind, placed his left hand on her husband's neck and stabbed her husband with his right hand which was underhandedly holding the knife. She stated that her husband was stabbed around seven (7) times.<sup>[7]</sup> After she witnessed accused stab her husband, accused poised to stab her but she lifted a chair to cover herself.<sup>[8]</sup> Then, Carlo Delgado entered their house and accused also stabbed Delgado on the left portion of his abdomen. Thereafter, accused ran away. Virgie ran outside their house and sought the help of her neighbors. Her neighbors and her brother-in-law, Noli Bagan, came and brought her husband to the Quezon City General Hospital where he was declared dead on arrival.<sup>[9]</sup> Virgie also testified that at the time of his death, her husband was 39 years old, an employee of MMDA earning a monthly salary of P6,000.00. She spent P20,000.00 for the funeral of her husband.<sup>[10]</sup>

P/CInsp. Paul Ed Ortiz,<sup>[11]</sup> the medico-legal officer of the PNP Crime Lab who conducted an autopsy examination on the victim, testified that Arnel Bagan died of stab wounds to the thorax. Based on his records, there were three (3) stab wounds. He testified that one stab wound was 12 cm deep and was caused by a sharp object such as a knife. The thrust of that stab wound perforated the heart and penetrated the upper part of the left lung, which was sufficient to cause the death of the victim.<sup>[12]</sup> Another stab wound was more or less located in the area just below the ribcage in the upper right abdominal part, 7 cm deep. The thrust was from the front to the back and upward and to the middle of the body, penetrating the heart at the level of the 7th rib. Ortiz testified that the blade used was about 11 cm in length.<sup>[13]</sup> The last stab wound was at the left upper arm and was superficial. Ortiz also noted abrasions on both knees of the victim and on the right pectoral region of the right upper breast.<sup>[14]</sup>

Florencio Cabalquinto testified that he was the Barangay Executive Officer of Brgy. Balingasa, Quezon City and he was one of the arresting officers who apprehended the accused.<sup>[15]</sup> He averred that on January 18, 2009, Pedro Tayao, one of the tanods, reported a stabbing incident at Sitio Sto. Cristo involving Melvin Pereira alias "Bulik". He, together with BPSO Rommel Dayat and Roberto Dy, went to the place of the incident. When they reached the place, they were told by the neighbors that the accused already fled to Sitio Tibagan. They proceeded to Sitio Tibagan where the cousin of the accused, Dorothea Macaraeg, informed them that the accused was at No. 1076 A. Bonifacio. When they went to the said house, the accused voluntarily surrendered to them. Cabalquinto testified that from where accused was sitting on the rooftop, the latter went down, approached them and handed them the knife used in the stabbing incident. They brought the accused to Police Station 1.<sup>[16]</sup>

Cabalquinto also testified that the knife surrendered by the accused was more or less 11 inches long, including the handle. It was made of stainless metal and had a yellow colored handle.<sup>[17]</sup>

P/Insp. Joseph Carlos Madrid testified that on January 18, 2009, he was assigned as a homicide investigator at the CIDU based at Camp Karingal, Quezon City. He conducted the investigation on the stabbing incident involving Melvin Pereira which resulted in the death of Arnel Bagan.<sup>[18]</sup> He interviewed the wife of the victim, Virgie Bagan and other witnesses. He took the statements of Virgie Bagan and Rhea Masalunga.<sup>[19]</sup> He testified that the accused was turned over to him by the arresting team.<sup>[20]</sup> After preparing all the documents, they went to the Fiscal's Office for inquest. He also testified that based on his investigation, the accused used a bladed weapon to stab the victim and that the knife used was turned over to him by Cabalquinto. He placed the initial of the accused "MP" on the knife handle.<sup>[21]</sup> On cross-examination, he testified that the investigation showed that there were two victims of the stabbing incident, Arnel Bagan and Carlo Delgado. He took the statement of Delgado and a frustrated case was filed against accused by Delgado.<sup>[22]</sup>

In the Appellant's Brief<sup>[23]</sup>, the version of the defense is summarized as follows:<sup>[24]</sup>

The mother of the accused, Leonila Pereira, testified that the victim, Arnel Bagan, was their neighbor in Sto. Cristo Street, Balintawak, Quezon City. Their house is only five (5) meters away from that of the victim, or nine (9) houses away.

On 18 January 2009 about late in the afternoon, her son Melvin Pereira went out of their house to confront their neighbor Caloy Bagan (victim herein), whose wife Virgie hit her (Leonila) with a coffee mug in the head.<sup>[25]</sup> She does not know of any reason why Virgie hit her. When she was hit, she felt dizzy which caused her to lean on the wall. Her neighbor named Nelia helped her and brought her home. She then called her sister and she was brought to Quezon City General Hospital for treatment. After which, she went home and rested.

Her children, accused Melvin and daughter Melissa, learned about what happened to her and became very angry. The accused kept on shouting and was very mad because of what was done to her by Virgie.

Thereafter, she proceeded to the barangay to report the incident and because she was worried about the accused who was very angry during that time. When she returned home, there were already police officers and she was told by Virgie Bagan that her husband was stabbed by the accused.

Upon learning it, she asked the assistance of the barangay to find her son Melvin. She found her son at the house of her cousin and she surrendered him to the barangay. Her son had a stab wound on his forearm and was brought to the hospital for treatment. The latter was not armed with any knife at the time he left their house.

When she was able to talk to her son, the latter admitted that the incident was brought about by what was done to her by Virgie. The

accused further told her that when he confronted the victim, Virgie was not there but only Arnel who was armed with a gun. According to her son, he was constrained to use a knife in order to defend himself.<sup>[26]</sup>

On 18 January 2009, the accused, Melvin Pereira, was at home sleeping. At around 5:00 o'clock in the afternoon, he woke up and saw his mother's head wrapped with bandage. He asked his mother what happened and learned that Ate Virgie Bagan hit her with a glass. He had no knowledge of any reason why his mother was hit.

Upon learning it, he got angry and after about fifteen (15) minutes, told his mother that he was going to see Virgie to talk to her. His siblings warned him of what might happen if he would go to Virgie, but he told them that he would only talk to Virgie.

Upon reaching the house of Virgie, the latter and her husband Arnel were there. He asked why she (Virgie) did that to his mother. Virgie answered him in a loud voice and angrily told him that what happened was just right for his mother. Arnel also told him that it was not even enough and he might as well include him. After hearing this, he went home to avoid further trouble.

At around 6:40 o'clock in the evening of the same date, he went out of their house to buy some bath soap. When he was on his way home, he was surprised when Arnel suddenly appeared in front of the latter's house from the sidecar of his motorcycle. Arnel was hiding a kitchen knife with a length of more or less fourteen (14) inches.<sup>[27]</sup>

Suddenly, Arnel stabbed him. He was not hit during the first thrust, however, he was hit in his left hand during the second thrust. After which, he was able to hold the right hand of Arnel, which was holding the knife. He embraced Arnel from behind to stop him. They slipped and fell on the concrete pavement. Because of that, Arnel lost hold of the knife and he was able to get it. Thereafter, he felt dizzy because of blood loss and lost his senses and stabbed the victim.<sup>[28]</sup>

After the incident, he went to Edubas Compound at Sitio Tibagan, Barangay Balingasa to see his aunt who was working thereat and to ask for help. It took him fifteen (15) minutes of walking to reach the said area.

He did not intend to evade liability of prosecution by going to Edubas Compound. He merely went there to seek help from his tita for his surrender. In fact, when the barangay officials arrived, he went with them peacefully and surrendered the knife used in stabbing the victim.

The accused did not have any intention to kill the victim, nor did he plan to kill him. He also did not intend to employ force and violence upon the victim. In fact, he was not carrying any weapon during that time.<sup>[29]</sup>

On February 5, 2013, the trial court promulgated the assailed Decision<sup>[30]</sup>, the dispositive portion of which reads:

"WHEREFORE, accused Melvin Pereira y Montalbo @ "Bulik" is found guilty beyond reasonable doubt of Murder, and is sentenced to suffer the penalty of *reclusion perpetua* with a duration of Twenty (20) Years and One (1) Day to Forty (40) Years, and the said accused shall suffer Perpetual Absolute Disqualification as an accessory to the principal penalty. Accused is further ordered to pay the heirs of Arnel Bagan y Simplina, the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P25,000.00 as temperate damages.

In the service of his sentence, accused is ordered credited with four-fifths (4/5) of the preventive imprisonment undergone by him, there being no showing that he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED."<sup>[31]</sup>

On February 6, 2013, the accused, through counsel, filed a Notice of Appeal.<sup>[32]</sup> The trial court granted the same in its Order dated February 21, 2013.<sup>[33]</sup> In his appeal, accused-appellant raised the following issues:

1. The court *a quo* gravely erred in not giving credence to accused-appellant's claim of self-defense;
2. Assuming that his defense is unavailing, the court *a quo* gravely erred in convicting the accused-appellant of the crime charged despite failure of the prosecution to prove his guilt; and
3. Granting that the accused-appellant is guilty thereof, the court *a quo* gravely erred in not appreciating the mitigating circumstance of voluntary surrender and incomplete self-defense.

Accused-appellant argues that the trial court gravely erred in disregarding his straightforward testimony as well as that of his witness, and in solely basing its decision on the prosecution's assertion that he committed the crime charged.<sup>[34]</sup> Accused-appellant maintains that the testimonies of the prosecution witnesses are insufficient to prove his guilt beyond reasonable doubt.<sup>[35]</sup>

Accused-appellant's defense centers on self-defense. He asserts that there was unlawful aggression on the part of the victim. Prior to the incident, Virgie and Arnel Bagan initiated the trouble when Virgie hit the head of accused-appellant's mother with a coffee mug. Instead of asking for an apology, Arnel, suddenly and out of nowhere, attacked accused-appellant with a knife, which prompted the latter to defend himself from such aggression.<sup>[36]</sup>

Accused-appellant argues further that the prosecution failed to establish motive on his part in supposedly attacking and eventually killing the victim.<sup>[37]</sup> He argues that his testimony clearly showed that he did not intend to employ force and violence on the victim and during that time, he was not in possession of a knife. Consequently, it was the victim who had the motive to harm accused-appellant, and not the other way around.<sup>[38]</sup>