

[ **CR No. 32686, June 23, 2010** ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERDY GAVINO Y ARORONG @ MCCOY, JEFFREY OLIVAR Y MERCADO @ JEFF AND VICTOR ALEJANDRIA Y MERCADEJAS @ DODONG, ACCUSED, ERDY GAVINO Y ARORONG @ MCCOY, ACCUSED-APPELLANT.**

**Court of Appeals**

Before this Court is an appeal from the Decision<sup>[1]</sup> dated May 7, 2009 of the Regional Trial Court, National Capital Judicial Region Branch 114, Pasay City in Criminal Case No. 05-1194-CFM entitled "People of the Philippines, versus Erdy Gavino y Arorong @ McCoy, et al., Accused.", the dispositive portion of which reads:

"In light of the foregoing, the Court finds the three (3) accused namely: ERDY GAVINO Y ARORONG @ MCCOY, JEFFREY OLIVAR Y MERCADO @ JEFF AND VICTOR ALEJANDRIA Y MERCADEJAS @ DODONG, "Guilty" beyond reasonable doubt only of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code, as amended, and hereby sentences each of them to suffer the penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years of reclusion temporal and ordered to pay the heirs of the victim Eduardo Salvador y Raganit the following:

1. P75,000.00 as moral damages; and
2. P84,492.20 as actual damages.

SO ORDERED."

The facts are:

On August 1, 2005 an information<sup>[2]</sup> for Murder was filed against accused-appellant Erdy Gavino y Arorong @ McCoy ("Gavino" for brevity) and accused Jeffrey Olivar y Mercado @ Jeff ("Olivar" for brevity), Victor Alejandria y Mercadejas @ Dodong ("Alejandria" for brevity), John Doe, Peter Doe, Richard Doe, Allan Doe, Michael Doe, Alex Doe and Arnold Doe, the true names, real identities and present whereabouts of the last seven (7) accused are still unknown, the accusatory portion of which reads:

"That on or about the 30th day of July, 2005, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with a deadly weapon, did then and there willfully, unlawfully and feloniously with intent to kill, treachery and abuse of superior strength, attack, assault and stab one Eduardo Salvador y Raganit, at the vital parts of his body, thereby inflicting upon the latter mortal wounds which caused his instantaneous death.

Contrary to Law."

On September 28, 2005, accused-appellant Gavino and accused Olivar and Alejandria, assisted by Counsel, pleaded<sup>[3]</sup> not guilty to the crime charged.

The identities of accused-appellant Gavino and accused Olivar and Alejandria were admitted by the defense who made on stipulation during the preliminary conference<sup>[4]</sup> held on October 12, 2005. On October 19, 2005<sup>[5]</sup>, the lower court adopted and considered the Preliminary Conference Report of the Branch Clerk of Court as part of the pre-trial conference of this case because it had substantially covered the matters involved in the pre-trial conference and it ordered the termination of the same.

Thereafter, trial ensued.

The prosecution presented Roldan Benhero, Roberto Villanueva, Jason Ibanes, Milagros R. Salvador, PO2 Carlo Daet, SPO1 Christian Marquez, Dr. Rolando C. Victoria and PO3 Alberto Sombilon, as witnesses.

Roldan Benhero ("Benhero" for brevity) testified<sup>[6]</sup> that: at about 12:30 o'clock in the morning of July 30, 2005, he was buying a cigarette from a store at Geronimo St. Malibay, Pasay City when he heard a woman shouting "tama na po" twice near the corner of San Diego Compound: he saw the victim, Salvador being chased by around eight (8) armed men as he went near the scene of the incident; accused-appellant Gavino approached and stabbed Salvador with a knife on the lower left chest, while the latter was being lifted by accused Alejandria and an unidentified assailants; the assailants ganged up (pinagtulungan) on Salvador as the latter fell down; he was able to recognize Salvador and the assailants because the place was well lighted; he thought of throwing stones at the assailants to drive them away, but he was not able to find stones at the scene of the incident; the assailants went after and threatened to stab some persons who tried to help Salvador; he does not know the assailants' names but he could recognize them if he would see them again; accused Oliva chased the persons who tried to stop the stabbing of Salvador with a knife; the assailants left when somebody shouted "patay "na iyan" ; he approached Salvador (nilapitan ko si Eduardo Salvador) and brought the latter to the hospital who was already dead upon arrival thereat; Salvador sustained a lot of stab wounds; accused appellant Gavino and accused Olivar and Alejandria were immediately arrested by the police and he saw them at the police headquarters; he did not see any blood stains on the black garments worn by accused-appellant Gavino and accused Olivar and Alejandria nor in their hands and arms.

Roberto Villanueva ("Roberto" for brevity) testified<sup>[7]</sup> that: in the evening of July 29, 2005, he attended his cousin Ruby Ana Villanueva's ("Ruby Ana" for brevity) birthday party at San Diego Compound; Ruby Ana's boyfriend Patrick and his friends also attended the party and were already drunk (nakainpm na rin po sila) when they arrived at about 10:00 o'clock in the evening; he occupied a table with Jason Ibañez ("Ibañez" for brevity) and David, while Patrick's group occupied another table; Patrick's group drank with Ibañez and David; accused-appellant Gavino and accused Olivar and Alejandria are Patrick's friends and were among the guests of Ruby Ana; Patrick called and talked to Jonjon David Natividad; Jonjon intimated to them about

the trouble between Patrick's group and a certain Varete; Salvador was also called Varete, named after the former boxing champion Rolando Navarrete because of the former's bad boy reputation; Jonjon left the party and called for Salvador to settle their differences; somebody called Salvador and the latter went to the San Diego Compound alone; Salvador asked him, "sino ang kumukursunada sa barkada namin?" and said "kakausapin ka lang."; Dondon, a member of Patrick's group (kasama po nila), approached Salvador and said, "pare peace tayo ha, peace tayo?"; Dondon distanced (dumistansya) himself from Salvador after the latter asked the former who he was and Dondon, for no apparent reason, suddenly punched Salvador although they were not enemies; Patrick's group stood up and pulled out (nagbunutan po) bladed weapons; he was able to parry the attack (pasugod na po) of Patrick's group and ran away: accused-appellant Gavino was not hit by a stone and there was no stone throwing incident that ensued; accused-appellant Gavino and accused Oliver and Alejandria and Dondon were among the more than ten (10) persons who attended Ruby Ana's party and gave Salvador a chase while the latter was running away; he did not recognize the two (2) persons who chased him but he is familiar with the faces of the persons who chased Salvador; Patrick's group had no quarrel with his group and Salvador; and, he does not know who stabbed Salvador.

Jason Ibañez testified<sup>[8]</sup> that: on July 29, 2005, he attended Ruby Ana's birthday party at San Diego Compound, where a drinking session was held, upon the invitation of Ruby Ana's sister Jessa; Jessa introduced him to the other guests, namely: accused-appellant Gavino, accused Oliver and Alejandria, Patrick, Don and a certain Tisoy; after Jonjon's conversation with Patrick, the former went back to their table and told them that he would be going to Salvador's place to patch up the differences between Patrick and Salvador; he followed Jonjon and saw him talking to Salvador in a house at Geronimo St.; Salvador went out of the house- and proceeded to San Diego Compound, while Jonjon was left behind; Salvador's brother, Toto, followed Salvador upon their cousin's instruction, and he was about seven (7) meters away from Salvador; upon his arrival at San Diego Compound, Patrick's group was already chasing Salvador; he did not see how the trouble started; Patrick's group ran passed him, brushed him aside (ako ay napatabi) and Dondon kept him at bay for a few seconds by poking a knife at him; Patrick's group prevented everyone from rescuing Salvador; Patrick's group also chased his four (4) companions; he told Dondon that he was just trying to pacify them and Dondon ran to rejoin Patrick's group and stabbed Salvador; accused-appellant Gavino and accused Oliver and Alejandria were among those who caught up, surrounded and stabbed Salvador with knives while the latter was in a stooping (nakayuko) position and later fell to the ground; he was among those who helped Salvador when the assailants scampered away twenty (20) minutes later; Salvador was carried by them up to the plaza and Salvador's brother rushed him to the Pasay City General Hospital; he was not able to talk to Salvador anymore; and, later the police arrived at the scene of the crime.

Milagros R. Salvador, mother of the victim Salvador, testified<sup>[9]</sup> that: Salvador was her third child; she saw Salvador sprawled to the ground when she went out of their house; Salvador was twenty (20) years of age and was a sophomore<sup>[10]</sup> student at the Philippine College of Criminology at the time of his death; she paid P12, 247.74 for Salvador's tuition at PCCR; she gave Salvador a daily allowance of P150.00 for his school expenses; Salvador was a good son and a brother; "gusto po

niyang iahon ako sa hirap pero pinatay lang siya"; Salvador seldom went out of the house; the untimely demise of Salvador is painful for he was her only hope and she could not help but cry when she sees his garments; her family incurred<sup>[11]</sup> around P40,000.00 for Salvador's wake, P45,000.00<sup>[12]</sup> for his coffin, P16,000.00<sup>[13]</sup> for his internet (pagpapahukay) and P1,200.00 for the epitaph<sup>[14]</sup>, P10,000.00 as acceptance fee and P1,500.00 as per appearance fee, and P10,000.00 for the ten (10) jeepneys which were hired to transport the relatives and friends of Salvador from Pasay City to Manila Memorial Park for Salvador's interment.

PO2 Carlo Daet testified<sup>[15]</sup> that: he is stationed at Precinct 7 of the Pasay City Police Office in Malibay, Pasay, City; on July 30, 2005, at 12:35 o'clock in the morning, Bernardo Tolentino ("Tolentino" for brevity) called their office and sought police assistance with regard to the ensuing trouble at Geronimo St., Pasay City; Tolentino informed them that the persons involved in the trouble were armed with deadly weapons; they were dispatched by their right shift supervisor to the scene of the incident; he and his companions were cruising along C. Jose St., on board mobile patrol car 54122, when they chanced upon and immediately chased a group of individuals who were running towards the direction of Maricaban; some of the individuals in the group were carrying bladed weapons; the armed group scampered to different directions upon noticing their presence; he cornered and arrested accused-appellant Gavino who was hiding under a parked jeepney along Vitales St., and brought the latter to their office; accused Olivar and Alejandria were arrested by his companions SPO1 Dugan and SPO1 Marquez; upon their arrest, accused-appellant Gavino and accused Olivar and Alejandria were apprised to their constitutional rights, he was present when Adam Taroy, Mark Abool, Jenrick Sayo, John Carlo Sayo and Paulo Intad identified and pointed to accused-appellant Gavino and accused Oliver and Alejandria, at the police station, as the persons who ganged up on Salvador; and, they referred the matter to the Criminal Investigation Division.

The testimony of SPO1 Christian Marquez corroborated the testimonies of the other policemen who responded to a call from Bernardo Tolentino seeking assistance relative to a trouble along Geronimo St., Pasay City, as well as their response, such as forming a team to respond, confiscation of the deadly weapons from the individuals who were seen running away and the arrest of accused-appellant Gavino, accused Alejandria and Olivar.

Dr. Rolando C. Victoria, National Bureau of investigation Medico-Legal Officer, testified<sup>[16]</sup> that: on July 30, 2005, he conducted a post-mortem examination<sup>[17]</sup> on the victim Salvador's body; Salvador sustained two (2) stab wounds on the chest, nine (9) stab wounds at the back and one (1) stab wound on the thigh; Salvador sustained six (6) fatal wounds and six (6) non-fatal wounds; the fatal stab wounds on the front and back of Salvador's chest affected his left and right lungs and heart; contused abrasion and breaks in the skin were present at the left hand and right upper extremity of Salvador; contused abrasion could be caused by contact with hard rough object; the assailant could either be facing behind or at the side of the victim as long as the victim was within the assailant's reach; the stab wounds could be inflicted by either one or more assailants for as long as the weapons used have the same characteristics; the assailant used a sharp pointed sharp edged instrument with the widest width of not more than three (3) centimeters; the weapon used could be a fan knife (balisong) or kitchen knife but not an ice pick; the wounds

measured two and a half (2.5) up to three (3) centimeters wide; the stab wounds could not be possibly inflicted at the time Salvador was already dead because the stab wounds could be only inflicted within a minute and Salvador could have died twenty (20) up to thirty (30) minutes later; Salvador sustained an incise wound on the occipital area at the back of the head caused by a bladed weapon; Salvador did not sustain a wound on the neck; he did not find any stab wound on Salvador's shoulder, face and head; blood does not necessarily spurt when a person is stabbed; the blood fills in the cavity housing the heart and the lungs before it oozes out of the root; the spurting of blood would depend upon the blood vessel that was hit; the twelve (12) stab wounds inflicted on Salvador could possibly stain the assailant's hands; and it is possible that the back of Salvador was hit while on a lying position.

PO3 Alberto Sombilon testified<sup>[18]</sup> that: on July 30, 2005, the elements of the Pasay City Police Precinct 7 turned over to him the persons of accused-appellant Gavino and accused Olivar and Alejandria, a fan knife and a Philips screwdriver confiscated from the accused; the screwdriver confiscated from accused Alejandria was marked "VNA"; accused-appellant Gavino and accused Olivar and Alejandria refused to sign the booking sheet and arrest report<sup>[19]</sup> prepared and executed by him; he took down the sworn statements of witnesses Benhero and Villanueva and reduced them into writing; Benhero mentioned to him that two (2) persons bodily lifted Salvador and told him to include it in his statement; he admits that he omitted that portion of witness Benhero's statement in the course of the preparation of the sworn statement, but he did not intent to extend favor to any of the accused because he does not personally know them.

On the other hand, Joan Villanueva, accused Olivar, accused Alejandria, accused-appellant Gavino and Jessa Villanueva were presented as defense witnesses.

Joan Villanueva testified<sup>[20]</sup> that: Ruby Ana, Jessa and Roberto Villanueva are her cousins; she invited her friend, accused Olivar, to Ruby Ana's birthday party; she had known Salvador since childhood; accused-appellant Gavino and accused Olivar and Alejandria had no misunderstanding or quarrel with the victim Salvador because the former did not know the latter; Salvador arrived at the party at 12:00 o'clock midnight with his brother Toto and another companion, Paulo, looking for Patrick while they were drinking and having fun; Salvador and Patrick did not know each other; Roberto approached and stood near Salvador but did not talk to the latter; Dondon also approached Salvador and asked the latter not to create trouble since they were just newcomers in the place; Salvador shouted invectives at Dondon and told him that he should not meddle with what was happening (putang ina mo, gago ka wala kang pakialam); when Patrick went out of the house, Salvador asked him if he was Patrick; she heard no reply from Patrick; somebody threw stones from behind as she and Jessa tried to appease Salvador and asked the latter not to barge in, and after Dondon hit Roberto on the face; Dondon later on apologized; accused-appellant Gavino and accused Olivar and Alejandria were still eating during the confrontation between her and Salvador; she told her brother Jaime Villanueva to go inside the house while she was at the side of her aunt's stone; the guests ran away from the compound going towards Geronimo St. during the stone throwing incident; a stone hit accused-appellant Gavino's head causing him to faint and fell to the ground; she saw Salvador bloodied and prostrated on the street near Salvador's house while she, Ruby Ana and Jessa were helping accused-appellant Gavino leave the compound until they reached Geronimo St.; and, no one among them was