

## THIRD DIVISION

[ G.R. No. 241901, November 25, 2020 ]

**ERWIN PASCUAL Y FRANCISO AND WILBERT SARMIENTO Y MUÑOZ A.K.A. "BOYET",\* PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**INTING, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated January 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 35927. The assailed CA Decision affirmed the Joint Decision<sup>[3]</sup> dated July 29, 2013 Branch 41, Regional Trial Court (RTC), Manila finding Erwin Pascual y Francisco (Pascual) guilty beyond reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621; and further finding both Pascual and Wilbert Sarmiento y Muñoz a.k.a "Boyet" (Sarmiento) guilty beyond reasonable doubt of the crime of Frustrated Homicide in Criminal Case No. 98-163622.

#### *The Antecedents*

On February 24, 1998, Pascual and Sarmiento (collectively, petitioners), together with their co-accused *a quo* Joel Ceasico, Jr. (Ceasico) and Bartolome Glicerio, Jr. (Glicerio), were charged under two separate Informations:<sup>[4]</sup> (1) Murder for the killing of Ernanie Rabang y Laquindanum (Rabang); and (2) Frustrated Murder for inflicting fatal injuries on the person of Joel Deang y Sese (Deang), to wit:

Criminal Case Nos. 98-163621 (Murder)

"That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill, treachery and evident premeditation, attack, assault and use personal violence upon the person of ERNANIE RABANG y LAQUINDANUM, by then and there stabbing the latter on the chest with a bladed instrument, thereby inflicting upon said ERNANIE RABANG y LAQUINDANUM stab wound which is the direct and immediate cause of his death thereafter.

Contrary to law."<sup>[5]</sup>

Criminal Case Nos. 98-163622 (Frustrated Murder)

"That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with abuse of superior strength, attack, assault and use

personal violence upon the person of JOEL DEANG y SESE, by then and there mauling and stabbing the latter on the different parts of the body with knives, ice pick and broken bottles, thereby inflicting upon said JOEL DEANG y SESE stab wounds which are necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to JOEL DEANG y SESE which prevented his death thereafter.

Contrary to law."<sup>[6]</sup>

On April 1, 1998, a warrant of arrest was issued against all four accused. Despite the warrant, all four remained at large. Thus, on April 5, 1999, the RTC issued an order archiving the cases subject to revival upon the arrest of the accused. Meanwhile, an alias warrant of arrest was issued against them. Thereafter, the prosecution filed a motion to set the cases for arraignment after the motion for reconsideration of the accused was denied. After the setting of the arraignment, the RTC again sent the cases to the archives as all accused still remained at large.<sup>[7]</sup>

On August 30, 2000, Pascual filed a motion for voluntary surrender; hence, he was committed to the Manila City Jail on the same day. On his arraignment on September 6, 2000, he pleaded "not guilty" to both charges<sup>[8]</sup>

On July 29, 2008, Sarmiento was arrested and committed to the Manila City Jail. On his arraignment on August 24, 2008, he entered a plea of "not guilty" to the charges.<sup>[9]</sup>

In the course of the prosecution's presentation of evidence, the following incidents occurred: (1) Pascual filed a Petition for Bail<sup>[10]</sup> on December 7, 2000 which the RTC granted on April 24, 2001;<sup>[11]</sup> and (2) Sarmiento filed a Petition for Bail<sup>[12]</sup> on December 8, 2008 which the RTC deemed as mooted after it dismissed on September 20, 2010 the case for Murder in so far as Sarmiento was concerned for failure of the prosecution to prosecute the case.<sup>[13]</sup>

Glicerio and Ceasico remained at large.<sup>[14]</sup>

#### *Version of the Prosecution*

##### *The murder of Rabang.*

The prosecution alleged that on October 29, 1996 at around 2:00 a.m., Richard Apostol (Apostol) was on his way to the house of his friend, Alan Palad (Palad), located along Zamora Street, Tondo, Manila. While walking along Meajorada Street near Sande Street, Apostol met Rabang, who asked him if he saw Palad. Apostol then told Rabang to go with him instead as he was going to Palad's house. When they reached the corner of Sande and Meajorada Streets, they met another friend named Rodel Robles (Robles). After an exchange of pleasantries, Apostol left Robles and Rabang to call Palad.<sup>[15]</sup>

Thereafter, Apostol, who was already with Palad, returned to Sande Street where Rabang and Robles were waiting. While the four were conversing among themselves, Apostol noticed four men coming from Perla Street heading their way.

Three of the four men crossed Sande Street, while the other one remained on the other side of the street. One of the three men who crossed the street walked to the opposite side to urinate. The one who urinated was later identified as Glicerio and the other three were identified as petitioners and Ceasico.<sup>[16]</sup>

After the group of Pascual approached the group of Apostol, Glicerio suddenly asked Apostol's group: "*ano iyon?*" to which Rabang responded, "*anong ano rin iyon?*" Pascual replied, "*tang-ina mo, ang yabang mo ha!*" and suddenly hit Rabang. Apostol backed off due to the ensuing altercation. Pascual chased Apostol leaving Rabang and Glicerio behind. As Apostol sensed that Pascual had a bladed weapon, he picked up a piece of wood from a nearby backyard. When Pascual saw that Apostol was holding a wood, he withdrew and returned to the spot where Rabang and Glicerio were standing.<sup>[17]</sup>

On the other hand, Sarmiento ran after Palad, who was then able to seek refuge in his house and asked help from his brother. While at his house, Palad saw petitioners and Ceasico proceed to the place where Rabang and Glicerio were having an altercation. From his window, Palad saw petitioners, Ceasico, and Glicerio (petitioners' group) surround Rabang. When Rabang was cornered, petitioners aided Glicerio in stabbing Rabang. Rabang desperately parried all the blows delivered by petitioners' group, but he was unsuccessful.<sup>[18]</sup>

Apostol, who was near the crime scene, threw a piece of wood towards petitioners' group to distract them. As a result, Rabang was able to move away from petitioners' group, walked towards Apostol, and uttered, "*may tama ako.*" At that point, Apostol saw Rabang on the verge of death. Rabang's relatives and neighbors rushed him to the hospital. Unfortunately, Rabang was pronounced dead on arrival.<sup>[19]</sup>

Apparently, petitioners' group was not yet done wreaking havoc in their community after the stabbing incident. They were seen kicking an old man who was then riding on his bicycle along Sande Street which prompted a Security Guard nearby to fire a warning shot to divert their attention. Petitioners' group walked casually towards Pavia Street to Divisoria.<sup>[20]</sup>

### *The inflicting of fatal wounds on the person of Deang.*

On the same day of October 29, 1996, Deang, who was a *barangay tanod* of Divisoria, alighted from a jeepney along Pavia Street when he saw petitioners' group mauling an old man at a nearby bakery. Deang shouted at them. This prompted petitioners' group to proceed to the corner across the street. This time, they turned their ire on Christopher Lising (Christopher), a 15-year-old son of Norma Lising (Norma), who was selling *puto-bumbong* in the area. Petitioners' group surrounded Christopher and threatened to stab him, but Norma protected her son. Deang intervened, introduced himself as a *barangay tanod*, and told petitioners' group to stop making trouble. Instead of heeding Deang's warning, Pascual swiftly punched Deang's back causing Deang to run towards the *barangay* hall to ask for help. As he could not find anyone to assist him, Deang picked up a bamboo stick and returned to Norma's stall. When Deang confronted petitioners' group again, they surrounded him and threatened to stab him with their knives. Deang ran towards Moriones Street, but petitioners' group chased him and eventually caught up with him.<sup>[21]</sup>

Deang tripped on a drainage pipe and fell to the ground. Petitioners' group surrounded him and began hitting him simultaneously while he was lying on the ground. Pascual stabbed Deang with a knife; Sarmiento grabbed Deang's bamboo stick and struck him several times on the head; Ceasico hit Deang's face with a broken bottle; and Glicerio attacked Deang with an ice pick. Deang tried to parry the attacks, but to no avail. Due to the severity of his injuries, Deang lost consciousness. Later, he was taken to a hospital where he survived the fatal wounds and injuries inflicted on him.<sup>[22]</sup>

Dr. Policarpio Santos, Jr., the attending physician, noted that if it were not for the timely medical intervention, Deang would have died from his injuries.<sup>[23]</sup>

#### *Version of the Defense*

Petitioners raised self-defense and denied the allegations hurled against them.

The testimony of Pascual:

Pascual narrated that on October 29, 1996, he invited his friends to go to a wake in Caloocan. Sarmiento, Ceasico, and Glicerio joined him. They took a jeepney ride, but did not make it to Caloocan because Glicerio asked them instead to go to his girlfriend's house in Delpan. Before reaching Delpan, they alighted from the jeepney on Moriones Street to take another ride to Divisoria. While inside the second jeepney, Glicerio asked its driver to stop along Juan Luna Street or Sande Street, because he wanted to urinate. While Glicerio was urinating, a man approached him.

Petitioners, and Ceasico went near Glicerio and heard the latter arguing with the man. Pascual pleaded with the man to pardon them because they were just passing through, but the man suddenly punched him. Another man who was holding a piece of wood hit Glicerio. When the man was about to hit him also, he ran towards Moriones Street. When he noticed that he was not being followed by anybody, he returned to his friends.

Thereafter, Deang arrived and introduced himself as the *barangay* chairman and told them to go home. Sarmiento told the *barangay* chairman that he has a high school classmate who lives in the vicinity. Then, they proceeded to Sarmiento's classmate, but no one came out when they knocked on the door. Thus, they decided to go home.

While passing along Moriones Street, they saw two men; one of them shouted, "*ayun yung mga tarantado!*". Pascual recognized one of them as the man who introduced himself as the *barangay* chairman of the area. Suddenly, the *barangay* chairman attacked them, while the other men threw bottles at them. His friends wrestled with the *barangay* chairman, while he just stood and watched them. After the incident, they all went home.<sup>[24]</sup>

Sarmiento corroborated the statements of Pascual. He likewise denied the allegations against them.

#### *The Ruling of the RTC*

In its Decision dated July 29, 2013, the RTC found Pascual guilty beyond reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621 and sentenced him to suffer the indeterminate penalty of four (4) years, two (2)

months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. The RTC further ordered Pascual to pay the heirs of Rabang P50,000.00 as civil indemnity, P100,000.00 as actual damages, P25,000.00 as moral damages, and P2,004,000.00 as compensation for loss of earning capacity.

The RTC likewise found both petitioners guilty beyond reasonable doubt of Frustrated Homicide in Criminal Case No. 98-163622 and sentenced them to four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. It ordered both to jointly pay Deang the sum of P400,000.00 as temperate damages and P25,000.00 each as moral damages.

#### *The Ruling of the CA*

On January 1 2018, the CA affirmed petitioners' conviction with modifications as to the monetary awards.

In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang P50,000.00 as civil indemnity, P100,000.00 as actual damages, P50,000.00 as moral damages, and P2,004,000.00 representing loss of earning capacity. In Criminal Case No. 98-163622, the CA ordered both petitioners to pay Deang P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P25,000.00 as temperate damages. The CA likewise imposed interest at the rate of 6% *per annum* to all monetary awards from the date of the finality of the decision until fully paid.

Hence, the instant petition.

Petitioners raise the following issues:

#### I.

WHETHER OR NOT THE [CA] GRAVELY ERRED IN FINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED DESPITE PROSECUTION'S FAILURE TO PROVE PETITIONER [PASCUAL'S] PARTICIPATION IN HOMICIDE AND FRUSTRATED HOMICIDE.

#### II.

WHETHER OR NOT THE [CA] GRAVELY ERRED IN FINDING PETITIONERS GUILTY OF THE CRIME CHARGED DESPITE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF PETITIONER [SARMIENTO].<sup>[25]</sup>

#### *The Ruling of the Court*

The petition has no merit.

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.<sup>[26]</sup> Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.<sup>[27]</sup> The reason is quite simple: the