

FIRST DIVISION

[G.R. No. 130490, June 20, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VENANCIO FRANCISCO Y BERNALDO ALIAS "MABINI" AND
ERNIE MANSAMAD ALIAS "NONO", ACCUSED-APPELLANTS.**

D E C I S I O N

KAPUNAN, J.:

The instant case was forwarded to this Court by the Court of Appeals pursuant to its Decision, dated 29 July 1997,^[1] upon finding that the proper penalty imposable on accused-appellants Venancio Francisco and Ernie Mansamad in Criminal Case No. C-4567 for the crime of murder is *reclusion perpetua*. This Court accordingly accepted the appeal of accused-appellants in its Resolution, dated 1 December 1997.

Accused-appellants were charged with and convicted for the crimes of murder and attempted murder by the Regional Trial Court, Branch 40 of Calapan, Oriental Mindoro. The Information filed against accused-appellants for murder, docketed as Criminal Case No. C-4567, reads:

That on or about the 21st day of April, 1994, at around 1:00 o'clock in the morning, in Barangay Evangelista, Municipality of Naujan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and taking advantage of the darkness of the night, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault, stab and hack with a [sic] sharp-pointed and sharp-bladed instruments one DANILO MENDOZA thereby inflicting upon the latter several mortal wounds on the different parts of his body, as a result thereof, the said DANILO MENDOZA died instantly.

That in the commission of the aforecited offense, the qualifying circumstances of treachery and known premeditation were attendant.

Contrary to Article 248 of the Revised Penal Code.^[2]

The Information against accused-appellants for attempted murder, docketed as Criminal Case No. C-4588, reads:

That on or about the 21st day of April, 1994, at around 1:00 o'clock in the morning, in Barangay Evangelista, Municipality of Naujan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and taking advantage of the darkness of the night, did then and there willfully,

unlawfully and feloniously attack, assault and wound with a [sic] sharp-pointed and sharp-bladed instruments one JOSEFINA MONTOYA-MENDOZA thus commencing the commission of the crime of Murder directly by overt acts, and did not perform all the acts of execution which should produce the said felony by reason of some cause or accident other than their own spontaneous desistance, that is, the said accused ran away after killing [the] victim's husband, DANILO MENDOZA, who was also being attacked and assaulted at that time.

Contrary to Articles 248, 6 and 51 of the Revised Penal Code.^[3]

At their arraignment, accused-appellants pleaded "not guilty" to both charges. Upon agreement of the prosecution and defense, the two (2) cases were jointly tried as the criminal charges against accused-appellants arose out of the same incident.

The prosecution presented Josefina Montoya-Mendoza, Supremo Macatangay and Baldomero Gonzales as witnesses. Josefina Montoya-Mendoza, widow of the victim Danilo Mendoza, testified^[4] that on 21 April 1994, at around one o'clock in the morning, she and her husband Danilo, together with their four-year old son Rico, were on their way home. They just came from Barangay Evangelista, Naujan, Oriental Mindoro, which was then celebrating its barangay fiesta.

While they were walking along the road, husband and wife were conversing with each other. Accused-appellant Francisco suddenly appeared in front of them shouting "*putang ina mo, patay kayo sa amin.*" He immediately stabbed Danilo in his belly. Reeling from the attack, Danilo leaned and embraced accused-appellant Francisco who then stabbed the victim's back several times. While stabbing the victim, accused-appellant asked his companion, accused-appellant Mansamad, for the bolo muttering, "Ernie, *gulok!*" Accused-appellant Mansamad then hacked the victim with the bolo.

Josefina tried to pull away her husband from accused-appellants. She was, however, unable to do so because accused-appellant Francisco likewise stabbed her several times. She sustained three (3) stab wounds in her stomach, leg and at her back. The knife or "*balisong*" used by accused-appellant Francisco to stab both husband and wife was recovered by Josefina as it was left in her leg. Fortunately, their son, Rico, was unharmed. Josefina readily recognized accused-appellants as the assailants because there was sufficient light from the illumination of the moon. Moreover, she was able to beam her flashlight at accused-appellants' faces.

After accused-appellants had fled, Baldomero Gonzales, ex-barangay captain of Evangelista, happened to pass by the scene of the crime. He narrated^[5] that he was on his way home when he saw Danilo lying on the road lifeless. He also saw Josefina, who was wounded, and their son. Josefina asked for Gonzales' help who forthwith went to the police authorities in Barangay Aurora. He came back with the Detachment Commander and four (4) members of the CAFGU. They immediately conducted an investigation. Josefina was brought to the provincial hospital while Danilo was taken to the Alcancia Funeral Parlor in Barcenaga, Naujan, where his body was autopsied.

When it was his turn to take the witness stand, Supremo Macatangay substantially

corroborated the testimony of Josefina.^[6] On that fateful day, at around one o'clock in the morning, Macatangay was also on his way home after attending the festivities in Barangay Evangelista. On the road, he noticed that the people ahead of him were scampering away. He saw Danilo being ganged up by two men. One of them was stabbing Danilo with a "*balisong*". The other hacked him with a bolo. Macatangay also saw Josefina desperately trying to separate her husband from his assailants.

Macatangay recognized accused-appellants as the assailants because when the incident transpired, he was only three (3) meters away from them. He was able to see their faces by pointing his flashlight at them. After witnessing the assault on Danilo, Macatangay hurriedly left the place for fear that accused-appellants would turn their attention on him.

The testimonies of Drs. Angelita Legaspi and Marlon dela Rosa were dispensed with after accused-appellants' counsel admitted the authenticity of their autopsy report^[7] and medical certificate,^[8] respectively. The postmortem findings revealed that Danilo died of "hypovolemic shock; blood and chemical peritonitis secondary to penetrating perforating stabbed wound of the abdomen."^[9] He sustained the following injuries:

EXTERNAL FINDINGS:

Head and Neck: No pertinent findings.

Chest: (Posterior) 1.) Stabbed wound 2.5 Cm long (Superficial-subcutaneous) over the (L) lateral border of left scapular area directed medially and inferiorly towards lesion number 2.

2.) Stabbed wound 1.5 Cm long (Point of exit) - left infra-scapular area.

3.) Stabbed wound 2.5 Cm long 10 Cm deep directed slightly upwards and anteriorly (L) posterior lumbar area penetrating abdomen.

4.) Stabbed wound 2 cm. long and 1 Cm deep (L) inguinal area.

5.) Incised wound 5 cm, long and 1 cm. Deep medial area of left ankle joint.

Abdomen and Extremities has [sic] no pertinent findings.

INTERNAL FINDINGS:

Head and Neck: No pertinent findings.

Chest: No pertinent findings.

Abdomen: Penetrating stabbed wound (L) lobe of the liver inferior or border. Penetrating perforating stabbed wound on the posterior border of the body of the stomach. More than 1 & ½ liter clotted and non-clotted sanguinous material with spillage of food particles on the peritoneal

cavity.

Extremities: No pertinent findings.^[10]

The medical certificate of Josefina, on the other hand, showed that she sustained the following injuries:

1. Incised wound, 2 cm. left leg.
2. Incised wound, 5 cm. left iliac region.
3. Incised wound, 5 cm. left lumbar area.
4. x x x.^[11]

For its part, the defense presented as witnesses accused-appellant Francisco, Alberto Gonzales and Dr. Marlon dela Rosa. Accused-appellant Mansamad did not take the witness stand. Accused-appellant's version of what transpired on 21 April 1994 at around one o'clock in the morning is as follows:^[12] He was walking on his way home from the barangay fiesta in Evangelista, Naujan. Out of nowhere, Danilo appeared with a bolo and hacked him on the left shoulder. When accused-appellant turned his head, Danilo hacked him on the right shoulder. Thereafter, Danilo and accused-appellant Francisco grappled for the possession of the bolo. As a result thereof, the bolo was thrown away. Josefina then picked it up and hacked accused-appellant Francisco on his head.

Accused-appellant Francisco managed to run away from Danilo and Josefina. After about ten (10) minutes, he met accused-appellant Mansamad and Alberto Gonzales who brought him to the hospital. Accused-appellant Francisco admitted to killing Danilo but claimed that he did so only as an act of self-defense.

Accused-appellant Francisco intimated that prior to the incident, he and Danilo were not in good terms with each other. Three years ago, Danilo stoned accused-appellant Francisco's house and hit him on the left brow.

There was also a time when the victim and his son challenged accused-appellant Francisco to a fight but the latter ignored them. Their serious quarrel, however, occurred when accused-appellant Francisco drained the excess water in his land which flooded the land of Danilo and Josefina. To prevent their house from being flooded as well, the Mendozas closed the culvert. The closure of the culvert caused the water to flood accused-appellant Francisco's one-hectare land. Consequently, most of the *palay* on said lot was destroyed. He used to harvest forty (40) cavans of *palay* but because of the flood, he was able to harvest only twelve (12) cavans.

Alberto Gonzales testified^[13] that he was walking home with accused-appellant Mansamad on 21 April 1994 at around one o'clock in the morning. He saw Josefina hack accused-appellant Francisco. She hit him on his head and on his back. He (Gonzales), accused-appellant Mansamad and one Ireneo Cabales brought accused-appellant Francisco to the Oriental Mindoro Provincial Hospital. He averred that they did not report the matter to the police authorities.

Dr. Marlon dela Rosa appeared as a witness for the defense.^[14] He attested to the authenticity and genuineness of the medical certificate he issued in connection with

the wounds inflicted on Josefina. A sharp pointed instrument was used to inflict these wounds. As stated in the medical certificate, wound no. 2 (Incised wound, 5 cm. left iliac region) was inflicted on the left side of Josefina's body below her waist. Wound no. 3 (Incised wound, 5 cm. left lumbar area) was inflicted on the same side of her body but above the waist. The location of these wounds showed that the assailant could have been in front of Josefina. Upon the other hand, the assailant could have been at the back of Josefina when wound no. 1 (Incised wound, 2 cm. left leg) was inflicted on her.

After trial, the lower court rendered judgment the dispositive portion of which reads:

In Crim. Case No. C-4567

WHEREFORE, premises considered, this Court finds both accused guilty beyond reasonable doubt of the crime of Murder punishable under Art. 248 of the Revised Penal Code in consonance with Sec. 21 of R.A. 7659. Applying the provisions of the Indeterminate Sentence Law, this Court hereby sentences both accused to suffer imprisonment from 17 years, 4 months and 1 day of Reclusion Temporal Maximum as minimum to 33 years & 4 months of Reclusion Perpetua Medium as maximum. By way of indemnity, both accused shall pay the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00). The accused, who are both under preventive imprisonment, shall be credited in the service of their sentences consisting of deprivation of liberty, with the full time of imprisonment, subject to the conditions prescribed in Article 29 of the Revised Penal Code.

In Crim. Case No. C-4588

WHEREFORE, premises considered, this Court finds the accused Venancio Francisco guilty beyond reasonable doubt of the crime of Attempted Homicide, punishable under Art. 249 of the Revised Penal Code. Applying the Indeterminate Sentence Law, this court hereby sentences him to suffer imprisonment from 6 months of *arresto mayor* as minimum to 6 years of *prision correccional* as maximum.

Further, this Court hereby declares accused Ernie Mansamad innocent of the crime charged herein.

SO ORDERED.^[15]

On appeal, the CA affirmed the conviction of accused-appellants for the crime of murder in Criminal Case No. C-4567 but modified the penalty imposed therein to *reclusion perpetua*. In Criminal Case No. C-4588, the CA absolved accused-appellants of the crime of attempted murder. The CA held therein that only accused-appellant Francisco is liable for slight physical injuries, defined and penalized under Article 266 of the Revised Penal Code. The dispositive portion of the CA Decision reads:

WHEREFORE, the appealed decision is hereby modified in that:

(A.) In Criminal Case No. C-4588, Venancio Francisco y Bernaldo is