

## EN BANC

[ G.R. No. 116239, November 29, 2000 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELPIDIO MERCADO Y HERNANDO AND AURELIO ACEBRON Y  
ADORA, ACCUSED-APPELLANTS.**

### D E C I S I O N

#### PER CURIAM:

For automatic review by the court is the decision,<sup>[1]</sup> dated July 22, 1994, of the Regional Trial Court, Branch 156, Pasig, convicting accused-appellants SPO2 Elpidio Mercado y Hernando and SPO1 Aurelio Acebron y Adora, of the Philippine National Police of Tanay, Rizal, of kidnapping with murder and sentencing them as follows:

"WHEREFORE, in the light of the foregoing discussions and finding the guilt of both accused to be proven beyond reasonable doubt, while the undersigned Presiding Judge does not believe in the imposition of the death penalty as a form of punishment, nevertheless, in obedience to the law which is his duty to uphold, the Court hereby sentences both accused, ELPIDIO MERCADO y HERNANDO and AURELIO ACEBRON y ADORA, to death, to proportionately indemnify the heirs of the deceased Richard Buama in the sum of fifty thousand pesos (P50,000.00); to pay the sum of fifty two thousand six hundred eighty pesos (P52,680.00) (Exhibit 'J', 'J-1' to 'J-7') as expenses incident to the burial; and the further sum of one hundred thousand pesos (P100,000.00) by way of moral and exemplary damages, all without subsidiary imprisonment in case of insolvency and to pay the costs.

"Let a Commitment Order be issued for the transfer of both accused from the Pasig Municipal Jail to the Bureau of Corrections, Muntinlupa, Metro Manila.

"Let the records of this case be forwarded immediately to the Supreme Court for mandatory review.

"SO ORDERED."<sup>[2]</sup>

The information against accused-appellants charged-

"That on or about the 9th day of February, 1994, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being them members of the PNP, conspiring and confederating together and mutually helping and aiding one another, did then and there wilfully, unlawfully, and feloniously kidnap one Richard Buama, a 17 year old minor and boarded him in a

Red car bearing License plate No. CGZ 835 against his will thus depriving him of his freedom of liberty (sic), brought him to Tanay, Rizal in a safe house and there subjected him to extreme/brutal physical violence, and thereafter with abuse of superior strength and evident premeditation hacked and bludgeoned/clubbed said Richard Buama who thereby sustained mortal wounds which directly caused his death.

“Contrary to law.”<sup>[3]</sup>

Because of the gravity of the charge, no bail was recommended for the provisional release of accused-appellants.

When arraigned on March 8, 1994, both accused-appellants, assisted by counsel,<sup>[4]</sup> pleaded not guilty to the crime charged. During the trial, the prosecution presented the following witnesses: Florencio Villareal, Eric Ona, SPO2 Virgilio Buama, Maria Buama, Lourdes Vergara, SPO2 Delfin Gruta, SPO2 James Mabalot, Jesus Nieves Vergara, and Lupito Buama. Their testimonies are as follows:

Twelve-year-old **Florencio Villareal** testified that at around 9 o’clock in the evening of February 9, 1994, he and Richard Buama were picked up by accused-appellant Elpidio Mercado near Mercado’s house in Sto. Tomas, Bukid, Pasig, Metro Manila. Mercado arrived in a car, together with Eric Ona. Mercado suspected Florencio Villareal and Richard Buama of being the ones who had broken into his store and stolen money. Florencio’s friend, Rex Bugayong, was able to run from Mercado. Florencio and Richard were pushed into Mercado’s car. Florencio said Mercado poked a gun at Richard which made the latter say, “Sasama na lang po ako. Wag ninyo lang po akong sasaktan.” (“I will go with you. Just don’t hurt me.”)

Mercado drove the car to Tanay, Rizal. Florencio and Richard were seated at the back, behind Mercado and Eric, respectively. Upon reaching Tanay at around 11 o’clock in the evening Mercado took the three of them (Florencio, Richard, and Eric) to an apartment. Florencio was led inside the apartment while Richard was held outside by Mercado. When Florencio looked through the window, he saw Mercado slap and box Richard. Then he was brought inside. Mercado later went upstairs. According to Florencio, Richard asked if they could leave the place as he held his stomach in pain, but Florencio replied that the door was padlocked. Eventually, Mercado came down with Acebron.

Richard was made to sit on the floor in the kitchen of the apartment. Mercado then told Aceborn that he had brought him a present (“pasalubong”) and that they were going to kill two boys – a small one and a big one who was dark. In reply, Aceborn said, “Pare, huwag yung maliit dahil kasing hawig ng anak ko, saka magbe-birthday pa kinabukasan.” (“Buddy, not the small one because he resembles my son who will celebrate his birthday tomorrow.”) As the conversation was made within his hearing distance, Richard became so scared that he could not answer when asked by Acebron about a girl’s picture found in his wallet. This angered Acebron who boxed Richard’s in the stomach.

Mercado thereafter ordered Richard to take off all his clothes and lie face down on the kitchen floor. Mercado asked his aide Jeff to get a rope. Jeff brought a piece of rattan rope and tied Richard’s hands, while Mercado tied Richard’s feet. This happened at about 11:30 in the evening. Mercado also ordered Jeff to get rags with

which to blindfold and gag Richard and then asked Acebron to get a bolo or a big knife. After getting a bolo, Acebron and Jeff put Richard into the luggage compartment of Mercado's car. They then drove away, leaving behind Florencio and Eric in the apartment. After two hours, Mercado and Acebron came back. Florencio saw Acebron washing the bloodstains off the bolo. He asked Mercado where Richard was, to which Mercado replied, "Wala na. Pinatahimik ko na." ("Gone. I have already silenced him.")

Mercado and Acebron then took Eric and Florencio to a beerhouse in Tanay, Rizal and warned them not to tell anyone about the incident or they and their families would be killed. For fear of his life and that of his family, Florencio promised he would not. From the beerhouse, Mercado drove to Acebron's apartment, where the latter was dropped off, and then proceeded home to Pasig with Eric and Florencio.

Florencio waited three days for news about Richard. On February 12, 1994, with still no news about Richard, Florencio decided to talk to Richard's sister, a flower vendor whose store was located near the Pasig Church. Florencio told her to look for Richard in Tanay; he even promised to help them once they found him. Actually, it was Richard's brother, Virgilio Buama, a policeman, who found Richard's body in a morgue in Morong, Rizal. He was told by a funeral parlor employee that they had retrieved Richard's body near the boundary of Laguna. Florencio attended the wake of his friend in Sto. Tomas, Pasig.<sup>[5]</sup>

Virgilio Buama, a policeman and brother of Richard, last saw the latter on December 25, 1993 as Richard lived with their mother. On February 11, 1994, Virgilio learned from his sister, Maria Buama, that Richard had been picked up by a policeman on February 9, 1994. Hence, he went to see Florencio Villareal, who related to him how Richard had been kidnapped and killed by Mercado. Virgilio took Florencio to his house, and the following day, February 12, 1994, they went to the PNP headquarters at Hilltop, Taytay, Rizal, where Florencio was shown pictures by Maj. Patricio Abenido. Florencio picked out pictures of Mercado and Acebron and identified them as the culprits in the killing of Richard. Florencio gave a sworn statement concerning the incident to SPO2 James Mabalot at the PNP headquarters. Mercado was thereafter ordered to report to the Provincial Director, Col. Maralit, and it was there that Florencio pointed to Mercado as the person who had kidnapped and killed Richard. Acebron was likewise called, and he and Mercado were detained at the Rizal PNP Command Stockade.

Virgilio found Richard's body at the San Francisco Funeral Homes in Morong, Rizal. The owner/manager of the funeral parlor told him that Richard's body had been recovered in Mabitac, Laguna. Virgilio brought the remains of his brother home.<sup>[6]</sup>

Eric Matangghian Ona, 21 years old, was in the house of his neighbor Coco San Juan, in Sto. Tomas, Pasig, Metro Manila, at around 9 o'clock in the evening of February 9, 1994 when Mercado arrived and asked him to go with him, after Mercado had asked Eric's father for permission to do so. Along the way, Eric asked Mercado where they were going, and the latter said that they would look for "Bunso" (Florencio Villareal's nickname) who had stolen money from his video machines. Eric went with Mercado in the latter's car.

Florencio voluntarily went with them when Eric and Mercado saw him. Later, they

saw Richard and Rex Bugayong seated on the street gutter. When the two saw the car stop, Rex stood up and ran away. Mercado told Eric to go after Rex, but Eric refused to do so because Rex was his friend. Mercado was able to get Richard. Mercado placed his arm around Richard's shoulders while his other hand poked a gun at Richard's side. Eric heard Richard pleading with Mercado not to hurt him and saying that he would go with him. Eric knew that Mercado poked a gun at Richard because the latter was Mercado's suspect in the robbery of his store. He heard Mercado ask, "Eric, bakit naman pinasok nina Richard Buama at Florencio Villareal ang tindahan ko?" ("Eric, why did Richard Buama and Florencio Villareal break into my store?") He answered that he did not know anything about it. Then, Mercado told Richard and Florencio, "Nagkamali kayo ng tinalo. Isang napakalaking bangungot ang ginawa ninyo." ("You picked on the wrong guy. What you have done is a big nightmare.") According to Eric, they then boarded Mercado's car. Along the way, Eric asked Mercado where they were going, to which Mercado replied, "Sa Tanay. Have you been there?" Mercado asked Richard how many they were in the family, to which Richard replied that they were ten and that one of his brothers was "one of them." ("Kabaro ninyo.") Mercado also asked them when their birthdays were and whether they would like to have another birthday.

Upon reaching Tanay, they were brought to an apartment. There Mercado hit Richard on the face and told him to take off his clothes. Mercado then went upstairs to wake up Acebron. Acebron tried to talk to Richard, but the latter would not speak. This so angered Acebron that he boxed Richard hard on the stomach. Mercado then asked his aide named Jeff to tie Richard's hands and feet and to blindfold and gag him. This done, Acebron and Jeff loaded Richard into the luggage compartment of the car. Eric described Richard as pale ("maputla"). He had hematoma on his stomach and a swollen right cheek that was blackish in color. Eric saw Acebron get a bolo from the kitchen, a long one, "mapurol" ("dull and not sharp"), and with a black handle. Fearing for his safety, Eric kept quiet. Mercado warned them not to tell anybody about the incident; otherwise, they would be killed.

After two hours, Mercado and Acebron returned to the apartment without Richard. Eric saw the bolo with bloodstains. He asked Mercado, "Tata Pedi, where is Richard?" Mercado answered, "Wala na, pinagpahinga ko na." ("He is gone. I have laid him to rest.")

At around 4 o'clock in the morning, they went to the nearby "Space" beerhouse in Tanay, Rizal where they were made to drink. It was there that Eric heard Mercado and Acebron's conversation. Mercado asked, "Pare, ilan na ba ang napatay mo?" ("How many have you killed?") Acebron said, "Ako, labimpito." ("Me, 17.") Mercado countered, "Pare, ako dalawampu't lima." ("Buddy, me, 25.") Acebron said Richard was the 17th person he had killed while Mercado said that Richard was his 25th victim.

Thereafter, with Eric and Florencio in tow, Mercado brought Acebron back to the apartment and they then went home to Pasig in Mercado's car. They reached Sto. Tomas, Pasig at around 5:30 in the morning. Mercado again warned them: "Eric, Bunso, yung sinabi ko, ha." ("Eric, Bunso, don't forget what I told you.") Eric took that to mean that they should not tell anyone about the incident; otherwise, something bad would happen to them. Hence, hounded by fear, Eric did not report the matter to the police. He also did not know that Richard had been killed. He said if he had known that Richard was already dead when Mercado brought him home,

he would have reported the matter to police authorities.

Richard's brothers and sisters searched for him the following day, but Eric, fearing for his life, did not talk to them. It was only when he saw the wake being held for Richard at the Sto. Tomas Chapel that Eric realized that Richard was dead. After Richard's wake, Mercado told Eric to look for Florencio lest the latter talk about the incident. Eric did not obey Mercado. When Mercado asked him if he had seen Florencio, Eric said he had not. Thereafter, someone from the PNP headquarters in Hilltop picked him up. At the investigation conducted, Eric executed a sworn statement.<sup>[7]</sup>

The sisters Maria Buama and Lourdes Buama Vergara testified that Richard was informally adopted by the Buama family. When Richard was six months old, his mother gave him to Maria at the Pasig Immaculate Conception Church on June 18, 1977. They considered Richard as their own brother and a member of their family. It was Florencio who informed them that Mercado had picked him up and Richard on February 9, 1994. In the evening of February 11, 1994, upon learning about the incident, Maria and Lourdes went to Mercado's house cum store in Sto. Tomas, Pasig where Richard used to play video machines. Mercado's wife told them that Richard no longer came to the video store as he had done something wrong. Asked what it was that Richard had done, Mercado's wife failed to answer because someone inside the store said, "Hinahanap si Richard ng mga kapatid niya." When asked why his parents were not informed about Richard's alleged mischief, Mercado's wife allegedly replied it was because their store had not yet been emptied. ("Hindi pa raw nauubos ang tindahan nila.") Lourdes and Maria eventually found Richard's body in the early morning of February 12, 1994. For the wake the Buama family held for Richard at the Chapel of Sto. Tomas in Pasig and his funeral, they spent P52,680.00.<sup>[8]</sup>

SPO2 James Mabalot took the statements of Eric and Florencio. When the latter implicated Mercado and Acebron, SPO2 Mabalot took the two boys to the Administrative Building. From the pictures of almost all of the more than 100 members of the PNP Rizal, Eric and Florencio picked those of Mercado and Acebron. The statements that Eric and Florencio executed were signed in the presence of both SPO2 Mabalot and his superior. SPO2 Mabalot and his team thereafter went to a funeral parlor in Morong, Rizal where they were told that Richard's body had been taken to the PNP Crime Laboratory Services for autopsy. They learned that Richard's body had been found at the boundary of Rizal and Laguna.

On the way to that site, SPO2 Mabalot and his team dropped by the Tanay Police Station to coordinate with the Tanay police in the investigation of the case. When Florencio, who was with them, saw Mercado's car parked outside the police station, he recognized it as the one used in taking them from Pasig to Tanay. When SPO2 Mabalot and his team opened the car, they found blood spots on the backseat. The car was then taken to the PNP Headquarters in Hilltop, Taytay, Rizal for proper identification and examination of the bloodstains.

On orders of Col. Maralit, Mercado and Acebron were placed in detention. SPO2 Mabalot wanted Florencio and Eric to confront Mercado and Acebron, but Florencio and Eric were so scared to do so for fear that the accused might hurt them.<sup>[9]</sup>

**Dr. Jesusa Nieves Vergara**, Acting Chief of the Medico-legal Division of the PNP