

## FIRST DIVISION

[ CA-G.R. CR No. 35554, December 15, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY APOLINARIO Y BANDILLON, ACCUSED-APPELLANT.**

### D E C I S I O N

**BRUSELAS, JR. J.:**

Before us for review is a *Decision*<sup>[1]</sup> that found the accused-appellant Jerry Apolinario y Bandillon ("**Apolinario**" for brevity) guilty beyond reasonable doubt of the crime of Homicide, the decretal portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered convicting the accused Jerry Apolinario as principal in the crime of Homicide and he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum.

Accused is also ordered to pay the heirs of the victim, P 50,000.00 as civil indemnity, P 50,000.00 for moral damages and P 43,678.00 as actual damages and pay the costs.

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

On 01 December 2010, an Information for Homicide was filed against the accused-appellant Apolinario, the accusatory portion of which reads:

"That on or about November 28, 2010, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one MARLON PASCUA y ECHAVEZ, by then and there stabbing him on the right side of his body, thereby inflicting upon said MARLON PASCUA y ECHAVEZ fatal stab wound, which was the direct and immediate cause of his death thereafter.

Contrary to law."<sup>[3]</sup>

When arraigned, Apolinario pleaded "*Not Guilty*" to the charge.

At the pretrial conference, the parties stipulated on the jurisdiction of the court and

the identity of the accused.

The prosecution presented the testimonies of: (1) Domingo Gadon ("**Gadon**"); (2) Alky Infante ("**Infante**"); (3) Dolores Pascua; (4) Lovelita Pascua; and (5) Dra. Angelica Oropilla and offered its documentary evidence. The defense, on the other hand, presented the testimonies of: (1) Roxanne Flores ("**Flores**"); (2) Patricia Joy Fuentes ("**Fuentes**"); (3) accused-appellant Apolinario; and (4) Elizabeth Apolinario and offered in evidence their documentary as well. The defense also offered its documentary evidence as well.

The facts of the case as gathered from the records are as follows:

On 28 November 2010, Infante, together with his friends, Joven Jalocon, Eduard Gapas and Carlo Palileo, were having a drinking spree in front of Infante's house at 1201 Narciso Street, Pandacan, Manila when Hero Osongco ("**Osongco**") and his girlfriend passed by.<sup>[4]</sup> After Osongco noticed that Infante and his group were looking at him and his girlfriend while the two (2) of them were arguing, Osongco confronted Infante and his group and said, "*Huwag kayong makialam sa away namin.*"<sup>[5]</sup> Osongco then uttered invectives against Infante and his friends. Osongco also threatened that he will get back at Infante's group and left. A few minutes later, Osongco returned with his girlfriend. He then cursed at and threw invectives against Infante and his friends.<sup>[6]</sup>

Osongco's action angered Infante and his gang. As Infante and his friends approached Osongco to talk, the latter ran away. Infante and his friends then ran after Osongco and a chase ensued.<sup>[7]</sup>

In the middle of the chase, Osongco entered a canteen and hid himself. Barangay Kagawads Boyong Simbillo and Jong Flores thereafter arrived and tried to convince Osongco to get out of the canteen.<sup>[8]</sup> Osongco went out of the canteen but instead of calming down, he once again threw invectives against Infante and his group. Osongco even uttered, "*Maghintay kayo, babalikan ko kayo.*"<sup>[9]</sup>

Once again angered by Osongco's threats, Infante and his group chased Osongco.<sup>[10]</sup> At this point, Marlon Pascua ("**Pascua**"), Infante's cousin, had followed Infante and his group and joined them in the chase.<sup>[11]</sup>

As Infante's group proceeded to chase Osongco, appellant Apolinario, who was a *Barangay Kagawad*, blocked their way and introduced himself as such.<sup>[12]</sup> Apolinario thereafter launched a fan knife and attempted to stab Infante but to no avail. Infante fell to the ground and Pascua helped him stand up and the two started to run away from Apolinario.<sup>[13]</sup>

Unknown to Infante, Pascua was left behind. A kid then called out to Infante and shouted that Pascua was being stabbed. Infante stopped, turned around and saw that Apolinario was on top of Pascua and that the former stabbed the latter.<sup>[14]</sup>

Infante then helped Pascua and they proceeded to walk to the direction of Gadon who was along Narciso Street. Infante allowed Pascua to walk by himself to Narciso

St. while he and his group ran after Apolinario.<sup>[15]</sup> Pascua then walked up to Gadon who was standing near his tricycle. Upon seeing the victim Pascua, Gadon immediately noticed the victim's wound.<sup>[16]</sup>

Pascua then requested Gadon to bring him to the hospital to which request the latter acceded. As they were on their way to the hospital, Pascua disclosed to Gadon that it was Apolinario who stabbed him.<sup>[17]</sup>

After bringing Pascua to Sta. Ana Hospital, Gadon then called the victim's mother, Dolores Pascua, to inform her of what had happened to her son.<sup>[18]</sup> When the victim's mother arrived at the hospital, the victim Pascua was already lying on a hospital bed. Dolores approached her son and asked what had happened and who stabbed him. Pascua replied that it was Jerry who stabbed him.<sup>[19]</sup> Jerry is the same *Kagawad* Jerry Apolinario.

Pascua was then brought to the operating room where he died.<sup>[20]</sup> An autopsy was conducted and which autopsy report indicated that the victim died from a stab wound at his right lumbar area.<sup>[21]</sup>

Pascua's wife, Lovelita Pascua testified with respect to the hospitalization and funeral expenses that she incurred by reason of Pascua's death: 1) blood that was needed by her husband for the operation which amounted to P 1,500.00; 2) wake expenses for nine days amounting to a total of P 46,602.00; 3) cemetery lot at Manila South Cemetery amounting to P 6,000.00; 4) funeral service amounting to P 20,000.00; and 5) payment for the place of the wake amounting to P 12,500.00.

Dra. Angelica Oropilla testified that she conducted an autopsy of the body of Pascua and that she prepared the Autopsy Report No. N-10-1046, the Certification of Death, the Anatomic Diagram and the Certificate of Post-Mortem Examination of Pascua.

The defense, on the other hand, adopted a different version of the facts. Apolinario claimed that on November 28, 2010, at around 9:00 to 11:00 in the evening, he and his wife were at home celebrating their wedding anniversary with a mucho-sized Red Horse Beer; that he was suddenly fetched by the cousin of Osongco to pacify Infante at Theodora San Luis near Zamora in Dambana as he was then a *Barangay Kagawad*; that at the place of the incident, he found two warring groups; that in order to pacify them, he blocked the way of Infante by embracing him; that Infante, however, removed his shirt and boxed him (Apolinario) on his mouth; that he was not able to retaliate because Infante's group ran away and his wife got hold of him; that he and his wife then proceeded to their house; that while he and his wife were on their way home, the latter informed him that she saw somebody got stabbed; that while he was sleeping, Barangay Chairman Antonio Lilac, together with some policemen caused his arrest; that he voluntarily went with the policemen to the precinct and was subjected to a medical examination; and that he was later detained at the Homicide Section of Western Police District at U.N. Avenue.

On cross-examination, Apolinario mentioned that two to three months prior to the stabbing incident, he came to know the victim, Pascua, at the Barangay Hall of Barangay 847 because his nephew became an accused in a case filed by Pascua;

and that he knew Infante because of a basketball game but that he did not know Gadon.

Defense witness Flores, an SK Chairman of Barangay 847, narrated that on the date and time of the incident, she was with her fellow SK Kagawad Ella Perez at Jacinto Zamora Park sitting and waiting for her father who was called by a certain Ate Ella who was a *Baranagay Tanod* in their place because her father, who was then a *Barangay Kagawad*, was asked to fetch Osongco who was at the canteen; that her father was able to fetch Osongco and while they were passing by the park, three (3) men arrived; that somebody then shouted that there were people at the back of Osongco and flower pots were thrown by a certain Marlon and his companions at Osongco's direction; that she saw a flower pot thrown at Osongco but that it hit instead her father's nape; that the two groups, particularly the Central group consisting of three (3) males and the group of Osongco also consisting of three (3) males, fought each other; and that she could no longer see these persons after the incident.<sup>[22]</sup>

Flores added that Apolinario had pacified Infante while Osongco and his group ran away after they were pacified; that Osongco's girlfriend was shouting and was about to embrace her boyfriend when they got hold of her and brought her inside the park; that she then saw Marlon running towards Central Street followed by Osongco who was carrying a bladed weapon; and that Osongco was able to thrust his knife at Marlon's right shoulder who fell on his knees but was able to stand up and continue running.<sup>[23]</sup>

On cross-examination, Flores mentioned that the accused was a friend of her father and that he was a *Kagawad* at their place; that she did not know the victim but only came to know him on the night of the incident because the victim's friends went in front of their house and asked *Kagawad* Apolinario to get out of his house; that they were talking about Marlon; and that at the time of the commotion, it was only his father who was there as a *Kagawad* of the barangay; and that a *Barangay Tanod* merely called Apolinario to respond to the place of the incident.<sup>[24]</sup>

Defense witness Fuentes, on the other, who was then fourteen years old, testified that in the evening of the stabbing incident, she was buying viand at the *carinderia* along Central Steet when a commotion transpired between Osongco, Pascua and a certain JR;<sup>[25]</sup> that they were pacified by their *kagawads* and Osongco was supposed to be brought to their place when three persons suddenly approached them;<sup>[26]</sup> that Apolinario then introduced himself as a *Barangay Kagawad* and pacified the three persons; that one of the three persons suddenly boxed Apolinario on his mouth while the two others went to where Osongco was and mauled the latter;<sup>[27]</sup> that one of the two persons ran away and it was Pascua who was left behind; that Pascua fell down then a cousin of Osongco, a certain Kim, handed Osongco a bladed weapon with which Pascua was stabbed as he attempted to stand up and run; that Osongco then ran towards their place but he did not pursue Pascua anymore; and that a certain barangay kagawad Joe held and pacified Apolinario.<sup>[28]</sup>

On cross-examination, Fuentes added that she did not know the reason why there was a commotion but she knew that Osongco was alone and was attacked by three (3) persons whom she did not know; that Osongco was the one who stabbed a man

wearing a black shirt whom she later identified to be Pascua at the time she executed her affidavit; that Osongco was now in hiding; that at the police station, she was informed that there were two (2) conflicting versions of the incident; and that other persons were pointing to Apolinario as the perpetrator of the crime while the others were pointing to Osongco.<sup>[29]</sup>

Elizabeth Apolinario, the appellant's wife, testified that on November 28, 2010 at or about 9:00 to 11:00 in the evening, she and her husband Jerry Apolinario were drinking one bottle of Red Horse Mucho when a certain King Osongco, a cousin of Hero Osongco, arrived at their house to summon Jerry to pacify a commotion. Her husband then left the house, but she followed him to Dambana at Jacinto Zamora. She saw Jerry Apolinario pacify Infante but that the latter suddenly boxed the former; that she requested Apolinario to return home because the group of Infante as well as that of Osongco were throwing flower pots at the people pacifying the fight, more particularly Kagawad Sumbillo, Bogga and Kagawad Jong Flores; and that at the time Apolinario was pacifying Infante, she saw Osongco with a knife and after that he was gone and was never seen.<sup>[30]</sup>

The trial court then rendered the assailed decision which found Apolinario guilty beyond reasonable doubt of the crime of Homicide under the Revised Penal Code. The trial court gave full faith and credit to the evidence of the prosecution. Invoking his innocence, Apolinario appeals his conviction before the Court and seeks his acquittal by raising the following assignment of errors:

"I.

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE STATEMENTS OF THE VICTIM MARLON PASCUA ARE PART OF THE *RES GESTAE*;

II. THE HONORABLE REGIONAL TRIAL COURT ERRED WHEN IT CONSIDERED THE INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESS ALKY INFANTE; and

III. THE HONORABLE REGIONAL TRIAL COURT ERRED WHEN IT DID NOT CONSIDER THE CLEAR AND EQUIVOCAL STATEMENTS OF DEFENSE WITNESSES FLORES AND FUENTES."

**We find the instant appeal to be devoid of merit.**

In pursuit of his assertion that Pascua's statements cannot be considered *part of the res gestae*, the appellant Apolinario argues that from the time Pascua was aided by Gadon until the former was endorsed to the hospital for medical aid, Gadon never suspected the physical condition of the victim. Gadon even testified that he did not notice that the victim was mortally wounded, as the latter went out of the tricycle all by himself, unaided; and that Gadon even remarked that the victim Pascua looked strong. Apolinario further contends that the victim was not laboring under the impression that he was about to die soon; therefore, his statements cannot be considered as part of the *res gestae*.