

SECOND DIVISION

[G.R. No. 179154, July 31, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER PEREZ AND
DANILO PEREZ, APPELLANTS.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the Decision^[1] dated May 31, 2007 of the Court of Appeals in CA-G.R. CR HC No. 01586. The Court of Appeals had affirmed with modification the Decision^[2] dated February 11, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding appellants guilty of the crime of murder in Criminal Case No. Q-00-94135.

On August 1, 2000, an Information^[3] was filed charging the accused, now appellants herein, with murder allegedly committed as follows:

That on or about the 29th day of January 2000, in Quezon City, Philippines, the said accused, conspiring, confederating [with] another person whose true name, identity and whereabouts [have] not as yet been ascertained and mutually helping one another did then and there willfully, unlawfully and feloniously with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of one FULGENCIO MAGLENTE CUYSONA by then and there stabbing him with the use of a bladed weapon, hitting him on his trunk, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of Fulgencio Maglente y Cuysona.

CONTRARY TO LAW.^[4]

Upon arraignment, the accused pleaded not guilty to the charge. Thereafter, trial ensued. The prosecution presented Ariel Baque and Rolando Gangca, two eyewitnesses who allegedly saw the stabbing incident on January 29, 2000, and Araceli Cuysona, widow of the victim Fulgencio Cuysona.

Ariel Baque testified that he was in his house located at 147 Lilac Street, Fairview, Quezon City on January 29, 2000 at about 9:30 in the evening when he saw the victim Fulgencio before the stabbing incident. Baque narrated that Fulgencio was standing in front of a store, which was about four arms length away directly in front of his house, when he saw appellant Danilo Perez stab Fulgencio at the back, followed by appellant Roger Perez, who stabbed Fulgencio at the chest. Thereafter,

Fulgencio ran but was blocked by a man with blond hair whom Baque could not name and whom he only knew to be a vendor. The man with the blond hair held Fulgencio's arm so he could not run and the three took turns in stabbing Fulgencio.^[5]

On cross-examination, Baque testified that he is a tricycle driver but on January 29, 2000, he neither drove his tricycle nor went to Cavite as insisted by the defense counsel, but just stayed at home. Baque likewise denied that a certain Marcial Dungallo instructed him to implicate appellant Roger Perez and maintained that he actually saw appellant Roger Perez as one of the three persons who stabbed Fulgencio.^[6]

Rolando Gangca, also a resident of Lilac Street, Fairview, Quezon City, testified that he was in his house on January 29, 2000 at about 9:30 in the evening. He decided to go out to buy a cigarette, but was not able to do so because when he turned at the corner, he saw Jerry Bautista running towards the house of Boy Aguilar. When Gangca looked at the place where Jerry Bautista came from, he saw Fulgencio being stabbed by appellants Danilo Perez and Roger Perez. Gangca saw three persons, two of them stabbing the victim while the other was holding the victim's hands. Appellant Danilo Perez used an icepick while appellant Roger Perez used a stainless steel knife. The two were in front of the victim and took turns stabbing him.^[7]

Araceli Cuysona, Fulgencio's widow, testified that her husband died on January 29, 2000 because he was stabbed; that when he was stabbed, she was in Taiwan; that she spent P877.00 for hospitalization expenses and P30,000.00 for funeral expenses of her husband.^[8]

The defense, for its part, presented SPO1 Resty San Pedro of PNP CPD, Station 5 Police Station, Fairview, Quezon City; Francisco Dayola, Jr.; and appellants Roger Perez and Danilo Perez.

SPO1 Resty San Pedro's testimony on direct examination was dispensed with when the prosecution and the defense stipulated that: (1) at about 10:30 in the evening of November 4, 2000, appellants Roger Perez and Danilo Perez voluntarily surrendered at Fairview Police Station 5 accompanied by their lawyer, Atty. Gaspar Tagalo; (2) both appellants were interviewed by SPO1 San Pedro who was on duty at the time; (3) appellant Danilo Perez admitted to SPO1 San Pedro during the interview that he stabbed to death Fulgencio Cuysona and SPO1 San Pedro reduced the oral admission of Danilo Perez in typewritten (question and answer) form; and (4) SPO1 San Pedro gave the typewritten confession to appellant Danilo Perez who read the same and voluntarily signed the written admission in the presence of his counsel. The defense marked in evidence the following exhibits: Exhibit 8-a, signature of appellant Danilo Perez; Exhibit 8-b, signature of Atty. Gaspar Tagalo; Exhibit 8-c, signature of the Administering Officer; and Exhibit 8-d, Tanong at Sagot No. 8 where he admitted and claimed sole responsibility for killing Fulgencio.^[9]

Likewise, during the hearing on January 28, 2004, the direct examination of appellant Danilo Perez was dispensed with considering that his testimony would only corroborate the testimony of SPO1 Resty San Pedro given during the hearing on December 10, 2003.^[10]

On cross-examination, appellant Danilo Perez testified that he stabbed the victim on January 29, 2000 and that he surrendered and gave a statement to the police only on November 4, 2000 or ten months after the stabbing incident and when there was already a warrant of arrest issued for his apprehension. He likewise identified his written admission marked as Exhibit 8.^[11]

Francisco Dayola testified that at about 10:00 in the evening on January 29, 2000 he was in front of the store of Tatang waiting for it to close as he was fetching his girlfriend, Analyn Ladio, who worked there. While he was waiting, Rolando Gangca arrived and bought a cigarette and gin and proceeded to the house of Arnel Castro, where Gangca's other friends, namely, Jerry Caber, Daniel Castro and Fernando Sarmiento, were having a drinking spree. At past 10:00 in the evening, Dayola went to appellant Roger Perez' house which was also his residence and reached the same at 10:15 in the evening. Dayola saw that appellant Roger Perez was already sleeping. Dayola helped his co-workers Ferdinand Bascug, Freddie Castillo, Reynoso Segal and Reyco Salige to make *suman*. After a while, they heard shouts outside the house. They went out and saw Fulgencio lying in front of the store of one Kuya Cesar.^[12]

On cross-examination, Dayola testified that he is employed by appellant Roger Perez and that he is in court by virtue of a subpoena. He confirmed that on January 29, 2000, he was inside the house of appellant Roger Perez preparing rice cake and *suman* when he heard shouts outside the house. When he went out to find out what the commotion was about, he saw Fulgencio's body lying in front of said Kuya Cesar's store but he did not see who attacked Fulgencio. He inquired what happened to Fulgencio and somebody told him that Fulgencio was stabbed by the cousin of Ariel Baque - a fact which he admitted he failed to mention to the police. He also did not tell Fulgencio's wife who stabbed the victim because she was abroad at that time.^[13]

Appellant Roger Perez testified that he was a jeepney operator and owned a variety store. On January 29, 2000 at about 8:30 in the evening, he was in his house located at 147-D Lilac Street, Fairview, Quezon City having a drink with his fellow co-workers Rolando Gangca, Boy Adilan and Jerry Bautista. After a while, he excused himself from the group to go to sleep since he had work the following day. While he was already sleeping together with his wife, Elvira, and his wife's niece, Mirasol, he heard a commotion and noise outside his house. When he went out, he learned that Fulgencio has been stabbed and was brought by relatives to the hospital. Thereafter, some policemen arrived. He was brought to the Fairview, Quezon City Police Station 5 where he was investigated and his statement taken. But he was allowed to go home at 2:00 in the early morning of January 30, 2000.^[14]

On February 4, 2000 at 7:00 in the morning, he was again apprehended while he was in his house. He learned that Rolando Gangca gave a statement implicating him in the stabbing of Fulgencio, but he told the police that he had nothing to do with the stabbing incident.^[15]

On cross-examination, appellant Roger Perez confirmed that he had a drink with his friends at about 8:30 in the evening of January 29, 2000; that he consumed only a few bottles of beer; that while they were drinking, his brother, appellant Danilo

Perez, went home to eat; that at about 10:00 in the evening of the same day, he came to know that Fulgencio had been stabbed; that he did not attend the wake of Fulgencio although he knew the deceased during his lifetime; and that he also knew Ariel Baque and Rolando Gangca with whom he has no quarrel or dispute such that there is no reason for them to testify against him. He added that he learned that he was a suspect in the stabbing of Fulgencio only on February 4, 2000 when the policemen came to his house and that he was present when his brother Danilo Perez voluntarily admitted killing Fulgencio.^[16]

On February 11, 2005, the trial court rendered its decision finding appellants guilty of the crime of murder. The decretal portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, the Court finds both accused ROGER PEREZ y CAROLINO and DANILO PEREZ y CAROLINO guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code as amended, and applying the provisions of the said Code, hereby sentences each of them to Reclusion Perpetua, with all the accessory penalties provided by law and to pay jointly and severally the heirs of the late FULGENCIO CUYSONA the amounts of Fifty Thousand Pesos (P50,000.00) as indemnity for the death of the victim, P39,877.00 as actual damages and Fifty Thousand Pesos (P50,000.00) as moral damages.

The period during which the accused was under detention should be deducted from the service of his sentence.

SO ORDERED.^[17]

Appellants seasonably filed their appeal. However, in a Decision dated May 31, 2007, the Court of Appeals affirmed with modification the trial court's decision, thus:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 81, Quezon City, dated February 11, 2005, in Criminal Case No. Q-00-94135 sentencing accused Roger Perez y Carolino and Danilo Perez y Carolino to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that in addition to the amounts awarded by the court a quo, the additional amount of P25,000.00 as exemplary damages is awarded to the heirs of the victim Fulgencio Cuysona.

Costs de oficio.

SO ORDERED.^[18]

Hence, this appeal.

On February 6, 2008, we required the parties to submit their respective supplemental briefs. Both the Office of the Solicitor General (OSG) and the appellants, however, manifested that they were adopting their respective briefs filed

before the Court of Appeals as their supplemental briefs.

Appellants assign the following errors:

I.

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION'S EVIDENCE IS SO WEAK TO THE EFFECT THAT BOTH THE TESTIMONIAL AND DOCUMENTARY EXHIBITS OFFERED BY THE PROSECUTION MISERABLY FAILED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED-APPELLANT ROGER PEREZ, HENCE, ROGER PEREZ SHOULD BE EXONERATED AND ACQUITTED HIS GUILT NOT BEING ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT AS POINTED OUT IN SUBSEQUENT ERRORS HEREUNDER ASSIGNED;

II.

THE COURT BELOW ALSO ERRED IN NOT HOLDING THAT THE "FACT OF DEATH" OR CORPUS DELICTI WAS NOT PROVEN BY THE PROSECUTION EVIDENCE BEYOND REASONABLE DOUBT (SIC) AS AGAINST ACCUSED-APPELLANT ROGER PEREZ;

III.

THE COURT BELOW LIKEWISE ERRED IN NOT RULING THAT CONSPIRACY AND MOTIVE ARE NOT ESTABLISHED BY PROSECUTION EVIDENCE BEYOND REASONABLE DOUBT AGAINST APPELLANT ROGER PEREZ;

IV.

THE LOWER COURT FURTHER ERRED IN ADMITTING AS DOCUMENTARY EVIDENCE THE HEARSAY PROSECUTION EXHIBITS "C"; "E"; AND "F" AS AGAINST ROGER PEREZ;

V.

THE COURT A QUO SERIOUSLY ERRED IN NOT RULING THAT THE EXTRA JUDICIAL CONFESSION OF ACCUSED-APPELLANT DANILO PEREZ Y CAROLINO REPEATED BY HIS TESTIMONY IN COURT IS CONVERTED INTO A JUDICIAL CONFESSION; AND

VI.

FINALLY, THE TRIAL COURT OBVIOUSLY ERRED IN NOT HOLDING SAID APPELLANT DANILO PEREZ GUILTY OF HOMICIDE ONLY AND THE