

FIRST DIVISION

[G.R. No. 143765, July 30, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT DADIVO Y MENDOZA, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Gilbert Dadivo y Mendoza was charged in Criminal Case No. 35-2064 before the Regional Trial Court of Santiago City, Branch 35, with murder in an information ^[1] which reads, thus:

That sometime on December 31, 1995, in the City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously, attack, assault, stab and wound TEODORICO DELA CRUZ in the different parts of the body, inflicting upon him several wounds on the chest, with treachery and evident premeditation, said accused having inflicted said wounds upon Teodorico dela Cruz, and as a result thereof, the said Teodorico dela Cruz died instantly due to intra thoracic hemorrhage due to penetrating wound on both right and left auricle of the heart.

Accused-appellant pleaded "not guilty" on arraignment, after which trial ensued.

At 4:00 in the afternoon of December 31, 1995, accused-appellant and his friends, Sonny Ocampo, Anthony Galot, Ben Calimlim and the victim Teodorico dela Cruz, were engaged in a drinking session at the house of Rudy dela Cruz in Calaocan, Santiago City. The conversation was merry and light. Accused-appellant, Ocampo and Galot were seated on one long bench while Calimlim and Teodorico dela Cruz were seated on the opposite bench. Between the two benches was a small table on which their appetizers and drinks were set.

Accused-appellant left the group at 6:00 in the evening and went out of the house. He returned shortly and stood beside Galot, instead of returning to his seat. Calimlim had his right arm on Teodorico dela Cruz' shoulder who had his left arm on Calimlim's shoulder. Without any warning, accused-appellant lunged at Teodorico dela Cruz and stabbed him on the chest with a knife wrapped in handkerchief. Before anyone could react, accused-appellant stabbed Teodorico dela Cruz a second time. Teodorico dela Cruz weakly said, "may tama ako." He died before reaching the hospital.

Accused-appellant had a different version of the incident. He narrated that at 3:00 in the afternoon, he went to a nearby store to buy candy when he saw Sonny Tejada, whom he invited for a drink. However, the store-owner refused to let them drink in front of the store. Teodorico dela Cruz, who was nearby, invited them to drink at his brother's house. They drank gin and ate appetizers. Afterwards, they

were joined by Sonny Ocampo, Anthony Galot and Raul Espiritu. At 6:00 in the evening, accused-appellant went out of the house to relieve himself. As he was already intoxicated and feeling dizzy, he had difficulty keeping his balance. When he got back to the group, he informed Teodorico dela Cruz that he would like to leave as he had enough. Teodorico dela Cruz refused to let him leave, so he held accused-appellant's leg and cursed him. Teodorico dela Cruz then tried to reach for a knife on the table. Accused-appellant saw this as a threatening move, prompting him to "jump the gun," so to speak, and stab Teodorico dela Cruz with his own fan knife.

On February 8, 2000, the trial court rendered a decision as follows:

WHEREFORE, the Court finds the accused GILBERT DADIVO y MENDOZA GUILTY beyond reasonable doubt of the crime of MURDER and hereby sentences him [to] the penalty of RECLUSION PERPETUA and ordered (sic) to indemnify the heirs of Teodorico dela Cruz the sum of P100,000.00 as moral damages, the sum of P200,000.00 as actual damages and the sum of P50,000.00 as consequence of his death and cost against the accused. [2]

In this appeal, accused-appellant contends:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY FOR THE CRIME OF MURDER DESPITE THE INSUFFICIENCY OF EVIDENCE ADDUCED TO PROVE THE QUALIFYING CIRCUMSTANCES THERETO;

II

THE COURT A QUO ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCE OF INTOXICATION IN FAVOR OF THE ACCUSED. [3]

By invoking self-defense, accused-appellant in effect admitted authorship of the killing of Teodorico dela Cruz. The trial court, however, disbelieved his theory, finding that he was the unlawful aggressor. Hence, it found accused-appellant guilty of murder, qualified by treachery and evident premeditation.

Accused-appellant argues that the prosecution failed to prove the qualifying circumstance of evident premeditation. The requirements to prove evident premeditation are the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. [4]

We agree that the elements of evident premeditation have not been established in this case.

The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. [5] It bears reiterating that a qualifying circumstance such as evident premeditation must be proven as clearly as the crime itself. Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation. [6]