

SECOND DIVISION

[G.R. No. 130660, September 05, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY DORIO AND JOSE DORIO, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Dumaguete City, Branch 32, finding appellants Rolly Dorio and Jose Dorio guilty of murder and sentencing each to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law and to pay jointly and severally the spouses Dionesio^[1] and Enriqueta^[2] Cabusog, parents of the victim, P50,000 as death indemnity, P30,000 as actual damages, and P100,000 as moral damages.

The Information against appellants reads:

That at about twelve o'clock noon of December 15, 1995 at Sitio Mampalasan, Barangay Bagtic, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other with intent to kill and by means of treachery and evident premeditation and abuse of superior strength committed on the victim, a small girl, did then and there wilfully, unlawfully and feloniously assault, attack and stab one Jemalie Cabusog y Cadiente, thus inflicting stab wounds on the victim that resulted to her death soon thereafter.

Contrary to Article 248 of the Revised Penal Code.^[3]

On arraignment, both appellants pleaded not guilty. During trial, which thereafter ensued, the prosecution presented six witnesses against them.

The first witness, ROGELIO BALANSAG, testified that on December 15, 1995, at around 11:40 A.M., he was walking along a pathway in Mampalasan, when he saw Jemalie Cabusog walking alone. While Jemalie was walking, Jose Dorio suddenly appeared and held her while his son, Rolly Dorio, pulled a small bolo and used it to stab Jemalie. Rogelio Balansag said he was about 45 meters away.^[4] He did not immediately tell anyone what he saw because he was afraid of appellants who owned firearms^[5] and were known tough guys in their neighborhood.

The next witness, RESTITUTO PALAGTIW, testified that at around 12:00 o'clock noon of December 15, 1995, while he was walking along a road in Mampalasan from his house at Barangay Lamogong, Manjuyod towards the house of the victim's parents, he saw Rolly Dorio coming out from the sugarcane field of Dionesio Cabusog carrying a "*plamingko*" stained with blood. He was 15 meters away from Rolly Dorio when he saw him.^[6] Later that day, he accompanied the victim's parents in

searching for Jemalie and they found her body in the sugarcane field where he saw Rolly Dorio emerging earlier that day with the "*plamingko*".^[7] On cross-examination, the witness testified that he only saw Rolly Dorio. He did not see Jose Dorio.^[8]

CHITO CABUSOG, the brother of the victim, testified that on December 15, 1995, at around 7:00 A.M., he and his parents, together with Jemalie, were tilling their land. At around 9:00 A.M., his mother Enriqueta left to get their lunch. When she did not return, Chito and his father instructed Jemalie to get their food. This was around 11:30 A.M. When Jemalie did not return, his father and he decided to have lunch at home instead. Before they left, they saw Rolly Dorio walking with a "*plamingko*" tucked in his waist. Rolly was about 70 meters away from where they were. Upon reaching home at around 12:30 P.M., they saw their mother and Restituto Palagtiw but Jemalie was not home. This prompted his parents to look for Jemalie and asked their neighbors to help them. He proceeded to the crossing of Bagtiw to help bring a patient to a hospital. At around 3:00 P.M., he returned home and joined the search for Jemalie. At 5:00 P.M., they went to his father's sugarcane field which Restituto Palagtiw said was the place where he earlier saw Rolly Dorio with a bloodied "*plamingko*". During cross-examination, Chito added the information that 15 minutes after Jemalie disappeared from where he last saw her, he saw Rolly Dorio walking away from the place where they found the body of Jemalie^[9] with wounds on her stomach and neck.^[10]

SPO3 JOMIE BOHOL MORENO, the police officer who investigated the case, testified that on December 15, 1995, he was ordered by their Chief of Police to go to Mampalasan, Mabinay, to conduct an investigation on the circumstances surrounding the death of Jemalie Cabusog. After he saw the dead body of Jemalie in her house, he went to the crime scene and prepared a sketch^[11] of it. He said that Jemalie's parents told him they suspected Rolly and Jose Dorio^[12] as the culprits.

DIONESIO CABUSOG testified that Jemalie was his daughter. He corroborated the testimony of his son, Chito. He added that appellants killed his daughter because sometime in March 1995, he tried to stop Jose from playing "*hantak*", a gambling game. Jose got angry and threatened to kill him, his wife, and his children. He also testified on the expenses he incurred as a result of his daughter's death as well as the damages he suffered.^[13]

DR. CARMENCITA UY testified that she was the physician who issued the death certificate and the medical certificate concerning the autopsy of the victim. Both were admitted by the defense.^[14]

Three witnesses, namely Eladio Dacot-dacot, and appellants Rolly Dorio and Jose Dorio were presented by the defense.

ELADIO DACOT-DACOT, a farm worker, testified that he was with Jose Dorio on December 15, 1995, from 10:00 A.M. until past 3:00 P.M. They both went to Mambaha to collect their salaries from a certain Maria Diaz. He stated that they left Jose's house at 10:00 A.M. and arrived at Mambaha after an hour. In Mambaha, they waited until 1:00 P.M., as it was only then that they got their salaries. After receiving their pay, they shopped and then went home at around 2:40 P.M. They first went to his house in Bagtic, Mabinay where he parted ways with Jose, who then proceeded home in Mampalasan. He also stated that from the time they met at 10:00 A.M. until they went home in the afternoon, he and Jose were together all the

time.^[15] On cross-examination, Eladio added that the house of Jose Dorio was about 5 1/2 kilometers away from Mambaha, and that he did not see Rolly Dorio during the entire day of December 15, 1995.^[16]

Appellant ROLLY DORIO testified that he was at their farm in Mampalasan on December 15, 1995, which was about 25 minutes away from the farm of Dionesio Cabusog. He stayed at their farm from 6:30 A.M. until 5:00 P.M. He denied having anything to do regarding the death of Jemalie.^[17]

The last witness presented was Rolly's father, JOSE DORIO, who also denied any role in Jemalie's death. He essentially corroborated Eladio Dacot-dacot's testimony.^[18]

On June 10, 1997, the trial court rendered its decision finding both Rolly Dorio and Jose Dorio guilty of the crime charged. Its dispositive portion reads:

Wherefore, premises considered, the Court finds accused Jose Dorio and Rolly Dorio y Cadiente GUILTY beyond reasonable doubt of Murder penalized under Art. 248 of the Revised Penal Code in relation to RA 7659 and hereby sentences each one of them to suffer the prison term of *reclusion perpetua* together with all the accessory penalties provided for by law to jointly and severally pay spouses Dionesio Cabusog and Enriqueta Cabusog the following:

- a) P50,000.00 as death indemnity;
- b) P30,000.00 as actual damages; and
- c) P100,000.00 for moral damages and to pay the costs.

The jailer is hereby ordered to make the proper reduction of the period during which both defendants were under preventive custody by reason of this case in accordance with law.

SO ORDERED.^[19]

Jose and Rolly Dorio seasonably interposed this appeal. They claimed that the lower court erred in finding them guilty, despite the lack of sufficient proof to prove their guilt beyond reasonable doubt. They now assign as error the following:

THE LOWER COURT ERRED IN FINDING BOTH THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED WITHOUT THEIR GUILT HAVING BEEN PROVED BEYOND REASONABLE DOUBT.^[20]

In essence, appellants assail the credibility of prosecution witnesses, particularly Rogelio Balansag whose testimony, according to them, served as the sole and primary basis of their conviction. Appellants aver that the rest of the prosecution's evidence was merely corroborative and circumstantial.^[21] They also claim that the trial court erred in finding that there was conspiracy between Rolly Dorio and Jose Dorio.

In their brief, appellants point out that it was very "unsettling and unbelievable" that Rogelio Balansag reported what he saw on December 15, 1995 only sometime in June 1996. Although Rogelio explained the delay by saying that he feared appellants whom he described as "barbarians, and brutal individuals,"^[22] appellants argue that this explanation was unsatisfactory. They claim that if it were true that Rogelio was