

FIRST DIVISION

[G.R. No. 131817, August 08, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DOMINGO Y LIMPOT, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Dante Domingo y Limpot, together with accused Leonardo Guerrero y Castro and Nanette Ricarse y Saveron, were charged with murder in an information^[1] which reads, thus:

That on or about October 12, 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, armed with a gun, with treachery and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot with said gun one PO3 Pedro Delgado, thereby inflicting fatal injuries upon the latter which caused his death.

CONTRARY TO LAW.

In the evening of October 12, 1994, Michael Abad, a bodyguard and driver of a certain Manuel Orig, was standing in front of the Davao Investment Promotion Center along Quimpo Boulevard. He was waiting for Mr. Orig who was then having a meeting at said Center. At around 9:30 p.m., he saw PO3 Pedro Delgado, accused-appellant Dante Domingo, Leonardo Guerrero and Nanette Ricarse walking alongside each other across the boulevard. PO3 Delgado was nearest the cemented road pavement and on his right was Domingo, Guerrero and Ricarse. He noticed Guerrero step back and allow Ricarse to approach accused-appellant. From Abad's perspective, it appeared that Ricarse handed something to accused-appellant and immediately the latter shot Delgado at the back of his head.

Another witness, Rosauo Sauza, testified that he heard several gunshots and as he tried to look into the general direction of where he heard the gunshots, he saw accused-appellant, who was wearing a jacket, approaching and at the same time allegedly tucking something in his left waistline.

Dr. Danilo Ledesma of the Davao City Health Office made an autopsy on the body of the victim and later issued a Post-mortem Examination Report,^[2] indicating "Gunshot Wound of the Head" as the cause of death.

For his part, accused-appellant interposed self-defense. He claimed that on the evening of October 12, 1994, he and the victim were walking along Quimpo

Boulevard going south. They had just come from a drinking session at the Ecoland Bus Terminal when the victim taunted accused-appellant that he is not the father of the unborn child being carried by his wife. At first, accused-appellant ignored the victim's taunting but when the latter pestered him and even laughed at him, he told the victim to stop. Resenting his admonition for him to stop, the victim pushed him and pulled out a knife. As the victim was about to stab him, he stepped back and shot the victim.

Guerrero and Ricarse simply raised lack of conspiracy between them and accused-appellant and did not controvert the latter's narration of the incident.

While the trial court acquitted Guerrero and Ricarse of the charges based on insufficiency of evidence, it convicted accused-appellant Dante Domingo of the crime charged and held thus:

For the foregoing considerations, this Court finds DANTE DOMINGO, "GUILTY", of Murder aggravated by the qualifying circumstance of treachery and considering that the commission of the crime was not attended by any other aggravating circumstance is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA and ordered to indemnify the family of the victim the sum of P50,000.00 for the death of the victim and to pay actual damages in the sum of P57,245.00.

Considering the insufficiency of evidence of conspiracy, the Information against LEONARDO GUERRERO and NANETTE RICARSE is hereby DISMISSED.

Accordingly, the City Warden, Ma-a City Jail, Davao City, is hereby directed to release accused Leonardo Guerrero and Nanette Ricarse from his custody in so far as this case is concerned.^[3]

Aggrieved by the decision, accused-appellant Dante Domingo interposed the instant appeal on the following assignment of errors:

- I. The court a quo erred in not considering Dante Domingo's plea of self-defense;
- II. The court a quo erred in finding that the qualifying circumstance of treachery attended the commission of the crime charged; and
- III. The court a quo erred in not considering the mitigating circumstances of intoxication, passion and obfuscation in favor of the accused-appellant.

The trial court correctly disregarded accused-appellant's claim of self-defense. To prove self-defense, the accused must show with clear and convincing evidence, that: ^[1] he is not the unlawful aggressor; ^[2] there was lack of sufficient provocation on his part, and ^[3] he employed reasonable means to prevent or repel the