

FIRST DIVISION

[G.R. No. 122248, February 11, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER DORADO, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE, JR., C.J.:

Accused-appellant Roger Dorado (hereafter ROGER) appeals from the decision^[1] of the Regional Trial Court (RTC), Branch 18, Roxas City, in Criminal Case No. C-4588, which convicted him of murder and accordingly sentenced him to serve the penalty of *reclusion perpetua* and to pay the heirs of the victim, Isidro Buñi, P50,085.50 as actual damages and P50,000.00 as civil indemnity.

The criminal complaint accusing ROGER of murder was based on the sworn statements of the victim's widow, Nelly Buñi, and three eyewitnesses, Danilo Tapayan, Adorico Sarcino, and Gigger Besana.^[2] ROGER, who was on bail, waived presentation of evidence in the preliminary investigation.

On 30 June 1994, an information^[3] was filed with the RTC of Roxas City charging ROGER with the crime of murder; thus:

That on or about 2:00 o'clock in the morning of January 23, 1994, at Sitio Tico, Brgy. Tabuc, Pontevedra, Capiz, and within the jurisdiction of this Court, the said accused did then and there, and with deliberate intent to take the life of ISIDRO BUÑI, wilfully, feloniously and treacherously stab the latter [] inflicting upon him a mortal wound on the stomach thereby causing the untimely death of said victim.

CONTRARY TO LAW and with the qualifying circumstance of treachery.

The prosecution presented the following witnesses: Gigger Besana, Dr. Gervacio Diaz, and Nelly Buñi.

Besana knew ROGER, whose wife was his (Besana's) cousin. He testified that in the early morning of 23 January 1994 he was in a benefit dance. His companions included Danilo Tapayan and the victim, Isidro Buñi. At that time, ROGER was some three meters away from Isidro, who was conversing with Danilo and facing the dance hall. He saw ROGER approach Isidro from behind, place his hand on Isidro's shoulder, and stab him in his stomach. Besana was just one-and-a-half meters away. He was certain of what he saw because the place was well lit. He described the weapon as "a small long knife" and twice demonstrated how ROGER stabbed Isidro. He also claimed that Isidro had no opportunity to defend himself. He knew no reason for the attack, since no altercation between the two took place. After the incident, ROGER fled the scene. Besana then approached Isidro, who was slumped

on the ground. Seeing the gravity of Isidro's injury, he and several men brought Isidro to the hospital. Isidro eventually died.^[4]

Dr. Gervacio Diaz was the doctor who examined Isidro in the hospital. He immediately operated on him, but Isidro expired some hours later due to profuse bleeding. He then issued a medical certificate,^[5] which described the single stab wound inflicted on Isidro. He opined that the wound was caused by a long, sharp bladed instrument. He also issued a death certificate,^[6] which indicated that the proximate cause of death was hemorrhage due to a stab wound.^[7]

Nelly Buñi, the widow of Isidro, testified that in the dawn of 23 January 1994 she was fetched from her boarding house and brought to the hospital where her husband was. While in the surgical ward, her husband managed to converse with her. When asked who could have stabbed him, her husband replied that he failed to see the assailant because the latter came from behind. Her husband died that afternoon. She incurred expenses for the hospitalization and funeral services in the amounts of P11,085.50 and P15,000.00, respectively. Both were covered by official receipts.^[8] She separately paid Dr. Diaz P9,000.00 as professional fee; however, no receipt was issued. She estimated that funeral expenses amounted to P30,000.00, since her husband lay in state for one month. The interment was delayed because the family awaited the arrival of her brother, who was a seaman.^[9]

As might be expected, the defense had a different version.

Carlos Borbon testified that in the evening of 22 January 1994 he could not sleep at home because of the blaring music coming from the benefit dance. He left home to watch the affair from outside the dance hall.^[10] He claimed that an altercation between ROGER and the victim, Isidro Buñi, occurred that evening. It involved the bidding of a basket of goods held in the benefit dance. The emcee of the benefit dance declared that Isidro was buying the basket at P200. Part of the prize was the honor to dance with the lady who held the basket. Isidro got to dance with the lady. Thereafter, the emcee again inquired who would like to dance next with the lady. ROGER volunteered and declared that he also wanted to buy the basket at P250. The emcee thus took the basket from Isidro and handed it to ROGER, who also danced with the lady. After the dance, ROGER returned to his seat. Isidro accosted him, thrust his fingers on ROGER's face, and demanded why ROGER bought the basket which was already his. Isidro then kicked ROGER's foot. ROGER stood up, and Isidro immediately brandished a knife from his waist. Before Isidro could harm ROGER, the latter was able to get the knife from the former by twisting Isidro's hand. Isidro tried to grapple the knife. In the process, ROGER stabbed Isidro once. Thereafter, ROGER ran out of the dance hall.^[11]

Borbon also claimed that he was testifying on his own volition because the killing of Isidro was indeed done by ROGER in self-defense. He did not immediately report the matter to the police because no one bothered to ask him. He also knew that after the incident the police was searching for ROGER, who was hiding in the place of his in-laws. He agreed to testify upon the request of ROGER's wife.^[12]

ROGER invoked self-defense in his testimony. He declared that he arrived at the benefit dance at around 11:00 p.m. of 22 January 1994. The dance continued until

the following morning. During the affair, a bidding of a basket of goods took place. A certain Isidro Buñi gave a bid of P200, and he was able to dance with the lady who held the basket of goods. Thereafter, ROGER decided to also bid for the basket at P250. The emcee led the lady to him, and he likewise danced with her. While they were dancing another person gave a higher bid of P300. The lady was taken from him and offered to the next bidder. He thus returned to his seat. Isidro followed him to his seat and thrust his fingers towards him. Isidro claimed that the basket was already his and demanded why he, ROGER, had to dance with the lady. Isidro appeared drunk and angry. When ROGER stood up, Isidro kicked him and pulled a knife from his waist. Roger managed to grab the knife from Isidro, but the latter tried to wrest it from the former. Instead, he lunged the knife once into Isidro's waist. He was afraid that should Isidro take possession of the knife the latter would stab him.^[13]

ROGER fled the scene because Isidro had several companions. He proceeded to the house of his in-laws and stayed there for three days. He did not surrender since no complaint was filed against him. He remained in hiding because he was afraid of Isidro's family, which was powerful. He also admitted that he only surfaced when his bail bond was ready, which was almost four months after the incident.^[14]

The prosecution presented rebuttal evidence through the testimonies of Amable Bertuso and Jose Belvis.

Bertuso was the master of ceremonies of the benefit dance. He arrived at about 10:00 p.m. of 22 January 1994. There were five baskets of goods for bidding. He testified that ROGER neither danced nor bided for a basket. The last basket to be sold was initially bided by Gigger Besana at P250. The bid was upped by Isidro at P300. The basket was eventually awarded to Isidro. At the time the stabbing incident happened, he was nowhere in the dance hall; he had gone home. His testimony was obtained through the invitation of ROGER's brother-in-law.^[15]

Jose Belvis testified that he knew Carlos Borbon, who married his (Jose's) cousin. He claimed that ROGER and Carlos were related by affinity; ROGER married the niece of Carlos' wife.^[16]

In its decision of 21 July 1995, the trial court convicted ROGER. It rejected the theory of self-defense and, instead, gave credence to the version of the witnesses for the prosecution. It cited inconsistencies in the testimony of ROGER's witness, Carlos Borbon. It also declared that ROGER's flight from the scene of the crime was indicative of his guilt. It appreciated treachery because the accused, without any provocation, suddenly attacked the victim from behind without giving the latter an opportunity to defend himself.

ROGER appealed the decision, contending that the trial court erred in (1) declaring that treachery attended the killing of Isidro Buñi; (2) convicting him of the crime of murder; and (3) rejecting his plea of self-defense.

According to ROGER, it does not necessarily follow that treachery exists when the attack was sudden and unexpected. For treachery to be considered as a qualifying circumstance, it should be shown that the offender consciously and deliberately adopted particular means to ensure the execution of the crime without risk to