

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

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

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-143765/>

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]

In the case at bar, the trial court stated that “[i]t is impossible for Dadivo to stab dela Cruz without any compelling reason at all.” [7] The trial court surmised that “Teodorico dela Cruz might have slighted Dadivo during the drinking spree.” [8] The trial court’s reasoning may be logical. However, the premise that accused-appellant might have been slighted by Teodorico dela Cruz is not supported by any evidence; hence it is speculative. There is no way of knowing the time when accused-appellant decided to stab Teodorico dela Cruz. The first requirement therefore has not been met.

Likewise, the second requirement is absent. If the time when accused-appellant decided to stab Teodorico dela Cruz cannot be determined with certainty, then indeed one cannot infer that he clung to his determination to kill Teodorico dela Cruz. In fact, one cannot infer at all that the act of leaving the house presumably to relieve himself

is the overt act manifesting his determination to stab Teodorico dela Cruz. Settled is the rule that when it is not shown how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. [9]

Even the third requirement is lacking. Accused-appellant's act of leaving the house was too short a time for him to meditate or reflect upon the consequences of his decision to stab dela Cruz. To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt. [10]

Accused-appellant, likewise, disputes the trial court's finding that treachery attended the commission of the crime. For the qualifying circumstance of treachery to be appreciated, two elements must concur: (1) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution is deliberately or consciously adopted. [11]

The trial court found that accused-appellant attacked Teodorico dela Cruz from behind. This, however, is belied by testimonial evidence and by the location of the wounds. There is no evidence that Teodorico dela Cruz was attacked from behind. Rather, the evidence indicates that the attack against Teodorico dela Cruz was frontal. This is bolstered by the location of the wounds which were both on the chest.

The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself. What is decisive is that the execution of the attack, without the slightest provocation from a victim who is unarmed, made it impossible for the victim to defend himself or to retaliate. [12]

From all indications, Teodorico dela Cruz was simply enjoying the drinks, the food, the talk and the company. His left arm was even on Calimlim's shoulder. He was seated on a bench. He could not have anticipated accused-appellant's evil intention. Before accused-appellant delivered the fatal first thrust, the knife was concealed in a handkerchief. In fact, the victim as well as his drinking companions only realized what was happening when the knife was uncovered after the first thrust was delivered. Therefore, the circumstance of treachery was present, thereby qualifying the killing to murder.

In seeking to mitigate his sentence, accused-appellant alleges that he was intoxicated when he committed the killing. However, this circumstance, even if proved, will not have any effect as far as the penalty is concerned. Besides, accused-appellant failed to prove that he was intoxicated. Settled is the rule that the intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit the felony. [13] He failed to prove those conditions. As the Solicitor General aptly observed:

Accused-appellant himself narrated that after stabbing the victim, he ran home, confessed to his parents what he did and asked them to surrender him to the police. These actuations are hardly the acts of a man so inebriated that his will-power was impaired or that he could no longer comprehend the wrongfulness of his acts. [14]

Accused-appellant is, therefore, guilty of murder, penalized under Article 248 of the Revised Penal Code by reclusion perpetua to death. There being neither mitigating nor aggravating circumstance that attended the killing, the lesser of the two indivisible penalties shall be imposed, i.e., reclusion perpetua, pursuant to Article 63 (2) of the Revised Penal Code.

On the matter of damages, the trial court correctly granted the award of P50,000.00 as indemnity ex delicto for the death of Teodorico dela Cruz. However, the award of P100,000.00 as moral damages should be reduced to

P50,000.00 in line with prevailing jurisprudence. [15]

Likewise, the trial court's award of P200,000.00 as actual damages, inclusive of loss of earning capacity as well as funeral and burial expenses, is improper. Rudy dela Cruz, the victim's brother, testified on the funeral and burial expenses. Out of the amount awarded, only P4,500.00 representing funeral services was duly receipted. On the other hand, Sinamar dela Cruz, Teodorico dela Cruz's widow, testified that her husband was earning P26,000.00 per annum as a farmer and part-time construction worker. In *People v. Panabang*, [16] we ruled:

Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. A self-serving statement, being unreliable, is not enough. xxx [F]or lost income to be recovered, there must likewise be an unbiased proof of the deceased's average, not just gross, income. An award for loss earning capacity refers to the net income of the deceased, i.e., his total income net of expenses. xxx. A recovery of actual damages requires proof, with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, on the amount actually expended in connection with the death of the victim.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Santiago City, Branch 35, finding Gilbert Dadivo y Mendoza guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that the award for moral damages is reduced from P100,000.00 to P50,000.00 and the award for actual damages is likewise reduced from P200,000.00 to P4,500.00. The award of P50,000.00 as indemnity ex delicto is **AFFIRMED**.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Records, p. 1.

[2] Rollo, pp. 20-28, at 28; penned by Judge Demetrio D. Calimag Jr.

[3] Ibid., p. 61.

[4] *People v. Base*, 329 SCRA 158 [2000].

[5] *People v. Chua*, 297 SCRA 229 [1998].

[6] *People v. Timblor*, 285 SCRA 64 [1998].

[7] Decision, Records, p. 178.

[8] Ibid.

[9] *People v. Basao*, 310 SCRA 743 [1999].

[10] *People v. Eribal*, 305 SCRA 341 [1999].

[11] *People v. Geral*, 333 SCRA 453 [2000].

[12] *People v. Tan*, 314 SCRA 413 [1999].

[13] *People v. Bato*, 348 SCRA 253 [2000].

[14] Appellee's Brief, Rollo, p. 106.

[15] *People v. Olivo*, 349 SCRA 499 [2001].

[16] G.R. Nos. 137514-15, January 16, 2002.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.