

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIORICO BUGHO, ACCUSED-APPELLANT.

G.R. No. 91849. September 30, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the decision of the Regional Trial Court, 8[th] Judicial Region, Branch 15, Government Center, Palo, Leyte[1] promulgated on December 1989, finding the accused guilty of the crime of Murder. The dispositive portion of the decision reads:

WHEREFORE, premises considered, this Court holds accused Diorico Bugho alias Dodong guilty of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as the killing of his victim was made with the qualifying circumstance of treachery. The killing was likewise with the presence of the generic aggravating circumstance of disregard of respect due to the offended party on account of his age, and, there being no mitigating circumstance to even the same, he is hereby sentenced to LIFE IMPRISONMENT and to pay the heirs of his victim the sum of Eight Thousand Seven Hundred Ninety Three Pesos and Eighty Centavos (P8,793.85) [sic] as actual damages, and the sum of Thirty Thousand Pesos (P30,000.00) as indemnity. Costs against him.

SO ORDERED.[2]

The material facts, as affirmed under oath by the victim's grandson, an eye-witness to the crime, was summarized by the court a quo:

Florentino Tobias, a fourteen (14) year old student testified that on March 27, 1989 at about 6:00 o'clock in the evening, he was in the house of his grandfather in Barangay Taboanan, Burauen, Leyte. He was specifically in the front yard of his grandfather's house when the accused Diorico Bugho alias Dodong, who is from Barangay Balorinay, arrived with a bolo and demanded from his grandfather money and chicken. That since his grandfather was unable to give the accused immediately what he was demanding (for), the latter forthwith hacked his grandfather with a bolo who was hit on his right hand. He shouted for his grandfather to run. The latter ran. He tried to trick the accused to delay the latter's pursuit of his grandfather, by trying to approach the accused, but when the latter could hack him, he ran and the accused pursued his grandfather and when overtaken hacked him several times to death. He was about fifty (50) meters to the place where his grandfather was overtaken and attacked by the accused.[3]

This declaration was corroborated by Marciana Raquel, 57, who testified that she saw the victim, Demetrio Alcober, being chased by the accused, Diorico Bugho, alias Dodong. She attested that on March 27, 1989, at around 6:00 o'clock in the evening, while gathering firewood near the house of the victim, she saw the accused holding a bolo with his right hand and two (2) plastic gallon containers with his left, and chasing the victim who was already wounded.[4]

Remedios Lobrigo, 33, a resident of Barangay Tabo-anon (also referred to as Taboanan), averred that the accused, whose wife is the sister of her husband, was in her house drinking tuba, which he brought with him in two (2)

plastic gallon containers, from 10:00 o'clock in the morning of March 27, 1989 until late that afternoon. The accused was said to have gone home that same afternoon, drunk, taking with him the said containers which were already empty.[5]

Dr. Dionesio Conde, Municipal Health Officer of Buraen, Leyte, affirmed that he conducted an autopsy examination on the body of the victim, and found the cause or the death of the victim to be "profuse hemorrhage due to multiple (nine) stab and incise wounds (specification, ours)," four (4) of which are fatal.[6]

To these charges, the accused-appellant gave a flat denial, saying he was working in his farm at Barangay San Diego, which is some three (3) kilometers away from Barangay Tabo-anon.[7] He worked with two (2) others until 4:30 in the afternoon, after which they drank tuba until around 8:00 o'clock.[8]

The defense also presented one Cesario Lopez, 55, a farmer and furniture maker, to corroborate the testimony of the accused that at the time of the alleged incident, the accused was in his farm in San Diego and never left the place.[9]

We give credence to the prosecution's account of the incident.

Accordingly, we affirm the accused-appellant's conviction.

The defense of the accused-appellant primarily hinges on alibi, one of the weakest defenses that may be invoked. Alibi, as we have repeatedly held, must yield to and can not prevail over the positive identification made by the prosecution's witnesses.[10] There is no reason to doubt the testimony of the victim's grandson, Florentino Tobias, who positively identified Diorico Bugho, a frequent visitor of theirs[11] as the assailant; it appearing that the incident happened at around 6:00 o'clock when the afternoon shade was just turning to dusk; and the witness was just about six (6) meters away from the victim when the latter was first hacked.[12]

Furthermore, as we have consistently declared, for an alibi to be considered favorably, it must be shown that it was physically impossible for the accused to have gone to the scene of the crime at the time of its commission.[13]

No physical impossibility exists where the distance between the scene of the crime and the place where the accused allegedly was at that time could be negotiated by jeep or tricycle in fifteen to twenty minutes,[14] or where the places involved are only seven (7) to eight (8) kilometers apart and could be traversed by walking in one-and-a-half hours.[15] The instant case is not an exception; the place the accused claimed he was drinking tuba at the time of the commission of the crime—his farm at San Diego—being only three (3) kilometers away from the locus criminis.[16]

All told, the accused-appellant's defense of alibi must fail, not only because of its inherent weakness, but also because of its easy fabrication.

The testimony of Cesario Lopez, the defense's corroborating witness, is also doubtful. This is evident from his own declaration, to wit:

Fiscal Zalavarria:

Q.

But without the information given to you by the wife of Diorico Bugho you could not remember that it was March 27, 1989 when you met Diorico Bugho, isn't it?

Cesario Lopez: No.[17]

The defense crumbles even more when nowhere in the records has it been shown that the victim's family had an axe to grind against the accused-appellant to have forced them to concoct a story. The accused-appellant himself has not suggested any. Thus:

Atty. Tabao (Counsel for the accused):

Q.

You are being implicated with the death of one Demetrio Alcober. What do you say about the charge?

Diorico Bugho:

A.

I do not know the reason why they are angry at me.[18]

The defense even attempts to discredit Florentino Tobias by alleging that he is a perjured witness. This allegation, to say the least, is a mere conclusion which remains unsubstantiated and finds no support in the records of the case. The irrefutable fact is that Florentino Tobias was an eyewitness to the crime and he has positively identified the accused as the assailant of his grandfather.

In view of the foregoing, we hold that the court a quo correctly found the accused-appellant, Diorico Bugho alias Dodong, guilty beyond reasonable doubt of the crime of Murder with the qualifying circumstance of treachery, a sudden attack having been made on the deceased who was in no position to defend himself. The generic aggravating circumstance of disrespect due the offended party on account of his age was correctly appreciated, the victim being seventy-three (73) years old at the time he was hacked to death, and his assailant, twenty-seven (27). However, the penalty should be designated as "reclusion perpetua" and not "life imprisonment[19]," as imposed by the trial court. The indemnity adjudged is also increased from Thirty Thousand Pesos (P30,000.00) to Fifty Thousand Pesos (P50,000.00) consonant with prevailing jurisprudence.[20] The award of actual damages representing burial expenses in the sum of Eight Thousand Seven Hundred Ninety Three Pesos and Eighty Centavos (P8,793.80) is sustained.

WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATIONS above indicated.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Hon. Nunilon P. Buedron, Presiding and Executive Judge.

[2] Rollo, 18.

[3] Ibid, 15.

[4] TSN, October 9, 1989, 23-24.

[5] Ibid, October 4, 1989, 18-20.

[6] Id., October 3, 1989, 4-9.

[7] Id., October 10, 1989, 22-23.

[8] Id., 28-29.

[9] Id., November 23, 1989, 37-38.

[10] *People v. Mandal*, G.R. No. 87959, August 13, 1990, 188 SCRA 526, 530; *People v. Cagalingan*, G.R. No. 79168, August 3, 1990, 188 SCRA 313, 319; *People v. Esparida*, G.R. No. 94176, July 6, 1990, 187 SCRA 282, 290; *People v. Arceo*, G.R. No. 88324, July 6, 1990, 187 SCRA 265, 275; *People v. Laredo*, G.R. Nos. 81249-51, May 14, 1990, 185 SCRA 383, 396; *People v. Carmina*, G.R. Nos. 81405-06, May 7, 1990, 185 SCRA 59, 63, among many others.

[11] TSN, October 2, 1989, 3.

[12] Ibid., 5.

[13] *People v. Paringit*, G.R. No. 83947, September 13, 1990, 189 SCRA 478, 488, among many others.

[14] *People v. Temblor*, No. 668, May 28, 1988, 161 SCRA 623, 627.

[15] *People v. Manangan*, No. L-32733, September 11, 1974, 59 SCRA 31, 36; cited by *People v. Albanilla*, G.R. No. 84729, July 39, 1990, 188 SCRA 113, 112; *People v. Quidilla*, Nos. 79369-70, October 28, 1988, 166 SCRA 778, 788; *People v. Arceo*, *supra*, 274; *People v. Asuan*, No. L-49728, July 15, 1987, 152 SCRA 52, 59.

[16] TSN, October 10, 1989, 23, 28.

[17] TSN, November 23, 1989, 40.

[18] Ibid, October 20, 1989, 23.

[19] *People v. Mose*, No. L-1292, May 24, 1948, 81, Phil. 58, 63; *People v. Deveje*, No. L-21155, April 22, 1974, 56 SCRA 554, 559; *People v. Gonzales*, No. L-33926, July 31, 1974, 58 SCRA 205, 271. *People v. Abletes*, No. L-33304, July 31, 1974, 58 SCRA 241, 248.

[20] *People v. Monzon*, G.R. No. 74784, October 11, 1990, 190 SCRA 378, 385, among many others.

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