

FIFTH DIVISION

[CA-G.R. CR-H.C. NO. 01184, August 08, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRIQUE DUNGAO Y ARCA, ACCUSED-APPELLANT.**

DECISION

BARRIOS, J.:

At about 12:45 in the morning of November 26, 2000 and while in the course of a police "buy-bust" operation, SPO2 Alberto Lizarondo (or SPO2 Lizarondo for brevity) was shot dead at E. Jacinto St., Sangandaan, Kalookan City. He was hit once on the trunk.

The principal and only suspect, there and then identified, was the appellant Enrique Dungao y Arca (or Dungao). He was charged with *Murder* on the allegation that the killing was attended by treachery and evident premeditation.

The prosecution presented as eyewitnesses police officer SPO2 Filemon Arenas (or SPO2 Arenas) and police asset Gladys Jurado (or Jurado), who incidentally is a man. Among the Exhibits it presented were "A", the *Medico-Legal Report No. M-736-00*, "C", the *Physical Report No. D-1343-2000*, and "D", the *Salaysay* of Gladys Jurado.

Aside from the victim's widow Jeanette Lizarondo, no witness was presented at the turn of the defense. Not even the accused Dungao testified. He relied though on the peripheral testimony of Jeanette Lizarondo and her *Affidavit of Desistance* (Exh. "E"), as well as that of Jurado who flip-flopped when re-took the witness stand at the behest of an accommodating prosecutor.

According to the prosecution, SPO2 Lizarondo and SPO2 Arenas were members of the Drug Enforcement Unit of the Kalookan City police assigned to Bagong Barrio, and the drug user Jurado was their "asset". Jurado reported that he had just bought shabu in Jacinto St. in Sangandaan where drug trafficking was rampant. His pusher went by the monicker of Ricky Tuloy, and who turned out to be Dungao.

SPO2 Lizarondo and SPO2 Arenas decided to operate against Dungao, and that next day of November 26, 2000 at about 12:45 a.m. they went to this place utilizing Jurado. They found Dungao sitting in front of his house, and he was approached by Jurado who told him that his companions wanted to buy P100.00 worth of shabu. They struck a deal, and money and the drugs were exchanged between them. Jurado then gave their pre-arranged signal of scratching his head, but this tipped off the wary Dungao who ran inside his house. He was chased by Jurado and SPO2 Lizarondo, while SPO2 Arenas trailed them. Dungao was not in the ground floor nor found in the second floor. With Jurado leading, they were on the way to the third floor when Jurado stopped upon seeing Dungao on the roof holding a gun. He

warned his companions, but SPO2 Lizarondo disregarded this blurting "*Anong baril baril*" and continued the pursuit. Three (3) gunshots rang out and SPO2 Lizarondo slumped moaning. Jurado saw Dungao fire the shots at SPO2 Lizarondo, but SPO2 Arenas because of his position did not see who did it. SPO2 Arenas nonetheless fired his gun in the direction from where the shots came from to dissuade the gunman from further shooting. They then tended to SPO2 Lizarondo and brought him to the hospital, but he was pronounced dead on arrival.

As said, Jurado came back to testify under curious circumstances. This time he said that although he saw Dungao holding a gun, he was not too sure that it was Dungao who shot SPO2 Lizarondo. He explained that there were many persons drinking who then scampered away when they came, but that they had zeroed in on Dungao. The widow Jeanette Lizarondo also testified to put in a good word for Dungao and submitted her *Affidavit of Desistance* (Exh. "E").

Subsequently a case for Violation of R.A. 6425 was filed too against Dungao.

After all was said and done, the trial court rendered judgment in this case finding Dungao guilty of *Murder*, and disposing that:

In the Light of all the Foregoing, the Court hereby finds accused Enrique Dungao y Arca guilty of Murder, qualified by treachery, beyond reasonable doubt, and hereby sentences him to suffer the penalty of Reclusion Perpetua. He is ordered to pay the heirs of the victim P50,000.00, as indemnity ex-delicto, P25,000.00 as temperate damages, and P50,000.00 as exemplary damages. (Decision, p. 182, record)

This is assailed by Dungao in this appeal where he alleges that the court *a quo* committed these reversible errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING FULL WEIGHT AND CREDENCE TO THE RETRACTION MADE BY PROSECUTION WITNESS GLADYS JURADO.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED. (Appellant's Brief, p. 45, rollo)

In homicide (by dolo) and in murder cases, the prosecution is burdened to prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death (*Quinto vs. Andres*, G. R. No. 155791, March 16, 2005). These elements were proven by the prosecution beyond reasonable doubt notwithstanding that Jurado, one of the eyewitnesses, blew hot and then cold on his identification of the gunman.

Jurado in his *Salaysay* (Exh. "D", p. 23, record) taken on November 26, 2000 or the very