708 Phil. 218

FIRST DIVISION

[G.R. No. 201449, April 03, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WELVIN DIU Y KOTSESA, AND DENNIS DAYAON Y TUPIT,[1] ACCUSED-APPELLANTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an appeal of the Decision[2] dated March 11, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03785, affirming with modification the Decision[3] dated December 23, 2008 of the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 59, in Criminal Case No. 03-668, which found accused-appellants Welvin Diu y Kotsesa (Diu) and Dennis Dayaon y Tupit (Dayaon) guilty beyond reasonable doubt of robbery with homicide.

Accused-appellants, together with Cornelio de la Cruz, Jr., alias "Jay-Ar de la Cruz" (De la Cruz), were charged before the RTC on March 28, 2005 under the following Amended Information:

> That on or about the 3rd day of October, 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, armed with double bladed weapon, with intent of gain and by means of violence and intimidation against person, did and there willfully, unlawfully and feloniously take, steal and carry away from PERLIE SALVADOR y PALISOC, one (1) shoulder bag containing cash money amounting to P1,800.00, to the damage and prejudice of the said PERLIE SALVADOR, in the amount of ONE THOUSAND EIGHT HUNDRED PESOS (P1,800.00), Philippine currency, and on the occasion of the said taking and stealing the said accused, did then and there willfully, unlawfully and feloniously with intent to rob, stab [the] other complainant NELY SALVADOR y PALISOC, with the use of the bladed weapon on the different parts of her body, and as a result thereof, sustained fatal wounds on the different parts of her body, which eventually caused her death.[4]

Only accused-appellants were arrested, while their co-accused De la Cruz remained at large.[5]

When arraigned on November 4, 2003, accused-appellants, duly assisted by counsel, pleaded not guilty.[6]

The prosecution presented as witnesses Perlie Salvador (Perlie),[7] the surviving victim; and Police Inspector Medardo M. Manalo (P/Insp. Manalo),[8] involved in the follow-up police operation that resulted in the arrest of accused-appellants.

Perlie testified that she and her sister Nely Salvador (Nely) were employed as waitresses at Halla Hotel in Angeles City. As the sisters were walking home from work along Colorado Street in Villasol Subdivision at around 10:30 in the evening of October 3, 2003, they saw accused-appellants and De la Cruz about two to three meters away. The three men were facing the wall, approximately one and one-half feet apart, urinating. As soon as the sisters passed by the three men, the latter accosted the former. Accused-appellant Diu embraced Perlie while accused-appellant Dayaon and De la Cruz held on to Nely. Perlie was able to break loose by elbowing accused-appellant Diu, but accused-appellant Diu grabbed Perlie's bag, which contained her work uniform, personal effects, and P1,800.00 cash. Perlie ran away to ask for help from people nearby. Meanwhile, accused-appellant Dayaon and De la Cruz were embracing Nely from behind. As she tried to go near Nely, Perlie saw accused-appellant and De la Cruz stabbing Nely, passing a knife to each other. Perlie described the knife as double bladed and approximately seven inches long. After the stabbing, Nely was left lying face down on the ground, covered in blood. The entire incident took place within two minutes. Two men then helped Perlie bring Nely to the Ospital Ning Angeles, where Nely was pronounced dead on arrival. Perlie recovered Nely's bag and upon checking its contents, she discovered that P50.00 was missing. Perlie herself sustained wounds on her left elbow and left hip when she fell to the ground as she was trying to escape from accused-appellant Diu.

Perlie asserted that Colorado Street was populated and well-lit. The light coming from the streetlamps was "like sun rays,"[9] enabling Perlie to see not only the profiles of accused-appellants and De la Cruz, but also their facial expressions. During the police investigation, Perlie described accused-appellant Diu as "[having] a flat nose, somewhat ugly. *Medyo payat and maitim*."[10] Perlie also claimed that accused-appellant Diu looked like he was going to kill her. Perlie additionally observed that accused-appellants and De la Cruz, with their red eyes, appeared to be under the influence of drugs. In open court, Perlie was able to identify accused-appellant Diu as the one who attacked her, and accused-appellant Dayaon as one of those who stabbed Nely.[11]

The second prosecution witness, P/Insp. Manalo, was assigned at Police Station No. 5 from 2002 to May 10, 2004. On October 7, 2003, he was the commander-in-charge of intelligence, investigation, and operations of Police Kabayan Center (PKC) No. 51. While on duty, he witnessed police officers of PKC No. 52 questioning accused-appellant Diu regarding the homicide committed on October 3, 2003. He heard accused-appellant Diu name accused-appellant Dayaon, residing in *Daang Bakal,* Balibago, Angeles City, as the other suspect. Immediately, P/Insp. Manalo organized a raiding team. P/Insp. Manalo and the raiding team, with accused-appellant Diu, conducted an investigation at *Daang Bakal* from 10:00 to 11:00 in the morning. They suspected that accused-appellant Dayaon was staying at a house in a depressed area along the railroad track. They stayed about 30 meters away from the house, and waited for four to seven minutes until accused-appellant Dayaon stepped out. Accused-appellant Diu pointed to accused-appellant Dayaon, saying "That's him in the red t-shirt."[12] However, only after a few seconds,

accused-appellant Dayaon stepped back inside the house. The raiding team rushed into the house. Since there was no other entrance or exit into the house except for the front door, accused-appellant Dayaon merely sat down on the floor and asked "why, what."[13] Accused-appellant Diu again pointed to accused-appellant Dayaon as the other suspect in the homicide case.

The prosecution submitted as documentary evidence: (1) the Affidavit of Apprehension[14] dated October 7, 2003 of the police officers who arrested accused-appellants; (2) the Custodial Investigation Report[15] dated October 7, 2003 signed by Senior Police Officer (SPO) 4 Ernesto C. Silva; (3) Nely's Certificate of Death;[16] (4) Perlie's Sworn Statement[17] dated October 4, 2003 and Additional Sworn Statement[18] dated October 7, 2003; and (5) the Medical Certificate[19] dated January 27, 2004 executed by Dr. Rachell P. Gutierrez who attended to Nely at the hospital.

For the defense, accused-appellants Diu[20] and Dayaon[21] themselves took the witness stand. They denied their culpability and participation in the incident, and mainly laid the blame on their co-accused De la Cruz, who remained at-large.

According to accused-appellant Diu, on the night of October 3, 2003, he and accused-appellant Dayaon were walking along Colorado Street *en route* from a carnival in Balibago, when they chanced upon their common friend, De la Cruz. The accused-appellants were walking behind two girls as they entered Colorado Street. De la Cruz suddenly approached and embraced the two girls. Accused-appellants, who were only about a meter away, took a step back in surprise. Accused-appellant Diu tried to help the girls but accused-appellant Dayaon stopped him, warning him that they might be implicated. The girls shouted, and one of them fell down bloodied. The other girl was left standing, and when De la Cruz was about to approach her, accused-appellant Diu ran to her, embraced her, and then pushed her away. The girl, who accused-appellant Diu identified as Perlie, fell to the ground because he pushed her hard, but Perlie was able to get up and run away. Accused-appellant Diu at first said that accused-appellant Dayaon tried to approach and hold De la Cruz, but later he stated that accused-appellant Dayaon likewise ran away.[22] Accused-appellant remembered that De la Cruz was very angry and was about to advance towards him, but De la Cruz left the place at once when he heard other people coming. Accused-appellant Diu also left the scene to go home to Plaridel II.

Accused-appellant Diu admitted going to Manila right after the incident and returning to Plaridel II only two days later. Upon accused-appellant Diu's return, a certain Police Officer (PO) Paragas, together with three other men, went to see him at his auntie's house also in Plaridel II. PO Paragas said that a security guard saw accused-appellant Diu at the scene of the incident on October 3, 2003. Accused-appellant Diu admitted his presence on Colorado Street on October 3, 2003 and told PO Paragas everything he witnessed. PO Paragas and his three companions then brought accused-appellant Diu to the Friendship police station. At the police station, PO Paragas typed a one-page statement in *Tagalog*, which accused-appellant was unable to read or understand. The police next boarded accused-appellant Diu on a van and took him to Cuayan where he was detained for one day and one night. Thereafter, accused-appellant Diu was once more boarded on a van by PO Paragas and brought to Balibago. PO Paragas asked accused-appellant Diu to pinpoint

accused-appellant Dayaon. Failing to find accused-appellant Dayaon in Balibago after a night of search, the police brought accused-appellant Diu to the police precinct at Cuayan. After a day, the police brought in accused-appellant Dayaon to join accused-appellant Diu at the same precinct. The police told both accused-appellants that "Anyway, [De la Cruz] is not here, we will lock you up instead."[23]

As for accused-appellant Dayaon, he recounted that on the night of October 3, 2003, he and accused-appellant Diu went to a carnival and were on their way to accused-appellant Diu's house in Plaridel II. Accused-appellant Dayaon initially said that the carnival was very far from Colorado Street so he and accused-appellant Diu rode a jeep, but subsequently, he stated that they were walking along Colorado Street.[24] During his direct examination, accused-appellant Dayaon recalled that Colorado Street was very dark, having only one streetlight, so he did not see anyone else on the street. Accused-appellants then heard a woman scream.[25] Accused-appellant Diu noticed a commotion along Colorado Street, about 15 meters away from them. Accused-appellant Dayaon told accused-appellant Diu that they should just go back from where they came. Accused-appellant Diu, however, replied that accused-appellant Dayaon should just go home, and since accused-appellant Diu was going the same direction as the commotion, he would be the one taking care of it. Following accused-appellant Diu's advice, accused-appellant Dayaon went home at Checkpoint *riles*.

Accused-appellant Dayaon gave more details when he was cross-examined. He maintained that only accused-appellant Diu was previously acquainted with De la Cruz and he only came to know De la Cruz during his detention. He reported that on October 3, 2003, he and accused-appellant Diu saw De la Cruz about 15 meters away from them, walking towards the opposite direction on the other side of Colorado Street. Accused-appellant Diu commented that "Jay-Ar (De la Cruz)" was approaching. De la Cruz came near some people who were also walking, but because it was so dark, accused-appellant Dayaon could not even tell if the other people were girls. Accused-appellants later heard women screaming.[26] Accused-appellant Dayaon insisted that he did not know anything else since he already went home. Police eventually picked him up to ask him some questions regarding the stabbing incident. While accused-appellant Dayaon was detained at Cuayan, accused-appellant Diu told him about De la Cruz and his reaction was, "so that is Jay-Ar. I do not know him."[27]

During re-direct examination, accused-appellant Dayaon recollected that relative to his and accused-appellant Diu's position, the two girls were on the other side of the street but were nearer to them than De la Cruz. Accused-appellant Dayaon first said that the girls were walking towards the opposite direction, but later contradicted himself by saying that the girls were heading the same direction accused-appellants were going.[28]

In addition, the defense called to the witness stand Eduardo Roxas Mekitpekit (Eduardo)[29] and Esther Mekitpekit (Esther).[30]

Eduardo related that between 9:00 and 9:15 in the evening of October 3, 2003, he was on his way home from work on board a tricycle, when he saw De la Cruz standing at the corner of Colorado and New York Streets. De la Cruz was staying

with his uncle who was his (Eduardo's) neighbor, so De la Cruz was familiar. Eduardo asked De la Cruz what he was doing there when it was already evening and De la Cruz replied that he was waiting for somebody. Eduardo proceeded home in Plaridel II. The next day, October 4, 2003, his sister Ludy warned him against passing by Colorado Street because somebody got killed there. Yet, at 11:00 in the evening of the same day, Eduardo went to the apartment his family was renting on Colorado Street. He asked the security guard of the apartment about the stabbing incident and the security guard pointed to the place where it happened. Eduardo was terrified as it was the same place where he saw De la Cruz the night before. At around 6:00 in the morning of October 5, 2003, as he stepped out of their house in Plaridel II, Eduardo saw De la Cruz who likewise just awakened. Eduardo asked De la Cruz, "you were the one who did it?" and De la Cruz answered, "[y]es, I did it because the girl fought back."[31] Eduardo's sister, Esther, who was standing just half a meter away, heard De la Cruz, and she got angry. Esther hit De la Cruz's nape (binatukan) and said, "*babae ang inano ni'yo, hindi na kayo naawa*."[32] Eduardo claimed that he executed a statement at the Cuayan Police Station but it was not presented before the RTC.

Esther corroborated Eduardo's testimony. She was outside their house in Plaridel cleaning fish when she heard De la Cruz admitting to Eduardo that he stabbed the girl on Colorado Street. Esther hit De la Cruz's head and started to nag ("*nagbubunganga na ako*"), so De la Cruz immediately left.[33] When asked on cross-examination whether De la Cruz admitted that he was alone, it took Esther too long to answer, and when she finally did, she replied "[n]o sir."[34]

In its Decision dated December 23, 2008, the RTC found that Perlie's testimony was more credible; that Perlie's positive identification of accused-appellants, without showing of ill motive on her part, prevailed over accused-appellants' denial; and that there was conspiracy among accused-appellants and De la Cruz in the commission of the crime Robbery with Homicide. The RTC further determined that with the aggravating circumstance of nighttime present in this case, accused-appellants should be sentenced to death, but said sentence could not be imposed because of the enactment of Republic Act No. 9346. The RTC decreed in the end:

> WHEREFORE, the Court finds accused WELVIN DIU y KOTSESA and DENNIS DAYAON y TUPIT guilty beyond reasonable doubt of the crime of Robbery with Homicide defined in Article 293 and penalized in paragraph 1, Article 294 of the Revised Penal Code, and hereby sentences each of them to suffer the penalty of reclusion perpetua; to jointly and severally pay the heirs of victim Nely P. Salvador the amount of Fifty thousand pesos (P50,000.00) as civil indemnity; to jointly and severally pay the heirs of victim Nely P. Salvador and complainant [Perlie] P. Salvador the amount of Twenty thousand pesos (P20,000.00) as exemplary damages; to pay complainant [Perlie] P. Salvador the amount of One thousand eight hundred pesos (P1,800.00) for actual damages; and to pay the costs of suit in the amount of Three hundred pesos (P300.00).[35]

In an Order[36] dated February 6, 2009, the RTC gave due course to accused-appellants' Notice of Appeal and ordered the transmittal of the records of the case to