

FIRST DIVISION

[G.R. No. 185005, December 10, 2012]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DEJILLO AND GERVACIO "DONGKOY" HOYLE, JR., ACCUSED-APPELLANTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On appeal is the Decision^[1] dated February 22, 2008 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00510, which affirmed with modification the Decision^[2] dated September 20, 2000 of the Regional Trial Court (RTC), Branch 52 of Talibon, Bohol, in Criminal Case No. 96-267, finding accused-appellants Dante Dejillo (Dante) and Gervacio "Dongkoy" Hoyle, Jr. (Gervacio) guilty beyond reasonable doubt of the murder of Aurelio "Boy" Basalo (Aurelio).

Aurelio is a 22-year-old *Sangguniang Kabataan* (SK) *Kagawad* of Barangay Bugang, San Miguel, Bohol. On or about 3:00 a.m. of July 29, 1996, in Barangay Bugang, Aurelio was stabbed below his left rib. Aurelio was pronounced dead on arrival at the infirmary in San Miguel. The incident was entered in the police blotter of the Philippine National Police (PNP) of San Miguel on July 29, 1996 at about 4:10 a.m. According to said entry in the PNP police blotter, Aurelio was stabbed by one Romeo Puracan (Romeo), 30 years old and a resident of Ong Farm, Ubay, Bohol. Romeo was identified by accused-appellant Gervacio, who executed a Sworn Statement dated July 29, 1996 before the PNP of San Miguel. The police picked up Romeo by 6:00 a.m. of July 29, 1996. Thereafter, Romeo was charged with the crime of homicide.

In two letters dated September 3, 1996, Germana Basalo (Germana), Aurelio's mother, requested the PNP Chief of San Miguel to initiate the filing of a criminal complaint for murder against herein accused-appellants, plus one Jonathan Sodio (Jonathan) and Petronilo Dejillo, Sr. (Petronilo, Sr.), the father of accused-appellant Dante. In support of her request, Germana submitted the affidavits executed by several witnesses, including Germana herself and Romeo, mostly executed on August 31, 1996, with one executed on September 3, 1996. Germana and her family believed that Romeo was not the culprit and they had already referred the matter to the National Bureau of Investigation (NBI).

Acting favorably on the complaint for murder against accused-appellants, the Provincial Prosecution Office of Bohol eventually filed an Information charging accused-appellants, thus:

That on or about the 29th day of July, 1996, in the Municipality of San Miguel, Province of Bohol, Philippines, and within the jurisdiction of this

Honorable Court, the abovenamed accused, with intent to kill and without justifiable motive, conspiring, confederating and helping one another and with treachery and abuse of superior strength, the accused being then armed with a sharp pointed weapon while the victim was unarmed and was not given an opportunity to defend himself, and with evident premeditation, as accused Dante Dejillo had a grudge against the victim when the latter testified in a Robbery case filed against Dante Dejillo's younger brother, Petronillo Dejillo, Jr., did then and there willfully, unlawfully and feloniously attack, assault and stab one Aurelio Basalo, with the use of the said sharp pointed weapon, hitting the victim on the vital part of his body which resulted to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the Provision of Article 248 of the Revised Penal Code, as Amended by Republic Act 7659.^[3]

Accused-appellants pleaded not guilty during their arraignment.^[4] Thereafter, trial ensued.

The prosecution called to the witness stand Florenda Dolera (Florenda),^[5] Elias Aurestila (Elias),^[6] Amelita Basalo (Amelita),^[7] Gemima Dolera (Gemima),^[8] Romeo,^[9] and Germana.^[10] The prosecution dispensed with the testimony of Dr. Gil Macato (Gil),^[11] NBI Medico-legal Officer, Region VII, after the defense admitted the genuineness and veracity of Dr. Gil's exhumation report on Aurelio's cadaver, which determined Aurelio's cause of death as a "stab wound of the chest." The prosecution also subsequently presented Senior Police Officer (SPO) 3 Victor Gubat,^[12] Saul Curiba (Saul),^[13] and again Elias^[14] as rebuttal witnesses.

The testimonies of the prosecution witnesses presented the following version of events:

In the evening of July 28, 1996, Aurelio and accused-appellants were engaged in a drinking spree at Germana's house in Barangay Bugang. About 40-50 meters away in the same Barangay, Celso Nuera (Celso) was celebrating his birthday at his house where Saul and his nephew Romeo were in attendance as guests. By midnight, Romeo fell asleep on a bamboo bed outside Celso's house. At around 3:30 a.m. of July 29, 1996, Romeo was awakened by the crowing of a rooster. While still lying down, Romeo saw clearly Aurelio and accused-appellants on the *barangay* road, just four meters away. Accused-appellant Gervacio, *alias* Dongkoy, had his left arm on Aurelio's right shoulder and with his right hand, held and raised Aurelio's left hand to shoulder level. Accused-appellant Dante then stabbed Aurelio with a knife at the left side of the latter's body. Accused-appellants ran away leaving Aurelio behind. Aurelio was still standing but already staggering. Romeo was about to help Aurelio but he was chased away by three men, one armed with a knife. Romeo went home to Ong Farm at Sitio Caong, San Francisco, Ubay, Bohol, where he was arrested later that morning.

In the meantime, Florenda, Aurelio's sister, was asleep at her residence when she was awakened at around 3:30 a.m. of July 29, 1996 by the sound of running feet. Remembering accused-appellant Dante's threat against Aurelio's life six days earlier,

Florenda started looking for Aurelio. She met accused-appellant Gervacio along the way, who pretended to help in searching for Aurelio. Florenda subsequently heard Aurelio shouting for help. Florenda found her brother at a road canal, leaning against the canal wall. Thinking that her brother was only drunk, Florenda asked accused-appellant Gervacio to help her carry Aurelio home but accused-appellant Gervacio pulled up Aurelio's T-shirt and said, "So, he was hit because he was stabbed by Ramie Puracan." Yet, as Florenda was embracing Aurelio, Aurelio was able to whisper in Florenda's left ear that, "I was stabbed by Dante while Dongkoy held me." By this time, Saul, Petronilo, Sr., and Amelita (Florenda's niece) had arrived at the scene. As Florenda ran home to get her husband, Amelita heard Saul asking her uncle Aurelio who stabbed him and Aurelio answering that it was accused-appellants Dante and Dongkoy. Petronilo, Sr., father of accused-appellant Dante, went near Aurelio and covered Aurelio's mouth.

Florenda and her husband took Aurelio to the San Miguel Infirmary where Aurelio was pronounced dead on arrival. Aurelio's Death Certificate stated that his cause of death was cardiopulmonary arrest secondary to hypovolemia (internal hemorrhage) secondary to stab wound.

Accused-appellant Dante had already been threatening to kill Aurelio days prior to the stabbing. Accused-appellant's brother, Petronilo Dejillo, Jr. (Petronilo, Jr.) committed robbery against Gemima, Florenda's mother-in-law. Aurelio was the star witness in the robbery case against Petronilo, Jr. Petronilo, Jr. had since been in hiding and was unable to come home even for his grandmother's death and wake. Elias, related to both accused-appellants through his father-in-law, personally witnessed accused-appellant Dante making such threats against Aurelio, and Gemima was already warned of accused-appellant Dante's threats against her son-in-law, Aurelio, days before July 29, 1996.

Following Aurelio's death, his family had been requesting the police to file complaints against accused-appellants. When the police failed to act upon their request, Aurelio's family already sought the help of the NBI.

According to Germana, Aurelio was the one supporting her so his death was beyond compensation. Germana also claimed that she had already spent P67,000.00 for Aurelio's wake and burial, P5,000.00 for the exhumation of Aurelio's body, and P38,500.00 for court expenses, for a total of P110,500.00. Germana, however, did not present any receipt.

The defense countered with the testimonies of accused-appellants

Gervacio/Dongkoy^[15] and Dante,^[16] SPO1 Dario Nuez,^[17] Jonathan,^[18] SPO1 Paulino Boñor,^[19] Dr. Hamilcar Lauroy Sanial (Hamilcar),^[20] Nerio Quisto,^[21] Lorenzo Orevillo,^[22] Petronilo, Sr.,^[23] Letecia Torreón Dejillo (Letecia),^[24] and Hospicia Eliadora Hoyle.^[25] The defense also presented Police Officer (PO) 1 Desiderio Garcia^[26] as a sur-rebuttal witness.

Taken together, the defense witnesses' testimonies give the following account of events of July 28-29, 1996:

On July 28, 1996, accused-appellants, with Jonathan and several other companions,

were hopping from one *barangay* to another to play basketball, to visit accused-appellant Gervacio's girlfriend, and to eat supper at the house of accused-appellant Gervacio's uncle. Their group finally got back to Barangay Bugang past 11:30 p.m. and had a drinking spree at Aurelio's house. They were later joined by Saul and Romeo.

During the drinking spree, Saul pulled Aurelio's hair and Aurelio retaliated by boxing Saul. Accused-appellant Gervacio separated Saul from the group and brought Saul to the Bugang public market, about 25 meters away. While accused-appellant Gervacio and Saul were at the market, Romeo was boxed by Aurelio and hit by Dante with a belt. Romeo ran away, past accused-appellant Gervacio and Saul at the public market. Accused-appellant Gervacio eventually returned to his group at Aurelio's house.

Thereafter, Celso invited the group to his house. Only Aurelio and accused-appellant Dante entered Celso's house, while the rest of the group remained outside to sleep on the bamboo bed outside said house. That was the last time accused-appellants saw each other.

Finding Saul also inside Celso's house, Aurelio confronted Saul about the hair-pulling incident. The two were pacified by Petronilo, Sr., who then advised his own son, accused-appellant Dante, to just go home. Following his father's advice, accused-appellant Dante left for home at around 2:00 a.m. of July 29, 1996. Accused-appellant went to sleep and woke up at around 6:00 a.m., whereupon he learned from his mother Letecia that Aurelio had been stabbed.

It was around 3:00 a.m. of July 29, 1996 when Aurelio woke up accused-appellant Gervacio, who was sleeping on the bamboo bed outside Celso's house. Aurelio and accused-appellant Gervacio began walking towards Aurelio's house only 25 meters away. But then, they heard a commotion and Romeo appeared from the left side of the road, carrying a hunting knife. Romeo stabbed Aurelio on the latter's left side. Aurelio and accused-appellant Gervacio both ran away with Romeo chasing after them.

Accused-appellant Gervacio first hid himself before going home, where he got a scythe for protection. He then went back to check on Aurelio.

Along the way, accused-appellant Gervacio met Florenda who asked about the persons running. Accused-appellant Gervacio told Florenda that Romeo was chasing him and Aurelio and that Aurelio was stabbed. He helped in looking for Aurelio who was found lying face up at the right side of the road, breathing with difficulty, and unable to talk. When Florenda and her husband brought Aurelio to the hospital, accused-appellant Gervacio accompanied them.

After Aurelio was received at the hospital at around 4:00 a.m. of July 29, 1996, accused-appellant Gervacio proceeded to the municipal hall to report the incident to the police. Thus, Romeo was arrested around two hours later.

Dr. Hamilcar, the municipal health officer of San Miguel, conducted a post mortem examination of Aurelio's body and found only one fatal wound and no other contusions or abrasions. Aurelio suffered from massive internal hemorrhage, causing his death. When Dr. Hamilcar examined Aurelio at 4:00 a.m. on July 29, 1996, rigor

mortis had not yet set in. However, Dr. Hamilcar admitted that because of the lack of facilities, he was not able to perform a real autopsy on Aurelio. Dr. Hamilcar only conducted a surface anatomy, including poking Aurelio's wound with a blunt instrument. Hence, Dr. Hamilcar qualified that he could only testify on possibilities, *i.e.*, that it is possible to inflict such a wound as was found on Aurelio without having to intentionally lift Aurelio's left hand, provided, that the left arm is not obstructing the location, such as when the arms are swung or are raised; that it is possible that Aurelio's speech power was affected because of lack of blood supply to the brain; and that it is possible that Aurelio was still able to talk about who inflicted his injury.

On September 20, 2000, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of the crime of murder, with the qualifying circumstance of taking advantage of superior strength. Said verdict reads:

WHEREFORE, the Court finds the accused Dante Dejillo and Gervacio Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder defined and penalized under Art. 248 of the Revised Penal Code, as amended by RA No. 7659. There being no mitigating nor aggravating circumstances adduced and proven during the trial, the Court hereby sentences each of the accused to suffer the penalty of Reclusion Perpetua, with all the accessory penalties of the law and to pay the costs.

Further, each of the accused shall pay jointly and severally to the heirs of Aurelio Basalo civil indemnity for the death of the victim in the amount of P50,000.00 and moral damages in the amount of P50,000.00.

As the heirs of the victim clearly incurred funeral expenses although no receipts were presented[,], the amount of P10,000.00 by way of temperate damages is hereby awarded. No actual damages representing unearned income of the victim can be awarded, the same not having been sufficiently proven.

The period during which the accused were detained shall be credited in their favor as service of sentence in conformity with Article 29 of the Revised Penal Code, as amended.^[27]

Pursuant to the Commitment on Final Sentence^[28] issued by the RTC

on September 27, 2000, accused-appellants were committed to and received at the New Bilibid Prison, Muntinlupa City.^[29]

Accused-appellants appealed their conviction by the RTC directly before this Court, ^[30] but conformably with its ruling in *People v. Mateo*,^[31] the Court transferred the case to the Court of Appeals for appropriate action.

The Court of Appeals promulgated its Decision on February 22, 2008 dismissing accused-appellants' appeal and affirming the RTC judgment with the modification of increasing the award of temperate damages, thus: