

## SECOND DIVISION

[ G.R. No. 171085, March 17, 2009 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO "RUDY" SORIANO, APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated June 6, 2005 of the Court of Appeals in CA-G.R. CR No. 00978, which affirmed the Decision<sup>[2]</sup> dated April 29, 2002 of the Regional Trial Court, Branch 46 of Urdaneta City. The trial court found appellant Rodolfo "Rudy" Soriano guilty of murder in Criminal Case No. U-11465.

The Information dated July 17, 2001 charging appellant and one Ireneo "Rene" Lumilay with murder, defined and penalized under Article

248<sup>[3]</sup> of the Revised Penal Code, reads as follows:

x x x x

That on or about May 2, 2001 at Brgy. Oraan West, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, armed and with the use of unlicensed firearms, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot Diodito Broniola, inflicting upon him two (2) gunshot wounds which cause[d] his death to the damage and prejudice of his heirs.

Contrary to Art. 248, Revised Penal Code as amended by R.A. No. 7659 in relation to R.A. [No.] 8294.<sup>[4]</sup>

Appellant was arrested by the police authorities while Ireneo "Rene" Lumilay remained at large. Upon arraignment, appellant pleaded not guilty. Trial thereafter ensued.

The prosecution presented, as witnesses, Genaro R. Lumilay, an eyewitness; PO3 Dante N. Marmolejo, the police investigator of the PNP Manaoag, Pangasinan; and Dr. Arnulfo T. Bacorro, Rural Health Physician of Manaoag, Pangasinan.

Genaro R. Lumilay<sup>[5]</sup> testified that on May 2, 2001 at 2:00 p.m., he attended a birthday party at Barangay Oraan, Manaoag, Pangasinan. At around 7:00 p.m., he left the party with Diodito "Perlito" Broniola and the latter's live-in partner, Rowena P. Cariño. While walking on their way home, appellant and Ireneo suddenly emerged from nowhere and faced them. Appellant shot Diodito below the neck. Genaro

moved Diodito to the canal along the left side of the road but Ireneo shot Diodito again at the left side of his body. As Diodito fell to the ground, Genaro ran home. Later that evening, the police fetched him and brought him to the police station where he gave his statement.

PO3 Dante N. Marmolejo<sup>[6]</sup> testified that upon receiving a report that there was a shooting incident at Barangay Oraan, Manaoag, Pangasinan, he immediately proceeded to the place of the incident. He saw the lifeless body of Diodito lying on the side of the road. Rowena told him that it was appellant who shot Diodito. Thereafter, he searched for and arrested appellant at his house.

Dr. Arnulfo T. Bacorro conducted an autopsy on Diodito. In his Autopsy Report<sup>[7]</sup> and testimony,<sup>[8]</sup> he declared that Diodito's body bore two gunshot wounds. The first wound was fatal because it trajected the inferior lobe of the left lung up to the upper lobe of the right lung thereby causing massive bleeding.

On the other hand, the defense presented, as witnesses, appellant Rudy Soriano; Elvira Soriano, appellant's wife; and Edwina C. de Jesus.

Elvira Soriano<sup>[9]</sup> testified that at around 7:00 p.m. of May 2, 2001, they heard a single gun burst while she, her husband and daughter, were eating supper. They proceeded to the road which was about ten meters away from their house. She saw Genaro running westward. Eastward, she saw Diodito lying on the ground with Rowena beside him. Appellant flagged down a tricycle to help Diodito but the driver refused to board them. When Genaro came back, he pointed to appellant as the one responsible for Diodito's death.

Elvira declared that Genaro hated appellant for the following reasons: *First*, appellant borrowed a male duck which they failed to return because it died. *Second*, appellant was close to Ireneo, who won a land dispute case against Genaro's father, and to one Jonathan Fernandez,<sup>[10]</sup> the private complainant in a robbery case against Genaro.

Appellant Rudy Soriano<sup>[11]</sup> testified that at around 7:00 p.m. of May 2, 2001, he was at home with his wife and daughter. While they were eating supper, they heard a burst of gun fire. They went out of their house and saw Genaro running eastward. He also saw Diodito lying at the side of the road face up. He tried to help him but the tricycle driver refused to board them. He was not able to report the incident since he was already arrested by PO3 Marmolejo.

Appellant added that Genaro testified against him because he failed to return the male duck he borrowed. He was also very close to Ireneo who won a land dispute case against Genaro's father, and Jonathan Fernandez, the private complainant in a robbery case against Genaro.

Edwina C. de Jesus<sup>[12]</sup> testified that she was selling cooked food near the place of the incident on the night of May 2, 2001. While thereat, she heard a woman shouting, "*bay-am, bay-am*" (leave it, leave it), and saw two men and a woman. After a while, she heard a gun burst. She recognized the victim as Diodito, the woman as Rowena and the one who ran away as Genaro. As Rowena cried for help,

Edwina approached her. She flagged down a tricycle but the driver told them not to bring Diodito to the hospital anymore since he was already dead.

Edwina added that she knows appellant but does not know if he was at the place of the incident because many people were there.

On April 29, 2002, the trial court convicted appellant. It gave credence to Genaro's testimony and rejected appellant's defense of denial and alibi. It also did not give weight to the insinuation of ulterior motive on Genaro's part. It held that Genaro and Rowena's statements were taken immediately after the incident and there could have been no time to fabricate their statements. Moreover, Genaro withstood the rigors of cross-examination and was firm in his testimony that it was appellant who shot Diodito.

The trial court appreciated treachery which qualified the killing to murder. It ruled that Diodito was attacked in a swift and unexpected manner affording him no chance to defend himself.

The dispositive portion of the decision reads:

WHEREFORE, the court finds the accused guilty of murder penalized by Article 248 as amended by R.A. 7659 and sentences him to suffer the penalty of [*Reclusion Perpetua*] and to pay the heirs of the victim Diodito Broniola alias "Perlito" the civil indemnity of P50,000.00 and with costs against the said accused.

SO ORDERED. <sup>[13]</sup>

On June 6, 2005, the Court of Appeals affirmed the decision of the trial court. *First*, it noted that Genaro's testimony regarding the details of the shooting incident was substantiated by the findings of Dr. Bacorro. Dr. Bacorro confirmed that Diodito sustained two fatal gunshot wounds. *Second*, it observed that Genaro's testimony was reliable as he did not immediately report the matter to the police. He ran home since he could no longer help Diodito. He had no time to fabricate or concoct any story as the incident was still fresh in his memory. He was cross-examined and was never shaken. His story was consistent throughout. *Third*, it held that the prosecution's failure to present Rowena was not fatal. Since the witness was equally available or accessible to the defense, no negative inference can be made out of it. The presumption of suppression of evidence is inapplicable where the evidence was at the disposal of both the defense and the prosecution and would have the same weight against one party as against the other. *Fourth*, it ruled that appellant's defense of denial and alibi deserved no weight. His alibi cannot prevail over his positive identification by the prosecution witness as one of the perpetrators of the crime. He failed to discharge the burden of proving that it was physically impossible for him to be at the scene of the crime at the time it was committed. *Fifth*, it concluded that appellant's ill-motive theory was speculative and insufficient to impel Genaro to perjure himself and put appellant behind bars for life.

The appellate court likewise affirmed that treachery attended the killing. Diodito and his companions were merely walking when appellant suddenly appeared and shot him. Appellant consciously adopted said mode of nighttime attack to insure the success of his purpose without any risk to himself. Diodito was unaware of the