

SECOND DIVISION

[G.R. No. 149725, October 23, 2003]

**OSCAR MAGNO, PETITIONER, VS. THE PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure for the reversal of the decision^[1] of the Court of Appeals in CA-G.R. CR No. 22399 reversing the decision^[2] of the Regional Trial Court of Ifugao, Branch 14, in Criminal Case No. 808.

The Indictment

The petitioner was charged with homicide in an Information, the accusatory portion of which reads:

That on or about the 4th day of June, 1992, in the Municipality of Lagawe, Ifugao, and within the jurisdiction of the Honorable Court, the above-named accused with intent to kill, and without any justifiable reason whatsoever DID then and there willfully, unlawfully and feloniously inflict physical injuries on the different parts of the body of Dov Lourenz Dunuan which directly caused the latter's death.

CONTRARY TO LAW.^[3]

On arraignment, the petitioner, assisted by counsel, pleaded not guilty.

The Case for the Prosecution

As culled by the trial court, the case stemmed from the following facts:

In the early evening of June 4, 1992, Buss, Gilbert Baccay and Herman Dinamling were drinking liquor (beer) inside the backroom of the restaurant owned and managed by Emerita Danao, known then as the Top Side Restaurant. This restaurant faces the concrete house of the accused and their distance is more or less 10 meters with the national highway separating both buildings.

There were other customers also drinking. While the liquor binge of the three was on-going, Dov arrived and joined them as he was invited. Moments later, Dov went to the juke box and played a tune and continued taking in beer just as the rest were doing. After consuming the bottle, he informed the group that he will go to the other side (referring

to the house of the accused which has a store in it), but he was followed by Gilbert who stayed up to the main door of the restaurant Buss and Herman Dinamling were left behind drinking. Realizing that Gilbert was staying outside long, Buss told Herman to stay put as he was going out to see the two. Reaching outside, he saw Gilbert standing just near the Platinum Office (an insurance office also located in the house of the accused) and near him was Dov.

Buss decided to join the two who were still in front of the house of the accused. Gilbert then intimated to Dov that Buss be his companion to which Dov agreed. So Gilbert returned back to the restaurant while Dov and Buss entered the store of Mr. Magno. Upon entering, Buss saw the accused at the counter, the maid was situated at the kitchen. Meanwhile, Dov sat near a table while Buss went to the counter to order for some soft drinks (cola-cola). Mr. Magno did not answer but at this moment, Olen (who is actually Lorraine Magno), daughter of the accused, came out and told Buss that their soft drinks were consumed but Buss retorted that earlier, he bought some soft drinks and how come said drinks are now not available. With the exchange of words between Olen and Buss, accused eyed sharply the two intoxicated youngsters. Buss then urged and tried to pull Dov to get out but the latter refused because the former saw the accused getting angry. Dov persisted in staying and in fact removed Buss' hold on him. By this time, feeling the necessity of urination, Buss went outside to relieve himself. After that, he turned to call Dov but when he was in between the house of Cora Martin and that of the house of the accused as both houses were very adjacent and likewise both facing the Top Side Restaurant, he saw the accused strangle Dov. Aside from this, he saw further Mr. Magno landing more blows on Dov's chest and twisted the latter's hand. While this was taking place, he saw Dov with eyes and mouth opened due to the strangling and the boxes thrown because he was four meters more or less from the place where accused inflicted the injuries which was beside the accused's ISUZU cargo truck parked in front of the same house on a sloping cemented portion.

Shocked by what he saw, he ran away proceeding to the nearby Top Side Restaurant, then went to the direction of the Don Bosco High School which was also very near and as he was about to proceed to Lagawe Proper (a nearby barangay), he thought his companions left the restaurant, so he returned back as fast as he could, opened the door, sat down and leaned his head on a table. As he was tongue tied, he did not tell anyone what he saw but at this very instance, shouts were heard and the voice of Emerita Danao yelling "It's Dov, it's Dov , it's Dov," was in particular the voice he heard.

Hearing this, Buss then went out and saw his companions Herman and Gilbert carrying the body of Dov just near the store of the accused. He noticed further that the parked truck of the same accused was nowhere to be seen, so he helped his two friends hold the body of Dov and saw blood oozing from the latter's nose and mouth (Exhibits "A," "A-1," "A-2").

Meanwhile, Gilbert Baccay, after leaving Buss and Dov at the frontage of accused's residence, returned to the restaurant to join Herman Dinamling in the drinking and while telling stories and listening to the music, they suddenly heard a shout outside, and Gilbert saw Mrs. Emerita Danao crying. He immediately went out of the restaurant and saw his friend Dov sprawled on the cemented portion of the frontage of Magno's house just beside the paved national road. Hurriedly, he went to Dov, turned and took hold of him and asked "Dov, what happened to you?" but the latter did not move and answer. He saw Dov's eyes "blankly open and blood was oozing from his nose. Then Herman Dinamling arrived but Gilbert still asked Dov "what happened," but the little son of Emerita Danao who was present pointed to the accused, who by then just arrived still driving the big vehicle, as "... That one who did it to him." The accused next told them "to look for a tricycle" to bring Dov to the hospital. (Exhibit "K" and sub-markings). After saying this, accused drove said truck and proceeded towards the direction of the Don Bosco Teacher's Quarters passing the Top Side Restaurant. Mrs. Emerita Danao by then called a tricycle to rush Dov to the hospital. Buss and Gilbert rushed to inform Dov's parents what transpired.

Upon the request of the relatives of the victim, coursed through official channels (Exhibits "B," "C," "D," and "E"), Dr. Ruben Angobung, Medico-Legal Officer, NBI, Ilagan, Isabela, conducted an autopsy or exhumation on the body of Dov. (Exhibits "F," "G," "H" and its sub-markings, "I," "J"). Hereunder are his findings and the extent of the injuries, to wit:

PHYSICAL INJURIES:

CONTUSED ABRASIONS:

1. 3.0 x 2.0 cms., cheek, left aspect.
2. Multi-linear; irregularly distributed in a horizontal fashion, covering an area of 5.0 x 1.0 cm., located more at the anterior aspect of the neck tapering irregularly on the left side.
3. Confluent; measuring 10.0 x 7.5 cms., located at the anterior upper-half, chest, between the anterior fold and the nipple, right.
4. 1.0 x 1.0 cm., located at the anterior chest wall, midline.
5. 2.5 x 1.5 cms., anterior upper-half, chest left side.
6. 1.5 x 0.3 cm., posterior aspect, upper midline thorax;
7. 4.5 x 1.0 cm., posterior aspect, medial to inner left scapula margin, left.
8. 22.0 x 3.0 cms., postero-lateral aspect, forearm, left.

CONTUSIONS:

1. 10.0 x 1.0 cm., postero-lateral aspect, external ear, right.
2. 10.0 x 4.5 cms., posterior-proximal third, arm, left.
3. 4.0 x 1.0 cm., anterior wrist, right.

HEMATOMA:

1. Subcutaneous and intramuscular, moderate in amount, anterior chest, right side above 3rd, 4th and 5th anterior ribs.

2. Subcutaneous and intramuscular, severe, located at the anterior chest, above 2nd and 3rd anterior ribs, left.

FRACTURED:

1. Second anterior rib, complete along mid-clavicular line, left.
2. Third anterior rib, complete at costo-chondral junction, left.

INTERNAL ORGAN INVOLVEMENT:

1. Lungs, left contused at its anterior aspect, upper and lower lobes.
2. Spleen, superficial ruptures with ramifications at its dome.
3. Brain and other visceral organs, pale, but otherwise unremarkable.

HEMORRHAGE:

Intra-thoracic, severe; Intra-peritoneal, minimal.

Stomach, contained small amount of partially digested rice and other food particles.

CAUSE OF DEATH:

Hemorrhagic shock; Traumatic. (Exhibit "G")

Dov's father Manuel Dunuan, Jr., claimed that his youngest son died on June 4, 1992 and Funeraria Gambito, Bayombong, Nueva Vizcaya was contacted for the funeral services. In the process, the family paid P30,000.00 covered by a receipt issued by said funeral parlor (Exhibit "L"). During the wake and for the duration of 5 days, one pig valued at P4,000.00 was butchered for a day except the 3rd and 5th day where additional pigs of more or less the same value were likewise butchered for the many visitors and mourners. For the duration of the novena, one cow worth P10,000.00 and one pig worth P4,000.00 were butchered for the people. One sack of rice valued at P600.00 per day was consumed for the duration of five days.

All the members of the family suffered heavily and they experienced mental anguish, sadness and tortured thoughts. The loss of Dov, being the youngest and closest to all affected Dov's elder sister Pamela such that she was referred and confined at the Makati Medical Center for psychiatric care and the family spent P60,000.00 plus another P20,000.00 for the food, travel and other related expenses incurred while Pamela was confined. The other sister had to drop all her subjects at the University of Baguio, Baguio City, because she can't accept the loss of her little brother.

His wife, who has a fondness to Dov had to take a leave of absence from her work. They have now recovered from the loss of her son but they still suffer whenever Dov is remembered.^[4]

The Case for the Petitioner

The case for the petitioner as culled from the evidence is as follows:

The residence of the accused is a three-storey house. The first floor could not be seen on the street, but the second floor is on level with the national road (Rizal Avenue). The second floor is where the store (sari-sari and snack house) is located and also where the Platinum Office is stationed. The third floor is where the family of the accused used as their residence.

...

On June 4, 1992, Jun Mar Danao was then 10 years old; Nerry Ann Bravo - a niece of Mr. and Mrs. Magno, was also ten years old and Lorraine Magno, daughter of the accused, was then 12 years old.

Between 6:00 to 7:00 p.m. of June 4, 1992, the store of the accused was opened and Lorraine Magno and her cousin Nerry Ann Bravo together with the accused were inside the store. Lorraine and Nerry were sitting just behind the counter and attending to the store for any customer. The accused was reading a newspaper at the counter. Two persons entered the store and they were Dov and Buss who were drunk because of the smell of liquor and their swaying movements. They seated themselves beside one of the tables, and they asked for soft drinks (coke) from Lorraine but she told them that their soft drinks were consumed. Buss stood up and called Dov "come now" but Dov answered "you go," so Buss left Dov. Dov stood up and went to the counter and looked at the accused who was near the counter reading a newspaper. The accused advised Dov in a soft tone to go home because he was drunk. Dov went out. Mr. Magno ordered Nerry and Lorraine to close the store but it was the latter who closed the accordion door and a space of two feet was left opened because Dov was forcing the door to be opened for him to tell something to the accused. Dov was telling Lorraine "Can I talk to your papa?" to which Lorraine retorted, "What will you talk about?" Dov turned to leave, so Lorraine shut the accordion door.

Moments later, they heard banging sounds particularly the sound of stones thrown at the accordion door. The accused stood up as he was surprised by the stoning and opened the same door. The accused went out looking for anybody who stoned. He went to the street while Lorraine followed his father but she stayed just at the accordion door while Nerry Ann Bravo was at her back. They saw nobody on the street except the accused. Then immediately accused passed by the front of the Isuzu truck parked in front of the store of the accused and got to the driver's seat, switched on the light, started the engine and proceeded to the plaza turning in the right direction. Before the accused drove away, Lorraine noticed a boy under the truck "crawling towards her" so she screamed to her father to stop the truck but her father did not hear and sped off, leaving this boy in the same spot where the truck was parked. Lorraine went near the boy and noticed him to be Dov Dunuan, as if he was sleeping and not moving. Nerry Ann Bravo saw that the person was ran over by the last wheel of the truck. Lorraine ran to the Topside Restaurant to call for help and she met Emerita Danao on the steps. The latter followed Lorraine and both of them went to the body of Dov and Emerita Danao was crying. Mrs. Danao then lifted the head of the victim