

FIRST DIVISION

[G.R. No. 122104, January 19, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO ORBITA Y JUSAY, CEFERINO CAPISUNDA Y BALCE, AND ORLANDO SANTIAGO Y FRANCISCO, ACCUSED-APPELLANTS.

D E C I S I O N

PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Batangas, Branch 13, Lipa City finding accused-appellants Pepito Orbita y Jusay, Ceferino Capisunda y Balce and Orlando Santiago y Francisco, guilty beyond reasonable doubt of murder.^[1]

On October 3, 1989, the third assistant Provincial Prosecutor, province of Batangas, filed with the Regional Trial Court, Lipa City an Information charging accused-appellants with murder committed as follows:

"That on or about the 18th day of August, 1989, at about 7:30 o'clock in the evening, at Barangay Tipaz, Municipality of San Juan, Province of Batangas, Philippines and within the jurisdiction of this honorable court, the above named accused, armed with long firearms, conspiring, and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Diosdado de Guzman y Areglado, suddenly and without warning, thereby inflicting upon the latter multiple gunshot wounds on different parts of his body which directly caused his death.

"Contrary to law."^[2]

The accused were arraigned separately. Pepito Orbita y Jusay and Ceferino Capisunda y Balce were arraigned on December 4, 1989, and they pleaded not guilty. The accused Orlando Santiago y Francisco was arraigned on January 9, 1990. He pleaded not guilty.^[3] Trial ensued.

The facts are as follows:

On August 18, 1989 at about 2:00 in the afternoon, Arbel Magtibay, Gildo Areglado, Diosdado de Guzman and Ading Ray were having a drinking spree in front of the house of Ading Ray at Barangay Tipaz, San Juan Batangas. At that moment, accused-appellants Pepito Orbita, Ceferino Capisunda and Orlando Santiago all CAGU members passed by. They were invited by the group to drink. When Ading Ray handed Santiago a drink, the latter threw the glass of lambanog, which

prompted Diosdado de Guzman to say " ***kung iinom, uminom, kung ayaw huwag itapon ang alak***". Obviously irked by the remark, Orbita, Capisunda and Santiago suddenly pointed their rifles at Diosdado de Guzman. Ading Ray pacified the three accused who thereafter left.^[4]

Later that same day, at around 7:30 in the evening, while Diosdado de Guzman, Ambo Comia, Lordino Mendoza and Arbel Magtibay were walking home, they met the two accused-appellants, Pepito Orbita and Orlando Santiago in front of the store of Rosenda Bautista. The two poked their M-14 armalite rifles at Diosdado de Guzman. Lordonio Mendoza pacified the accused-appellants. However, Orbita suddenly opened fire at Diosdado de Guzman, hitting the latter on the chest. Ambrocio Comia and Lordino Mendoza, companions of Diosdado de Guzman fled from the scene while helping Diosdado, and after reaching a big stone at the side of the road left Diosdado to call for a jeep to bring the seriously wounded Diosdado to a hospital.^[5]

Eyewitness Juanito Mendoza testified that he was at his house nearby when he heard the shots. When he went out of his house, he saw Diosdado de Guzman being aided by Ambrocio Comia, and Lordonio Mendoza. Diosdado de Guzman was bloodied. Ambrocio Comia and Lordonio Mendoza then left to look for a jeep. Juanito Mendoza went to the side of the road in front of his house and saw Ceferino Capisunda at the other side of the road, carrying a long firearm. Juanito asked him not to fire his gun because his mother was sick and the shot would alarm her. Ceferino Capisunda did not respond. Juanito Mendoza went on his way home. After a few steps away from Ceferino and before reaching his house, he heard someone calling him "Cap" followed by a burst of gunfire. When he turned around, he saw Ceferino Capisunda firing his long firearm at Diosdado de Guzman and the latter fell to the ground, near the stairs at the side of the road just in front of his house. The latter was instantly killed.^[6]

After consideration of the evidence presented by both parties, on February 2, 1995, the trial court rendered judgment finding the accused guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered and taking into account the qualifying circumstance of Treachery and the generic aggravating circumstance of use of superior strength, the court finds the accused Pepito Orbita, Ceferino Capisunda and Orlando Santiago GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA together with all the accessory penalties, to jointly and solidarily indemnify the heirs of the victim in the amount of FIFTY THOUSAND (50,000.00) PESOS and to pay the costs of suit.

SO ORDERED."^[7]

Hence, this appeal.

In their brief, accused-appellants imputes the following errors to the trial court:

1. In finding that there was conspiracy and thus convicting the three (3) accused of murder;