

SECOND DIVISION

[G.R. No. 111941, April 27, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONALD ESTORCO Y DE LUNA, BUTCH BALLESTEROS, HENRY
JUGUILON Y NARVASA AND PETER DOE, ACCUSED**

RONALD ESTORCO Y DE LUNA, ACCUSED-APPELLANT.

D E C I S I O N

BUENA, J.:

This is an appeal from the Decision of the Regional Trial Court of Dagupan City, Branch 44, in Crim. Case No. D-10756, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Ronald Estorco y de Luna guilty beyond reasonable doubt as principal of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, and in view of the presence of the generic aggravating circumstances of superior strength and cruelty without being offset by any mitigating circumstance, and pursuant to law, hereby sentences Ronald Estorco y de Luna to suffer the penalty of Reclusion Perpetua and to pay the costs.

"Accused Ronald Estorco is hereby ordered to indemnify the heirs of the deceased in the amount of P50,000.00.

"Accused is also ordered to pay the amount of P18,050.00 representing actual expenses and P100,000.00 as moral damages plus attorney's fees in the amount of P10,000.00.

"SO ORDERED."^[1]

On December 24, 1991, at 5:30 in the afternoon, Rodrigo Alvendo, 21 years old, his brother Rogelio Alvendo, 17 years old, and their cousin Vicente Alvendo, 17 years old, were in the carnival ground (periyahan) on A.B. Fernandez Street, Dagupan City, betting on the rollets (running light game). Rogelio, trying to get acquainted with one of the ladies/attendants in the game, was talking with the latter when Ronald Estorco came and told the former that it is prohibited to talk with the lady. Rogelio asked the lady if it was really prohibited to talk with her, and the latter answered it was not. So Rogelio continued talking with her. Estorco got mad. He drew a fan knife and intimidated the group of Rogelio. Estorco called up one companion and both of them threatened Rogelio, et al. Thereafter, Estorco left again. When he returned after a few minutes, he had two more companions. Estorco made a sign of stabbing by positioning his hand forward. One of Estorco's companions boxed Rodrigo; another one, Butch Ballesteros, stabbed Rodrigo, and then Estorco's companions converged on Rodrigo. Rogelio was not able to do anything because Estorco was holding his arm and was poking the fan knife on him. Rodrigo, upon being able to

free himself from Estorco's companions, ran. Rogelio was also able to extricate himself from Estorco. However, as Rogelio followed his brother Rodrigo, the latter fell down. When Rogelio touched his brother's pulse, it was no longer beating. So he ran toward the police station and informed the police on what transpired, telling the police that his brother was stabbed. Three policemen went with him to the place where his brother was stabbed. Seeing that Ronald Estorco was still standing in the place, he pointed to him. Ronald Estorco was apprehended. Rodrigo was brought to the hospital but was pronounced dead on arrival.

In an Amended Information,^[2] appellant Ronald Estorco y de Luna, together with Butch Ballesteros, Henry Juguilon and Peter Doe, was charged with murder. The Amended Information reads:] Court

"That on or about the 24th day of December, 1991, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RONALD ESTORCO y de Luna, BUTCH BALLESTEROS, HENRY JUGUILON y Narvasa and PETER DOE, Butch Ballesteros being then armed with a knife, with treachery, abuse of superior strength and with intent to kill one RODRIGO ALVENDO, confederating together, acting jointly and helping one another, did then and there, willfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by BUTCH BALLESTEROS stabbing and hitting RODRIGO ALVENDO on vital parts of his body with the said weapon, while PETER DOE and HENRY JUGUILON y Narvasa held him thereby causing his death shortly thereafter due to 'Cardio Respiratory Arrest, Massive Intrathoracic, intra-abdominal hemorrhage and multiple stab wounds' as per Autopsy Report issued by Dr. Tomas G. Cornel, of the City Health Department, this city, to the damage and prejudice of the legal heirs of said deceased, RODRIGO ALVENDO, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages. Jlexj

"Contrary to Article 248 of the Revised Penal Code."

Upon arraignment, appellant pleaded not guilty. As the other accused were at large, a separate trial against accused-appellant Ronald Estorco was conducted.

The facts, as culled by the trial court from the evidence which it found to be credible, are as follows: Lexjuris

"Rogelio Alvendo, 17 years old and a resident of Reyes Street, testified that on December 24, 1991 at 5:30 in the afternoon, he and his brother Rodrigo Alvendo and his cousin Vicente Alvendo were inside the carnival ground at A.B. Fernandez Avenue, Dagupan City. They were betting on a rollet game. While he was talking with a lady, Ronald Estorco approached him. Ronald Estorco told him that it is prohibited to talk with her. The woman answered, it is not prohibited, and so he continued talking with her. Ronald Estorco got mad and drew a fan knife and intimidated them. Then Ronald Estorco called for one companion and both of them threatened them after which Ronald Estorco left. Few minutes thereafter, Ronald Estorco and two companions arrived. At this juncture, one of Estorco's companion boxed his brother Rodrigo Alvendo. He was not able

to do anything because Ronald Estorco poked a fan knife to him. He saw Butch Ballesteros stab his brother Rodrigo Alvendo. The other companions of Ronald Estorco went near. When his brother ran, he followed and saw him fall. He touched his pulse and the same is no longer moving. So he ran toward the police station and informed the police on what transpired, telling the police that his brother was stabbed. Three policemen went with him to the place where his brother was stabbed. Seeing that Ronald Estorco (was) still standing in the place, he pointed to him. Ronald Estorco was apprehended. The other companions of Ronald Estorco were no longer at the place. When asked to identify him, he pointed to the person of Ronald Estorco. (6-16, tsn, April 20, 1992).

"Vicente Alvendo testified that on December 24, 1991 at 5:30 in the afternoon while he, together with his cousins Rogelio Alvendo and Rodrigo Alvendo were at the carnival ground roaming and sometimes betting, and Rogelio was talking with a lady, a man approached Rogelio saying that talking to that girl is not allowed. After that, the man left. Upon his return after ten minutes, the man with a companion returned. They tried to scare them by drawing out their fan knives. Then the first man left but when he came back, he had two companions, at which time he made a sign of stabbing by positioning his hand forward. He moved backward. One of them boxed his cousin Rogelio, and the other stabbed Rodrigo while the first man that approached him poked a fan knife on the side of Rogelio Alvendo. He moved backward. His cousin Rodrigo Alvendo extricated himself and ran away. His cousin Rogelio was (also) able to escape and ran away after which, he (Vicente Alvendo) went to his uncle and both went to the carnival ground to see his cousin who was stabbed. They brought Rodrigo Alvendo to the hospital. (2-9 tsn April 24, 1992).

"Vicente Alvendo identified Ronald Estorco as the same person who poked a knife at the side of his cousin and who boxed and stabbed his cousin Rodrigo (Ibid, p. 10)

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"Dr. Tomas Cornel testified on the autopsy report he conducted on the corpse of Rodrigo Alvendo on December 24, 1991 at about 7:30 in the evening. He reduced the autopsy in writing. The autopsy report is reproduced as follows:

Republic of the Philippines
City of Dagupan
CITY HEALTH DEPARTMENT
MEDICO-SECTION

AUTOPSY REPORT^[3]

Date: December 25, 1991

Name of Deceased: Rodrigo B. Alvendo

Age: 21 yrs. old
 Date & Time of Death: December 24, 1991, about 5:30 p.m.
 Sex: Male
 Place of Death: Nueva St., Dagupan City
 Height: 5'4"
 Nationality: Filipino
 Civil Status: Single
 Occupation: Student
 Address: # 1 Reyes St., Dagupan City
 Agency Requesting Autopsy: DCPS-PNP
 Date & Time of Autopsy: December 24, 1991 at 7:30 p.m.
 Place of Autopsy: Funeraria Dagupan, Dagupan City

EXTERNAL FINDINGS

1. Stab wound, along the parasternal line, left, level of the 4th intercostal space, left, 1" x ½" penetrating. The edge of one side of the wound is sharp and pointed.
2. Stab wound, along the paramedian line, right, level of the 6th intercostal space, right, 1" x ¼", penetrating. The edge of one side of the wound is sharp and pointed.
3. Stab wound, along the nipple line, right, level of the 6th intercostal space, right, 1" x ½" penetrating. The edge of one side of the wound is sharp and pointed.
4. Stab wound, along the posterior axillary line, right, level of the 6th intercostal space, right, ½" x ¼", penetrating. The edge of one side of the wound is sharp and pointed.
5. Incised wound 1" x ½" x ¼", shoulder, right. The edges of both sides of the wound were sharp and pointed. justice
6. Incised wound, middle 3rd, anterior aspect, forearm, left, 2" x ¼" x ¼"

INTERNAL FINDINGS

Massive intrathoracic and intra-abdominal hemorrhage with perforation of the left auricle of the heart. The lower lobe of the right lung was perforated. Perforation of the right lobe of the liver. Perforation of the small intestine.

Cause of Death:	Cardio Intrathoracic Hemorrhage	Respiratory And	Arrest Intra-abdominal	Massive
Due to:	Multiple Stab Wound			
Autopsy Performed by:	(Sgd.) TOMAS G. CORNEL, M.D.			
Asst. City Health Officer			Name	Position"

Among others, Dr. Cornel testified that stab wound number 1 is fatal because the organs in this area are the heart and lungs; stab wound number 4 also involved some vital organs and is also fatal; wound number 5 is a superficial wound located at the right shoulder; that wound number 6 is also superficial; and that with the internal findings, the chance of survival is very remote.^[4]

The appellant interposed the defense of alibi. Ronald Estorco testified that he was a show boy; that at 5:00 o'clock in the afternoon of December 24, 1991, his employer, Bebot de Luna, told him to buy fish and firewood so he left for the Centromart. Upon returning to the carnival ground, he delivered the fish and firewood to the cook Cristina Coquia. He then noticed many people coming near a dead person, which was 2½ meters from where he was standing. He was immediately apprehended and he was shocked because he knew that he had no fault. He was able to return to the carnival grounds at around 6:00 o'clock in the afternoon and that at around 5:30 o'clock in the afternoon, he was still buying fish and firewood.^[5]

Defense witnesses Merlin Prado, Cristina Coquia, and Esperanza Burguillos, all co-workers of appellant at the carnival, testified and corroborated the testimony of appellant that at 5:30 in the afternoon of December 24, 1991, the latter was not in the carnival grounds as he was buying fish and firewood.

After trial, the court rendered a Decision convicting appellant, the dispositive portion of which was heretofore quoted.

Hence, the instant appeal.

Appellant ascribes to the trial court the following assignment of errors:

1. The Honorable lower court gravely erred in finding the accused Ronald Estorco guilty as principal of the crime of murder.
2. The Honorable lower court also seriously erred in giving credence to the testimonies of Rogelio Alvendo and Vicente Alvendo.
3. The Honorable lower court likewise gravely erred in not giving weight to the testimonies of defense witnesses Merlin Prado, Cristina Coquia, Esperanza Burguillos and accused Ronald Estorco.
4. The Honorable lower court further committed serious error in considering the aggravating circumstances of superior strength and cruelty.
5. The Honorable lower court furthermore seriously erred in not acquitting the accused of the crime of murder.

On the first assigned error, appellant alleges that the evidence for the prosecution is bereft of any showing of treachery and abuse of superior strength because assuming that the incident happened as claimed by the prosecution, there was, however, prior altercation between the accused on the one hand, and Rogelio Alvendo on the other hand, regarding a certain lady, so that the threat allegedly made by the accused