

## FIRST DIVISION

[ G. R. No. 123111, September 13, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY DAGAMI Y MORBOS, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

Jimmy Dagami y Morbos appeals from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 7, Tacloban City finding him guilty of murder and sentencing him to *reclusion perpetua* and to pay P50,000.00, as death indemnity to the heirs of the victim Ignacio Glorioso.

The facts are as follows:

On July 20, 1994, Provincial Prosecutor Joventino P. Isidro of Leyte filed with the Regional Trial Court, Leyte, Branch 7, Tacloban City an information charging accused Jimmy Dagami y Morbos with murder committed as follows:

"That on or about the 19<sup>th</sup> day of May, 1994, in the Municipality of Sta. Fe, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with evident premeditation and with treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab one IGNACIO GLORIOSO with the use of a sharp bladed weapon, which the accused provided himself for the purpose, thereby causing upon the said victim stab wound on his stomach, which directly caused his death.

"ACTS CONTRARY TO LAW.

"Bulwagan ng Katarungan, Tacloban City, July 20, 1994.

"(S/T) JOVENTINO P. ISIDRO

"Provincial Prosecutor"<sup>[2]</sup>

On May 26, 1994, Municipal Trial Judge Cristina S. Huñamayor of Sta. Fe, Leyte issued a warrant of arrest against accused but it was returned unserved with the information that accused was in Metro Manila.

On August 4, 1994, Regional Trial Judge Pedro S. Espina issued another warrant of arrest against accused but the same was again not served because the whereabouts of accused was still unknown. On October 30, 1994, the Sta. Fe police arrested accused.

Upon arraignment on February 17, 1995, accused pleaded "Not Guilty".<sup>[3]</sup>

Thereafter, trial ensued.

At about 7:00 in the evening of May 18, 1994, Ignacio Glorioso, together with his brother, Paquito Glorioso, and his cousin, Ricardo Glorioso attended a dance held at the basketball court of a school building at Barangay Katipunan, Sta. Fe, Leyte. The dance lasted until the early hours of the following morning. At about 1:00 a.m. of May 19, 1994, the Glorioso brothers decided to go home. Ignacio walked ahead, followed by his brother Paquito, who was less than a meter behind him. They walked from the dance area up to the gate which had a distance of about 3 meters. While outside the gate, Ignacio walked towards a waiting motorcycle in order to charter it in going home. Suddenly, without any warning, Jimmy Dagami drew a knife from his waist and immediately stabbed Ignacio, hitting the latter on the right side of the stomach. Ignacio was facing the dance area while accused Jimmy Dagami's back was towards the dance area when accused made the piercing thrust. Upon sustaining a stab wound, Ignacio ran away in the direction of the coconut plantation. Accused chased him. Accused, however, was no longer able to pursue him as Ignacio also tried to stab Paquito, and the latter was not able to help his brother.<sup>[4]</sup>

Paquito saw the whole stabbing incident. The place was illuminated by a lighted fluorescent lamp of a nearby post. He was able to identify accused, as the latter was familiar with him, being a resident of a barangay adjacent to the house of his brother Ignacio. He often saw accused during drinking sprees and whenever Paquito passed by their house when he was still staying with his brother.<sup>[5]</sup>

After the stabbing incident, Paquito and his cousin, Ricardo Glorioso, immediately went to look for Ignacio. They found him under a coconut tree, his body bent in pain, with his right hand holding the wound on his stomach. The place was about five (5) arms length from the dance area. They boarded Ignacio on a motorcycle and brought him to the City Hospital at Tacloban City, where he subsequently died.<sup>[6]</sup>

Dr. Marian Ravas of the Tacloban Eastern Visayas Regional Medical Center, conducted a post mortem examination on the body of the victim Ignacio Glorioso. The medico-legal report<sup>[7]</sup> dated May 20, 1994, shows the following finding:

- Stab wound, 3 cm. (R) subcostal area along anterior axillary line penetrating abdominal cavity directed transversely to the (L) incising inferior portion of pancreas head, perforating 3<sup>rd</sup> portion of duodenum thru and thru transecting superior mesenteric vein, exiting at the ligament of treitz perforating proximal jejunum thru and thru with massive hemoperitoneum.
- Operation - Explor lap, evacuation of hemoperitoneum, ligation of bleeders, (R) retroperitoneal exploration.

In his defense, accused Jimmy Dagami denied any liability for murder. He testified that it was not he who stabbed Ignacio Glorioso but a certain Raul Castillo. He claimed that barangay tanod Generoso Palamos was near the victim. He must have seen when Raul stabbed Ignacio. The victim ran towards the east and Raul chased him. When the commotion died down, accused went home.

On July 4, 1995, the trial court, however, gave credence to the testimonies of the witnesses for the prosecution and found accused guilty of murder qualified by treachery. The court held:

"There is no reason to doubt the testimony of Paquito Glorioso, in whose presence his brother was killed, that he can completely identify his brother's assailant. It is remote he would be pointing to an innocent man when his quest is to seek justice for his brother. The testimony of the brother of the deceased establishes beyond reasonable doubt that it was the accused Jimmy Dagami who knifed to death Ignacio Glorioso.

"The question of whether the knifing of the victim by the accused was attended by treachery, is in the opinion of the Court clearly established. There is evidence that the victim was in (the) act of talking to the tricycle driver and as such was unaware when stabbed by the accused. The manner how the intent to kill was executed, was done on purpose of eliminating any risk that may come from the victim. Such situation is treachery as found in *People vs. Cuyo*, 196 SCRA 447, where the Supreme Court ruled:

"There is treachery when the offender adopts means, methods, or forms in the execution of the felony which ensure its commission without risk to himself arising from the defense which the offender party might make."

The dispositive portion of the decision reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of Murder, he is hereby sentenced to RECLUSION PERPETUA. He is further ordered to indemnify the family of the victim Ignacio Glorioso the sum of P50,000.00 plus costs of this suit, without subsidiary imprisonment in case of insolvency.

"Considering the range of the penalty, the Provincial Warden is hereby directed to transfer the accused to the custody of the National Penitentiary in Abuyog, Leyte.

"SO ORDERED."

In this appeal, appellant Jimmy Dagami imputes the following errors to the trial court:

1. In convicting accused based on conflicting, incredible and improbable testimony of prosecution witness Paquito Glorioso.
2. In concluding that accused is guilty of murder although the evidence is hearsay.

We find the evidence sufficient to establish the guilt of accused-appellant Jimmy Dagami beyond reasonable doubt. The testimony of a single witness, if credible and positive, is sufficient to produce a conviction.<sup>[8]</sup> Ignacio's brother, Paquito, positively identified accused-appellant as the one who stabbed Ignacio Glorioso. Paquito could not have been mistaken as to the identity of accused-appellant since he was only one meter away from his brother and the place was well lighted by a nearby post.