

SECOND DIVISION

[G.R. No. 117749, December 01, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARDO C. ESPERO A.K.A. DUEG, ACCUSED-APPELLANT.

DECISION

DE LEON, JR., J.:

Before us on appeal is the Decision^[1] of the Regional Trial Court of Dagupan City, Branch 44, in Criminal Case No. D-12290 convicting appellant Nardo C. Espero of the crime of murder.

Nardo C. Espero a.k.a. Dueg was charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, in an Information that reads:

That on or about the 26th day of November, 1993, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, NARDO C. ESPERO @ Dueg, being then armed with a bladed weapon, with treachery, evident premeditation and with intent to kill one JOSE TABABAN @ Totoy, did then and there wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by stabbing and hitting him on a vital part of his body with the said weapon, thereby causing his death shortly thereafter due to "Cardio Respiratory Arrest, Massive Intrathoracic Hemorrhage, Stab Wound" as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, JOSE TABABAN @ Totoy, in the amount not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code.

Upon being arraigned on December 10, 1993, accused Nardo Espero y Cerenio, assisted by counsel, entered the plea of "Not guilty" to the charge in the Information. Pre-trial was waived by the accused. Thereafter, trial on the merits ensued.

On May 24, 1994, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Nardo Espero alias Dueg guilty beyond reasonable doubt as principal of the crime of Murder under Article 248 of the Revised Penal Code, and pursuant to law, hereby sentences the accused to suffer the penalty of Reclusion Perpetua. Accused is ordered to indemnify the heirs of the deceased in the amount of P50,000.00.

Accused is also ordered to pay Eustaquio Tababan the amount of P15,000.00 representing the expenses incurred by Eustaquio Tababan.

SO ORDERED.

Aggrieved by the decision, the accused, Nardo Espero, interposed the instant appeal.

It appears that in the evening of November 26, 1993, Roderick T. Perez and his uncle, Jose Tababan, attended the wake of a certain Boy Bardon in the Perez Market Site, Perez Blvd., Dagupan City. Roderick and his uncle Jose were watching card games ("pusoy") when Nardo Espero, who appeared drunk, arrived. After staying inside the house of Boy Bardon, Nardo went outside and seated himself on one of the chairs near the people who were playing card games.^[2]

Roderick revealed that they were not in good terms with Nardo who had the propensity of picking fistfights whenever he got drunk. Nardo had punched and kicked Roderick more than twenty (20) times prior to November 26, 1993 as a result of which the latter bore a grudge against the former.^[3]

At around 9:10 o'clock of the same evening, Nardo approached Jose and for no apparent reason dragged him away from the premises. Suspicious that something untoward might happen, Roderick followed Nardo and his uncle.^[4]

Upon reaching a vacant lot that was lit by a lamppost, Roderick saw Nardo embraced Jose with his left arm then he (Nardo) pulled from his waist a butcher's knife ("colonial") using his right hand. The duo grappled for possession of the knife before Nardo succeeded in stabbing Jose on the chest. Nardo hurriedly left the crime scene while Jose was rushed to the Nazareth General Hospital where he died soon thereafter. Roderick proceeded to the house of his aunt and informed her that Jose was stabbed.^[5]

Meanwhile, Police Officers Cesar Calimag, Mariano Dolores, Jr., Franklin Obispo and Donato Estayo of the PNP, Dagupan City, received a report over the police radio that a certain Nardo Espero stabbed Jose Tababan in Perez Market, Perez Blvd., Dagupan City. Upon arrival at the crime scene, they proceeded to the Nazareth General Hospital in Perez Boulevard where the victim was brought for medical treatment. However, they failed to get his statement for the reason that he was already dead.^[6]

In their search for the assailant the police and other concerned citizens spotted Nardo Espero on the same evening ducking behind the earth dike of a fishpond in Mayombo District, Dagupan City. Nardo attempted to escape and in the process left

his pair of slippers that were partially submerged in the mud. The police officers and the concerned citizens chased him until he gave himself up when SPO2 Calimag fired a warning shot. When asked as to the whereabouts of the knife that he used in stabbing Jose Tababan, Nardo replied that he had thrown it away.^[7]

On November 27, 1993, Dr. Tomas G. Cornel, M.D., Assistant City Health Officer of Dagupan City, conducted a post mortem examination on the cadaver of Jose Tababan. The autopsy report^[8] that was prepared and signed by Dr. Cornel, shows the following findings:

EXTERNAL FINDINGS:

Stab wound, midclavicular line, level of the 4th intercostal space, left, ½" x ¼", penetrating. The edge of one side of the wound is sharp pointed.

INTERNAL FINDINGS:

Massive left intrathoracic hemorrhage with perforation of the left auricle of the heart.

CAUSE OF DEATH:

Cardio Respiratory Arrest
Massive Intrathoracic Hemorrhage
Stab Wound.

Eustaquio Tababan testified that he had adopted and reared the victim, Jose Tababan, like his own child. In connection with the death of Jose Tababan, Eustaquio spent almost P15,000.00 for the wake and burial expenses.^[9]

For his defense, appellant Nardo C. Espero denied that he stabbed to death Jose Tababan. Nardo testified that at around 6:00 o'clock in the evening on November 26, 1993, he hit Roderick Perez on the head inasmuch as the latter threatened to kill him. Thereafter, a fistfight occurred wherein Nardo was able to hit Roderick twice in the abdomen.^[10]

After the fistfight, Nardo went to the fishpond, bringing with him a flashlight and a container, to catch fish. At around 11:00 o'clock in the evening, he was defecating in the fishpond when a person, who turned out to be SPO2 Cesar Calimag, shot him from the back. Fearing for his life, Nardo ran but he was pursued up to his house. While inside the house, Nardo acceded to SPO2 Calimag's invitation for both of them to talk somewhere. However, he was brought to the Dagupan City Police Station where he was incarcerated for allegedly killing Jose Tababan.^[11]

In his Brief,^[12] appellant Nardo Espero interposed the following assignments of error: