

SECOND DIVISION

[G.R. No. 124036, October 23, 2001]

**FIDELINO GARCIA, PETITIONER, VS. THE COURT OF APPEALS,
THE PRESIDING JUDGE OF THE RTC, GUMACA, QUEZON, BRANCH
62, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

On appeal by *certiorari* is the decision of the Court of Appeals dated February 22, 1996, in CA-G.R. CR No. 13358. The decision affirmed the judgment of the Regional Trial Court of Gumaca, Quezon, Branch 62 in Criminal Case No. 2307-G, finding petitioner Fidelino Garcia with his co-accused Leopoldo Garcia and Wilfredo Garcia guilty of homicide.

In an Information dated December 13, 1983, Fidelino Garcia, Leopoldo Garcia, and Wilfredo Garcia were charged with murder allegedly committed as follows:

That on or about the 30th day of July 1983, at Barangay II, in Poblacion, Municipality of Mulanay, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, a piece of wood and a broken bottle with intent to kill, and taking advantage of their superior strength and with treachery, did then and there willfully, unlawfully and feloniously attack, hit with said piece of wood and stab with the said knife and broken bottle one Paulino Rodolfo y Olgena, thereby inflicting upon the latter the following injuries, to wit:

"Wound lacerated mid parietal area 4cm with linear fracture of underlying skull;

Wound lacerated 3 cm mid frontal area;
Wound lacerated T shape right frontal ½ cm;
Abrasion right nasolridge;
Contusion with laceration nose;
Multiple contusion chest right #3 6cm deep non-penetrating;
Wound lacerated left temporal 1 cm;
Wound stab left arm medial aspect 1½ cm."

which directly caused his death.

Contrary to law.^[1]

Petitioner and Wilfredo Garcia are brothers, while their co-accused in Criminal Case

No. 2307-G, Leopoldo, is their first-degree cousin.^[2]

Earlier, a separate charge sheet docketed as Criminal Case No. 2165-G had been filed against petitioner Fidelino Garcia, charging him with direct assault upon an agent of a person in authority. On March 8, 1984, he was arraigned in said case and entered a plea of not guilty.

In 1985, the accused in Criminal Case No. 2307-G were separately arraigned. All pleaded not guilty to the charge. As Criminal Cases Nos. 2165-G and 2307-G arose from the same incident, a joint trial ensued.

The facts, as established by the prosecution before the trial court and affirmed by the appellate court, are as follows:

At around 2:30 P.M., July 30, 1983, P/Cpl. Francisco Rollera was on his way to mail a letter. He was waiting at the crossing near the police outpost in the town proper of Mulanay, Quezon, when he saw petitioner, Wilfredo and Leopoldo, ganging up on Paulino Rodolfo y Olgena.^[3] While Leopoldo held the victim, petitioner hit him with an empty bottle. Wilfredo then stabbed the victim once with a stainless steel fan knife (*balisong*). The knife got stuck in Paulino's body. Paulino succeeded in wrestling free from Leopoldo's grasp and pulling out the knife from his body. He used the knife to stab petitioner in the stomach.

Rollera tried to stop the fight. He pulled out his service pistol and fired three successive warning shots, calling upon the combatants to stop their fight, but to no avail. Still holding Wilfredo's knife, the wounded Paulino beat a hasty retreat to the store of one Manuel Roberto. Wilfredo pursued him. Inside the store, Paulino stabbed Wilfredo twice in the neck and stomach. Unable to stop the affray, Rollera then asked the other people around to summon other policemen.

Paulino went back to the street. Seeing that Wilfredo was about to hit him with a piece of wood, Rollera stepped in and wrestled the stick away from Wilfredo. The latter, however, managed to get hold of an empty bottle. Before Rollera could react, petitioner approached him, holding a broken bottle. Rollera moved back and Fidelino chased him around a parked vehicle.

At this point, two other policemen arrived and pacified the antagonists. A third responding policeman grabbed and caught petitioner chasing Rollera around the parked vehicle.

Paulino Rodolfo subsequently died. The medico-legal certificate issued by Dr. Mario A. Cuento of the Bondoc Peninsula District Hospital at Catanauan, Quezon, revealed that the cause of death was "cerebral hemorrhage."^[4]

Predictably, the defense gave a slightly different version of the incident. Wilfredo testified that between 2:00 and 3:00 P.M. of July 30, 1983, he was on his way to the tricycle parking space in Nanadiego St., Mulanay, Quezon, with his two co-accused following a short distance behind him. He met P/Cpl. Rollera and Paulino, both of whom appeared to be intoxicated. Paulino put an arm around Wilfredo's shoulder and invited him to have a drink. The latter removed Paulino's arm and refused, explaining that he had to go to the barrio. Wilfredo was about to leave, when

Paulino suddenly collared him and poked a *balisong* at his throat. Wilfredo stepped back, but Paulino nonetheless succeeded in stabbing him in the neck, chest, and stomach. He did not know what transpired next as he lost consciousness as a result of his wounds, regaining it only next morning when he found himself at the Quezon Memorial Hospital where he was confined for four (4) days.

Although petitioner and he were closely following Wilfredo, Leopoldo claimed that he did not actually see how Paulino attacked Wilfredo. What he heard were the voices of persons heatedly arguing. When he advanced to investigate, he saw Wilfredo already wounded. Leopoldo ran towards the municipal hall to get police assistance. On his way, he met police officers Pobeda and Roadilla and he told them what happened. They then proceeded to the scene of the incident where Leopoldo allegedly saw Rollera chasing a wounded Fidelino around a parked vehicle. Pobeda and Roadilla then pacified Rollera and petitioner. Because Leopoldo and petitioner were both wounded, the peace officers brought them to the Catanauan Hospital. Leopoldo claimed that he never saw the victim at the scene.

On February 14, 1992, the trial court rendered its decision and disposed of the two cases as follows:

WHEREFORE, in view of the foregoing, on ground of reasonable doubt, accused Fidelino Garcia is hereby ACQUITTED of the crime charged under Criminal Case No. 2165-G for Direct Assault Upon An Agent of a Person in Authority.

In Criminal Case No. 2307-G, the judgment of conviction is hereby entered. Accused FIDELINO, WILFREDO and LEOPOLDO, all surnamed GARCIA are found guilty beyond reasonable doubt of the crime of HOMICIDE, and this Court hereby sentences them, applying the Indeterminate Sentence Law, to suffer an imprisonment of SIX (6) YEARS and ONE (1) DAY of *prision mayor* as minimum to TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal* as maximum.

Furthermore, all the accused are solidarily liable and are ordered to indemnify the heirs of the late Paulino Rodolfo y Olgena, the sum of FIFTY THOUSAND PESOS (P50,000.00) plus the sum of TEN THOUSAND PESOS (P10,000.00) as actual damages and to pay the costs of this suit.

SO ORDERED.^[5]

The accused seasonably filed their respective notices of appeal to the appellate court.^[6] The Court of Appeals, in a resolution dated May 17, 1994 ordered Wilfredo Garcia's appeal deemed "abandoned and ordered dismissed for failure to furnish the Court (with) his forwarding address."^[7] On September 3, 1994, the resolution dismissing Wilfredo's appeal became final and executory. The Court of Appeals, in CA-G.R. CR No. 13358, thus resolved only the appeals interposed by Leopoldo and Fidelino Garcia.

On February 22, 1996, the appellate court affirmed the lower court's decision finding

them guilty beyond reasonable doubt of homicide, thus:

WHEREFORE, with the modification that the indeterminate sentence should be from six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum, the decision appealed from is AFFIRMED in all respects.

Costs against accused-appellants.

SO ORDERED.^[8]

Although the three accused were represented by one counsel before the trial court, said counsel filed an appellant's brief only for accused Leopoldo Garcia. Before us now is the separate appeal of petitioner Fidelino Garcia filed by a court appointed counsel *de officio* from the Free Legal Assistance Group (FLAG).^[9] In his brief, petitioner Fidelino Garcia assigns the following as errors committed by the appellate court:

First Assigned Error

THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION FOR CONSPIRACY WHEN IT WAS NEVER ALLEGED IN THE INFORMATION NOR PROVEN DURING TRIAL.

Second Assigned Error

THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION IN THE ABSENCE OF ANY EVIDENCE REGARDING THE FACT, MANNER AND CAUSE OF THE ALLEGED VICTIM'S DEATH.

Third Assigned Error

THE COURT OF APPEALS ERRED IN GIVING GREATER WEIGHT TO THE EVIDENCE OF THE PROSECUTION AND FINDING NO ILL-MOTIVE ON THE PART OF THE PROSECUTION WITNESS.

Fourth Assigned Error

PETITIONER SHOULD BE ACQUITTED BECAUSE THE EVIDENCE DOES NOT ESTABLISH HIS CULPABILITY AS A PRINCIPAL, CO-CONSPIRATOR OR ACCOMPLICE.^[10]

In sum, the issues for our resolution are: (1) Whether the appellate court erred in convicting petitioner as a conspirator in the killing of Paulino Rodolfo y Olgena; and (2) Whether or not there was sufficient evidence to establish petitioner's guilt with moral certainty.

On the *first issue*, petitioner contends that an accused cannot be convicted of any offense not alleged in the information, as he has the right to be informed of the nature of the offense with which he is charged before he is put on trial. He points out that the Information in Criminal Case No. 2307-G did not allege that he conspired, confederated, mutually helped, and/or acted in concert and with consent in committing the offense charged. He submits that an allegation of conspiracy cannot be presumed or implied in an information. In finding him to be a conspirator in the killing of the victim, appellant claims that his rights to be informed of the nature and cause of the accusation against him; to a fair trial; to due process of law; and to equal protection of law were violated by respondent appellate court.

For the State, the Office of the Solicitor General (OSG) contends that it is not essential that the allegation of "conspiracy" be expressly stated in the indictment. It is enough that the narration in the Information shows that the accused acted in concert in the commission of the crime.

On this point, we are not in agreement with the OSG.

In all criminal prosecutions, the accused shall first be informed of the nature and cause of the accusation against him.^[11] The right of the accused to be informed of the charges against him is explicit in Sec. 1(b) Rule 115 of the Rules of Criminal Procedure.^[12] To ensure that the due process rights of an accused are observed, every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof. One such particular circumstance is conspiracy where two or more persons are charged in an information. Conspiracy denotes an intentional participation in a criminal transaction, with a view to the furtherance of a common design and purpose. It imputes criminal liability to an accused for the acts of another or others, regardless of the nature and extent of his own participation. In a conspiracy, the act of one becomes the act of all and the particular act of an accused becomes of secondary relevance. Thus, it is essential that an accused must know from the information whether he is criminally accountable not only for his acts but also for the acts of his co-accused as well.^[13] An indictment for conspiracy is sufficient if: (1) it follows the words of the statute creating the offense and reasonably informs the accused of the character of the offense he is charged with conspiring to commit;^[14] or (2) following the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy;^[15] or (3) alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them.^[16]

In the present case, the appellate court held that an allegation of conspiracy is implied in, or may be inferred from, the statement that "the said accused, armed with a knife, a piece of wood and a broken bottle, with intent to kill, and taking advantage of their superior strength and with treachery, did then and there willfully, unlawfully, and feloniously attack, hit with said piece of wood and stab with the said knife and broken bottle one Paulino Rodolfo y Olgena." But we agree with appellant that here the information does not satisfy the requirement that the conspiracy must be conveyed in "appropriate language."^[17] The words "conspired," "confederated," or the phrase "acting in concert" or "in conspiracy," or their synonyms or derivatives do not appear in the indictment.^[18] The language used by the prosecution in