

THIRD DIVISION

[G.R. No. 115998, June 16, 2000]

RICARDO SALVATIERRA, RODRIGO ASUNCION AND MANUEL RAMIREZ, PETITIONERS, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

GONZAGA-REYES, J.:

Before us is a petition for review of the decision of the Court of Appeals in CA-G.R. CR. No. 08553 dated June 16, 1994 affirming with modification the decision of the trial court dated July 18, 1989.

On August 7, 1978 an Information for homicide was filed before the then Circuit Criminal Court of Pasig which states as follows:

AMENDED INFORMATION

The undersigned Assistant City Fiscal of Quezon City accuses Luis Alina, Rodrigo Asuncion, Manuel Ramirez, Jun D. Ignacio and Ricardo Salvatierra of the crime of homicide, committed as follows:

That on or about the 2nd day of December 1977 in Quezon City, Philippines, the above named accused, conspiring together, did then and there willfully, unlawfully and feloniously, with intent to kill and without justifiable cause, attack and assault Rolando Samonte y Magno, by then and there stabbing him with a knife on the chest right side and at the lumbar region, right anterior aspect, thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his death to the damage and prejudice of the heirs of the victim in such amount as may be awarded under the provision of existing laws.

Contrary to law.

Upon arraignment all the accused pleaded "not guilty".

The fact of death of the victim due to severe hemorrhage from stab wounds in his chest and abdomen is undisputed. The Necropsy Report^[1] filed by the NBI states:

"Pallor, marked generalized wound, stab:

- 1) Spindle shaped, 3.5 cms. Oriented supero-medially, edges clean cut with contused supero-medial and sharp infero-lateral extremities, located at the chest, right side, anterior aspect level of the 5th rib, 10.0 cms. from the anterior median line, directed backward, upward and medially,

- involving the skin and underlying soft tissues, cutting the 5th coastal cartilage unto the thoracic cavity, perforating the lower lobe of the right lung, pericardium and right ventricle of the heart with an approximate depth of about 11.0 cms.
- 2) Spindle shaped, 3.0 cms. oriented infero-medially, edges clean cut with sharp infero-lateral extremities, located at the lumbar region, right, anterior aspect, 11.0 cms. from the anterior median line directed backward, upward and medially, involving the skin and underlying soft tissues, into the abdominal cavity, perforating the small intestine and partially cutting the abdominal aorta with an approximate depth of about 13.0 cms.
 - 3) Hemathorax, right side, about 800 cc.
 - 4) Hemopericardium about 250 cc.
 - 5) Hemoperitonium about 1,000 cc.
 - 6) Brain and other viceral organs pale
 - 7) Stomach ½ filed with partly digested rice and other food materials.

The identities of all the accused are likewise not disputed. Two eye witnesses were presented by the prosecution pointing to Luis Alina as the one who actually stabbed the victim while the other accused did not do anything. Only Luis Alina presented evidence to support his denial of culpability and to show that it was the group of the victim who dragged him out of the jeep and hit him with a wooden club on the head. Alina declared that he went to the hospital for treatment and went home thereafter; he denied the accusation that he kicked and stabbed Rolando Samonte. Accused Asuncion, Ramirez and Salvatierra filed separate motions to dismiss/ demurrer to evidence for the alleged failure of the prosecution to show that they were in conspiracy with Alina in killing the victim. Alina also filed a motion to dismiss on the ground that the evidence for the prosecution pointing to him as the assailant is unworthy of credence. The trial court did not resolve the said motions and instead rendered judgment on May 22, 1989 finding all the accused guilty of the crime charged; the dispositive portion of the judgment states:

"Wherefore, and in the light of all the foregoing considerations, the Court hereby finds the accused Luis Alina, Manuel Ramirez, Jun Ignacio, Rodrigo Asuncion and Ricardo Salvatierra guilty beyond reasonable doubt of the crime of homicide, as charged in this case. There being no mitigating or aggravating circumstance, and applying the Indeterminate Sentence Law, hereby sentences each of them to suffer the penalty of 12 years and 1 day of reclusion temporal, as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum, with the accessories of the law; to indemnify the heirs of the victim in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency; and to their proportionate share in the costs of this proceeding."^[2]

Accused-appellants Alina, Asuncion and Salvatierra appealed from the decision of the trial court. The Court of Appeals noted that under Section 1 Rule 122 of the Revised Rules on Criminal Procedure the accused Manuel Ramirez and Jun D. Ignacio who did not appeal from the decision of the trial court will not be affected by the judgment of the appellate court except insofar as it is favorable to them.^[3] On

June 16, 1994 the Court of Appeals affirmed the judgment of conviction of all the accused with modification as regards the penalty imposed as follows:

THE FOREGOING CONSIDERED, the appealed decision of the court a quo is hereby affirmed, but the penalty should be modified to 8 years and 1 day as the minimum of the indeterminate penalty, to not more than 14 years 8 months and 1 day , as the maximum, to indemnify the heirs of the deceased the amount of fifty thousand pesos, and finally with costs against the appellant.

Petitioners Ricardo Salvatierra, Rodrigo Asuncion and Manuel Ramirez, represented by the same counsel, filed this petition for review on the principal contention that conspiracy with Luis Alina to kill Rolando Samonte was not proven by the evidence for the prosecution. The two eyewitnesses who testified for the prosecution stated in court that it was Luis Alina who actually stabbed the victim while petitioner Salvatierra and co-defendant Jun D. Ignacio were inside the jeep and did not do anything, whereas petitioners Asuncion and Ramirez had previously fled to their respective homes which were a short distance away from the scene of the crime. Petitioners maintain that no evidence was presented by the prosecution to show unity of purpose among the accused to kill the victim and they should accordingly be acquitted of the crime charged. It is pointed out that as early as 1982 herein petitioners filed their separate motions to dismiss or demurrer to evidence on this ground but the trial court did not resolve them. Instead when they failed to attend the hearing on October 29, 1985 for the presentation of evidence for the defense, the trial court ordered them arrested for jumping bail and considered this as an indication of guilt. Thus, in the trial court's decision rendered in 1989 herein petitioners were held to have conspired to kill Rolando Samonte. Petitioners claim that flight may be taken as an indication of guilt if the disappearance of the accused is to evade prosecution which is not the case here. The bail bonds they posted contain a proviso that failure to attend trial or hearing will only be deemed to be a waiver of their right to be present thereat; thus their failure to attend hearing in 1985 should not have been construed by the trial court as evidence of guilt. Moreover, the petitioners' motions to dismiss/ demurrer to evidence were still pending at the time of their non-appearance for trial and the petitioners were of the honest belief that they need not attend trial nor present evidence in their behalf until after the said motions were resolved. On these two grounds the petitioners contend that both the trial court and the appellate court erred in their conclusions.

The Solicitor-General filed memorandum for the appellee praying for the affirmance of the decision of the appellate court. The appellee cites the findings of the trial court that the presence of the five accused at the different stages of the incident is sufficient to establish conspiracy to kill Rolando Samonte. The appellee quotes the findings of the trial court to wit:

"3. Evidence on record has shown, that the accused have conspired in the killing of the victim. Again, as shown by the record, when the victim and his companion Ramonito Guda alighted from a passenger jeepney coming from their work, they saw the accused Jun Ignacio, Ricardo Salvatierra and Rodrigo Asuncion together. When the victim and his companions, Ramonito Guda and the victim's brother, Miguel Samonte were inside the store of Aling Ester, accused Jun Ignacio and Ricardo Salvatierra arrived and after a brief telephone conversation these two left. Soon thereafter, Rodrigo Asuncion and Manuel Ramirez arrived and

later challenged the victim to a fight, to which the victim acceded. A little later, the accused Jun Ignacio and Ricardo Salvatierra returned, this time accompanied by their co-accused Luis Alina and one Bong Morales. After the stabbing incident, accused Jun Ignacio, Ricardo Salvatierra and Rodrigo Asuncion were seen escaping on board the jeep owned and driven by their co-accused Luis Alina. The participation of all the accused at the different stages of the incident, when taken altogether, clearly indicates that they have a common object or purpose."^[4]

The appellee argues that the presence and concerted acts of all the accused at the scene show their common purpose to kill the victim. Also the appellee asserts that the trial court properly declared the accused to have jumped bail and considered this circumstance as flight, and accordingly, evidence of guilt, for the reason that notwithstanding the posting of bail bonds the accused are still subject to the order of the court to appear for trial and failure to comply therewith was properly considered as a violation of the conditions of the bail bond.

The petition is impressed with merit.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.^[5] There is conspiracy if at the time of the commission of the felony the defendants had the same criminal purpose and acted in unison towards the execution of their common criminal design. Once the conspiracy is proven the act of one becomes the act of all regardless of who actually rendered the fatal blow on the victim. A conspirator must however, perform an overt act in furtherance of the plan to commit a felony; mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.^[6] As such conspiracy must be established as any element of the crime and evidence of the conspiracy must be beyond reasonable doubt.^[7] In the case of People vs. Eljorde^[8] this Court had occasion to explain the requisites for a defendant to be held liable as a conspirator:

"Conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence, not merely by conjecture. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Hence, conspiracy exists in a situation where at the time the malefactors were committing the crime their actions impliedly showed unity of purpose among them, a concerted effort to bring about the death of the victim. In a great majority of cases, complicity was established by proof of acts done in concert, i.e., acts which yield the reasonable inference that the doers thereof were acting with a common intent or design. Therefore, the task in every case is determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference."

The two eyewitnesses who testified for the prosecution, Romanito Guda and the Miguel Samonte, both stated in court that it was Luis Alina who actually stabbed and kicked the victim. Miguel Samonte testified in court that the other accused-appellants Asuncion and Ramirez had fled to their houses prior to the stabbing incident while appellant Salvatierra and his companion June Ignacio did not do anything while Alina stabbed the victim. Witness Samonte's narration of the incident is as follows:

ATTY. FERNANDEZ

"Q: While you were in the store of Aling Ester on December 2, 1977, between 10:00 and 11:00 o'clock in the evening, do you recall of any unusual incident that happened?

A: Yes, there was.

Q: Can you tell the Court what was that unusual incident that happened?

A: When I was eating fish ball in front of the store of Aling Ester, I saw my brother who was with Ramonito Buda.

Q: And who is this Ramonito Buda?

A: He is a co-employee of my brother at the Affiliated . . .

Q: How long have you known Ramonito Buda?

A: Almost five years now.

Q: What happened at the time you saw your brother?

A: My brother invited me to have a refreshment and to drink beer.

Q: Did you drink beer?

A: Yes, inside the store of Aling Ester.

Q: While you were drinking, do you know what else happened?

A: Yes, the son of Aling Ester arrived by the name Jun Ignacio.

Q: Who was his companion at that time?

A: He was with Ricky Salvatierra, Sir.

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Q: What did Jun Ignacio and Ricky Salvatierra do?

A: They ate in the store of Aling Ester.

Q: And while they were eating, what happened?

A: A telephone rang and Jun Ignacio answered the telephone.

Q: Did you hear what Jun Ignacio was saying over the telephone?

A: I heard that he was always answering "Yes".

Q: How far were you from Jun Ignacio when he was answering the telephone?

A: One step away.

Q: After talking over the telephone, what did Jun Ignacio and Ricky Salvatierra do?

A: After five minutes, after they have eaten, they left the store of Aling Ester.

Q: Do you know where they went?

A: I do not know, Sir.

Q: After they left, what did you and your brother and Ramonito Buda do?

A: We had a conversation regarding problems in the office.

Q: And what happened after that?

A: When we were conversing, two persons arrived.

Q: Who were those two persons?

A: Manuel Ramirez and Jun Ignacio arrived in the store of Aling Ester, no, excuse me, it was Rodrigo Asuncion.

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ATTY. FERNANDEZ:

Q: What did Rodrigo Asuncion and Manuel Ramirez do after arriving in the store of Aling Ester?

A: He talked to me and my brother.

Q: Who talked to you?