

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANGELINO PUDPUD, ELEUTERIO CUBELO AND PASTOR CERELIGIA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-26731. June 30, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

The plea for reversal of appellants Angelino Pudpud, Eleuterio Cubelo and Pastor Cereligia, from a judgment of conviction by the lower court for murder and attempted murder, a killing motivated by a long-standing grudge caused by a dispute over a piece of land that brought deep-seated resentment and bitterness in its wake, is premised on the absence of any culpable act on their part, outside of their presence at the scene of the crime. They would place sole responsibility on one of the other accused, likewise convicted, Icasiano Pudpud, brother of Angelino and brother-in-law of the two other appellants, as it was he who fired the shot that resulted in the death of one of the offended parties and inflicted the bolo wound on the other victim.[1] The competent evidence of record, hereafter to be discussed, point unerringly, however, to the existence of a conspiracy. There is no justification then for a reversal. We affirm.

As noted in the appealed decision,[2] an information for murder and attempted murder was filed on October 29, 1964 against the above-named four accused, worded thus: "That on or about March 27, 1964, in the Municipality of Baganga, Province of Davao, Philippines and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating together and helping one another armed with firearms and sharp cutting instrument, with treachery, evident premeditation and abuse of superior strength, and with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with said weapon Alfonso Milagrosa, thereby inflicting upon him physical injuries which caused his instantaneous death; that on the same occasion thereof, the above-mentioned accused, conspiring and confederating together and helping one another, armed with the same weapons, with treachery, evident premeditation and abuse of superior strength and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with said weapons Federico Postrero, thus the accused commenced the commission of the crime of murder directly by overt act but did not perform all the acts of execution which should produce the felony by reason of some cause other than his own spontaneous desistance." [3]

The cause for ill-feeling that existed between the Pudpud brothers and the intended victim, Federico Postrero, a close relative, was narrated in the appealed decision thus: "Federico Postrero on one hand and Icasiano Pudpud, Angelino Pudpud and the wives of Eleuterio Cubelo and Pastor Cereligia, on the other, are first degree cousins. And all of them are residents of Mercedes, Mahanob, Baganga. Postrero and the Pudpuds used to be in cordial relation until the former filed with this Court, Branch III, in 1956, a complaint for recovery of possession of a parcel of land situated at Mercedes, Baganga, Davao, and damages against the Pudpuds. A judgment by default was rendered against the defendants, but the same was subsequently amended in that a decision based upon an amicable settlement was entered. 'As a gesture of charity, Postrero bound himself to pay the Pudpuds the sum of

P1,000.00 as 'additional payment for the land in litigation containing 2 hectares which defendant agree to vacate and deliver to the Plaintiffs.' Postrero paid P1,000.00 to the Pudpuds and they [were on good terms] then. But after they had spent the money, they told him that they wanted to get back the land. More than that they threatened to liquidate him." [4] What happened on that tragic day of March 27, 1964, before the actual killing, was likewise set forth in such decision in these words: "On March 27, 1964, Federico Postrero went to the Poblacion of Baganga, which is about four kilometers from Mercedes, to file a criminal case of grave threat against Icasiano Pudpud committed on March 26, 1964, and another criminal action of arson against Icasiano Pudpud also and Eleuterio Cubelo, likewise committed on March 26, 1964, in which the house of his mother-in-law Felicisima Legaspi was burned. The case of grave threat [resulting from] Icasiano Pudpud [threatening] 'to kill Federico Postrero as soon as he has a chance to do so' was decided by the Court, Branch II, on March 8, 1966, convicting the accused. The case of arson was tried by this branch of the Court on April 18 and the decision will be promulgated in the 21st of this month of May. Postrero took along with him to Baganga that day of March 27, 1964, Felicitio Langoay, Domingo Nazareno and Alfonso Milagrosa in order to testify in said cases." [5] After noting that on the same afternoon the accused appellant Eleuterio Cubelo inquired from the mother-in-law of Federico Postrero whether he would be returning to Mercedes from Baganga that evening, the lower court continued its narration of facts thus: "As stated above, Postrero went to Baganga on March 27, 1964, with Langoay, Nazareno and Milagrosa, to file the grave threats and arson cases, but only the grave threat case was received or entertained by the chief of police that day, for he was very busy. They left for Baganga [riding] on carabaos, because the passenger jeeps plying between Mercedes and Baganga were not available that day as it was good Friday and returned at about 6:00 p.m. after they had attended the good Friday celebration, passing through the carabao-trail as they did in coming. Postrero and Milagrosa were riding on one carabao astride, * * * with Postrero in front. Langoay and Nazareno were following very closely on another carabao,* * *. It was a moonlight night. At a place in the trail about 30 meters away from the house of Angelino Pudpud and 50 meters away from the house of Anacleto Vda, de Pudpud, Postrero and his companions 'heard the creaking of the cogon grasses and [they] looked back our way and immediately [they] heard shotgun fire.'" The sound came from the right side of the road and about three meters away from the carabao on which Postrero and Milagrosa were riding. The gunshot also came from the same side of the road. Immediately after the gunshot or explosion, the eyes of Postrero were 'somewhat covered with smoke and [he] could notice that [his] companion [Milagrosa] was fatally hit because he immediately fell down and [so did he.] Both fell down at the same time. Immediately after, Postrero, Langoay and Nazareno saw Icasiano Pudpud, armed with a shotgun and a bolo, and Eleuterio Cubelo, Angelino Pudpud and Pastor Cereligia, all armed with bolos, come out of the cogon grasses. Icasiano Pudpud went to where Milagrosa was, who was lying on the ground, face down. Upon noticing that it was Milagrosa, Icasiano Pudpud said: 'He is not the one hit,' then proceeded to where Postrero was and struck him with a bolo but Postrero jumped and ran away. Icasiano Pudpud and Eleuterio Cubelo chased him. As they were chasing Postrero Icasiano Pudpud said: 'Do not run, I will finish you, putang Ina mo.' On the other hand, Angelino Pudpud and Pastor Cereligia approached Langoay and Nazareno and so the latter two also ran away. Postrero ran as fast as he could through the thick bushes where he hid until those chasing him had lost him and had left. Then he went home, passing through thick bushes and the Mahanob River. It was about 11:00 o'clock that evening when he reached home and saw Nazareno, who had related to his family what had happened to them." [6] Alfonso Milagrosa died on the spot, having been hit at the right eyebrow, part of his head being blown off, with fragments of his brain found scattered near his body.

In their brief, appellants did not dispute the above recital concerning the actual killing of Milagrosa and the wounding of Federico Postrero. They would cast doubt, however, on the existence of the motive of the accused for wishing harm on Federico Postrero and would not concede that they made threats against his life. Stress was laid in their brief on Icasiano Pudpud, not the appellants, being the sole culprit, as there was no conspiracy. Thus,

the last paragraph of their narration of facts reads: "Moments after the shot the four accused emerged from the cogon bushes. Icasiano Pudpud was carrying a home-made shotgun in his left hand a bolo in the right hand. The other three accused who followed Icasiano Pudpud were also armed each with a bolo. * * * Walking ahead of his party, Icasiano Pudpud approached the body of Alfonso Milagrosa and then went to where Federico Postrero was lying on the ground. He made a slash at Postrero with his bolo but the latter was not hit as he was able to get up immediately and run away. Icasiano Pudpud and Eleuterio Cubelo, gave chase to Postrero but the latter was able to run and elude his pursuers. * * * In the meantime, Dominico Nazareno and Felicito Langoay saw Angelino Pudpud and Pastor Cereligia, approaching them, whereupon they jumped from their carabao and ran away, heading towards the poblacion of Baganga. * * * Thus ended the unfortunate incident that befell the four travelers on that night of March 27, 1964 on the road to Mercedes." [7]

On the above facts, the lower court rendered its decision of May 21, 1966 finding the appellants as well as the accused Icasiano Pudpud guilty beyond reasonable doubt of the crime of murder of Alfonso Milagrosa and sentencing them to reclusion perpetua as well as to the penalty of indemnifying the heirs of the deceased Alfonso Milagrosa in the amount of P6,000.00, and likewise guilty of the crime of attempted homicide against the person of Federico Postrero, for which they would be made to suffer one year of prision correccional. An appeal was taken to this Court but, as noted at the outset, Icasiano Pudpud had withdrawn his appeal. In the brief for defendants-appellants filed on September 30, 1967, they would assail the appealed decision on the sole ground that error was committed by the lower court in its finding of conspiracy, the only other error being a corollary of the above contention that appellants should not therefore have been convicted as only Icasiano Pudpud should be held liable for the offenses in question. It is not to be lost sight of that in the lower court, the defense of alibi was interposed, but evidently, appellants realized how weak and insubstantial was such a claim, thus prompting them to rely on the alleged absence of a conspiracy. Again, as was made clear at the opening of this opinion, such is not the case at all. Reversal is not indicated.

1. A conspiracy in the statutory language "exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." [8] The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need in the language of Justice Mapa in the early leading case of *United States v. Magcomot*, a 1909 decision, [9] for "concurrence of wills" or "unity of action and purpose". [10] The usual phraseology employed in many of the later cases is "common and joint purpose and design." [11] At times, reference is made to "previous concert of criminal design." [12] Its manifestation could be shown by "united and concerted action." [13] Thus, a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If, to use the apt words of Chief Justice Bengzon, there is "a chain of circumstances" to that effect, then conspiracy has been established. [14] If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others. So it has been our constant ruling from the 1905 decision of *United States v. Maza*. [15]

2. Tested by the above controlling legal doctrines, the lower court decision, to repeat, cannot be overturned. The effort of appellants in their brief to demonstrate that there was no conspiracy is doomed to futility. They did not deny because they could not deny that a land dispute existed among the appellants and Icasiano Pudpud on the one hand and their near relation, a first-degree cousin of two of them and cousin-in-law of the two others, Federico Postrero, dating back to a suit filed against the Pudpuds for squatting on such property when their uncle, the father of Federico, had acquired the same as far back as 1935. It is true that thereafter the suit was settled amicably with the Pudpuds still getting an additional amount of P1,000.00, but later, as noted in the decision,

there was evidence that dissatisfaction once more rankled in their breast and a feeling of resentment at what they must have considered to be an unfair advantage taken by Postrero would not die down. At any rate, there was competent and credible testimony of threats being made against Postrero. Mention was likewise made therein that Icasiano Pudpud was found guilty of the offense of grave threats and that on or about the time the decision in this case was rendered, another one was expected from another sala regarding the case of arson filed not only against him but against appellant Cubelo. In the face of such incontrovertible testimony, it thus clearly appears that a denial that no ill-feeling existed between the parties involved is absolutely bereft of credence.

The brief for appellants would likewise try to make light of the presence of all of them with Icasiano Pudpud at the place and at the time of the commission of the criminal acts. The evidence for the prosecution clearly showed that they were there for one purpose alone, namely, to waylay their intended victim, Federico Postrero. They made certain first that he was going to return in the early evening of that day from the poblacion where he filed the action for grave threats. All four of them were together behind a clump of cogon grasses. Significantly, as admitted in their brief, the three appellants were each armed with a bolo. What better proof can there be that all of the accused were just waiting for the opportunity to ambush the unsuspecting Federico Postrero. When they saw him riding astride a carabao with the unfortunate Alfonso Milagrosa behind him, Icasiano Pudpud, as was intended, he having the shotgun, took aim and did fire.[16] Fortunately for Postrero and unfortunately for Milagrosa, it was the latter who was hit near the right eyebrow; death as a result was instantaneous. As a further proof of the persistence in giving bent to their hatred of Postrero when they found out that he escaped unharmed, Icasiano Pudpud slashed at him with his bolo and with appellant Eleuterio Cubelo, chased him after he ran away. On the other hand, the other appellants approached menacingly the two other companions of Postrero. Could there be any doubt then that all the accused, including the three appellants, did plan to take the life of Postrero? To assert that there was no conspiracy is to close one's eyes to the undeniable facts.

WHEREFORE, the appealed decision of May 21, 1966 is affirmed with the modification that the indemnification to the heirs of the deceased Alfonso Milagrosa should be in the amount of P12,000.00. Appellants are sentenced to pay the proportionate share of the costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., did not take part.

Ruiz Castro, J., on official leave.

[1] Under date of September 14, 1966, this appellant, Icasiano Pudpud, filed a motion for the withdrawal of his appeal, which motion was granted by this Court in a resolution of October 28, 1966.

[2] Criminal Case No. 8782 of the Court of First Instance of Davao.

[3] Decision, Annex A, Brief for the Defendants-Appellants. In connection with the above information, it was noted by the lower court: "The caption of the information shows that the criminal action is for the complex crime of murder with attempted murder, whereas the designation in the body are, and the allegations therein constitute murder and attempted murder. And so it is that there is a variance between the designation appearing in the caption and the facts alleged in the information as constituting the offenses and in such a case, the crimes charged in the body-murder and attempted murder-prevail." Ibid. It is worth noting that no motion to quash for duplicity of offenses was filed by any of the accused. As shown in the appealed decision, the information was not as accurate as it could have been.

[4] Ibid, p. 2.

[5] Ibid.

[6] Ibid, pp. 2 and 3.

[7] Brief for the Defendants-Appellants, p. 2.

[8] Art 8. Revised Penal Code, Act No. 3815 (1932).

[9] 13 Phil. 386.

[10] Ibid, p. 389.

[11] *People v. Abrina*, 102 Phil. 695 (1957); *People v. Izon*, 104 Phil. 690 (1958); *People v. Monroy*, 104 Phil. 759 (1958); *People v. Indic*, L-18071-72, Jan. 31, 1964, 10 SCRA 130; *People v. Estrada*, L-26103, Jan. 17, 1968, 22 SCRA 111; *People v. Capito*, L-24466, March 19, 1968, 22 SCRA 1130; *People v. Fontillas*, L-25298, April 16, 1968, 23 SCRA 74.

[12] *People v. Magcamit*, L-25555, March 28, 1969, 27 SCRA 450; *People v. Tapitan*, L-21492, April 25, 1969, 27 SCRA 959. It could be "common accord." *People v. Tiongson*, L-9866-7, Nov. 28, 1964, 12 SCRA 402. Another variation is "community of purpose or unity design." *People v. Monadi*, 97 Phil. 575 (1955). It could be "common criminal design", as in *People v. Bernal*, 91 Phil. 619 (1952) or "sharing of criminal purpose", as in *People v. Abrina*, 102 Phil. 695 (1957).

[13] *People v. Castro*, L-17465, Aug. 31, 1964, 11 SCRA 699; *People v. Indic*, L-18071-72, Jan. 31, 1964, 10 SCRA 130; *People v. Tila-on*, L-21406, June 30, 1961, 2 SCRA 653; *People v. Zapanta*, 79 Phil. 308 (1947).

[14] *People v. Villanueva*, L-12687, July 31, 1962, 5 SCRA 672.

[15] 5 Phil. 346. Cf. *United States v. Grant*, 18 Phil. 122 (1910); *United States v. Ipil*, 27 Phil. 530 (1914); *United States v. Remigio*, 37 Phil. 599 (1918); *People v. Cu Unjieng*, 61 Phil. 236 (1935); *People v. Delgado*, 77 Phil. 11 (1946); *People v. Zapanta*, 79 Phil. 308 (1947); *People v. Mendiola*, 82 Phil. 740 (1949); *People v. Mostoles*, 85 Phil. 883 (1950); *People v. Colman*, 103 Phil. 6 (1958); *People v. Monroy*, 104 Phil. 759 (1958); *People v. Belen*, L-13895, Sept. 30, 1963, 9 SCRA 39; *People v. Curiano*, L-15256-57, Oct. 31, 1963, 9 SCRA 323; *People v. Usab Mohamad*, L-14583, Dec. 28, 1963, 9 SCRA 904; *People v. Pedro*, L-18997, Jan. 31, 1966, 16 SCRA 57; *People v. Akiran*, L-18760, Sept. 29, 1966, 18 SCRA 239; *People v. Jaravata*, L-22029, Aug. 15, 1967, 20 SCRA 1014; *People v. Atencio*, L-22518, Jan. 17, 1968, 22 SCRA 88; *People v. Estrada*, L-26103, Jan. 17, 1968, 22 SCRA 111; *People v. Fontillas*, L-25298, April 16, 1968, 23 SCRA 74; *People v. Condemena*, L-22426, May 29, 1968, 23 SCRA 910; *People v. Jamero*, L-19852, July 29, 1968, 24 SCRA 206; *People v. Ubaldo*, L-19490, Aug. 26, 1968, 24 SCRA 735; *People v. Viñas*, L-21756, Oct. 28, 1968, 25 SCRA 682; *People v. Peralta*, L-19069, Oct. 29, 1968, 25 SCRA 759; *People v. Magcamit*, L-25555, March 28, 1969, 27 SCRA 450; *People v. Tapitan*, L-21492, April 25, 1969, 27 SCRA 959; *People v. Bautista*, L-23303, May 20, 1969, 28 SCRA 184; *People v. Tapac*, L-26491, May 20, 1969, 28 SCRA 191; *People v. Gomez*, L-25815, May 31, 1969, 28 SCRA 440; *People v. Pareja*, L-21937, Nov. 29, 1969, 30 SCRA 693; *People v. Espejo*, L-27708, Dec. 19, 1970, 36 SCRA 400.

[16] While no reference was made to *People v. Ampad*, L-23513, Jan. 31, 1969, 26 SCRA 750, where this Court, through Justice Makalintal, held that where, from the prosecution's own evidence, the conspiracy was against a certain individual alone, but in the course of the commission of the offense, another person was likewise shot, the liability for the acts done outside the scope of the plan agreed upon should fall on the actual perpetrator alone, this doctrine finds no application as it was shown that the shot made by Icasiano Pudpud was precisely in pursuance of the conspiracy and that the intended victim was Postrero as agreed upon, but it turned out that the person behind him, Milagrosa, was the one hit. Clearly, under such circumstances, the criminal act was part and parcel of the

conspiracy agreed upon and all the conspirators should be held liable.

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