

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JACOBITO MARQUEZ, ALIAS “BOY MARQUEZ”;
SATURNINO JARON, CELESTINO ABRIGO, ALIAS “CELING
WARAY”; ALIAS “CELES-TINO JAVINEZ”...**

G.R. No. L-31403. December 14, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

On the evening of December 23, 1965, inside an A.C. passenger jeepney in the poblacion of Davao City, with the driver and six passengers, victim Rolando Jardiel was suddenly stabbed by one of the other passengers from behind, causing his death later at the Broken-shire Hospital, where he was taken for treatment.[1]

The first information filed for murder, dated December 21, 1966, or about one year after the crime was committed, accused only Jacobito Marquez, alias "Boy Marquez" of the crime.[2]

The Amended Information, dated February 28, 1967, charges Jacobito Marquez, alias "Boy Marquez", Saturnino Jaron and Celestino Abrigo, alias "Celestino Waray", alias "Celestino Javinez", of murder by conspiracy, as follows:

"That on or about December 23, 1965, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, con-spining, confederating together and helping one another, with treachery and evident premeditation and with in-tent to kill, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Rolando Jardiel, thereby inflicting upon him the following:

"Hemorrhage, severe, secondary to stab wound at the chest, left side at the level of the third rib, involving the heart left auricle.

"Hemorrhage 1000 c.c..

"Cardiac Tamponade

Stabb Wound, 2nd left

Intercostal spaces."

which injuries caused his death.

"That the commission of the foregoing offense was attended by the aggravating circumstance of night?time, the accused having purposely sought it to facili-tate the commission of the crime.

"Contrary to law."[3]

All the accused pleaded not guilty upon arraignment.[4] Later, accused Saturnino Jaron changed his plea to that of guilty. He was meted out an indeterminate penalty of seventeen (17) years, four (4) months and one (1) day of

reclusion temporal as minimum to twenty (20) years of reclusion temporal as maximum.[5]

Proceedings against accused Jacobito Marquez and Celestino Abrigo continued to determine their liability in the charge of murder by conspiracy. After trial, the lower court was convinced that "conspiracy exists in the case at bar as shown in details in the above discussion and analysis of the facts and circumstances of the case." [6]

The trial court opined that "once conspiracy is established, each conspirator is privy to the acts of the others; the act of one conspirator is the act of all the conspirators". [7] The Court concluded "there is no more need to find out who delivered the fatal knife thrust to the victim for the act of the culprit is the act of all the rest." [8]

The trial court decided the case by convicting the accused beyond reasonable doubt of the crime charged, with dispositive portion as follows:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused Jacobito Marquez, Celestino Abrigo and Saturnino Jaron guilty as principals beyond reasonable doubt of having committed the crime of Murder charged in the amended information and in the manner alleged therein and there being no mitigating or aggravating circumstances and considering the attendant circumstance of treachery and the sudden attack to insure impunity, the Court hereby sentences each and every one of the said accused to suffer life imprisonment according to Article 248, Section 1, Revised Penal Code with the accessories of the law and to pay jointly and severally the heirs of the deceased the sum of P12,000.00, without subsidiary imprisonment due to the nature of the crime committed.

"Since the accused Saturnino Jaron has already been sentenced of the same crime on October 9, 1967 on a plea of guilty he is hereby excluded from the effects of this judgment.

"SO ORDERED." [9]

Accused Jacobito Marquez appealed the judgment of conviction. [10] This Court on June 23, 1970, ordered the temporary release of appellant after filing a bond. [11] Accused Celestino Abrigo escaped from the Davao City Jail on July 14, 1969 and has remained at large. [12]

The version of the prosecution is as follows:

On December 23, 1965, in the evening, Vicente Baez was driving an AC passenger jeepney in the poblacion of Davao City. Between 9:00 and 10:00 p.m., Baez picked up Bernardino Mempin at Claveria (now Claro Recto) Street. Later, Rolando Jardiel joined them at San Pedro Street. The trio proceeded to Meding's place at corner Bolton and Magallanes Streets where each took a bottle or two of beer. [13]

At the G.S.I.S. building in Matina, Davao City, where the victim Jardiel and Mempin were employed, there was a Christmas party that night. Jardiel suggested going to the party, so the trio were on their way. Baez, the driver of the jeepney was seated on the left front side, Jardiel on his right side, and Mempin on the front right side. This, Jardiel was seated between Baez on his left and Mempin on his right in the front seat. [14] At Bankerohan, on their way to Matina, the passenger jeepney was hailed by four persons. The group of four, Celestino Abrigo, Saturnino Jaron, Perfecto Obenza and Jacobito Marquez, took the rear seats. [15] Appellant Marquez and Celestino Abrigo sat together, with appellant Marquez directly behind Mempin on the right front seat. Facing the former, were Perfecto Obenza and Saturnino Jaron, the latter seated behind the driver Baez who was at the left front seat. [16]

When the jeepney reached the Coca-Cola plant at Matina, approaching Tulip Drive Crossing, someone behind told the driver to stop. Suddenly, appellant Jacobito Marquez stabbed Rolando Jardiel with a Batangas knife. [17] Jardiel cried out "I was stabbed. [18] Mempin, hearing this, looked behind and immediately held Marquez' right hand holding a knife. [19] Mempin immediately alighted, still holding Marquez who was struggling but the former

released his hold upon Marquez when he saw Celestino Abrigo about to throw a stone at him.[20] The driver Vicente Baez saw Mempo when he held the wrist of Marquez.[21] The group of four afterwards ran away.[22]

Jardiel asked his friends to bring him to a hospital. He was brought to the Brokenshire Hospital where he died.[23]

The autopsy on the cadaver conducted by Dr. Juan Abear, Jr., medico legal officer of Davao City, revealed the following post mortem examination results:

"Hemorrhage, severe, secondary to stab wound at the chest, left side at the level of the third rib, involving the heart left auricle.

"Hemorrhage 1000 c.c.

"Cardiac Tamponade Stab Wound, 2nd left Intercostal spaces."[24]

The cause of death was "hemorrhage, secondary to stab wound" on the left heart inflicted by sharp pointed instrument, possibly a knife.[25]

The version of the defense is:

It is not disputed that Rolando Jardiel was stabbed inside an AC jeep in the evening of December 23, 1965, at Matina, Davao City. The victim was then seated at the front seat of the jeepney at the right side of the driver and the alleged aggressor was one of the four passengers seated at the back of the jeep, who all fled after the victim was stabbed. Appellant was one of the said passengers.[26]

The version of the defense is supported by the testimonies of the appellant Jacobito Marquez, the accused Celestino Abrigo, the co-passenger Perfecto Obenza, and Saturnino Jaron, who pleaded guilty that he was the one who stabbed Rolando Jardiel. Jaron claimed he had no intention to stab Jardiel but the latter kept staring at him so he stabbed him.[27]

Appellant claims that on the night of December 23, 1965, while checking his personnel at the Coca-Cola Plant in Matina, Davao City, he met Perfecto Obenza with the latter's companions Celestino Abrigo and Saturnino Jaron. They planned to see the Coca-Cola Christmas decorations. In order to hear juke box music, they proceeded to Ching's place at Bankerohan where they had some drinks. Because the four wanted to enjoy the "floor show" at the Matina Nite Club, they boarded an AC jeep bound for Matina. All of a sudden, Saturnino Jaron told the driver of the jeep to stop when the jeep was approach-ing the "Tulip Drive". When the jeep was about to stop, Saturnino Jaron stood up. Without saying any word, he suddenly, unexpectedly and surprisingly raised his left hand and stabbed the passenger seated in front of him. That victim was Rolando Jardiel. Jaron, Obenza and Abrigo alighted from the jeep and ran to the "Tulip Drive." Appellant Jacobito Marquez was so surprised by the sudden behavior of Jaron, he was left alone in the jeep. He became afraid, so he alighted and went to the house of a friend. He kept silent, regard-ing this incident as he was afraid of retaliation.[28]

The basis of the trial court's judgment of conviction contained in its decision concerning appellant is that conspiracy was proven among the three accused.[29]

The victim received only one stab wound on his left chest inflicted by one person.[30] Appellant can be held liable only if a conspiracy between appellant and Jaron can be proven.

It is a well established rule that when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, conspiracy exists.[31] Conspiracy can also exist upon the proven concerted criminal act on the same occasion of several persons.

A scrutiny of the evidence in this case shows no evidence to establish a preconceived plan to commit the crime. Jaron admitted that the attack on the victim done by him alone was sudden, un-expected, and at the spur of the moment. It is fundamental, that when the criminal act is not the result of a pre-conceived plan, the criminal liabilities of the participants can only be considered in the light of their individual participation, and not of a common criminal design. [32]

Conspiracy to commit a crime must be established by positive evidence, and conviction must be founded on facts, not on mere inferences and presumptions.[33]

It is clear that from the circumstances proven, no conspiracy existed between Jaron and appellant. The evidence presented by the prosecution is not sufficient to establish beyond reasonable doubt the existence of conspiracy.

WHEREFORE, the Decision dated July 15, 1969, in Criminal Case No. 10277, of the Court of First Instance of Davao, convicting appellant Jacobito Marquez guilty beyond reasonable doubt of murder, is hereby REVERSED and SET ASIDE with respect to appellant, who is ACQUITTED on the ground of reasonable doubt, with costs de oficio.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.
Aquino J., see attached dissent.

[1] pp. 3-4, Appellee's Brief.

[2] pp. 1-2, Original Record, Criminal Case No. 10277, CFI, Davao.

[3] pp. 21-22, Original Record.

[4] pp. 23-24, 52-53; Id.

[5] pp. 59-60, Original Record; pp. 2-4, t.s.n., October 9, 1967.

[6] p. 14, Decision, p. 224, Original Record.

[7] p. 224, Original Record.

[8] Id.

[9] pp. 224-224, Original Record.

[10] p. 4, rollo.

[11] p. 91, Id.

[12] p. 60, Id.

[13] pp. 5, 6, 12, 13, 14, 28, 29, 41, 43, t.s.n.

[14] pp. 7, 16, 28, 29, 42, t.s.n.

[15] pp. 6, 15, 29, 30, t.s.n.

[16] Exh. "A", p. 1, Folder of Exhibits; pp. 7, 30, 31, 32, t.s.n.

[17] pp. 8, 9, 31, 32, 33, 37, 38, t.s.n.

- [18] pp. 34, 35, t.s.n.
- [19] pp. 31, 32, 34, 35, 43, 44, 46, t.s.n.
- [20] pp. 33, 34, t.s.n.
- [21] pp. 9, 10, 11, t.s.n.
- [22] pp. 36; 115, 198, ????? t.s.n.
- [23] pp. 8, 9, 37, t.s.n.
- [24] Exhs. "B", "C", "D" and "D-1", pp. 2-5, Folder of Exhibits, pp. 57, 58, 61, t.s.n.
- [25] pp. 60, 65, t.s.n., Exhs. "B-3", "D", "D-2", pp. 2, 4, 5, Folder of Exhibits.
- [26] pp. 10-11, Appellant's Brief.
- [27] p. 13, Appellant's Brief, pp. 106-125, 150-169, 195-203, 225-237, t.s.n.
- [28] pp. 13-14, Appellant's Brief.
- [29] pp. 221-224, Original Record.
- [30] pp. 60, 65, t.s.n.; Exhs. "B-3" "D", "D-2", pp. 2, 4, 5, Folder of Exhibits.
- [31] Article 8, Revised Penal Code.
- [32] People vs. Cutura, G.R. No. L-12702, March 30, 1962.
- [33] People vs. Chan, 26 O.G. 1481; People vs. Otero, 21 O.G. 669.

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DISSENTING OPINION

AQUINO, J:

I dissent. The guilt of Jacobito Marquez was proven beyond reasonable doubt by the testimony of Bernardo Mempin who seized the hand of Marquez right after Marquez had stabbed Rolando Jardiel. Marquez' hand was still holding the murder weapon, a Batangas knife.

Marquez never told the police that it was Saturnino Jaron who stabbed Jardiel. He adopted the theory that Jaron stabbed Jardiel only when he (Marquez) testified in court.

On the other hand, Jaron could easily admit that he stabbed Jardiel because Jaron was already convicted of murder in a prior case. That was alleged in the original and amended informations as follows:

"That the commission of the foregoing offense was attended by the aggravating circumstance of nighttime, the accused having pur-posely sought it to facilitate the commission of the crime, and reci-divism, the accused Saturnino Jaron having been convicted of murder in CC 9459 in Davao on Aug. 31, 1966."

The above underlined or italicized clause is written in ink in the original and amended informations but is not included in the in-formation as quoted on page 2 of the majority opinion.

This is one case where the trial court's finding on the guilt of the accused should be binding on this Court, Said the

trial court:

"A careful scrutiny and analysis of the statements of the accused specially that of Jacobito Marques would point out clearly that their statements are concocted and stained with vice and are unbelievable due to the inherent inconsistencies, contradictions and improbabilities that are found in all of them.

"As we analyze and evaluate them hereinbelow we will notice at once that they are riddled with falsities and would affect seriously their credibility and probity as witnesses as well as the trustworthiness of their testimony.

"Marquez testified that he was investigated by the police of Davao City twice: the first, on December 25, 1965 and the next was on December 16, 1966. During the course of these investigations which covered a period of one year he did not tell the police the facts that he stated before this Court; that is, that Jaron knifed Jardiel to death and that his co-accused, Celestino Abrigo, was his companion in the jeep during the stabbing incident. His reason is that he was afraid that Jaron may inflict revenge or retaliation to him if he would involve him in the crime.

"This is best illustrated by the following portions of the records, quoted thus:

"ATTY. TOLENTINO: Q. - Mr. Marquez, when you were investigated in the police department, did you not report it was Saturnino Jaron who stabbed Rolando Jardiel? - A. - No, sir.

"Q. - You did not also tell the police department that your companion was Celestino Abrigo? - A.- Yes, sir.

"COURT: Q - Why did you not tell the police what you are stating now before this Court? - A. - Because I am the one being prosecuted. (tsn. pp. 141-142, 146-148.)

"Marquez did not tell the police that Perfecto Obenza was with him during that stabbing-killing incident subject of the present inquiry (tsn p. 142).

"The Court asked Marquez whether he told the police that Abrigo was with him during that night in question. He answered he did not know (tsn pp. 143 and 148).

"In the direct examination Marquez related at length that it was Jaron who stabbed and killed the deceased in his presence and in the presence the other accused and their companion, Perfecto Obenza.

"If it is true that knifed to death Jardiel why did not Marques tell that the fact to the during the investigation held on December 25, 1965 and on December 16, 1966? Why would it take him a year to reveal before this Court the fact that Jaron killed Jardiel?

"If it is true that Obenza and Abrigo were with him during the night of that incident in question, why did he not tell that fact during the course of the two investigations conducted by the police?

"This will only tend to prove that Marquez wanted to conceal and suppress the truth by devising a scheme to allow Jaron to assume the crime in order to free himself and to give a new look to the picture so as to deceive and mislead the Court to track down the true facts of the case. His only excuse to defend his acts of not revealing the facts for a long time is the alleged imaginary fear created in his mind that Jaron would take a revenge against him if he would implicate him in the crime.

"Strange is this defense adopted by Marquez and the other accused for no one of them has presented a bit of evidence to prove a single act of threat, intimidation or hostility on the part of Jaron that may justify them to entertain in their mind that fear which has disturbed their imagination so much, when in fact Jaron has not done anything to cause such alarm.

"The other defendants, Celestino Abrigo and defense witness, Perfecto Obenza, corroborated the statements of Marquez to establish the fact that Jaron knifed the deceased to death and the concealment of the crime to the

authorities for a period of one year due to their fear that Jaron might inflict revenge and acts of hatred to them in the future.

"To prove the unworthiness of the defense' position, Obenza testified that he did not know who really stabbed the victim although he saw the hands of Jaron (tsn pp. 198 and 215) and that, although he knew the deceased at least one year prior to the incident in question he did not know that he was the one stabbed. Considering that the crime was done in his presence it would be difficult to believe him that he did not know what happened to Jardiel.

"Even after two years from the date of the incident at issue he told Francisco Pangilan the Acting Chief of Police of Davao City, that he did not know who was stabbed by Jaron.

"Statements of this nature are highly suspicious, incredible and devoid of truth for being unnatural and vicious specially when they confirmed Marquez' statements about the concealment of the facts of the crime for a long time in the manner related above.

"Jaron pleaded guilty to the offense murder and admitted that he was serving sentence not only virtue of the judgment of conviction meted to him in this case but also due to another sentence rendered against him for having killed a certain Fructuoso Palad, Jr., Crim. Case No. 9595 (tsn 246) and that he killed Jardiel because the latter stared at him. His own admission is a reflection of the bad moral character of the accused and his statement must be received with caution."

Judge Alfredo I. Gonzales, the learned trial judge, carefully examined the testimonies of the prosecution witnesses and could not find any valid reason or justification for disregarding them. He noted that the said witnesses had no reason to be biased against the accused or to color their declarations "with impurities and vices in order to suppress the truth".

He observed their conduct and demeanor on the witness stand and noted that they testified in a candid, natural, simple and straight forward manner. The severe cross-examination to which they were subjected only served to make their testimonies "clearer and more convincing".

Judge Gonzales concluded that the prosecution eyewitnesses told the truth when they testified that Marquez stabbed Jardiel.

I vote for the affirmance of the trial court's judgment of conviction.

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