

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUFO RONDA AND JULIO GALLETO, DEFENDANTS AND APPELLANTS.

G.R. No. L-1702. December 21, 1948

Ponente: PARAS, J.

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PARAS, J.:

After a careful examination of the record of this case in the light of the points raised in the appellants' brief, we are fully convinced that the Court of First Instance of Misamis Occidental did not commit any error in finding the said appellants, Rufo Ronda and Julio Galleto, the latter as inducer, guilty of murder and sentencing them to reclusion perpetua and its accessories, to indemnify [jointly and severally the heirs of the deceased Gonzalo Elmedulan in the sum of two thousand pesos, and to pay the costs of prosecution.

In the morning of November 4, 1946, Gonzalo Elmedulan and his wife, Pahulia Dionson, went out to graze their carabaos on a piece of land located in Canibongan Proper, municipality of Tudela, Misamis Occidental. Hearing the sound of falling coconuts, they suspected the presence of some intruders. Gonzalo Elmedulan, followed behind by his wife, proceed to the place of the noise. Upon arrival of Elmedulan, appellant Rufo Ronda, then armed with a carbine and hiding with appellant Julio Galloto behind the bushes known as bahu-bahu, fired several shots which hit Gonzalo Elmedulan eight times as a result of which the latter died on the spot. Pahulia Dionson, who came to her husband's side, embraced the latter who was yet able to reveal that he was shot by the appellants.

Two eyewitnesses were presented by the prosecution, namely, Alberto Revelo, who was hired and paid by Julio Galleto to gather coconuts, and Victoria Iyog who was then gathering guavas near the place in question. It is not pretended for the defense that said witnesses could have been prompted by any ulterior motives.

We cannot believe the allegation of appellant Julio Galleto that he fired his carbine at Elmedulan in self-defense. In the first place, the testimony of prosecution eyewitnesses Alberto Revelo and Victoria Iyog deserves more credence. In the second place, such allegation is hardly consistent with the very admission of Julio's wife that said appellant, on the eve of the fatal occasion, decided that "I will kill Elmedulan because I can no longer endure the trouble he has given us." In the third place, such allegation is rather disproved by the number of shots (not less than eight) that were fired against Elmedulan which, on the other hand, seems to indicate a determined fact of aggression and a clear intention to kill. The fact that Elmedulan had allegedly caused Julio some trouble furnishes the motive on the latter's part for desiring to kill the former. It is of course immaterial whether, as contended by appellants' counsel, Elmedulan had no justification in trying to oust Julio from the land where the killing took place, because the same — even coupled with the alleged pugnacity of the Elmedulan — was likewise not a justification for Julio to murder Elmedulan. In the place, it is highly improbable that the carbine could have come to Julio's possession in the manner alleged by him, namely, that it was given by an unknown guerrilla officer during the Japanese occupation at a time where there was a Japanese patrol in Julio's house. It is of common knowledge that carbines came to be seen only after the Americans had liberated the country; and even if such

firearms in fact reached the hands of guerrillas in some way during the Japanese occupation, none would have passed then on to others,, like appellant Julio Galleto who has not been proved to be a guerrilla, for the simple reason that the guerrillas themselves badly needed arms; and a sensible guerrilla would certainly not deliver a carbine during an occasion in which there was a Japanese patrol. Lastly, there is little or no weight in the corroborating testimony of Julio's wife, inasmuch as She admitted that she was busy in the kitchen and turned around only after hearing the shots, thus seeing Elmedulan already dead.

The defense of alibi set up by appellant Rufo Ronda is not plausible. It cannot prevail over the positive testimony of the eyewitnesses presented by the prosecution As stated in the brief for the Government, it is incomprehensible that Rufo would have traveled from Marinding, Lanao, to the municipality of Tudela, Misamis Occidental, merely to have his pants repaired when there were tailors in Marinding. Moreover, it was not impossible for Rufo, who left the house in which he slept on November 3, 1946, "befjore the roosters alighted from their resting places^{1,1}, to have reached the place where Elmedulan wan killed in time to join Julio Galleto.

Appellants' counsel have also stressed the failure of prosecution witnesses Alberto Revelo and Victoria Tyog to corroborate the testimony of Pahulia Dionson that she heajpd shouts of people before the firing of the gun. This is of no moment, not only because witnesses may not have the same notions as to what are necessary to be detailed, but! because it is not sufficient to destroy the important fact that they saw the occurrence in question.

The appealed judgment, being conformable to the facts and the law, is affirmed with costs. So ordered.

Moran, C.J., Feria, Pablo, Bengzon, Briones, Tuason and Montemayor, JJ., concur.

CONCURRING AND DISSENTING

PERFECTO, J.,

According to the witnesses for the prosecution, Albetto Revelo and Victoria Iyog, the victim Gonzalo Elmedulan was shot to death with a carbine by Rufo Ronda. Attracted by the sound of falling coconuts, Elmedulan went to the place from which the sound came and where appellants were, and when he was about several meters away, Ronda leveled his carbine against him and fired several shots, hitting him eight times, as a result of which Elmedulan died on the spot. Julio Galleto took absolutely no participation in the killing, as he just remained behind Ronda, holding the latter's back.

Upon the facts thus proved by the prosecution, Julio Galleto cannot be held guilty as co-author of the crime. He took no direct part in the execution of the act resulting in the killing of Elmedulan; there is absolutely no evidence that he directly forced or induced Ronda to kill Elmedulan; and he did not cooperate in the commission of the offense by any act without which it would not have been accomplished, the three instances in which he could be declared criminally liable as principal under Art. 17 of the Revised Penal Code.

Julio Galleto should, however, be held guilty as an accomplice, by his failure to impede or stop Ronda from firing against Elmedulan, with which failure he cooperated in the execution of the offense.

"ART. 18. Accomplices.—Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts."

To cooperate is to act or operate jointly with another or others, to concur in action, effort, or effect, to contribute, to combine, to tempt, to conduce. Generally, cooperation implies active, positive or affirmative action, such as the performance of an act intended to help or assist in the carrying out of a common purpose. But the concept by does

not exclude cooperation /inaction, by omission, by failure to do what should be done.

The theory of indifference, of apathy, of nirvanic omission to act in the face of imminent danger, imperiling the fundamental rights of a fellow human being, when it is in one's power to avoid the disaster, is anti-social and repugnant to human nature. While there are basic rights of which no person, without any distinction, can be denied, nature has imposed upon all human beings some correlative fundamental duties, failure in the fulfillment of which creates liabilities and responsibilities.

In the instant case granting Julio Galleto all the benefits of any legal presumption, his failure to prevent the killing of Elmedulan makes him an accomplice in the crime. Under the circumstances, it was his absolute duty not to remain indifferent. He had full awareness of the fact that Ronda was about to kill Elmedulan. It was in his power to stop Ronda from achieving his murderous objective. He could have wrested the carbine from Ronda or, at least, disturbed the aim, so that the shots could not hit the mark. He was at the back of Ronda, he was holding the back of Ronda and, therefore, in the most advantageous position to pull or to push Ronda's arms or to body/ either side, considering that the slightest movement or inclination of Ronda's body or arms would have been enough to save Elmedulan's life. Under the circumstances, Galleto could not avoid the dilemma of allowing or not allowing Elmedulan to be killed. But by his failure to exercise his power to stop/ killing, he actually cooperated in the execution of the killing.

It is high time that the law should recognize the reality of human solidarity. No one can or may remain indifferent to the sufferings or fates of others. No one should remain indifferent in the presence of oppression, aggression, or any attempt to trample down the fundamental rights of fellow human beings. To remain indifferent under such situations is criminal. To allow a felony or crime to be committed when it is in one's power to stop the offender is to be an accomplice by cooperation.

For all the foregoing, we concur in the affirmance of the sentence against Rufo Ronda but we vote, as regards Julio Galleto, for the modification of the appealed decision by finding him guilty of murder as an accomplice and by reducing his penalty to an indeterminate period of from eight years and one day of prison mayor to fourteen years, eight months and one day of reclusion temporal.

Judgment affirmed.

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