

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESTEBAN YU, ANTONIO NOVILLA, FELIPE VILLAFUERTE AND
TEOTIMO PAALA, ACCUSED-APPELLANTS.***G.R. No. L-29667. November 29, 1977*

Ponente: AQUINO, J.

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Esteban Yu and Antonio Novilla appealed from the decision of the Court of First Instance of Leyte, Carigara branch, convicting them of murder and sentencing them, respectively, to an indeterminate penalty of ten years and one day of prision mayor to seventeen years, four months and one day of reclusion temporal and ten years and one day of prision mayor to fourteen years, eight months and one day of reclusion temporal and to pay solidarily to the heirs of Cipriano Velarde an indemnity of four thousand pesos (Criminal Case No. 839).

Felipe Villafuerte and Teotimo Paala also appealed from the same decision wherein they were convicted as accomplices in the said crime of murder and were each sentenced to an indeterminate penalty of four years, two months and one day of prision correccional to eight years and one day of prision mayor and to indemnify the heirs of the victim in the sum of two thousand pesos.

The judgment of conviction was based on the following facts:

At about three-thirty in the afternoon of February 12, 1956, a quarrel arose inside the cockpit in Alangalang, Leyte, as a result of the decision of Cipriano Velarde (the referee) that the match between the roosters of Diosdado Yu and Nicolas Jamora was a draw (tabla o patas).

Not satisfied with that decision, Esteban Yu insisted that his brother's rooster should win because it was still alive. Because Velarde stood pat on his decision, Esteban Yu testily said: "If that is the case, it would be better that the match would be between persons". Upon hearing that ominous remark, Alfonso Yu stood up and said: "I will start it". He approached Velarde and struck him with a knife. Then, the brothers, Esteban Yu, Alfonso Yu, and Diosdado Yu, assaulted Velarde, causing the latter to jump to a corner and to run away.

A policeman, who was inside the cockpit, fired his gun in-to the air in order to stop the commotion. Velarde was able to get out of the ring. Esteban and Diosdado followed him. When he reached the door, Felipe Villafuerte stabbed him at the back. Velarde continued running after he was stabbed by Villafuerte but Teotimo Paala met him and stabbed him. Although wounded, Velarde continued to run. He was stoned by Antonio Novilla who hit him on the left side of the forehead.

When Velarde stopped, Novilla approached him and struck him on the head with a piece of bamboo three inches in diameter, causing him to spin around and fall into a kneeling position. At that juncture, Esteban Yu, Alfonso Yu, Diosdado Yu, Felipe Villafuerte, Teotimo Paala, Jovito Villafuerte, Antonio Novilla and Tomas Soldao surrounded him and continued to assault him. After inflicting multiple injuries on Velarde, the assailants dispersed and left him prostrate on the ground.

Thereafter, Sinforosa Yu, the wife of Esteban Yu, arrived and, seeing Velarde's legs still moving, she stabbed him at the base of the neck saying: "How long will it take you to die, you son of the bitch. If I ever meet a relative of yours, I will kill him".

Velarde died on the spot. A postmortem examination conducted by the municipal health officer revealed that Velarde sustained seventeen wounds on his head, face, neck, body and arms. Some wounds were serious. Death was due to hemor-rhage and cerebral concussion. The wounds are described as follows (Exh. A):

"CERTIFICADO MEDICO

"A QUIEN CORRESPONDA: -

"El infrascrito, Dr. Emilio de Veyra, medico, Oficial de Sanidad Municipal, con residencia en el municipio de Alangalang, Leyte, a instancias de la Oficina del Jefe de Policia de la localidad, a como las 7:00 p.m. del 12 de Febrero, 1956, y en uno de los edificios del municipio (anteriormente - Dispensario Publico), examino el cuerpo del que, segun informacion dada por el hermano del occiso Dionisio Velarde, fue en vida Cipriano Velarde, varon, casado, en sus 47 años de edad, con 5 pies y 5 pulgadas de estatura y una constitucion fisica muscular, que ya era cadaver desde hacia unas tres horas, poco mas o menos; y el resultado de cuyo examen es como sigue:

"1. - Craneo:

"(a) A tres traveses de dedo por encima de la ceja derecha, en la region frontal, se hallo una hinchazon del tamano de un huevo de gallina y una depresion alargada por detras de ella con 2-1/2 pulgadas de longitud en posicion vertical de arriba-abajo y de dentro-afuera.

"(b) En la parte mas alta de la region occipital se encontro una contusion irregularmente ovalar de 2 pulgadas con 2-1/2 pulgadas de diametros en posicion oblicua de arriba-abajo y de derecha a izquierda, descansando sobre craneo en fractura compuesta. - Herida de caracter gravemente mortal.

"2. - Cara:

"(a) En el lado izquierdo y al nivel del pomulo de esta region se encontro una herida cortante en forma de luna en 4.o creciente con la concavidad mirando hacia abajo y 1-1/4 pulgadas de cuerda, con levantamiento de colgajo de piel, sin interesar el hueso subyacente. - Herida leve.

"(b) Por debajo de la precedente (2-a) se hallo otra herida cortante de 2-1/2 pulgadas de longitud y 1/4 de pulgada de abertura en situacion oblicua de arriba-abajo y de dentroafuera llegando hasta como un traves de dedo por debajo de la oreja izquierda; no interesando mas que la piel y tejido cecular subcutaneo. - Herida leve.

"3. - Cuello:

"(a) Un poco por encima de la articulation esterno-clavicular derecha se encontro una herida punzo-cortante ligera-mente oblicua de arriba-abajo y de dentro-afuera de 1 pulgada de longitud, 1/2 pulgada de abertura y 1-1/2 pulgadas de profundidad siguiendo una direccion fuertemente de arriba-abajo y ligeramente de delante-atras cortandose la arteria carotida primitiva derecha en su portion inicial. - Herida extremadamente grave.

"(b) Un poco por fuera de la precedente (3-a) se hallo otra herida punzo-cortante en situacion ligeramente oblicua de delante-atras y francamente de dentro-afuera con 7/8 de pulgada de longitud, sin separacion de sus labios y 1-1 /2 pulgadas de profundidad con direccion francamente vertical y muy ligeramente de dentro-afuera cortandose la arteria subclavia derecha. - Herida de caracter grave.

"4. - Tronco - Aspecto anterior:

"(a) Al nivel del 3.er espacio intercostal izquierdo y a 4 traveses de dedo a la izquierdo del esternon se encontro otra herida punzo-cortante oblicuamente situada de arriba-abajo y de dentro-afuera con 1-1/8 pulgadas de longitud y 5/8 de pulgada de abertura y 2-3/4 pulgadas de profundidad siguiendo una direccion de delante-atras, un poco de arriba-abajo y ligeramente de fuera-adentro interesando importantes troncos sanguineos pulmonares izquierdos. - Herida altamente grave.

"(b) Sobre la union de los dos-tercios superiores con el tercio-inferior del esternon (exactamente al nivel de la 5.a costilla) se encontro otra herida punzo-cortante transversal de 3 pulgadas de longitud con 3/4 de pulgada de abertura cuya extre-midad externa derecha penetro por debajo de la 5.a costilla a una profundidad de 1-3/4 pulgadas siguiendo una direccion de dentro-afuera, de arriba-abajo y ligeramente de delante-atras interesando la masa pulmonar. - Herida mas o menos grave.

"(c) Hacia el lado externo izquierdo del epigastrio, a dos traveses de dedo por fuera de la linea media y un poco mas de un traves de dedo por debajo del reborde costal izquierdo, se hallo otra herida punzo-cortante, en posicion francamente vertical, de 1-5/8 pulgadas de longitud con 1-1/2 pulgadas de abertura evis-cerando tres asas del intestino ileon, el cual fue atravesado en dos regiones. - Herida grave.

"5. - Tronco - Aspecto posterior:

"(a) Por encima del tercio externo de la espina del omoplato derecho se hallo otra herida punzo-cortante en posicion oblicua de arriba-abajo y de dentro-afuera de 7/8 de pulgada de longitud con 1/4 de pulgada de abertura y una profundidad de 3 pulgadas siguiendo la direccion de arriba-abajo, de atras-adelante y ligeramente de fuera-adentro interesando partes blandas de la region y el vertice del pulmon derecho. - Herida grave.

"(b) Por debajo de la extremidad interna de la espina del omoplato derecho otra herida punzo-cortante en posicion oblicua de arriba-abajo y de fuera-adentro con 3/4 de pulgada de longitud y 1/8 de pulgada de abertura con una profundidad de 1-1/2 pulgadas siguiendo la direccion fuertemente de arriba-abajo y ligeramente de dentro-afuera no interesando mas que partes blandas de la region rasando la susperficie de la escapula. - Herida menos grave.

"(c) Por debajo de la parte media de la espina del omoplato izquierdo otra herida punzo-cortante en V con el angulo mirando hacia adentro y ligeramente hacia abajo con 3/4 de pulgada de longitud y 1 pulgada de abertura la rama superior, y 1-5/8 pulgadas de longitud con 5/8 de pulgada de abertura la rama inferior con una profundidad de 1/2 pulgada con direccion fuertemente de fuera-adentro, ligeramente de arriba-abajo e imperceptiblemente de atras-adelante, no interesando mas que partes blandas de la region sin poder atravesar el hueso omoplato mas que rasandolo. - Herida menos grave.

"(d) Al nivel de la union de la derma con la undecima vertebrales dorsales se hallo otra herida punzo-cortante en posicion transversal de 1-1/4 pulgadas de longitud con 3/8 de pulgada de abertura y una profundidad de 2 pulgadas con la direccion de arriba-abajo, de atras-adelante y ligeramente de dentro-afuera interesando partes blandas de la region e hiriendo la cara posterior del riñon izquierdo en su portion superior. - Herida de mucha gravedad.

"6. - Tronco - Lado derecho:

"Por debajo del reborde costal, en la linea axilar media, se hallo otra herida punzo-cortante en posicion oblicua de arriba-abajo y de delante-atras con 1-7/8 pulgadas de longitud y 7/8 de pulgada de abertura con una profundidad de 1-1/2 pulgadas siguiendo una direccion horizontal ligeramente de atras-adelante atravesando la pared toracica de la region cortando a este nivel en 1/4 de pulgada el borde libre del higado. - Herida altamente grave.

"7. Tronco - Lado izquierdo:

"(a) A cuatro traveses de dedo por fuera del borde inferior del omoplato izquierdo, en la linea axilar posterior, se encontro otra herida punzo-cortante en posicion oblicua de arriba-abajo y de delante-atras de 7/8 de pulgada de longitud y 1/4 de pulgada de abertura con 1-3/4 pulgadas de profundidad siguiendo una direccion de arriba-abajo, ligeramente de atras--adelante y francamente de fuera-adentro hiriendo el pulmon. - Herida grave.

"(b) A dos traveses de dedo por delante y por debajo de la herida precedente (7-a) se hallo otra herida punzo-cortante en posicion mas o menos transversal de 1 pulgada de longitud con 3/8 de pulgada de abertura y 1-3/4 pulgadas de profundidad siguiendo la direccion francamente horizontal y ligeramente de delante-atras interesando la masa pulmonar a este nivel. - Herida grave.

"8. - Antebrazo izquierdo:

"Hacia el tercio superior de la cara dorsal se hallo otra herida cortante en posicion oblicua de arriba-abajo y de fuera-adentro con 2-1/4 pulgadas de longitud y 1 pulgada de abertura y 1-1/4 pulgadas de colgajo de masa musculo-cutanea en forma de medialuna con la convexidad mirando hacia abajo y afuera. - Herida menos grave.

"Expuesto lo arriba, salvo error involuntario, saco las siguientes conclusiones:

"I. - Que el occiso ha debido de haber muerto a consecuencia de hemorragias y conmocion cerebral;

"II. - Que el agente vulnerante que origino las lesiones 1-a y 1-b debe de ser un instrumento romo, mas o menos duro de consistencia, que haya chocado contra las regiones afectadas bajo el impulso de una fuerza mas o menos considerable;

"III. - Que el agente vulnerante que debio originar las heridas 2-a, 2-b y 8 debe de ser un instrumento cortante;

"IV. - Que el agente vulnerante que origino las heridas 3-a, 3-b, 4-a, 4-b, 4-c, 5-a, 5-b, 5-c, 5-d, 6, 7-a y 7-b debe de ser in instrumento punzo-cortante de tamano variado.

"Despues de todo lo arriba dicho, firmo el presente aqui en Alangalang, Leyte, hoy a 29 de Febrero, Año del Señor de 1956.

(S) Emilio de Veyra

(T) EMILIO DE VEYRA M. D."

On February 16, 1956 the chief of police filed in the justice of the peace court of Alangalang a complaint for murder against Esteban, Alfonso, Diosdado and Posing, all surnamed Yu, and against Paala, Felipe Villafuerte, Jovito Villafuerte, Novilla and Tomas Soldao. The complaint was based on the sworn statements of Aurea Velarde and Marciano Udtohan, who were eye-witnesses.

The case was elevated to the Court of First Instance where on May 22, 1956 an assistant provincial fiscal filed an information for murder against the same persons.

At the trial, defendant Paala testified that he was in the cockpit in the afternoon in question; that he heard gunshots, and, at the suggestion of his companion, Roman Francisco, he picked up his cock and went to the marketplace; that later Esteban Yu and Alfonso Yu, wounded and staggering, passed by; that he gave his cock to Roman Francisco and helped Alfonso Yu until they reached the store in front of the municipal building; that he did not wound Velarde, and that he was im-plicated in the crime because the relatives of Velarde were angry with him for having aided Alfonso Yu.

Defendant Felipe Villafuerte in his testimony admitted his presence in the cockpit at about two o'clock in the

afternoon on the occasion already mentioned. He said that while in the cockpit, he was informed by Gregorio Denalo that he had to go home because his wife was going to deliver and in fact she delivered at about four o'clock that afternoon (Exh. 1-Villafuerte which refers to a child named Rey Manuel Barola, fathered by Felipe Barola); that he did not participate in the killing, and that he was implicated by Miguel Demeterio and Aurea Velarde because he had a standing feud with those prosecution witnesses.

Defendant Esteban Yu testified that in the afternoon in question he was in the cockpit; that after Velarde declared the match to be a draw, he (Esteban) went out of the ring; that some-body shouted that there was a fight between Velarde and Alfonso Yu; that he approached them and told them not to quarrel because they could settle their differences; that Velarde and Alfonso Yu, both armed, were already wounded when he arrived inside the ring; that they did not heed his plea not to continue fighting; that Velarde lunged at him and wounded him in the infra-clavicular region; that after Velarde hit him in the acromial region, he used his fan knife to defend himself and he and Velarde fought, and that after the fight he was brought to the provincial hospital for the treatment of his five wounds (Exh. 4). His brother, Alfonso, was later killed by Andres Velarde, the son of Cipriano.

Defendant Novilla denied having taken part in the killing of Velarde. He said that he was in the cockpit in the afternoon in question playing hantak and that after hearing the two shots, he went home.

After a protracted trial before three judges, the aforementioned judgment of conviction was rendered. Tomas Soldao, Diosdado Yu and Jovito Villafuerte were acquitted. Sinforosa V. Yu was found guilty of an impossible crime. She was fined two hundred pesos. She did not appeal. Alfonso Yu died before the trial.

The appeal was made to the Court of Appeals. The Solicitor General in his appellee's brief recommended that appellants Yu and Novilla be each sentenced to reclusion perpetua and that the same penalty be imposed upon Paala and Felipe Villafuerte who should be regarded as co-principals, and not merely accomplices, because there was a conspiracy among the assailants to kill Velarde.

The Court of Appeals, through Justice Capistrano, in its decision of May 15, 1968 affirmed the lower court's decision as to Paala and Villafuerte but held that the penalties imposable upon Esteban Yu and Novilla as co-principals in the crime of murder should be death for Yu because of the aggra-vating circumstance of recidivism and reclusion perpetua for Novilla. Hence, their appeal was certified to this Court in accordance with section 17(4) of the Judiciary Law.

The appellants filed a motion for reconsideration. The Court of Appeals, again through Justice Capistrano, in its resolution of September 14, 1968, concluded that it erred in deciding separately the appeal of Paala and Villafuerte (the alleged accomplices). It resolved to certify the whole case to this Court in view of the provision of section 17(4) that offenses, which, though not punished with death or reclusion perpetua, arose out of the same occurrence or were committed by the accused on the same occasion as the more serious offense, fall within the exclusive appellate jurisdiction of this Court.

The appellants in their first and second assignments of error contend that the lower court erred in rendering a joint decision although Tomas Soldao was tried separately and that the trial court used against the appellants the evidence introduced at Soldao's trial.

That contention is not well-taken. The trial court rendered only one decision because the prosecution's evidence in Soldao's trial was the same evidence which was presented in the trial of the four appellants and the other two accused.

The prosecution witnesses, namely, Doctor Emilio de Veyra, Sergio Vergara, Aurea Velarde, and Miguel Deme-terio, who testified at the trial of defendants Esteban Yu, Diosdado Yu, Sinforosa V. Yu, Felipe

Villafuerte, Jovito Villafuerte, Antonio Novillo and Teotimo Paala, were also presented at Soldao's trial.

Soldao presented as his own witness Patrolman Pascasio Marmita. This witness did not testify at the trial of the other seven defendants. Appellants surmise that the trial court used Marmita's testimony as a basis for acquitting Soldao, Diosdado Yu and Jovito Villafuerte and that that action of the trial court unduly prejudiced the appellants.

Appellants' surmise is not an argument that justifies their acquittal. The lower court's exoneration of the three defendants is not under review. What is in issue is the sufficiency of the prosecution's evidence to establish appellants' culpability beyond reasonable doubt. The trial court's failure to render separate decisions, one for Soldao's case and another decision for the case against the seven defendants, has no crucial bearing on the resolution of that issue.

Appellants' contention that the trial court erred in appreciating the qualifying circumstance of abuse of superiority cannot be taken seriously. There were several assailants who literally ganged up on Velarde. He had to flee because he could not cope with the successive and simultaneous assaults of his assailants. Even the armed policeman, who was present at the scene of the fight, could not break up the fight because Velarde had several adversaries. All that the policeman could do was to fire his carbine in to the air.

There was a marked disparity between the strength of the victim and the strength of the aggressors who, at the last stage of the fight, surrounded their quarry, wounded him repeatedly and left him only when he was sprawled on the ground.

Evidently, the appellants and their companions cooperated in such a way as to derive advantage from their combined strength and to insure the victim's death (*People vs. Elizaga*, 86 Phil. 364, 383). Hence, abuse of superiority was correctly appreciated in this case.

Appellant Esteban Yu contends that the trial court erred in not holding that he acted in self-defense or in defense of a relative. That contention is predicated on circumstances which are not credible. Esteban Yu's version is that while Velarde and Alfonso Yu were fighting, he (Esteban) intervened and that Velarde lunged at him and wounded him in the infra-clavicular region. That version is difficult to believe because if Velarde was already fighting Alfonso Yu or was already occupied with the task of warding off the blows of Alfonso Yu, who was armed, it could not be expected that Velarde would take the initiative of assaulting Esteban Yu. It is simply unbelievable that Velarde would initially commit an unlawful aggression against Esteban Yu.

What is believable is that Esteban Yu was the aggressor and that Velarde wounded him because it was Velarde who was acting in self-defense. He was defending himself against the combined assaults of Alfonso Yu, Esteban Yu and Diosdado Yu, Velarde had no score to settle with Esteban Yu. There was no motive for Velarde to assault Esteban Yu. If Velarde assaulted Esteban Yu, it must have been because Esteban Yu provoked him and placed Velarde's life in jeopardy.

Certain contradictions were pointed out by the appellants in the testimonies of the prosecution witnesses. Those discrepancies do not destroy the probative value of the declarations of the eyewitness, Patrolman Vergara, and the bystanders, Marciano Udtohan, Aurea Velarde and Miguel Demeterio. Their testimonies are consistent in pointing to the appellants and their companions as *particeps criminis* in the killing of Velarde.

As the appeal throws the whole case open for review, it becomes necessary to pass upon the Solicitor General's contention that the trial court erred in holding that there was no conspiracy among the appellants and that their liability is individual and separate.

To establish a conspiracy, it is not essential that there be proof as to a previous agreement to commit a crime. It is

sufficient that the malefactors acted in concert to attain the same objective. (People vs. San Luis, 86 Phil. 485, 497).

As a rule, the concurrence of wills, which is the essence of conspiracy, may be deduced from the evidence of facts and circumstances, which taken together, indicate that the parties cooperated and labored to the same end (People vs. Macul, 86 Phil. 423, 426; People vs. Carbonel, 48 Phil. 868, 875).

"Conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proven by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. If it is proven that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proven." (People vs. Colman, 103 Phil. 6, 15, citing 5 R.C.L. 1088 and Underhill's Criminal Evidence, 4th Edition, revised by Niblack, sec. 773, pp. 1402-1403).

On the other hand, if there is no express nor implied conspiracy among two or more persons taking part in the commission of the crime, that is, no community of purpose or design, then their liability is regarded as individual or separate and not joint or collective. Thus, it was held that "where it does not appear that the aggression against the injured party was the result of a conspiracy on the part of the aggressors, each one of them is individually responsible for his acts and for the damage caused thereby to the injured party" (U.S. vs. Solis, 4 Phil. 178).

Concert of action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the fatal wound may determine complicity where it would not otherwise be evident (People vs. Tamayo, 44 Phil. 38, 54; People vs. Ibañez, 77 Phil. 664, 666).

Applying the foregoing rules to the instant case, we hold that the assaults or injuries perpetrated in concert by the four appellants against Velarde, as declared by the prosecution eyewitnesses, reveal a conspiracy and a tacit understanding to encompass Velarde's death. They were co-principals in the murder. Appellants Paala and Villafuerte were not mere accomplices. They were principals by direct participation.

The evidence shows that Esteban Yu is a recidivist. He was convicted of homicide in 1940 and he was sentenced to an indeterminate penalty of six years and one day of prison mayor to twelve years and one day of reclusion temporal (Exh. B).

In this case, there being no mitigating circumstances in his favor, the penalty that should be imposed on him is death (Arts. 64[3] and 248, Revised Penal Code).

Esteban Yu was fifty-six years old when he testified in 1962 (207 tsn). An agent of the National Bureau of Investigation reported that in 1972 Yu was already seventy years old. The death penalty cannot be imposed upon any person over seventy years of age. It should be commuted to reclusion perpetua with the accessory penalties provided in article 40 (Art. 83, Revised Penal Code). Hence, the death penalty cannot be imposed upon Esteban Yu.

Appellants Yu and Novilla filed a motion dated June 5, 1977 for the withdrawal of their appeal. They alleged that because of their poor health they had opted to serve the minimum terms of the indeterminate sentence imposed by the trial court and that they would later request that they be allowed to go on parole.

The Solicitor General opposed the motion. The withdrawal of an appeal after the case had been submitted for decision is discretionary in the court (People vs. Aleta, L-40694, August 31, 1976, 72 SCRA 542, 557; People

vs. Madrigal-Gonzales, 117 Phil. 956, 966).

After a conscientious study of the record, we found that the ends of retributory justice would be frustrated by allowing the withdrawal of the appeal. Hence, the motion for the withdrawal of the appeal was denied in the resolution dated November 17, 1977.

WHEREFORE, the trial court's holding that the crime committed is murder is affirmed. Its judgment is modified in the sense that appellants Teotimo Paala and Felipe Villafuerte are adjudged as co-principals and co-conspirators of appellants Antonio Novilla and Esteban Yu and each of the four appellants is sentenced to reclusion perpetua and to pay solidarily the heirs of Cipriano Velarde an indemnity of twelve thousand pesos and the costs. In Yu's case, the penalty of reclusion perpetua carries with it the accessory penalties for the death penalty as provided in article 40 of the Revised Penal Code.

SO ORDERED.

Makasiar, Antonio, Muñoz Palma, Concepcion, Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.
Ruiz Castro, J., in the result.

Fernando, Teehankee, and Barredo, JJ., took no part.

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