

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL CUSTODIO Y CARILLO, ALIAS “SAYKE”; ACCUSED-APPELLANT.

G.R. No. L-30463. October 30, 1972

Ponente: ANTONIO, J.

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ANTONIO, J.:

At the commencement of the trial, Angelito Paglicawan and Rosauro Roque, withdrew their previous plea of not guilty, and pleaded guilty without however admitting the aggravating circumstances alleged in the information. The decision was deferred until after trial. The Court after due hearing, found all the three accused guilty of the crime charged. Angelito Paglicawan and Rosauro Roque were sentenced to suffer the penalty of reclusion perpetua, while the death penalty was imposed on Manuel Custodio.

It is not disputed that, while Jesus Dequiña, was seated on a bench in front of a store at Masinop street, Tondo, Manila, conversing with some companions, at about midnight of January 29, 1969, Angelito Paglicawan held him by the neck while Rosauro Roque stabbed him, two of the stab wounds struck the back of the victim, fatally lacerating the lung and kidney, while the third wound caused an injury on the right eyebrow region of the face. The assailants immediately fled from the scene but were apprehended later by police operatives of the Manila Police Department and the METROCOM. Recovered from them was a dagger (Exhibit E) which Roque admitted as the weapon he employed in the stabbing and a bolo (Exhibit F). Police interrogation conducted in the early hours of January 30, 1969, resulted in the execution of written statements by Roque and Paglicawan, the former admitting the stabbing as aforesaid and the latter denying any criminal involvement therein. At about 8:00 o'clock that same morning, appellant Manuel Custodio, was arrested by the police upon information, that he "stood guard" during the commission of the crime.

At the trial the State attempted to show that the attack on the victim was pursuant to a conspiracy planned apriori by Roque, Paglicawan and appellant Custodio, the latter participating therein as guard to ensure the execution of the offense. In this, the prosecution relied on the testimonies of Angelina Malonso, Ricardo Sebastian and Dominador Fabros. For a clear overview of this evidence, the declarations of said witnesses are in substance reproduced hereunder.

1. Angelina Malonso, widow of the deceased declared that: She knew the three accused for a long time having been her neighbors. A month prior to the stabbing, her husband slapped Roque, and since then the latter while drunk and armed with a bolo used to pass at night in front of their house and stared at the house without uttering any word. The night prior to the fateful incident in question while she was fetching water in the vicinity of their house, she overheard the three accused who were five meters from her, conversing near a store, Roque saying "Bert tell Jessie that we will kill him" (Bert sabihin mo kay Jessie na papatayin namin siya) to which Bert allegedly retorted that he (Roque) should be the one to inform him because why should it be him. Appellant then allegedly remarked: "Why, does he have nine lives?" The group allegedly did not notice her as the place where

she was fetching water was dark. After she heard those remarks Roque approached her and inquired where her husband was working and whether he goes home at night. She replied that her husband usually sleeps in his place of work and after she had given her answer to them, they left. She never informed her husband about this incident because she "did not want him to injure any person." [1]

On cross-examination she admitted that her husband bore tattoo marks on his neck and back and that before, he was reputed to be a "tough guy", and although Roque used to pass in front of their house at night sometimes at 10:00 o'clock, 11:00 o'clock and 12:00 o'clock in the manner recounted by her, she never reported the matter to her husband. [2]

2. Ricardo Sebastian: 17 years of age, student of Guzman Institute of Technology declared that: On or before midnight of January 29, 1969 while he was talking with Jesus Dequiña and other friends of Jesus, like "Warray", "Mang Arcing" and "Doming" in front of a store at Masinop Street, four persons, three of whom he identified as the accused Roque, Paglicawan and the appellant, approached from behind Dequiña who was then seated on a bench. He was able to recognize them by the bright light of the street lamp. Upon nearing Dequiña, Paglicawan who was armed with a bolo, "squeezed" the neck of Jesus Dequiña while appellant Custodio "stood (as) guard" at distance of "about three arms length" from the victim. At that moment he saw Roque who was armed with a dagger, (Exhibit E,) stabbed Dequiña only once on the back. During the time when appellant Custodio was standing guard he was holding a bolo (Exhibit F). After the victim was stabbed and fell on his back, Sebastian was at that particular moment already near a pushcart about seven meters away from the situs of the stabbing. [3]

On cross-examination, he reiterated that he saw Roque stab the victim only once and that the victim after receiving the stabbing thrust did not struggle. He also affirmed that Paglicawan was carrying a bolo and pointed to the bolo (Exhibit F) as the one held by him. He explained that he saw the same bolo on three occasions, the second time in the police precinct and the third time in court. He admitted that appellant Custodio merely "stood guard" during the incident without moving his hands or taking any step towards the direction of Dequiña, and that when he reached the pushcart appellant Custodio had already ran away, together with his companions towards the direction of Cristobal street.

The witness further declared that when he ran towards the direction of the pushcart, he did not see them anymore, except that from a distance they stopped and faced at the direction of the victim. [4]

3. Dominador Fabros: 25 years of age, apple vendor, declared that: while he was conversing with "Rodolfo", "Mang Arcing" and "Warray" at a place at Masinop street, Jesus Dequiña arrived and after sitting on a bench about a meter away from him, requested him to buy some cigarettes. After he bought the cigarettes, and as he turned around, that was the time he saw Paglicawan and Roque. He saw Paglicawan "squeezed" the neck of Dequiña, while Roque stabbed the latter three times on the back until the victim fell. When he saw Roque stab the victim three times in succession, he shouted: "Don't stab him" but at that time the victim had already fallen to the ground. As he was about to approach Dequiña, appellant Custodio hacked him with a bolo (Exhibit F). He was able however to parry completely the blow but the end of the bolo hit his left thumb. After he was hacked the three accused immediately ran away. He admitted that he did not notice the approach of the three accused as he was then buying cigarettes. When he was asked by the Court to explain how the victim sustained the wound which according to the medical report was located on the region of the right upper eyebrow of Jesus Dequiña, considering that according to him all the stabbing thrusts were directed at the back of the victim, he replied that he "did not see that wound." [5]

On cross-examination, he admitted that only two persons approached "Jessie"; that the deceased was a "tough guy"; that while Paglicawan and Roque were attacking the deceased, Custodio merely "stood (as) guard" about

two meters away from them but when he approached them, Custodio turned, and hacked him with his bolo. He admitted that he did not file any complaint against Custodio as a consequence of his alleged injury on his left thumb.[6]

In denying his participation in the offense, appellant Custodio declared, substantially, as follows:

Manuel Custodio : 21 years, laborer, declared that: he knows the deceased Jesus Dequina as a tough guy, but never had any altercation with him. On the night of January 29, 1969, he joined Roque and Paglicawan in drinking gin at a place in Cristobal street. At about 10:00 o'clock, his elder sister fetched him and they proceeded to the house of the latter where he took his supper. After taking his supper, he asked money from his sister to buy cigarettes, and then proceeded to buy cigarettes in the store in Cristobal street but upon finding it closed, he went to the store at Masinop street. Upon his arrival there he was surprised to find that there was already some trouble and the people were in commotion. When he saw the people running away, he ran to the house of his elder sister. His sister noticing that he was gasping for breath, inquired what happened. After he told her about the trouble that he saw at Masinop street, his sister advised him to go home. He then proceeded to their home at Juan Luna street, where he stayed until the following morning when he was apprehended while walking along Recto Avenue. He categorically denied that he carried a bolo, or stood as guard or that he hacked Fabros with a bolo during the incident.

Both Rosauro Roque and Angelito Paglicawan in their testimony absolved appellant of any involvement in the perpetration of said offense.

The trial court rejected the defense of appellant, and concluded that "the evidence indubitably" showed that "Custodio conspired with his co-accused" which "conspiracy among the accused was established beyond doubt by the testimony of Angelita Malonso that the night before the incident the three agreed to kill her husband which agreement was actually carried out as testified to by Sebastian and Fabros."

In this appeal, the counsel de officio for appellant, now assigns these conclusions, as errors of the court a quo.

No brief was filed by the Solicitor General for the State.

Certain circumstances do cast serious doubt on the existence of conspiracy.

1. It may be recalled that the court a quo in its decision concluded that conspiracy among the accused was established beyond doubt by the testimony of Angelina Malonso. A careful review of her testimony however, does not support such conclusions of the court a quo. Thus on this point she testified:

"Q What were they talking about?

A Roque said 'Bert, sabihin mo kay Jessie na papatayin namin siya'.

* * * * *

Q What also did you hear other than what you have stated?

A Bert said that you should be the one to tell him why is it I?

Q And did you hear any other remarks after Bert have retorted?

A Manuel Custodio said 'Why, does he have nine lives?'

Q How far were you from these persons talking by the store when you hear what you have narrated?

A Around five meters, sir.

Q And you said that you were not noticed, do you know why you were not noticed while they were talking?

A No, sir, because it was dark where I was fetching.

Q And that was the time when you were drawing water?

A Yes, sir.

Q And after you have heard those remarks coming from the accused, what else did they do if they did anything?

A I was approached by Roque sir.

Q Did he say anything to you?

A He asked me where Jessie was working and if he goes home at night.

Q And did you answer him?

A Yes, sir.

Q What was your answer?

A He sleeps in his place of work.

Q And after you have given such answer, what else transpired?

A They left, sir.

Q After you have fetched water, what did you do?

A I went home.

Q Did you ever tell your husband about what happened and what you heard?

A No, sir."

There is nothing in the aforecited remark of appellant, from which it could be reasonably inferred that appellant, had by such utterance agreed with his companions to commit the offense charged. It must be recalled that only Rosauo Roque and Angelito Paglicawan had a previous misunderstanding with the deceased. At least both Roque and Paglicawan admitted in their extra-judicial statements that they were previously slapped by the deceased. (Exhs. F and G). Upon the other hand, there is no proof whatsoever that appellant had any grudge against the victim much less is there any fact or circumstance in the record from which any motive on his part to join the alleged criminal conspiracy against Jesus Dequiña, could be deduced. While proof of motive is not always necessary in criminal prosecutions, it is frequently important to know the reasons for the commission of a criminal act, to gain the desired judicial perspective in any given case^[7] for the purpose of ascertaining which of the conflicting theories is likely to be true^[8] or to evaluate the credibility of a witness. For in the absence of any motive, the appellant's remark could have been a mere innocent banter or persiflage.

Besides, if it is true that she heard such a conversation, it is quite incredible that she never bothered to relay to her consort such information. Knowing of the previous misunderstanding between Roque and her husband, it would have been logical to assume in keeping with the promptings of human nature and the ordinary course of things, for a wife to be concerned with the safety of her husband and to immediately warn him of any possible danger to his life. Evidently, such a testimony being too facile a device, is certainly insufficient to ensnare appellant within the folds of a criminal conspiracy with its far reaching and serious consequences.

2. This leads Us to a consideration of the incident of January 29, 1969. It must be noted that on the night in question, only Angelito Paglicawan and Rosauro Roque attacked Jesus Dequiña. The only participation of appellant, according to Ricardo Sebastian and Dominador Fabros was that he "stood as guard" while Roque was stabbing the victim. As to how and in what manner appellant acted in the course of the encounter, to warrant such a conclusion on the part of these witnesses, the evidence shows that these witnesses gave conflicting versions. Sebastian who was nearer to the scene of the attack, than Fabros, as he was only "four arms length" from the victim, declared that appellant merely stood "three-arms length" behind Angelito Paglicawan without moving his hands or taking "any step towards the direction" of Jesus Dequiña.[9] It is evident that if appellant stood passively in that manner, Sebastian's statement that he "stood as guard" was a mere expression of an opinion. Upon the other hand Fabros, claimed that when he approached the victim, appellant hacked him with a bolo, which he parried with his hands sustaining as a result thereof a slight injury on his left thumb. Evidently, if it is true that appellant hacked Dominador Fabros with a bolo, such an act, would not have escaped the attention of Sebastian who was also watching the same incident. It is therefore significant that, Sebastian has not corroborated Fabros in this regard.

Moreover, this claim of Fabros appears inconsistent with the facts appearing in the records of the police authorities, submitted as evidence by the prosecution. The "Booking Sheet and Arrest Report" dated January 30, 1969 (Exhibit J) of the accused Angelito Paglicawan clearly stated that it was the accused Angelito Paglicawan who "was positively identified by witnesses to be holding a native bolo (recovered) at the time of the incident and even tried to hack witness Dominador Fabros who tried to give succor to aforesaid deceased." Upon the other hand the "Booking Sheet and Arrest Report" of appellant Manuel Custodio also bearing the same date, (Exhibit L) which was prepared by the same police officer some hours later, merely stated that said appellant was "identified by witnesses to be with his co-accused in this case at the place, date and time of incident and stood as guard when his co-accused stabbed the deceased." On the basis of these police records it is reasonable to infer that the initial investigation of the witnesses conducted by the police showed that it was Paglicawan and not appellant Custodio who was identified by the witnesses as the one who hacked Fabros. These aforesaid documents were all prepared by prosecution witness Patrolman Eustaquio Casilla, the officer assigned to the case, and both documents bear the approval of his superior officers. No explanations had been given, why these police records contradict this claim of Dominador Fabros.

It should be noted also that the prosecution, in its zeal to buttress its claim that appellant was armed with a bolo at the time of the incident, presented Ricardo Sebastian to identify the bolo, marked as Exhibit F, as the weapon actually held by the appellant.

"Q At that time that this Custodio was as you said on guard, can you tell this court if he had any weapon on his person.

A There was sir.

Q What?

A Bolo, sir.

Q If you will be able to see that bolo, will you be able to recognize it?

A Yes, sir.

Q Showing to you a bolo which for purposes of identification, I request that it be marked as Exhibit F, do you know this Exhibit F?

A Yes, sir.

Q What relation has this with the bolo which was held that night by Custodio?

A This is the one, sir (witness referring to Exhibit F)"[10]

And yet this same witness contradicted himself by admitting on cross-examination that the bolo, marked as Exhibit F was the weapon actually held by Angelito Paglicawan at the time he was holding the neck of the victim.

"Q You said that Angelito was carrying a bolo, where is that now?

A (Witness pointing to the bolo Exhibit F).

Q Do you know who confiscated this Exhibit F?

A I don't know, sir.

Q And so you saw this weapon for the second time only now?

A This is the third time, I saw it in the precinct."[11]

Such an admission by Sebastian, that the bolo (Exh. F) was actually held by Paglicawan is reinforced by the fact, that according to the police report (Exhibit I) and the testimony of Pat. Eustaquio Casilla, the dagger (Exh. E) and the bolo (Exh. F) were recovered by the Metrocom Officers from Rosauo Roque and Paglicawan, when they apprehended them after a brief chase soon after the commission of the crime.

As pointed out by the counsel de oficio, if it was true that as stated by Sebastian, the bolo (Exh. F) was held by Angelito Paglicawan during the entire course of the incident, how can the same bolo be in the possession of the appellant?

The record fails to show that the prosecution exerted any effort to explain or reconcile such palpable discrepancy in the evidence of the state.

It is well to recall the settled rule that conspiracy presupposes the existence of a preconceived plan or agreement in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be established a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design.[12] Considering the far-reaching consequences, of criminal conspiracy, the same degree of proof required for establishing the crime is required to support a finding of its presence that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[13]

The evidence fails to meet such requirements. To hold him liable, upon the other hand, as an accomplice, it must be shown that he had knowledge of the criminal intention of the principal, which may be demonstrated by previous or simultaneous acts which contributed to the commission of the offense as aid thereto whether physical or moral.[14] As aptly stated in *People vs. Tamayo*[15] "It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is further necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way." In the case at bar it appears that the meeting between the accused and the victim was purely accidental. It could not be assumed from the fact that he arrived with Roque and Paglicawan at the scene of the incident, that he knew of the felonious intentions of his companions. He may have accompanied them only out of a sense of good fellowship. From our view of the evidence it has not been convincingly established that appellant cooperated in

the commission of the offense, either morally, through advice, encouragement or agreement or materially through external acts indicating a manifest intent of supplying aid in the perpetration of the crime in an efficacious way. Such circumstances, being absent, his mere passive presence at the scene of the crime certainly does not make him either a co-principal or an accomplice in the commission of the offense.[16]

By and large, the evidence on record fails to satisfy the requirement of moral certainty needed to hold appellant guilty of the charge. For it is "only by proof beyond reasonable doubt, which requires moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it — may the presumption of innocence be overcome." [17]

WHEREFORE, the sentence appealed from is reversed and appellant, Manuel Custodio, is acquitted. His release from confinement is hereby ordered, unless he is held for another legal cause. With costs de oficio.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Makalintal, J., on leave.

[1] T.s.n. session of Feb. 11, 1969, pp. 21-22.

[2] Id., pp. 23-24.

[3] T.s.n., pp. 10-13.

[4] Id., pp. 15-16.

[5] Id., pp. 17-19.

[6] Id., pp. 19-20.

[7] People vs. Dalmani, et al., 63 Phil. 188, 195.

[8] People vs. Zamora, 59 Phil. 568, 569.

[9] T.s.n., p. 14, session of Feb. 11, 1969.

[10] T.s.n., pp. 12-13.

[11] T.s.n., pp. 14-15.

[12] People vs. Bernal, 91 Phil. 619; People vs. Canare, 106 Phil. 270, 276; People vs. Regal, 5 SCRA 703.

[13] People vs. Bartolay, L-30610, Oct. 22, 1971; 42 SCRA 1; People vs. Vicente, L-26241, May 21, 1969; 28 SCRA 247; People vs. Portugetza, L-22064, July 31, 1967, 20 SCRA 901.

[14] People vs. Silvestre, et al., 56 Phil. 353, 356.

[15] 44 Phil. 38, 49.

[16] People vs. Regal, 5 SCRA 703, 706.

[17] People vs. Lavarias, 23 SCRA 1301. See also: People vs. Maisug, 27 SCRA 742.

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