

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALEJANDRO CLARIT AND “PEOPILO CLARIT, DEFENDANTS
AND APPELLANTS.**

G.R. No. L-14150. October 30, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Zamboanga del Norte, Hon. Wenceslao M. Ortega, presiding, finding Alejandro Clarit guilty as principal of the murder of one Orencio Gandamon, and defendant-appellant Teofilo Clarit guilty as accomplice in the commission of said murder, sentencing them accordingly, and further sentencing Alejandro Clarit to pay damages in the amount of P4,000 and Teofilo Clarit in the sum of P2,000 with costs.

It appears that before May 1, 1952, a family of Subanos lived in a house in the sitio of Pomokloron, barrio of Salvacion, municipality of New Pinan, Zamboanga del Norte. The family consisted of Orencio Gandamon and Liling Subana, husband and wife, and their children Cristina, Salvador, Soling, and other younger brothers and sisters of the latter. On May 1, 1952, the family was living in a house belonging to a nephew of Gandamon by the name of Vicente Gomiason or Takili. This was so because the house of Orencio Gandamon had been burned by Alejandro Clarit, for which burning the latter had been found guilty of arson. Orencio Gandamon was building a new house, but as it was not yet finished because only the framework thereof had been put up, he and his family had to live in the meantime in the house of the above mentioned nephew. This house had a flooring of boards and coconut leaves as siding.

In the evening of May 1, 1952, while the family was taking their supper squatting on the floor of the house, a gun explosion was suddenly heard Just outside the house. Orencio appeared to have been hit because immediately after the explosion he cried "Agoy", appearing to have received a shot in the left side of the chest. The explosion frightened all the members of the family and immediately Cristina and Soling jumped out through the door to secure his help. Just as they reached the ground they saw the two accused Alejandro Clarit and Teofilo Clarit standing by one side of the house, the former holding a gun. The accused were one meter beside the house and three meters away from them. Becoming more frightened upon seeing these two, they ran away for help. Salvador, the son, was also frightened and wanted to jump out of the window, but as he approached it, he saw the two accused, Alejandro Clarit and Teofilo Clarit, the former holding a gun. So Salvador desisted from his intent and came back to the middle of the house. Liling Subana, the wife of Orencio, after noticing that her husband was wounded, tried to help him out but to no avail, so she decided to go down, but as she did so, she saw the accused Alejandro and Teofilo Clarit running away from the house. In her statement taken by the chief of police, she said she identified Alejandro because he was limping. This statement differs somehow from her testimony in open court, but she explained the discrepancy saying that it was due to difficulties in translating her statement into Visayan which she did not speak.

Such are the testimonies of the three most important witnesses for the prosecution who identified the two accused as the authors of the murder. It was also proved by the prosecution that the father of the accused-appellants, Paulino Clarit, had purchased a land in the vicinity, which land adjoined that claimed by Orencio Gandamon. The accused who are the children of Paulino, claim that the land occupied by Orencio Gandamon is part of the property bought by their father, so Alejandro Clarit set fire to the house of Orencio Gandamon. Alejandro Clarit was prosecuted therefor and convicted of arson. After the burning of the house, Orencio Gandamon, still insisting that the land belonged to him, started building another house. The accused then approached Orencio and threatened to shoot him if he continued building the house. But on May 1, 1952, having finished only the framework, he and his family had to live in the house of a nephew where the murder took place.

The accused-appellants denied having committed the murder and claimed that on the day thereof, they were making copra in the coconut land of one Antonio Lantekse in another municipality. Antonio Lantekse declared that he has a parcel of coconut land in Onidos, Plaridel, Misamis Occidental; that he knows the accused, who are the sons of Paulino Clarit who also has a house in Onidos; that the accused, Alejandro and Teofilo, helped him make copra beginning May 1, 1952, and that the said accused were in his house in the evening of that day, they having taken supper in his house; that after supper, the said accused, slept in the house, and that, the following day they continued to make copra. On cross-examination, however, upon being asked, whether he was sure that the defendants started working with him on May 1, Monday, he answered that he was not sure and that he only believed that they started on Monday, because the father of the accused had come to him on May 7, asking him to testify to the fact that on May 1, his children were making copra on his land.

There are various circumstances why the wife and children of the deceased were able to identify accused-appellants. The latter were known to them because complainants lived near the land of the Clarits. The night was clear because it was a moonlit night. There were no trees near the house that could have hidden the appellants from sight and they were still near the house when the children of the deceased saw them. After the shot, Alejandro and Teofilo must have stayed close to the house to observe the results of the shot, so they were seen still near the house by the daughter who jumped down thru the door and the boy who was about to jump thru the window. When, on the following day, the police chief came to question the members of the family of the deceased, these never doubted who the assailants were and immediately pointed to the appellants as the authors of the crime. The appellants themselves can not deny that they must have been identified because, according to the testimony of Clarit's wife the chief of police and some Subanos went to their house looking for her husband and so she (Clarit's wife) had to seek shelter in another house for fear of reprisal.

The trial court was convinced that the crime was proved beyond reasonable doubt by the testimonies of the children and wife of the deceased. While there is a discrepancy in the testimony of the wife (she said that immediately after the firing of the shot she stepped down and saw the accused, but in her declaration before the chief of police Exh. "1" she said that after the shot she first had to help her husband and find out what his condition was, and it was only then that she went down the stairs and saw Alejandro Clarit 40 meter away from the house), this slight discrepancy was explained by her as due to the fact the one who took down her testimony, did not speak Subano which she speaks, for which reason the imperfections were made. But, even admitting that it was not her testimony in court but her declaration two days after the murder, Exh. "1" that is to be considered as the truth, the fact remains that Alejandro Clarit was also identified by her because of the manner in which he was limping as he ran away from the house.

Considering the fact that the accused-appellants were identified by no less than three persons, and were denounced to the police early the following day, while the principal witness to the alibi of the defense was not very definite about the day on which appellants were supposed to have started making copra for him, and the

further fact that the alibi was furnished by appellants themselves, their father and close friends, we are inclined to agree with the judge below that the commission of the crime by the accused-appellants was proved beyond reasonable doubt.

But while we agree with the trial court's findings that both Alejandro and Teofilo Clarit were at the scene of the commission of the crime on the evening of May 1, 1952, we are not prepared to confirm its conclusion that the participation of the younger brother Teofilo was that of an accomplice merely. It may be true that Alejandro, the elder, may have planned and executed personally the crime, as Teofilo was only about 19 years of age at that time. This planning and execution of the crime by Alejandro alone, in the absence of other circumstances, is not sufficient to prove that Teofilo did not actually conspire with his brother both in the planning and in the execution. The property or the land which they considered to have been encroached upon by Orencio Gandamon belonged to their father, and consequently the interest of one is just as much as the interest of the other; when previous to the occasion of the murder Orencio was threatened to be killed, when he insisted on building his house on the disputed property, it was both appellants again that came to see him and threatened to kill him if he would continue building said house.

In the case of *People vs. Ging Sam, et al.*, 94 Phil., 139, we held:

"The remaining question to be determined is: Is there conspiracy in this case? According to our law, 'A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.' (Article 8, Revised Penal Code.) This law apparently requires that for conspiracy to exist there must be an agreement concerning the commission of a felony. But this requirement does not actually mean that the agreement must be in writing or be expressly manifested it being sufficient that it be implied from the acts of the conspirators tending to show their common design to commit the crime. Previous acquaintance among the conspirators is not even necessary, nor is it required that each takes part in every act, or that all shall know the exact part to be performed by the others in the execution of conspiracy. The only thing required is that there be a common purpose or design to commit the act the means employed or the parts executed by each being immaterial. (12 C. J. 544-545)."

In *People vs. Sedenio*, G.R. No. L-6372, April 29, 1954 this Court also held:

"It is next argued that appellant Elpidio Mejenio should, at most, be convicted of slight physical injuries, there being allegedly no positive evidence of conspiracy with his co-defendant. This pretense is clearly untenable, for Elpidio's presence at the foot of the coconut tree—which he did not even try to explain—and the fact that he attacked Crispin as soon as the latter fell to the ground, prove that appellants were united in their purpose and in the execution thereof. This is borne out by the fact that, shortly after the occurrence, Sinforiano Sedenio told Pelagio Sedenio, in the presence of Elpidio Mejenio and Teresa Mejenio: 'Father we killed somebody. We forced Crispin Amacio to fall from a coconut tree.'"

In accordance with the above quoted rulings, we hold that the participation of Teofilo Clarit was not that of an accomplice merely but of a principal in the commission of the crime.

In view of the foregoing, the judgment and sentence imposed upon Alejandro Clarit is hereby affirmed, with the modification that the amount of indemnity which he is to pay is reduced from P4,000 to P3,000 and defendant-appellant Teofilo Clarit hereby found guilty as principal in the commission of the crime charged and sentenced to the penalty of reclusion perpetua, and to indemnify the heirs of the deceased in the amount of P3,000. As thus modified, the sentence imposed by the trial court is hereby affirmed.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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