

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELCHOR TIVIDAD, DELFIN TIVIDAD, FULGENCIO TIVIDAD AND
FRUCTUOSO TIVIDAD, DEFENDANTS-APPELLANTS.**

G.R. No. L-21469. June 30, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

At about five-thirty o'clock in the afternoon of February 14, 1961, a cockfight jointly sponsored Regino Murillo and Delfin Tividad was held in the sitio of Calumpit, barrio of Calantas, Calaca, Batangas. In the course of the sport, a heated argument arose between two bettors brought about by the refusal of one of them to make good a bet. As co-sponsor of the event, Delfin Tividad tried to settle the dispute, to no avail. Neither did Regino Murillo have any success. In apparent disgust, the latter blurted out, "if we could not agree, we better stop the cockfight", and then stalked out of the arena. Melchor Tividad, an older brother of Delfin, followed Regino, and, as the latter stood by the door of the cockpit, gave him a first blow. The two thereupon grappled until Melchor, the smaller of the two, fell to the ground with Regino bending over him, firmly holding his shoulders and trying to pin him down. At this juncture, Delfin came running out of the arena and with a knife stabbed Regino in the back, causing the latter to fall on his buttocks. Delfin then stabbed him in the neck and breast, causing him to fall on his back. While Regino was sprawled on the ground, Melchor hacked him with a bolo drawn from the scabbard on Regino's side. Then Fulgencio came and, with a piece of bamboo picked up from among those scattered in the ground, hit Regino on the head. He was followed by Fructuoso who, with a bamboo pole, swung at the prostrate figure of Regino, hitting the latter on the left arm. With Regino bleeding profusely from his wounds, the Tividad brothers left. Soon thereafter, Regino died.

On March 28, 1961 the four brothers were charged with murder before the Court of First Instance of Batangas. After due trial, the lower court rendered judgment, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds all the four accused Melchor, Delfin, Fulgencio and Fructuoso, all surnamed Tividad, guilty beyond reasonable doubt of murder, the killing being qualified by treachery. There being no other modifying circumstance to consider, the penalty provided for by law for the offense (reclusion temporal in its maximum period to death) should be imposed in its medium period. Hence, all four accused are hereby sentenced to life imprisonment, to jointly and severally indemnify the heirs of Regino Murillo in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay 1/4 of the costs each."

From this decision, the defendants have appealed to this Court. Subsequently Melchor Tividad withdrew his appeal which was accordingly dismissed.

The appellants denied complicity in the killing of Regino Murillo. Delfin declared that when he arrived at the cockpit, the fight was already over and Regina was on the ground dying. Fulgencio testified similarly. On the other hand, Fructuoso asserted that when he arrived at the scene of the fight, his brother Melchor had already obtained possession of the bolo of the deceased for which reason he saw no more necessity in going to his

brother's aid. Melchor admitted killing Murillo but only in self-defense. However, as he has already with-drawn his appeal, it is no longer necessary to consider the merits of his defense.

It is the theory of the defense that only Melchor Tividad fought with Regina Murillo, and that Delfin, Fulgencio and Fructuoso did not participate therein in any manner. The only witness presented by the defense counsel other than the accused themselves was Doroteo Sara, a resident of barrio Calantas. Sara testified that in the afternoon of February 14, 1961, he saw Melchor and Regino fighting with one another; that Regino had a bolo with which he tried to hack Melchor; that the latter was able to wrest the bolo from Regino and with it hacked the latter, several times in the chest; that Regino fell on his back and remained in that position until Melchor desisted from the attack; that Delfin, Fulgencio and Fructuoso were present during the fight but did not intervene therein; that they left the cockpit together after the fight; and that he himself left after the fight had ended.

We have exhaustively examined the record and nowhere do we find any support for the theory proffered by the defense. The nature and location of the wounds sustained by the deceased, and the declarations of the prosecution witnesses, create a different picture of the incident. In the autopsy report (exh. A) of the municipal health officer, Dr. Antonio E. Platon, the eleven wounds sustained by the deceased are described as follows:

1. Stab wound on the left side of the neck cutting the left carotid artery and vein;
2. Cut wound on the mouth cutting all teeth affecting also both commissures;
3. Cut wound above the right clavicle;
4. Stab wound in front right side near the sternum on the third intercostal space down deep into the thoracic cavity about 6 inches deep;
5. Cut wound on the left shoulder;
6. Stab wound on the left shoulder joint deep about 5 inches;
7. Cut wound on the right thumb;
8. Cut wound on the dorsum of the left hand;
9. At the back stab wound near the spinal column below the angle of the right scapula down deep into the thoracic cavity of about 6 inches deep;
10. Cut wound on the left occipito-parietal junction affecting the skull just reaching the gray matter only;
11. Linear longitudinal erosion of the skin from the left ear lobe to the cheek of same side of about 4 inches in length.

Of these wounds, those described in paragraphs (1), (4) and (9) were fatal. Any one of them, according to Dr. Platon, could have caused the death of Murillo.

Dr. Platon classified the wounds into three groups: (a) cut wounds or those caused by a sharp instrument like a bolo, (b) stab wounds or those caused by a sharp and pointed instrument like a knife, and (c) the wound described in paragraph 11 of the autopsy report which was caused by a blunt instrument like a bamboo pole or the handle of an ordinary knife. From a careful scrutiny of the autopsy report and the testimony of Dr. Platon, only one compelling inference presents itself, which is, that the wounds on the body of the deceased were caused by different weapons and not solely by the bolo allegedly wrested by Melchor from Regino as the defense would have us believe. If the latter were the case, the wounds would have exhibited much the same appearance. No evidence was presented by the defense to show that Melchor used some other weapon in killing Murillo.

Moreover, the wounds on the back, head, shoulder and mouth of the deceased disprove Sara's statement that he saw Melchor hack Murillo only in the chest. Considering Sara's testimony that the deceased never changed his position after falling to the ground as to expose his back to Melchor's onslaught, we can only conclude that he had misrepresented the truth as to the actual sequence of the events.

The failure of the appellants' evidence to tally with the autopsy findings of the municipal health officer considerably weakens their case and correspondingly strengthens the testimonies of the prosecution witnesses. In their brief, the appellants belabor the alleged bias of the prosecution witnesses Fabian Salanguit and Donato Ma. Katigbak, growing out of their relationship with the deceased, they being the half-brother and father-in-law of Murillo, respectively. The appellants likewise assail the testimony of Gaudencio Panaligan, husband of the mistress of Delfin Tividad, one of the accused. While witnesses may be said to be interested by reason of their relationship with one of the parties, their declarations should not be disregarded or rejected capriciously on the ground of apparent bias alone where they are reasonable, consistent and supported by other facts and circumstances (U.S. vs. Pagaduan 37 Phil. 90, 92). This is the situation obtaining in this case. The autopsy report (exh. A) not only gives credence to the testimonies of Salanguit, Katigbak and Panaligan and bolsters the prosecution's theory that Murillo was stabbed by Delfin in the back, neck and chest, hacked by Melchor in the breast, and struck by Fulgencio and Fructuoso in the head and arm with pieces of bamboo, but as well utterly destroys the pretensions of the defense.

Despite the number of people who witnessed the affray and the alleged notoriety of the deceased in the community, it is strange that the appellants were able to present only the hardly credible testimony of Doroteo Sara. Not only does such testimony fail to dovetail with the medical findings, but as well it disputes a material point in the testimonies of Delfin and Fulgencio. While the latter categorically denied their presence during the fight between Melchor and Regino, Sara asserted that they were present although they did not intervene therein. Neither in the court *quo* nor in their brief did the appellants explain this patent contradiction.

The prosecution has taken the position that the appellants acted in common accord, with the same criminal purpose and murderous intent, as to render each one as well liable for the acts of the others. As proof of this fraternal conspiracy, reliance is placed on the apparent simultaneity of the attack on the deceased. That there was a prior agreement among the Tividad brothers to kill Murillo has not been averred, much less proven, by the prosecution. While it may be true that direct proof is not essential to prove conspiracy and that it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged (People vs. Cabrera, 43 Phil. 64, 96; People vs. Carbonel, 48 Phil. 868, 875-876) nonetheless the evidence to prove the same must be positive and convincing (People vs. Aplegido, 43 O.G. 114, 117). As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle of criminal law requiring proof beyond reasonable doubt before conviction. It is with this guidepost in mind that we have examined the evidence on record and consequently arrived at the conclusion that the facts of the case do not support the position of the prosecution.

The record is bereft of any fact or circumstance, whether anterior to the commission of the offense or subsequent thereto, indicative of conspiracy among the accused. Although all the Tividad brothers were present during the cockfight, this fact does not give rise to any inference of unity of criminal purpose as their attendance therein may be explained by the facts that in the rural areas, cockfighting is a communal activity, especially among the menfolk, and that, in this case, one of them (Delfin) is a co-sponsor of the event. Neither is their departure together and in the same direction after the affray a positive manifestation of conspiratorial unity as it was merely an affirmation of the uncontradicted fact that they were neighbors. There is no proof that the Tividad brothers bore

the deceased any grudge previous to the assault on the latter. In fact, they were even seen together in conversation before the cockfight by Gaudencio Panaligan, one of the prosecution witnesses. If the parties had differences, the joint sponsorship of the cockfight by Delfin Tividad and the deceased would not have been possible.

This leads us to a consideration of the fight itself. It is indubitably clear from the record that the accused did not attack the deceased simultaneously. Even if they did, this would not of itself indicate the existence of a conspiracy among them as simultaneity per se is not a badge of conspiracy, absent the requisite concurrence of wills. It is not sufficient that the attack is joint and simultaneous; it is necessary that the assailants are animated by one and the same purpose (U.S. vs. Magcomot, 13 Phil. 386, 389; People vs. Caballero, 53 Phil. 595-596). Evidently, in a situation where the assaults were not simultaneous but successive, greater proof is demanded to establish concert of criminal design. The evidence for the prosecution shows that the assaults on the deceased were carried out by the accused successively. Panaligan even testified that while Melchor and Regino were grappling in the early stages of the fight, Delfin and Fructuoso stayed inside the arena some five meters away from the protagonists. Fulgencio, although outside the arena, was also about five meters distant from the two. If, later, they seemingly went to the aid of their brother, it was out of strong fraternal instincts and not on account of a conspiracy, express or implied, to take the life of the deceased or inflict upon him bodily injury. With the exception of Delfin, none of the accused was armed. The bamboo poles used by Fulgencio and Fructuoso were simply picked up by them from the many pieces lying on the ground near the cockpit. If it were their intention to kill Murillo, they would have priorly armed themselves with more lethal weapons. Of considerable significance is the circumstance that Melchor, who started the fracas, was unarmed and smaller in build than the deceased while the latter was not only bigger but also carried a bolo. As the appellants themselves asserted, the deceased was reputed in the locality to be a "siga-siga" or "barako" and was, presumably, more than familiar with the ways of street fighting. Would the accused have carelessly risked the life of their unarmed brother if they really had the intention of doing away with Murillo? As it was, the brothers did not intervene in the fight until after Melchor had been thrown to the ground. In brief, then, the facts do not disclose that the accused had previously conspired to kill the deceased.

In the absence of conspiracy, each of the accused is responsible only for the consequences of his own acts (U.S. vs. Abiog and Abiog, 37 Phil. 137, 140; People vs. Tamayo, 44 Phil. 38, 47-49). As to the remaining appellants, the qualifying circumstance of treachery should be appreciated only against Delfin Tividad who was positively identified as the one who treacherously stabbed the deceased in the back while the latter was trying to pin down Melchor. The injury caused, described in paragraph (9) of the autopsy report as about six inches deep, was one of the three fatal wounds sustained by Murillo. Fulgencio and Fructuoso, whose community of interest with the other accused has not been shown, should be held liable only for the consequences of their own acts. While the evidence shows that each of them hit the deceased once with a piece of bamboo, it is silent as to the extent of the injuries caused, in which case they should be held guilty only of slight physical injuries. As to Melchor Tividad, with the withdrawal and subsequent dismissal of his appeal, the judgment a quo against him has long become final.

ACCORDINGLY, the judgment appealed from is affirmed with respect to Delfin Tividad, and modified with respect to Fulgencio Tividad and Fructuoso Tividad to the extent that they are hereby held guilty only of slight physical injuries and sentenced to ten days of arresto menor. Having already served more than four years of preventive imprisonment, they are hereby ordered released from custody. The indemnification of P6,000 be paid to the heirs of Regino Murillo shall be borne jointly and severally by Melchor Tividad and Delfin Tividad. The costs of this appeal shall be paid proportionately by the three remaining appellants.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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