

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDCCEL MOSCOSO, ACCUSED-APPELLANT,

Ponente: SANTOS, J.

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SANTOS, J.:

Before this Court is an appeal from the Decision[1] dated 10 August 2012 rendered by the Regional Trial Court, 10th Judicial Region, Branch 10,[2] of Malaybalay City, Bukidnon (trial court) in Criminal Case No. 16242-06 finding accused-appellant, Edcel Moscoso, guilty beyond reasonable doubt of the crime of homicide. The dispositive portion of the assailed Decision reads:

WHEREFORE, in the light of the foregoing circumstances, the Prosecution proves the guilt of the accused beyond reasonable doubt and the court finds accused Edcel Moscoso GUILTY OF THE CRIME CHARGED and have to suffer the indeterminate sentence of Prison (sic) mayor to Reclusion Temporal in its medium, 10 years and 1 day to 17 years and 4 months and to jointly indemnify the heirs in the total amount of P50,000.00.

Let the records of this case be archived until the apprehension of the other accused, Kemex Jimenez.

SO ORDERED.[3]

The Antecedents

The instant appeal originated from an Information[4] dated 16 May 2006 charging accused-appellant Edcel Moscoso (hereafter accused-appellant) and accused Kemex Jimenez (Jimenez) with the crime of homicide. The Information, as amended, alleges as follows:

That on or about the 5[th] day of February 2006, midnight at [A]grosite, South Poblacion, municipality of Maramag, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, did and then willfully, unlawfully and felon[i]ously, attack, assault and stab VIDA JACOB alias Allan with an icepick and a knife thereby inflicting upon the latter mortal wound which caused the death of VIDA JACOB.

Contrary to and in violation of Article 249 of the Revised Penal Code.[5]

On 29 August 2006, accused-appellant was arrested by virtue of a Warrant of Arrest[6] issued by the trial court. Upon his arrest, accused-appellant put up a property bail bond for his provisional liberty. Accused Jimenez, however, remained at large.

Accused-appellant was later arraigned on 20 November 2006, entering a plea of not guilty to the crime charged against him.[7]

Trial on the merits thereafter ensued.

During trial, the prosecution presented the testimonies of four (4) witnesses, namely: Dr. Erwin Suan, Pacito Tomongol, Joan Jacob, and Dante Jacob. The prosecution likewise presented the following documents as evidence:

1. Exhibit "A" – Certificate of Death of Vida S. Jacob;
2. Exhibit "B" – Certificate of Live Birth of Vida S. Jacob;
3. Exhibit "C" – Certificate of Live Birth of Dante S. Jacob.[8]

The defense, on the other hand, presented the lone testimony of accused-appellant as evidence.

The facts according to the prosecution

Pacito Tomongol (Tomongol) testified that on [5] February 2006, at about 11:45 in the evening, he and the victim, Vida Jacob, also known as Dodong Jacob, were at a videoke bar owned by Delia Jacob situated at Agrosite, Maramag, Bukidnon.[9] During this time, accused-appellant and Jimenez were also inside the videoke bar, as well as Joan Jacob and Delia Jacob.[10] At around 12 o'clock midnight, Tomongol and the victim left the videoke bar after they were asked to leave by Delia Jacob because the latter was already closing the bar.[11] At this point, accused-appellant and Jimenez also went out from the bar.[12] After leaving the videoke bar, Tomongol and the victim proceeded to Rodel's Store and stayed outside of the said store.[13] While the two were outside Rodel's Store, accused-appellant and Jimenez arrived and Jimenez immediately stabbed the victim using an icepick hitting the latter on the left side of his chest.[14] After being stabbed by Jimenez, the victim ran back towards the videoke bar.[15] Accused-appellant and Jimenez then ran after the victim.[16] Tomongol, on the other hand, ran for his life upon seeing what accused-appellant and Jimenez did to the victim.[17] The following morning, Tomongol learned that Vida Jacob was already dead.[18]

Joan Jacob testified that the victim, Vida Jacob, also known as Allan Jacob, was her uncle.[19] On 6 February 2006, around 12:30 in the morning, Joan Jacob saw accused-appellant and Jimenez gang up on the victim causing the latter to fall on his back.[20] According to the witness, she saw accused-appellant pointing a knife at the victim.[21] While the victim was lying on his back, Jimenez "frisked" something on the former's breast.[22] Thereafter, the victim stood up and told the two accused that he would file a case against them.[23] The victim then ran away but the two accused ran after him.[24] During her cross-examination, Joan Jacob said that she was (5) meters away from the altercation between Jimenez, accused-appellant and the victim.[25] Joan Jacob said that she saw Jimenez stab the victim with a pointed object.[26] She did not, however, see accused-appellant stab the victim.[27]

Dr. Erwin Suan, the Medical Officer of Siliman Medical Center, testified that on 6 February 2006, around 2:15 in the morning, he attended to the body of the victim, Vida Jacob, who was already dead at the time.[28] Dr. Suan noted two (2) stab wounds on the victim's body, one on the left side of the chest below the collar bone and the other one on the right lower side of his body.[29] The victim's cause of death was hypovolemic shock or blood loss secondary to the stab wounds sustained.[30] Dr. Suan thereafter issued the Certificate of Death[31] of the victim, Vida Jacob.[32]

The facts according to the defense

Accused-appellant testified that on [5] February 2006, around 10:30 in the evening, he was inside a videoke bar owned by a certain Maglasang located in Agrosite, Purok 1, South Poblacion, Maramag, Bukidnon.[33] Accused-appellant was alone at first but he was later joined by Jimenez.[34] While accused-appellant and Jimenez were drinking, two men arrived inside the videoke bar.[35] According to accused-appellant, he knew one of the two men by face but he did not know the other one.[36] Accused-appellant and Jimenez left the videoke bar at 12 o'clock midnight.[37] When the two accused were outside of the videoke bar, accused-appellant walked ahead of Jimenez to urinate by the side of the road.[38] While accused-appellant was urinating, he was surprised because Jimenez had a heated argument with the two men who entered the videoke bar earlier that night.[39] While Jimenez was having an altercation with the two men, accused-appellant walked away because he did not want to

take part in the arguments.[40] One of the men arguing with Jimenez also ran away.[41] Accused-appellant then went to the “sicad” terminal and informed the people there that there were two persons fighting in front of the Rodel’s Store.[42] After the conversation subsided, accused-appellant went home.[43] Around 7 o’clock in the morning of the following day, accused-appellant received a text message from the owner of the videoke bar informing him that he was being charged for the death of Vida Jacob.[44]

On 10 August 2012, the trial court rendered the assailed Decision finding accused-appellant guilty of homicide.

Accused-appellant now appeals his case before this Court.

Assignment of Errors

Accused-appellant raises the following errors in this appeal:

I

THAT THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT, EDCEL MOSCOSO DESPITE EXISTENCE OF CLEAR AND CONVINCING EVIDENCE THAT ACCUSED-APPELLANT DID NOT COMMIT THE CRIME OF HOMICIDE.

II

THAT THE HONORABLE TRIAL COURT ERRED IN NOT APPRECIATING THE PROSECUTION’S EVIDENCE THAT THERE WAS NO CONSPIRACY TO COMMIT THE CRIME OF HOMICIDE BETWEEN ACCUSED-APPELLANT AND CO-ACCUSED, KEMEX JIMENEZ, AND THAT THE CRIME OF HOMICIDE WAS COMMITTED ONLY BY CO-ACCUSED.[45]

This Court’s Ruling

Accused-appellant anchors his innocence on the ground that the prosecution failed to establish any conspiracy between him and his co-accused, Jimenez. Accused-appellant argues that, based on the evidence presented by the prosecution, it was only Jimenez who stabbed the victim, Vida Jacob. Therefore, accused-appellant maintains that it was only Jimenez who committed the crime of homicide in this case.

The appeal must fail.

In finding accused-appellant guilty of the crime of homicide, the trial court held that the former acted in conspiracy with Jimenez in killing the victim. The trial court ruled, thus:

x x x The medico-legal officer found two (2) frontal stab wounds which to the opinion of the court, could not have been successfully inflicted by Kemex Jimenez if he was not assisted by Edcel Moscoso. The concerted action in attacking victim, Vida Jacob as narrated by the prosecution witnesses is an indication that the perpetrators knew beforehand what to do. The coordinated actions they executed showed conspiracy among them. Settled is the rule that conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime, as this could be inferred from the conduct of the accused before, during and after the commission of the crime, showing that accused acted in unison with each other, evidencing a common purpose. Even if there was no direct proof of the accused previous agreement to kill the victim, their individual acts when massed together, clearly manifested that they were acting in unison. They helped one another kill Vida Jacob and the left together after accomplishing their deed. x x x[46]

This Court agrees with the finding of the trial court.

Conspiracy exists when two or more persons come to agreement concerning the commission of a felony and decide to commit it.[47] There is conspiracy when one concurs with the criminal design of another and performs and overt act leading to the crime committed.[48] When conspiracy is established in a case, each co-conspirator

will be criminally liable as the others, on the theory that the act of one is the act of all.[49]

As correctly pointed out by the trial court, direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.[50]

It must be stressed, however, that in order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy.[51] As the Supreme Court explained in the case of *People v. Santiago*: [52]

x x x The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by exerting moral ascendancy over the other conspirators by moving them to execute or implement the conspiracy. Mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator. As such, conspiracy must be established as any element of the crime and evidence of the conspiracy must be beyond reasonable doubt. Neither joint or simultaneous action per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design.[53]

In the case at bar, this Court agrees with the trial court in finding that the acts of accused-appellant and Jimenez before, during, and after the incident, show that the two were in conspiracy with one other in killing the deceased victim.

From the evidence presented by the prosecution, there is no longer any question that it was Jimenez who stabbed the victim. Prosecution eyewitnesses Pacito Tomongol and Joan Jacob categorically testified on this point. However, Joan Jacob further categorically testified that the stabbing occurred after both accused-appellant and Jimenez ganged up on the victim. In other words, it is clear that accused-appellant was also involved in the altercation with the victim along with Jimenez. During the altercation, accused-appellant was seen holding a knife and pointing the same towards the victim while Jimenez was seen thrusting a pointed object on the chest of the victim. Then, after the victim was stabbed by Jimenez, both he and accused-appellant ran after the victim when the latter ran away.

The foregoing circumstances clearly establish that the two accused acted in unison and were motivated by a common purpose and design.

Thus, even if it was only Jimenez who actually inflicted the stab wounds on the victim, accused-appellant's acts rendered him equally liable for crime of homicide. As the Supreme Court has held:

With or without himself inflicting injuries upon victim Wilfredo, accused appellant Ronilo Tionko is equally liable for the crime of murder in the case at bar as accused appellant Gemoya. He cannot escape criminal liability under the circumstances even though the autopsy report indicated no other injuries except the punctured wound on the victim's chest. A conspirator, no matter how minimal his participation in the crime, is as guilty as the principal perpetrator of the crime x x x. Holding the victim to render him immobile to enable his companions to consummate the dastardly act x x x or standing guard or lending moral support to the actual perpetrator is criminally responsible to the same extent as the one who inflicted the fatal blow x x x.[54]

In sum, this Court finds that the trial court committed no error in convicting accused-appellant of the crime of homicide as charged in the Information.

WHEREFORE, the assailed Decision dated 10 August 2012 rendered by the Regional Trial Court, 10th Judicial Region, Branch 10, of Malaybalay City, Bukidnon is hereby **AFFIRMED** in toto.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

[1] Rollo, pp. 17-20.

[2] Hon. Judge Josefina Gentiles Bacal, presiding.

[3] Rollo, p. 20.

[4] Records, p. 2.

[5] Ibid.

[6] Records, p. 17.

[7] Records, p. 34.

[8] Records, pp. 124-125.

[9] TSN dated 8 August 2007, pp. 3-4.

[10] TSN dated 8 August 2007, p. 4.

[11] Ibid.

[12] Ibid.

[13] TSN dated 8 August 2007, p. 5.

[14] Ibid.

[15] Ibid.

[16] TSN dated 8 August 2007, p. 5-6.

[17] TSN dated 8 August 2007, p. 11.

[18] Ibid.

[19] TSN dated 18 February 2009, p. 7.

[20] TSN dated 18 February 2009, p. 6.

[21] Ibid.

[22] Ibid.

[23] TSN dated 18 February 2009, p. 8.

[24] Ibid.

[25] TSN dated 18 February 2009, p. 29.

[26] Ibid.

[27] TSN dated 18 February 2009, p. 32.

[28] TSN dated 25 July 2007, p. 4.

- [29] Ibid.
- [30] TSN dated 25 July 2007, p. 5.
- [31] Records, p. 126.
- [32] Ibid.
- [33] TSN dated 6 December 2010, p. 3.
- [34] Ibid.
- [35] TSN dated 6 December 2010, p. 4.
- [36] Ibid.
- [37] TSN dated 6 December 2010, p. 5.
- [38] Ibid.
- [39] Ibid.
- [40] TSN dated 6 December 2010, p. 6.
- [41] Ibid.
- [42] Ibid.
- [43] Ibid.
- [44] TSN dated 6 December 2010, p. 7.
- [45] Rollo, p. 21.
- [46] Rollo, p. 19.
- [47] People v. Bingky Campos and Danny “Boy” Acabo, G.R. No. 176061, 4 July 2011.
- [48] People v. Herman Bato and Jacinto Bato, G.R. No. 127843, 15 December 2000.
- [49] People v. Melanio del Castillo, G.R. No. 169084, 18 January 2012.
- [50] Supra note 45.
- [51] People v. Romeo Santiago, et al., G.R. No. 129371, 4 October 2000.
- [52] Ibid.
- [53] Ibid.
- [54] People v. Armando Gemoya and Ronilo Tionko, G.R. No. 132633, 4 October 2000.

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