

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GORGONIO DRILON, JR., DEFENDANT, NICOLAS LOBATON, DEFENDANT-APPELLANT.

G.R. No. L-33431. June 28, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

In an information filed before the Court of First Instance of Cebu, four (4) persons, namely: Gorgonio Drilon, Jr., Nicolas Lobaton, Warlito Matulac, and Ludovico Iraque were charged with the crime of murder qualified by treachery and aggravated by the circumstances of superior strength, nighttime, uninhabited place and cruelty.

Matulac and Iraque were discharged and utilized as state witness.

After trial, Gorgonio Drilon, Jr. and Nicolas Lobaton were found guilty as charged and sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Rafaelito Neri, Jr. in the sum of P12,000.00, and to pay the costs.

Both accused appealed their conviction. Subsequently, Drilon's appeal, on his own motion, was dismissed, thereby rendering final and executory the judgment a quo against him.

The facts established at the trial are summarized by the lower court as follows:

"From the evidence, there is no doubt as to the following facts. It was Valentine's Day on February 14, 1967, and a day for dating. At noon of that day, Rafaelito Neri, Jr. called up his friend, Esterlita Paca, by telephone inviting her to a dinner in the evening of that day. The girl accepted the invitation and agreed to wait for Neri at the Southwestern University after the end of her classes at 9:20 P.M. At the appointed time, Neri picked her up and from school they went to the Majestic Restaurant for dinner, staying there for about one hour, and thereafter, they proceeded to the Eggeling's Restaurant, about ten or fifteen minutes drive away. For this purpose, Neri drove a small white car, a Volkswagen of the beetle type. He did not know that he would be driving for the last time. At the Eggeling's Restaurant, he drank one bottle of beer, while Paca ordered a bottle of Lem-O-Lime. Later, the girl requested Neri to drive her home as it was already late in the evening, so they left Eggeling's place at about past 11:00 o'clock P.M., following the downhill road towards the city. On the way, the car stopped, Neri parking said car at the right side of the road, with both windows thereof closed. Although there was a fluorescent light about 100 meters away from them, said light could not illumine the place where they were, which was dark. There were no houses to be seen around the vicinity.

"Meanwhile, at about the time that the victim was eating dinner with Esterlita at the Majestic Restaurant, the two accused were conversing and enjoying their drinks with friends at the Road Rock Inn, or Road Rock Room, located at barrio Pangutana, near Camp Lapulapu, Cebu City. Later on, Warlito Matulac arrived and they invited him to eat and drink with them. Ludovico Iraque also came in, but he preferred to take his supper first and to join them thereafter. When it was already late in the evening, the group left the Road Rock Inn. From then on, the versions of the prosecution and of the defense vary. In any event, subsequently thereafter, the two accused, together with civilians Matulac and Iraque, armed with a carbine for each of them, were on

their barracks, following the road to barrio Apas. It was showering a little bit. Accused Drilon had his canvass shoes on, which he used as temporary slippers, and black McComber pants and polo shirt. The accused Lobaton had put on his khaki pants, polo shirt, and sandals. The two others, Matulac and Iraque, were also in civilian clothes. From barrio Apas, they proceeded to the Signal Building, then went up the hill. They used a road leading to Busay. Upon arriving at the road, they rested for a while and, since it was already late in the evening, they decided to return back. So, they proceeded to follow the road where vehicles pass towards Cebu City. After they have negotiated a distance of about two hundred meters therefrom, they saw a small painted white Volkswagen car which, as above-stated, was parked by the side of the road. Drilon went to the left side of the car and peeped at the occupants inside said car, with Lobaton close behind him. Matulac proceeded to the other side of the car, then peeped at the right side thereof, while Iraque was at his back.

"Thus, while Paca and Neri were talking inside the parked car for about five minutes, shadows of men suddenly appeared. According to the girl, she noticed one at her side, which was the right side of the car, and two or more at the side of Neri, or left side of the car. She got scared and seemed to hear Neri say "Just take my money," but no reply was made from the men who appeared to her to be carrying firearms, bigger and shorter than the rifles used by the ROTC cadets in schools, but not revolvers. As Neri switched on the ignition key and the car started to move forward towards the city, shots were fired at them, and although the shots hit Neri, as blood was seen by her on his face, the car continued to move, but suddenly it swerved to the right side of the road and down towards the cornfield. When the car stopped, she tried to help Neri out of the car but the latter waved her away. She got out of the car and, thinking that the men were following them, talked to herself addressing the men to go away from them. Again, she tried to help Neri but he waved her away. So, she ran like mad for the purpose of seeking help, but did not take the road because she was afraid that the men would see her. When she reached a fence, she followed the road and continued running towards the city. She did not see any house on her way. After running for about twenty minutes, she saw a house or a nipa hut, but it appeared to be closed. She resumed running towards the city and later saw another nipa hut about 150 meters from the first one. She knocked at the door and someone responded to her knocking but refused to admit her inside, saying that they could not do so for fear that the men would fire at them, so she went to another house at the back, knocked at the door, but again she was not allowed to get in for the same reason. Tired and exhausted, and since her feet would not let her go on, she hid among the banana bushes in front of said house. At about 3:00 A.M., it rained and she sought shelter in a cage where pigs and chickens were placed. At about daybreak, she came out and resumed moving slowly down the road and finally met a jeepney. She requested the driver to bring her to the police precinct and upon reaching the Police Head quarters at Ramos Supermarket, she reported the matter to the police authorities. Later, when she came back to the place of the incident, together with some policemen, they found the car still there.

"In the same morning of February 15, 1967, while a Special Squad of the Cebu City Police Department headed by Capt. Tallo, with Lt. Angel, patrolmen Aballe, Gayon, Rossel and Felixberto Rosito, the latter named being one of the witnesses for the prosecution, as members, was patrolling at Mambaling, Cebu City, on a Toyota Patrol Car, a flash report from the central unit at the supermarket through the radio was heard by the said squad, regarding a shooting incident at Betania Hills, a little above Camp Lapulapu, Cebu City. They proceeded to the place and there they saw the mobile patrol car of another team composed of Sgts. Regis, Cabantan, Gabuya and Suguitan, Jr. of the Cebu City Police Department, and four female civilians, one of whom was Esterlita Paca. The Volkswagen car was still on the plowed field at the Betania Hills, opposite the Betania Retreat House. Then, investigations by the policemen of the scene of the crime began. The policemen went to the place where the Volkswagen car was and they saw a man on the back seat, lying on his back with his eyes closed and immobile.

"One of the investigating policemen was Felixberto Rosito, who made inquiries and gathered that the Volkswagen car came from up the hill near Betania. Accompanied by one of the men of Sgt. Regis, they retraced the path of the car through the clear tire marks on the plowed field. Rosito found a bullet mark at the cover of the engine, of the car at the rear portion, while the glass at the back window was broken, and the

driver's seat had a hole. Upon instructions of Lt. Angel, Rosito posted Pat. Rossel to guard the car, and he proceeded to investigate the road, particularly at the place where the car of the victim appeared to have swerved towards the plowed field, searching for evidence or clues that may lead to the identity of the assailant. He found four empty carbine shells and one live bullet grouped at the center and side of the road within 14 inches from each other, and about 6 meters and 13 inches from the place where the car appeared to have swerved from the road to the plowed field. About four meters away from that place, Patrolman Aballe also found three other empty shells, which he gave to Rosito. These seven empty shells and the live bullet were wrapped by the latter with his handkerchief and placed them in his pocket, upon instruction of Lt. Angel. Finding no other clue or piece of evidence in that area, Rosito and Lt. Angel proceeded towards the Radio Control Station of the Third Military Area towards Busay at the upper portion of Betania Hills, and on reaching said radio station, they met and interviewed two persons, who stated having seen before the incident four persons bringing each an elongated object and going towards the direction of the road to Betania. And then, from another person interviewed by them, it was further gathered that persons were seen running and passing by his house after the incident. Also interviewed was the guard of the Radio Station, who could not furnish any information. So, these investigators returned to the scene of the crime and they found out that the body of the victim was already taken to the Southern Islands Hospital by an ambulance. They were about to leave the place in order to go to the said hospital, when they met the car of the Chief of Police, General Abundio Gultiano. After he had a talk with said Chief of Police, Lt. Angel, together with Rosito, Rossel and Miss Paca, went to the Southern Islands Hospital, where they received a flash report via radio that Col. Florencio Mangubat needed Miss Paca for an interview. They took Miss Paca to Col. Mangubat, but first passed by the house of the girl, upon her request, to change the dress which was stained with blood, thence to the headquarters at the Supermarket. Upon instruction of Col. Mangubat, Patrolman Rosito delivered the empty shells and the live bullet to Det. Rodolfo Judilla in the presence of Lt. Villaflor, Col. Mangubat and Sgt. Abella, and Judilla placed his markings "RJ" thereon."

Dr. Wilfredo De Leon, medico-legal officer of the Cebu City Police Department, who conducted an autopsy of the body of the victim, testified that the victim sustained seven (7) fatal gunshot wounds: one below the auditory canal, ear; two at the suprascapular region, back; three at the lower back, sacropelvic region; and one exit wound at the shoulder, supraclavicular region.

The records disclose that when appellant Lobaton arrived at the barracks that night, he asked Drilon, "Why did you have to shoot at the car?" The latter replied, "Ano abi kay gin padalagan niya" (because he started the car).

Four days after the incident, appellant Lobaton left for San Carlos City to seek the help of his stepfather, P.C. Sgt. David Lachica, who was stationed in that city. When he did not find him there, he proceeded to Iloilo City. He later returned to Cebu City accompanied by his uncle Atty. Uldarico Andutan and surrendered at the P.C. Headquarters at Camp Osmeña.

From the evidence, there is no dispute that Gorgonio Drilon, Jr. alone fired at the victim's car. This is attested to by the testimonies of the state witnesses Matulac and Lobaton, as well as the findings of Domingo del Rosario, the ballistic expert of the National Bureau of Investigation, who conducted a ballistic examination of all the twenty-two (22) carbines in the armory of the Log Support Company in Cebu City. He declared that the seven (7) empty shells found at the scene of the crime were fired from only one carbine, the one bearing serial number SN-3672900. This was identified by Matulac and Iraque as the carbine with a folding butt, in the possession of Drilon before, during and after the tragic event.

Despite the finding of the trial court that it was Drilon alone who fired all the shots during the incident in question, it pronounced Lobaton guilty as charged on the theory that he and Drilon conspired and acted in common accord as to render him liable for the acts of the latter.

We do not share this view. We have thoroughly and painstakingly scrutinized the records and found the same bereft of any fact or circumstance to establish the existence of a conspiracy.

While it is true that direct proof is not essential to prove conspiracy, for it may be established by facts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the crime charged,[1] nevertheless, the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt.[2]

The mere presence of appellant at the scene when the crime was perpetrated by Drilon is not by itself indicative of the existence of conspiracy between them. As this Court said in *People vs. Ybañez*[3], ". . . the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. It is not enough that there be a relation between the acts done by the principal and those attributed to the person charged as co-principal or accomplice, it is, furthermore, necessary that the latter, with knowledge of the former's criminal intent, should cooperate with moral or material aid in the consummation of the crime."

In this case at bar, there is direct proof of an agreement among the accused and their two civilian companions to ogle and gawk at the couples dating at Britania Hills; but there is not a shred of evidence to justify the inference that they had any pre-conceived plan to shoot anyone that night. In *People vs. Velaso*[4], it was held that where the conspiracy was to commit robbery, but during the course thereof, due to the sudden movement and attempt of the taxi driver to escape, one of appellant's companions shot the victim, said appellant cannot be held guilty of murder which was the charge filed against him.

Certain facts may be cited to show the lack of a common design to kill. As found by the lower court, immediately after Drilon had fired the first shot, Iraque ran to him, pleading, "don't do it". The records likewise reflect the unccontroverted testimony of appellant Lobaton to the effect that when he returned to the barracks after the incident, he asked Drilon why he had to shoot at the car, and the latter responded by saying, "because he started the car." These spontaneous reactions to Drilon's felonious act strongly indicate not only the absence of a common plan or purpose to do away with the deceased, but also that assailant's act in firing his gun was so sudden and unexpected, it caught his companions unawares.

It being patent that no conspiracy to kill existed between the actual assailant and the appellant, the latter cannot be held liable for the criminal act of the former.

ACCORDINGLY, the judgment is hereby modified, and appellant Nicolas Lobaton acquitted of the crime charged, with costs de oficio. His immediate release from custody is ordered, unless he is otherwise detained for some other legal cause.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.
Aquino, J., see concurrence.

[1] *People vs. Carbonell*, 48 Phil. 868, 875-876.

[2] *People vs. Portuguenza*, 20 SCRA 901.

[3] 77 Phil. 664.

[4] 110 SCRA 319.

CONCURRING OPINION**AQUINO, J.:**

I concur. Nicolas Lobaton and Gorgonio Drilon, Jr. were members of the Logistical Support Company, Philippine Army, stationed at the Third Military Area, Camp Lapu-Lapu, Cebu City. Together with the two civilians, the State witnesses Warlito Matulac and Ludovico Iraque, they had a drinking spree between seven and ten o'clock in the evening of Valentine's Day, February 14, 1967 at the Road Rock Snack, located just near their camp at Barrio Pangatungan, Cebu City.

After drinking, Drilon and his companions returned to the barracks. Drilon and Lobaton brought out four carbines, giving Matulac and Iraque each a carbine. Drilon told them that they were going to Betania Hills to watch couples dating at that place.

On the way to Betania Hills, the four saw the Volkswagen of Rafaelito Neri, Jr. parked at the side of the road. Drilon went to the left side of the car near the driver with Lobaton behind him. Drilon shot the driver, Neri.

I agree that there is reasonable doubt as to Lobaton's guilt. His community of design with Drilon is not manifest.

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