

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARCADIO ANIEL, ERNESTO DATINGGUINOO AND DOMINGO ILAGAN,
DEFENDANTS; ARCADIO ANIEL, DEFENDANT-APPELLANT.**

G.R. No. L-34416. February 21, 1980

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the decision of the Court of First Instance of Quezon, Branch II, 9[th] Judicial District (Criminal Case No. 16295), finding the accused Arcadio Aniel and Domingo Ilagan guilty of the crime of Murder as qualified by the circumstance of abuse of superior strength and sentencing each of them "to suffer imprisonment for life (should be reclusion perpetua); to jointly and severally indemnify the heirs of the deceased Juan Perlada in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the penalty imposed and to pay proportionately the costs of the proceedings." Co-accused Ernesto Datingguino was acquitted. Only Arcadio Aniel appealed the decision.

Murder, as qualified and aggravated by treach-ery and abuse of superior strength, was charged in the Information. However, the trial court found only the existence of the qualifying circumstance of abuse of superior strength.

On June 8, 1972, appellant's counsel filed a motion withdrawing the appeal on the ground that appellant manifested his lack of interest to pursue the appeal. This Court, in considering the recommendation of the Solicitor General in his comment that the appeal be not withdrawn as there is a possibility that appellant Aniel might either be acquitted or found guilty of the lesser crime of homicide, resolved to appoint Atty. Camilo Quiazon as counsel de oficio for appellant, and said counsel submitted an exhaustive brief.

The prosecution presented the following witnesses whose declarations are, in substance, reproduced hereunder:

1. Rodrigo Perlada, son of the deceased, declared that in the morning of January 29, 1968, there was a betrothal party in the house of his father, Juan Perlada, in Barrio Ilayang Bulo, Unisan, Quezon. On that occasion, Florencio Velasco asked, on behalf of his son, Maximo Velasco, for the hand in marriage of Luisita, the daughter of Juan Perlada. Among those present at the party were appellant Arcadio Aniel and his wife, Lorenza Patricio, as well as defendant Domingo Ilagan. The affair was characterized by eating and drinking until six o'clock in the evening.

At around five o'clock in the afternoon of the same day, appellant Aniel threw his glass of wine in front of all the guests and told Juan Perlada: "Ang minamanok ko ay mahina sa iyo. Tiyo, masama ang loob ko." Juan Perlada told appellant: "Don't do that, Cadio, in front of my visitors. It is shameful to my visitors." He also advised appellant to leave because he felt ashamed of the incident. Appellant answered: "Yes, uncle, but you will have a day when we meet again." (May araw ka rin, magkikita tayo.) Appellant Aniel and Domingo Ilagan left. After they left, he (Rodrigo) also went home after pacifying his father.

At 8:30 o'clock that same night, while he was resting in his home, he heard his father shouting "mga anak ko". He went down the house and proceeded to the place where the voice came from. Upon arriving at the place, he

lighted a match and saw his father crawling and wounded. He inquired what happened and his father answered: "Domingo and Arcadio are really killing me." He then sought the aid of his father-in-law, Andres Maniaga, and Crispino Bautista. While they were carrying him, his father kept saying: "Tatagang pinapatay ako ni Arcadio Aniel, Domingo Ilagan at Ernesto Datingguino." They brought his father to the PC soldiers at Binalbag. When his father could hardly answer the interrogations of the PC soldiers, they decided to bring him to the puericulture center at Agdangan for medical treatment but he expired on the way. At the puericulture center the physician merely cleaned the cadaver.

2. Crispino Bautista testified that on January 29, 1968, at about 8:30 p.m. while he was lying down and was about to sleep in his house at Ilayang Bulo, his attention was attracted by a shout. He stood up and opened the window and saw Juan Perlada with bloodstains on his clothes pursued by Domingo Ilagan, Ernesto Datingguino and Arcadio Aniel. When they were in front of his house he saw Domingo Ilagan stab Juan Perlada once with a small bolo while Aniel and Datingguino were watching. Juan Perlada fell but he stood up and ran toward his house. Ernesto Datingguino then went up his (Bautista's) house, asked for a glass of water and told him: "Mang Eping, may tama si Mang Juan." When Datingguino left he immediately closed the door of his house.

3. Dr. Albert Villaseñor, a physician and Rural Health Officer of Agdangan, Quezon, testified that on January 30, 1968, he examined the body of one Juan Perlada in the dispensary of Agdangan, Quezon, and issued a Necropsy Report (Exhibit "A"). He identified the signature appearing on Exhibit "A" as his own. He also produced before the trial court a sketch (Exhibit "B") of a person he prepared, indicating the wounds described in his Necropsy Report. According to him, Wound No. 1, as appearing in Exhibit "B", was not fatal, Wound No. 2 was fatal, Wound No. 3 was not necessarily fatal, Wound No. 4 was fatal, and Wound No. 5 was not fatal. He further testified that these wounds could have been caused by a sharp pointed instrument and inflicted when the assailant was face to face with the deceased. He declared that the cause of his death was hemorrhage due to the wounds.

4. Jose Valenzuela, a patrolman and member of the police force of Unisan, Quezon, narrated that he was on guard duty at the municipal building on January 29, 1968, from 10:00 p.m. to 12:00 in the morning. While he was on his tour of duty on that particular time and date, Arcadio Aniel, Ernesto Datingguino and Domingo Ilagan arrived at the municipal building looking for a physician to treat the wound of Arcadio Aniel. He told a fellow patrolman to fetch a physician. Before the physician arrived, Sgt. Isaac of the Unisan police force, who arrived with the Chief of Police of Agdangan, ordered him to search the three for being suspects in the killing. He found a small bolo (Exhibit "C") tucked in the front waist of Domingo Ilagan and another small bolo (Exhibit "D") inside the right pocket of Ernesto Datingguino. He delivered both bolos to Sgt. Isaac. He then incarcerated the three as ordered by Sgt. Isaac. When the Sanitary Inspector arrived he took Aniel from the jail and treated his wound at the puericulture center. After Aniel was treated he did not return him inside the jail anymore but merely allowed him to stay near the guardhouse.

5. Conrado Isaac, a police sergeant of the town of Unisan, Quezon, stated that on January 29, 1968, at about 11:00 p.m. the Chief of Police of Agdangan, Guillermo Fernandez, arrived at his house and informed him that a person was killed in Agdangan and that he (Fernandez) suspected the three persons, with whom he rode in a jeep, and who were talking about how they had stabbed a person, as the male-factors. As suggested by Chief of Police Fernandez, they proceeded to the health center of Unisan where they saw the three accused with Pat. Valenzuela inside the yard of the health center. He ordered Pat. Valenzuela to search them for weapons. The search yielded two small bolos, each from Ilagan and Datingguino. He then told Pat. Valenzuela to take the three to the municipal building. He wrapped the two bolos with paper and labelled them correspondingly. After he had entered the confiscation of the bolos in the police blotter, he and the Chief of Police of Agdangan went to the rural health center of Agdangan where they saw Dr. Villaseñor examining the cadaver of Juan Perlada. He requested

the latter to furnish him with a copy of his examination report.

6. Andres Maniaga, the father-in-law of Rodrigo Perlada, testified that at about 8:30 p.m. on January 29, 1968, while he was resting in his house at Ilayang Bulo, he heard his son-in-law, Rodrigo Perlada, shouting for help. He went to the house of Juan Perlada where the shout came from and saw Juan Perlada lying face downward, wounded and bathed in his own blood. While they were placing Juan Perlada in a hammock to be brought to the hospital, Rodrigo asked his father what happened and the latter answered: "Ernesto, Arcadio and Domingo are killing me." They brought Juan Perlada to the Agdangan health center where the police called for a physician to treat his wounds, but after the physician had conducted the examination, he pronounced him dead so they brought the remains back.

7. Paulita Ilagan, the surviving widow of Juan Perlada, merely testified that her late husband was a copra maker and the sole breadwinner of the family until his death.

For the defense, the following witnesses testified:

1. Igleserio Torres, a close friend of appellant, declared that on January 29, 1968 at 8:30 p.m. he was fishing at the Angalan River, Ilayang Bulo, Unisan, Quezon, using a carbide lamp. When he reached that part of the river fronted by the house of Arcadio Aniel he heard persons shouting. He went up the river bank and proceeded inside the yard of Arcadio Aniel where he saw Arcadio Aniel and Juan Perlada, the latter with a knife in each hand, grappling with each other and later, both fell and rolled on the ground. Aniel, who was wounded on the right wrist, stood up, leaving Juan Perlada, and went up his house. Torres then followed Aniel up the house. After helping dress Aniel's wound, he left without seeing Juan Perlada anymore. Before he left he asked Aniel how he sustained his wound and the latter answered he was stabbed. He did not ask who stabbed him.

2. Arcadio Aniel, the appellant, testified that on January 29, 1968, he was present at the betrothal party at the house of Juan Perlada in Barrio Ilayang Bulo, Unisan, Quezon. On that occasion, the guests were drinking alcoholic beverages. At about 6:00 p.m. of that day, Juan Perlada, who was already drunk, threatened to create trouble. Holding a knife in each hand, Juan Perlada walked to and fro near his house. Florencio Velasco followed Juan Perlada outside the house. When he tried to follow them, his wife, Lorenza Patricio, held him and told him that Florencio Velasco was already wounded. Because of this they decided to go home. As they were leaving, Juan Perlada saw them and he chased them but gave up the pursuit after they crossed the river.

About 9:00 o'clock that same night, he heard Juan Perlada uttering insulting words while he stoned his house. He peeped thru the window and told Juan Perlada: "Tiyo, you better go home." As the latter continued to stone the house, he went down to pacify him. When he reached the ground, Juan Perlada lunged at him with two knives which he was holding in his hands, but he parried the attack. They then clinched and rolled on the ground. When he felt that his right arm was wounded, he stood up and fled to his house. He subsequently had his wound treated at the Unisan Health Center. The following day he had his wound treated by Dr. Caraos in the Quezon Memorial Hospital. He denied that he intentionally threw his glass of wine in front of the guests and quarreled with Juan Perlada during the party. He also denied having threatened Juan Perlada.

3. Domingo Ilagan, a co-accused, declared that at 1:00 p.m. on January 29, 1968, he was in the house of Juan Perlada drinking wine with Juan Perlada, Arcadio Aniel, Ceferina Saavedra, Numeriano Alcantara, Florencio Velasco, Paulita Ilagan and Rodrigo Perlada on the occasion of a betrothal party. While they were drinking, he heard Juan Perlada say that he will create trouble, as he does not like his daughter to get married. The trouble began when Perlada approached and stabbed the right arm of Florencio Velasco, father of Maximo, who was betrothed to the daughter of Juan Perlada. Upon seeing Velasco wounded, he left the house and proceeded to the house of Arcadio Aniel, where he and his wife would sleep that night. At about 9:00 o'clock that night, while they

were having a conversation, they heard the sound of hard objects hitting the walls of the house. Arcadio Aniel opened the window to see what the noise was all about. They saw Juan Perlada on the ground and heard him challenging Arcadio Aniel to a fight, but Aniel replied: "You better go home, uncle, as the persons in my house are your rela-tives", but Juan Perlada did not leave and insisted on his challenge. Aniel went down but not long af-ter, he heard Aniel cry for help. He started to go down but on the stairs he met Aniel who requested him to bring him to a hospital for the treatment of his wound. They went up the house where he bandaged Aniel's wound before taking him to the health center of Unisan accompanied by Ernesto Datingguino, Pacio Bautista and Rustico dela Roca. He denied that he, Arcadio Aniel and Ernesto Datingguino, chased or stabbed Juan Perlada.

4. Ernesto Datingguino declared that at around 8:30 o'clock in the evening of January 29, 1968, he, Arcadio Aniel, Domingo Ilagan, Rustico dela Roca, Pacio Bautista, Lorenza Patricio, Alipio Aniel and Clarita Aniel were in the house of Arcadio Aniel. Upon hearing someone stoning the house, Arcadio Aniel opened the window. He heard Aniel telling Juan Perlada: "You better go home. No one here will fight against you." After Juan Perlada stopped throwing stones, Arcadio Aniel closed the window. When the stoning of the house was resumed, Arcadio Aniel, carrying a flashlight, opened the window but the flashlight fell so Arcadio Aniel and Domingo Ilagan went down the house. He then saw Domingo Ilagan with the flashlight. He noticed that Ilagan, followed by Aniel, were chasing Juan Perlada. He went down and followed the two to pacify them. As they reached the front of the house of Crispino Bautista, he saw Arcadio Aniel and Juan Perlada grappling with each other. It was in that situation when he saw Domingo Ilagan stab Juan Perlada's right side below the armpit. He felt scared when he saw them holding knives so he went up the house of Crispino Bautista and asked for a glass of water. He then told Bautista that Juan Perlada was badly wounded. After drinking the glass of water he re-turned to the house of Arcadio Aniel. In the house of Arcadio Aniel he saw Domingo Ilagan bandaging Aniel's wound. As requested, he accompanied Aniel and Ilagan to Unisan to have the wound of Aniel treated. He admitted having in his possession a small bolo when they went to Unisan which he turned over to the police. He also admitted having execu-ted a written statement before Judge Rufo Masaganda (Exhibit "F") and identified one of the signatures appearing thereon as his own and the other as that of Judge Masaganda's. He denied having participated in the killing of Juan Perlada.

It is not disputed that Juan Perlada died of hemorrhage, internal and external, due to stab wounds on January 29, 1968. According to the report dated January 30, 1968 of Dr. Albert F. Villaseñor, Municipal Health Officer of Agdangan, Quezon, the deceased sustained five (5) incised wounds (Exhibit "A"), which could have been caused by a sharp pointed instrument, but only two of them were fatal.[1]

The only issue is whether or not the evidence of guilt against appellant passes the test of moral certainty.

In this appeal, the counsel de oficio for the appellant contends that the lower court erred: (a) in sustaining the theory of the prosecution based on the existence of conspiracy to kill Juan Perlada; (b) in giving credence to the so-called dying decla-ration of Juan Perlada; and (c) in not finding that appellant was the victim of the aggression of Juan Perlada.

Since there is no proof that appellant attacked the deceased, it is evident that the basis of the trial court in convicting appellant of murder is the alleged conspiracy among the defendants. There was, however, no direct proof that appellant and the other accused entered into a conspiracy to kill Perlada. In the absence of a previous agreement to commit the crime, the community of criminal design has, of necessity, to be inferred from the specific acts done by each of the defendants. Mere knowledge, acquiescence or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy. Likewise, there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[2] In order to establish the existence of a preconceived criminal plan or agreement, it is not enough that

the persons supposedly engaged or connected with the same be pre-sent when the crime was perpetrated. There must be a logical relation between the commission of the crime and the acts of the supposed conspirators, evidencing a clear and intimate connection between and among the latter, such that their overt acts appear to have been done in pursuance of a common felonious design. Conspiracy implies concert of design and not participation in every detail. 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.[3]

To begin with, there appears to be no sufficient motive for appellant to kill Juan Perlada. Proof as to motive is essential when the evidence on the commission of the crime is purely circumstantial or inconclusive. As correctly pointed out by the counsel de officio, the circumstance that appellant Aniel and his wife attended the betrothal of Luisita Perlada to Maximo Velasco was an eloquent proof that said appellant did not resent the failure of his candidate to win the hands of Luisita. The prosecution evidence even showed that Aniel held Juan Perlada in high esteem, being the uncle of his wife. Even assuming that appellant Aniel showed his displeasure at the failure of his purported candidate to win the hands of the young maiden and threw his glass of wine on the floor in the presence of all the guests and reprobated his uncle, it would be Perlada who would be infuriated by this act. Certainly, Juan Perlada would have resented these public affront on his dignity and hospitality. According to the evidence, Juan Perlada, in his lifetime, became very troublesome when in a state of inebriation. Even Rodrigo Perlada, son of the deceased, admitted that he had to pacify his father after appellant Aniel left the house. In the light of this circumstance, the evidence of the defense that later that night, Perlada followed appellant to the latter's house, stoned the house and challenged its occupants to a fight is not improbable. Neither is the testimony of Datingguino, who declared positively that the deceased stoned the house of appellant and challenged Aniel to a fight, but appellant Aniel, instead of taking the challenge, admonished Perlada instead to go home as nobody in the house would fight him. And when the appellant went down his house, it was Perlada, according to the evidence for the defense, who lunged at Aniel with a knife, injuring the latter on the arm when he parried the blow. Datingguino testified that it was while Perlada and Aniel were grappling on the ground that Ilagan stabbed Perlada. These facts were not rebutted by the prosecution. According to prosecution witness Bautista, he saw Juan Perlada with blood-stains on his clothes pursued by Domingo Ilagan. Behind Ilagan, one arm's length away, was Datingguino, while two arms' lengths behind Datingguino was appellant Aniel. From these facts alone, it could not be absolutely concluded that appellant Aniel was running after the victim with murder in his heart. It was proven that appellant was then unarmed. If his intentions were otherwise, it could not be explained why he left his house without a priori arming himself. Appellant could very well have run to prevent Ilagan from further harming the uncle of his wife. Indeed, since the overt acts of appellant are susceptible of two interpretations, one which may be in accord with the theory of the prosecution and the other consistent with his claim of innocence, We should give him the benefit of the doubt.

Regarding the ante mortem declaration of Juan Perlada, it must be noted that the credibility and weight of a dying declaration should be determined by the court, by the same rules that are used in testing the weight and credibility of a living person's testimony.

It is true that as a rule, when an individual is at the point of death, every motive of falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth and, therefore, his statements under such circumstances deserve great weight. Courts, however, have noted that men, in the very threshold of death, have sometimes been swayed by a spirit of vindictive revenge or heated passion, or a desire to shield themselves or others, in making ante mortem statements.[4] It should be noted also that the source, accuracy and completeness of the declarant's knowledge as to the facts asserted by him could not be tested by means of cross examination, and that due to the limited time he had to make his declaration, or to the limited questions which he had to

answer, he might have omitted in his narrative details that would change the significance of the whole occurrence. It is also possible that the observation of the declarant might be inaccurate and his identification of his assailant mistaken. In fine, "the dying declaration of a person is simply a part of the evidence. It is not regarded in law as more sacred than the testimony of a witness, and is subject to discredit and impeachment in the same manner as other testimony."^[5]

In the case at bar, Aniel was not armed. No weapon was found on his person. No eyewitness saw him stab or attack Perlada. Considering also that the alleged statement of Juan Perlada, viz.: "Talagang pinapatay ako ni Arcadio Aniel, Domingo Ilagan at Ernesto Datingguino" appears rather a statement of opinion, belief, conclusion and suspicion, rather than one of fact, such ante mortem statement, therefore, cannot be a sufficient basis to convict the appellant. This conclusion is reinforced by the fact that although one of the bladed weapons was found in the possession of Datingguino and he was one of those who ran after the deceased, the trial court found that on that basis alone, the prosecution had failed to establish the guilt of Datingguino beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the judgment appealed from, insofar as appellant Arcadio Aniel is concerned, is hereby reversed, and appellant is ACQUITTED, with proportionate costs de oficio.

SO ORDERED.

Aquino, Concepcion, Jr., and Abad Santos, JJ., concur.

Barredo, (Chairman), J., giving the benefit of doubt to appellant, I concur.

[1] T.s.n., Hearing of August 26, 1968, p. 7.

[2] *People v. Izon, et al.*, L-10397, Oct. 16, 1958, 104 Phil. 690, 698, citing 15 C.J.S. 1062.

[3] *People v. Custodio*, L-30463, Oct. 30, 1972, 47 SCRA 289, citing *People v. Bernal*, L-4409, July 14, 1952, 91 Phil. 619, *People v. Canare, et al.*, L-10677, Sept. 30, 1959, 106 Phil. 270, 276, *People v. Regal*, L-14753, July 31, 1962, 5 SCRA 703, *People v. Bartolay*, L-30610, Oct. 22, 1971, 42 SCRA 1, *People v. Vicente*, L-26241, May 21, 1969, 28 SCRA 247, and *People v. Portuguesa*, L-22064, July 31, 1967, 20 SCRA 901.

[4] *U. S. v. Singson*, No. 5697, Sept. 6, 1920, 41 Phil. 53; *People v. Almendralejo*, No. 23948, Nov. 19, 1925, 48 Phil. 268.

[5] 40 Am. Jur. 2d 390, p. 618.

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