

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO PAGKALIWAGAN, DEFENDANT-APPELLANT.***G.R. No. L-29948. November 26, 1970*

Ponente: TEEHANKEE, J.

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Appeal from a judgment of conviction for murder rendered on October 30, 1968 by the Court of First Instance of Quezon.

The information of July 17, 1967 charged the herein defendant-appellant and one Reynaldo de las Alas alias "Hapon," with the crime of murder for the killing of Aniano Cabaña on May 18, 1967 in Barrio Pantoc, Sariaya, Quezon, alleging that they conspired together "with evident premeditation and treachery, taking advantage of their superior strength as aggravating circumstance" in inflicting upon the deceased several mortal stab wounds which caused his death. As defendant Reynaldo de las Alas had not been apprehended and was at large, the trial court ordered *motu proprio* on August 23, 1967 a separate trial for the herein defendant-appellant, after his not-guilty plea. After the hearings held on October 30, 1967, January 29, 1968 and September 23 and 24, 1968, the trial court rendered its judgment finding the defendant-appellant guilty as charged and sentencing him "to suffer life imprisonment, to indemnify the heirs of the offended party in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the penalty imposed, with the accessories of the law, and to pay the costs of the proceeding."

The evidence of three prosecution witnesses given credence by the trial court as against the defense was thus summarized in its decision: "From their evidence, the prosecution would want to show to the court that on May 18, 1967, at about five o'clock in the afternoon, the deceased Aniano Cabaña and his companion Segundo Balsomo were walking home from Barrio Limbon, Sariaya, Quezon, where they attended the barrio fiesta, taking the route of the railroad track. While these two were thus walking home they met on the way Reynaldo de las Alas and Ricardo Pagkaliwagan who were also walking home in the same direction where they were going, also coming from the barrio fiesta of Limbon. So that all of these four walked home following the railroad track one after the other, with Segundo Balsomo first, followed by Reynaldo de las Alas; then came Aniano Cabaña, followed by Ricardo Pagkaliwagan; that while these four were thus walking, Aniano Cabaña stabbed Reynaldo de las Alas, who was in front of him, at the back and that made Reynaldo de las Alas tell Segundo Balsomo that his com-panion (referring to Aniano Cabaña) is a traitor, at the same time he (Reynaldo) drew his own knife to stab Aniano Cabaña and at that juncture Segundo Balsomo shouted to Cabaña, telling the latter to run away which he did and Reynaldo de las Alas, together with Ricardo Pagkaliwagan, gave chase to Aniano Cabaña, that on overtaking Aniano Cabaña, Reynaldo de las Alas stabbed Cabaña while Ricardo Pagkaliwagan, who was armed with bolo, stood by the side of Aniano Cabaña while the latter was being stabbed by Reynaldo de las Alas, after which the two ran away passing by the house of Clemente de Chavez who was then the barrio lieute-nant of Barrio Pantoc, Sariaya, where the incident happened." [1]

The trial court arrived at its conclusion "that the theory of the prosecution is nearer the truth if not the actual truth

of what transpired" in this wise: "This is so because the evidence for the prosecution has satisfactorily established that after Aniano Cabaña stabbed Reynaldo de las Alas on the back while Segundo Balsomo, Reynaldo de las Alas, Aniano Cabaña and Ricardo Pagkaliwagan were walking home from Barrio Limbon, Aniano Cabaña ran away chased by Reynaldo de las Alas and Ricardo Pagkaliwagan. This is proved by the testimony of the prosecution witness Segundo Balsomo, corroborated by defense witness Cris-pulo Camo, with the exception of the fact that Camo did not mention the presence of the accused Ricardo Pagkaliwagan.

"The evidence of the prosecution has also satisfactorily established that Aniano Cabaña, who was chased by Reynaldo de las Alas and Ricardo Pagkaliwagan, was actually stabbed to death by Reynaldo de las Alas in the presence of Ricardo Pagkaliwagan who was holding a bolo, apparently standing as guard to prevent anyone from helping Aniano Cabaña who was being stabbed to death by Reynaldo de las Alas. This fact was testified to by eye-witness Pepito Soria and corroborated by Clemente de Chavez."

It is obvious from the foregoing recitation of the trial court that the appellant's co-accused, Alas, who has remained at large, chased and stabbed the deceased Cabaña to death because of the deceased's treacherous act of first having stabbed Alas in the back as they were walking along the railroad track; that appellant had no actual or direct participation in the killing; and that no evidence to prove conspiracy between him and Alas had been adduced.

The trial court, however, inferred conspiracy from "the act of the accused . . . in helping Reynaldo de las Alas chase the deceased Aniano Cabaña and that his act of standing by the side of Reynaldo de las Alas with a bolo in hand while Reynaldo de las Alas was stabbing to death Aniano Cabaña" and thus rationalized its guilty verdict against appellant: "While it is true that the prosecution did not adduce evidence to prove conspiracy and to establish the fact that the accused Ricardo Pagkaliwagan laid a hand on the deceased Aniano Cabaña, the evidence for the prosecution is complete with proof to satisfactorily establish and convince the court that the accused Ricardo Pagkaliwagan is a co-principal by separate and independent act. Conspiracy can be inferred and proven by the acts of the accused and in the instant case, the act of the accused Ricardo Pagkaliwagan in helping Reynaldo de las Alas chase the deceased Aniano Cabaña and that his act of standing by the side of Reynaldo de las Alas with a bolo in hand while Reynaldo de las Alas was stabbing to death Aniano Cabaña, leaves no doubt that conspiracy between the accused Reynaldo de las Alas and Ricardo Pagkaliwagan exists, considering that the accused Reynaldo de las Alas was chasing the deceased Aniano Cabaña with a knife with the intent to stab the deceased.

"While it is true that the evidence for the prosecution failed to establish the fact of actual and direct participation of the accused Ricardo Pagkaliwagan in the stabbing to death of the deceased Aniano Cabaña, nevertheless the prosecution established that he stood guard by the side of Reynaldo de las Alas while the latter was stabbing to death Aniano Cabaña, and the accused Ricardo Pagkaliwagan while standing by the side of the killer was holding a bolo, apparently to prevent anybody from helping Aniano Cabaña while his co-accused Reynaldo de las Alas was stabbing the deceased Cabaña.

"In order to warrant the conviction as principal in the crime of murder, it is not necessary that the defendant should have taken an active part and material part in its commission, but such conviction will also be sustained if it appears that the defendant willingly stayed with those who actually committed the crime and voluntarily present from the time it was committed until it was consummated. As in this case, the accused Ricardo Pagkaliwagan, like an intrepid gladiator, stood by the side of his co-accused Reynaldo de las Alas while the latter was stabbing to death Aniano Cabaña on the railroad track. Lastly, the crime committed by the accused is murder because of the fact that the deceased Aniano Cabaña was drunk and was lying on the railroad track when he was stabbed to death, besides the presence of superior strength it being two accused as against one drunken person who is the

deceased in this case." [2]

On appeal, counsel de-oficio [3] Fortunato de Leon has discharged his task with commendable zeal and submitted a detailed and exhaustive 65-page brief printed at his own expense, which has truly aided the Court in its review of the record. Atty. de Leon has marshalled seven assigned errors against the judgment of conviction, principally, that the trial court erred in finding the appellant guilty of murder by conspiracy, notwithstanding that no evidence thereof had been adduced by the prosecution, simply on the basis of purely circumstantial evidence entirely consistent with the appellant's innocence but which the Court held against the appellant "on mere suspicion, inferences and opinion which have no basis and foundation on fact of record."

The Court finds the appeal well taken.

1. As indicated above, the trial court, in the face of the admitted void of evidence to prove conspiracy and that appellant had any actual and direct participation in the killing, relied simply on two links which it considered as a sufficient chain of circumstantial evidence to warrant the appellant's conviction as principal in the crime of murder. These two links were: (a) That appellant helped Alas chase the deceased Cabaña, after Cabaña had first treacherously stabbed Alas in the back, based on the testimony of prosecution witness Segundo Balsomo, and (b) That appellant stood by the side of Alas with a bolo in hand while Alas was stabbing the deceased to death as testified by another prosecution witness Pepito Soria. As will presently be shown, the Court finds these circumstances, assuming them to be proven, insufficient to sustain a conviction for conspiracy. Furthermore, they fail to satisfy the test for accepting circumstantial evidence as proof of guilt beyond reasonable doubt – that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence. [4]

2. To start with, these two circumstances are insufficient to sustain a conviction for conspiracy since "evidence of actual cooperation, rather than mere cognizance, acquiescence or approval of an unlawful act is required." [5] Then, the circumstance of appellant's having allegedly helped Alas chase the deceased is utterly inconsistent with the other circumstance that when Alas caught up with the deceased and was stabbing him to death, the appellant merely stood by the side with a bolo, holding it not in an aggressive stance but merely "downwards." [6] These two circumstances cannot then be deemed to be convincing and conclusive of appellant's guilt nor inconsistent with his innocence.

According to the prosecution's evidence furthermore, appellant was walking behind the deceased Cabaña when Cabaña first stabbed Alas, who was in front of him, in the back without any previous provocation, argument, commotion or grudge. If indeed, a conspiracy existed between Alas and appellant to kill Cabaña, then it is inexplicable why appellant did not then and there act and attack Cabaña. The fact of record, however, is that the trial court's finding that appellant in fact helped Alas chase the deceased Cabaña after the latter's sudden attack on Alas cannot itself be said to be a proven fact. The only testimonial evidence on this is Balsomo's. And in answer to the trial court's own questions after his examination by the parties' counsels, this witness testified that "what I saw at the time was that when Ricardo de las Alas was chasing Cabaña I saw Ricardo Pagkaliwagan chasing also, but I don't know whether he was chasing Cabaña or de las Alas." [7]

3. The second and other link of circumstance as relied upon by the trial court was the appellant's act of "standing by the side of Reynaldo de las Alas with a bolo in hand while Reynaldo de las Alas was stabbing to death Aniano Cabaña." The precise testimony of Soria, the only prosecution witness as to the actual commission of the crime, was that Alas was "standing on the railway" stabbing Cabaña "many times", while appellant was "two meters" from them, as expressly noted on the record by the trial court, holding a bolo "downwards." [8] This witness further testified as to the conversation between Alas and Cabaña at their fight that Alas said to Cabaña 'Sigi, laban

(Go ahead, fight)."[9] The evidence, therefore does not bear out the trial court's conclusion that appellant stood by the side of Alas as Alas stabbed Cabaña to death. And there is not the least bit of evidence to warrant or justify the trial court's bare and extrapo-lated conclusion that appellant "stood guard by the side of Alas while the latter was stabbing to death Aniano Cabaña .. apparent-ly to prevent anybody from helping Aniano Cabaña" and that appellant "like an intrepid gladiator, stood by the side of his co-accused Alas while the latter was stabbing to death Aniano Cabaña on the railroad track." [10] The trial court's statement that appellant stood guard to prevent anybody from helping the deceased was based on mere unwarranted assumption and speculation, since according to the prosecution's evidence itself, there was nobody else but the three of them, viz, the two protagonists and Soria, Balsomo, according to his own testimony, had run away when Alas after having been stabbed in the back by Cabaña chased the latter and did not even know about the killing, while Soria merely chanced upon the scene afterwards and immediately turned back and went home because he was afraid.[11] Needless to say, the trial court in ruling that "In order to warrant the conviction as principal in the crime of murder, it is not necessary that the defendant should have taken an active part and material part in is commission, but such conviction will also be sustained if it appears that the defendant willingly stayed with those who actually committed the crime and voluntarily present from the time it was committed until it was consummated" makes a grossly erroneous statement that cannot receive the Court's sanction.

4. The State, in its brief, consequently disagreed with the trial court's finding of murder "since it appears from the evidence that the victim was not lying prostrate on the railroad track when assaulted. As testified by prosecution witness Segun-do Balsomo, after hearing the accused Reynaldo de las Alas say, "Napakataksil naman ang kasama mo," he saw the victim holding a balisong and Reynaldo himself wounded on the back pulling out a balisong and opening it, whereupon the fight ensued (pp. 3, 4, 6, 8, 10, 20, 21, t.s.n.). The offense committed, is, therefore, homicide and not murder."

The Court finds regrettably that both the State's brief as well as the trial court's decision were deficient in two vital parti-culars in that (a) both merely assumed unwarrantedly contrary to the evidence the existence of a conspiracy and (b) both accepted as gospel truth the prosecution version despite its inadequacy and many inconsistencies and did not even discuss, much less state any reason, for rejecting appellant's own version of the incident.

Thus, the State's brief states with respect to the alleged conspiracy that "(F)rom the proven fact that after the victim was stabbed by Reynaldo, the appellant who was armed with a gulukan joined his co-defendant in pursuing and attacking the victim, who sustained 14 wounds, some caused by a sharp pointed instrument and others by a balisong or gulukan (Exhibit B, supra, pp. 25, 26, 27, 28, t. s. n.), there can be no doubt that the appellant had participated directly either as a co-principal or co-conspirator in killing the victim." From this gratuitous premise, the State contends that "Conspiracy having been proved, it is of no moment that the appellant did not participate in the actual killing, for once conspiracy is shown, the act of one is the act of all."

As already shown above, there is no evidence of record to justify the State's bare statement that appellant "joined his co--defendant in pursuing and attacking the victim." The State in citing the 14 wounds sustained by Cabaña "some by a sharp pointed instru-ment and others by a balisong or gulukan" apparently would attri-bute these wounds to both Alas and appellant -- contrary to its own evidence that appellant did not participate in the actual killing. The trial court itself made no such finding in its decision. Furthermore, the State did not accurately state its own evidence which was that all the deceased's incised wounds, specified one by one by the muni-cipal health officer, Dr. G. Rodriguez, in testifying on his ne-cropsy report, Exhibit B, were inflicted by "a sharp pointed instrument", i.e. "by a balisong or gulukan", [12] and not, as the State would insinuate now, that the wounds were inflicted by two different weapons.

5. Neither the trial court nor the State discussed appel-lant's testimony on his own behalf, the substance of which

may thus be briefly stated: that on the day in question, he had not gone to the barrio fiesta at Limbon but was at his home in Talaan taking care of his children, when his neighbor, Alas, arrived alone and asked to be accompanied to the hospital because he (Alas) was wounded (by Cabaña); on their way to the hospital, they met Balsomo and Cabaña who was holding a balisong and these two shouted at them and approached them; that Alas then drew his knife also, and as appellant tried to pacify the protagonists, Balsomo boxed him saying "Let them alone, because he (Cabaña) was the one who stabbed Alas"; that appellant fell on his back some six meters away and "when (appellant) stood up (he) saw Segundo Balsomo holding Aniano Cabaña while Alas was stabbing him;" and that as Cabaña was falling down, Balsomo approached him (appellant) in a threatening manner and he ran away and went home.[13]

This version of appellant, which flatly accuses the accuser Balsomo, who claimed in his testimony to have run away from fear after Alas chased the deceased - not to his own home but to the home of his brother-in-law, where, according to his own affidavit, he slept until the police woke him up at 10:00 P. M. to investigate him for the killing[14] - stands unrefuted on the record. Worse, the trial court, by some inversive process, concluded simply because appellant, a simple farmer, answered candidly on cross-examination that he knew of no reason why Balsomo would testify against him, that Balsomo had no reason to concoct his testimony and must have told the truth -- notwithstanding that per appellant's unrefuted testimony, Balsomo had directly helped Alas in the killing by holding the deceased and would thus have every reason to exculpate himself and shift the blame to an other.

6. So many other circumstances support the presumption of appellant's innocence and his being entitled to a verdict of acquittal in the absence of proof showing his guilt beyond a reason-able doubt:[15] lack of motive or grudge, and lack of any pre-vious altercation or grudge between the protagonists; non-presentation of the weapon allegedly held by him; the fact that the deceased himself was the aggressor against Alas; appellant's passivity, doing nothing to impede Cabaña upon the latter's stabbing Alas in the back, and making no move either to aid Alas, which negates the prosecution's theory that appellant acted "in concert" with Alas. The further overriding circumstance that the protagonists, as Well as the prosecution witnesses had been to the barrio fiesta at Limbon, Soria admitting categorically that he was "under the influence of alcohol"[16] and Balsomo likewise evasively admit-ting that "we drank something, but we were not so drunk"[17] gives rise to grave doubts that they could have faithfully perceived and recollected the incidents that led to the senseless killing as they happened on that fateful afternoon. Indeed, reviewing the whole record, Attorney de-oficio de Leon's submission "that the whole incident was a case of a casual quarrel by people under the influence of liquor, culminating in violence and death of the vic-tim" seems just about a fair summing up of the case.

7. It was therefore gross error for the trial court to render its judgment of conviction on its bare conclusion that it "observed the witnesses for the prosecution to be truthful and reliable wit-nesses considering their demeanor on the witness stand", for as shown above, there were a number of circumstances, e. g. the admitted fact of their being under the influence of alcohol at the time of the incident that cast grave doubt upon their credibility. And it is difficult to comprehend that the trial court would consider Balsomo to be "truthful and reliable", when at the trial it had expressed its disbelief and singled out this witness -- from among all the witnesses for the prosecution and defense -- to admonish him as to whether he knew the value of his oath and that if he told a lie he would go to jail.[18]

And while the Court on appeal would normally not disturb the findings of the trial court on the credibility of witnesses in view of the latter's advantage of observing at first hand their demeanor in giving their testimony, the Court has consistently held that this rule of appreciation of evidence "must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt, because the law presumes that a defendant is innocent and this presumption must prevail unless overturned by competent and credible proof."[19]

In the case at bar, even if it were to be conceded that the prosecution witness-es testified credibly and truthfully, the circumstances testified to by them -- as against the admitted absence of conspiracy and actual and direct participation on the part of appellant -- can by no measure be held to have overcome the presumption of innocence in appellant's favor.

ACCORDINGLY, the judgment appealed from is hereby reversed and set aside. The defendant-appellant Ricardo Pagkaliwagan is hereby acquitted of the charge against him with costs de oficio and his immediate discharge from custody, unless he is held on some other valid charge, is hereby ordered.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, and Villamor, JJ., concur. Dizon and Makasiar, JJ., on leave.

[1] Emphasis supplied.

[2] Emphasis supplied.

[3] Defendant-appellant was also represented in the proceedings below by counsel de-oficio, Atty. Eulogio Alzaga.

[4] "Sec. 5. Circumstantial evidence, when sufficient. --- Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt." (Rule 133). People vs. Mahlon, 92 Phil. 883 (1953) and cases cited; People vs. Labita, 99 Phil. 1068 (September 15, 1956); People vs. Alipis, 14 SCRA 297 (1965).

[5] People vs. Malon, supra, fn. 4.

[6] T.s.n., pp. 3-4.

[7] T. s.n., p. 24, emphasis supplied.

[8] T.s.n., pp. 3-4.

[9] T.s.n., p. 6.

[10] Emphasis furnished.

[11] T.s.n., p. 8.

[12] T.s.n., pp. 25-28; emphasis furnished.

[13] T.s.n., p. 48 et seq.

[14] Record, p. 2.

[15] Rule 133, sec. 2.

[16] T.s.n., p. 6.

[17] Idem, p. 22.

[18] T.s.n., p. 25.

[19] People vs. Alto, 26 SCRA, 342 (Nov. 29, 1968).

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