

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR MEJIA, NICKNAMED DOMINGO,
DEFENDANT-APPELLANT.**

G.R. NO. L-26195. January 31, 1974

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal from the judgment of the Court of First Instance of Manila in its criminal case 72744, finding the accused Dominador Mejia, Rolando Echalar, Ricardo Garcia and Fidel Capili guilty of the crime of murder and sentencing the first three named accused to life imprisonment and the last named accused, by reason of his minority, to a lighter penalty. Echalar, Garcia and Capili later withdrew their appeals,[1] leaving Dominador Mejia as the sole appellant.

The appellant Mejia, thru counsel de oficio, seeks a reversal of the judgment and a consequent declaration of his innocence on the ground of reasonable doubt, stressing his alleged non-participation in the conspiracy that resulted in the killing of Victoriano de la Cruz, the victim named in the indictment upon which the appellant and his co-accused were convicted.

Death came to Victoriano de la Cruz shortly after 6:00 o'clock in the morning of September 28, 1963 as he was crossing G. Perfecto street in Tondo, Manila, from his house on Malong street, toward a public toilet nearby. He was felled by a .38 caliber bullet which lacerated his diaphragm, liver and its blood vessels and bile duct, vena cava and abdominal aorta. The fatal shot was fired by Fidel Capili who, with his co-accused Rolando Echalar, was beside a bakery, about fifteen meters away. Echalar also fired at Victoriano but missed.

The aforesaid place had been the scene of several gunfights between two rival gangs known as the "Kalaspac Group," to which the deceased de la Cruz belonged, and the "Dagupan Hunters Group," to which Capili and Garcia belonged. Two weeks before de la Cruz met his death, he had taken potshots at the mother and brother of Garcia.

At about 3:00 o'clock in the morning of September 28, 1963, the deceased de la Cruz again shot at the group of Capili. To even up the score, Capili's group hunted him the rest of the night; their quest and vendetta culminated in the killing of de la Cruz at the time and spot above-indicated.

The factual details inculpatory of the appellant Mejia were established mainly by the testimony of eyewitnesses.

Prosecution witness Aurelia de la Cruz was inside her house at 1549 G. Perfecto street in Tondo, Manila, that early morning of September 28, 1963 when she heard a shout, "Pasok, mga ulol!" She instinctively looked out of the window and espied the four accused, with firearms, at the corner of G. Perfecto and Linampas streets. Echalar and Capili stood close to the bakery, while the appellant Mejia and Ricardo Garcia were near the "talipapa;" the distance between the bakery and the "talipapa" was but the width of Linampas street. A certain Pito (Agapito) was about to cross G. Perfecto street when the appellant Mejia fired at him but missed. Pito remarked, "Bakit ninyo

ako babarilin, hindi naman ako ang kalaban ninyo," as he retreated to the "looban" or interior dwellings. When de la Cruz appeared and walked toward the public toilet, Echalar said to Capili, "Iyan ang isa, tirahin mo na." Echalar and Capili fired simultaneously at Victoriano, who thereupon fell. Witness Aurelia de la Cruz screamed. The four accused forthwith fled. Shortly thereafter, the brother of Victoriano de la Cruz arrived and brought him to the North General Hospital, where he was pronounced dead on arrival.

Julia Alagao testified that she was then at the store of her comadre, Bianang, not far from where the four accused were before the shooting. She noted that Victoriano de la Cruz was unarmed. As de la Cruz walked toward the toilet, he was shot by Capili. She saw de la Cruz fell. Then the four accused fled.

The existence of a conspiracy among the four accused is amply borne by the evidence. True it is that there is no direct evidence of an agreement among them, but the environmental circumstances compel the conclusion that they did conspire to wreak vengeance upon the members of their rival gang, in general, and upon the deceased, in particular, who was known not only as a member of the rival gang but also as the one who had previously fired upon the mother and brother of Garcia and at Capili and his group. The remark of Rolando Echalar, "Pasok, mga ulol," was a command to his companions to hide; the remark was intended not for Capili alone, as shown by the use of the plural word "mga," nor was the command intended to exclude the appellant Mejia because he and Garcia were together near the "talipapa." Even the plea of Pito was addressed to no one in particular in the group of four accused. The second remark of Rolando, "Iyan ang isa, tirahin mo na," demonstrates the unity of purpose of the four accused, as the remark indicated that they finally had an intended quarry – one whom they believed belonged to the enemy camp. That the appellant Mejia did not participate in the shooting of the victim de la Cruz does not make him any less a conspirator, because it has been proved that he acted in concert with his co-accused. He posted himself at a vantage point, as did his co-accused, as they prepared and waited for the moment to strike; he fired at Pito just before Capili shot de la Cruz; and he fled together with his co-accused from the scene of the crime immediately upon its commission.

Conspiracy can seldom be proved except by circumstantial evidence.[2] The conduct of the appellant before, during and after the commission of the crime demonstrates that he was part of the conspiracy,[3] the degree of his participation being of no consequence.[4]

Mejia's defense of alibi – that from June, 1963 until December 12, 1964 he was in Malasiqui, Pangasinan, helping his uncle plant rice, while the crime was committed on September 28, 1963 – was not pursued in the present appeal. Even so, it must be stated that his defense is feeble in the face of the positive declarations of the prosecution witnesses Aurelia de la Cruz and Julia Alagao that he was with his co-accused at the time and place of the commission of the crime.[5] It may be conceded that he did spend some time in Malasiqui, Pangasinan, but he did so, after the commission of the crime, as a fugitive from justice. While there, he received a telegram informing him of the death of his brother in Manila, and, to pay his last respects, he came to Manila, arriving at past midnight on December 13, 1964. Unfortunately for him, while he was in front of the Sta. Monica chapel at Jose Basa and Dagupan Streets, Binondo, where the remains of his brother lay, he was nabbed by the police.

We hold that the crime was committed in pursuance of a proven conspiracy, and that the appellant's direct involvement in the said conspiracy was established beyond a reasonable doubt.

ACCORDINGLY, the judgment a quo, insofar as the appellant Dominador Mejia is concerned, is affirmed. Costs against the said appellant.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Granted per resolution of this Court dated Nov. 25, 1966.

[2] *People vs. Cadag*, L-13830, May 31, 1961, 2 SCRA 388.

[3] See *People vs. Bersalona*, L-12236, April 28, 1961, 1 SCRA 1110; *People vs. Cabiltes*, L-18010, Sept. 25, 1968, 25 SCRA 112.

[4] See *People vs. Reyes*, L-18892, May 30, 1966, 17 SCRA 309.

[5] See *U.S. vs. Hudieres*, 27 Phil. 45; *People vs. Moro Ambahang*, 108 Phil. 325; *People vs. Kipte*, L-26662, Oct. 30, 1971, 42 SCRA 198.

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