

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO MENDIOLA, FLORENTINO ZAPANTA AND GREGORIO REYES, DEFENDANTS AND APPELLANTS.

G.R. Nos. L-1642-44. January 29, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Justina Rizal and Teofilo Ampil, spouses, had been quarrelling because of the latter's amorous relations with other women. During the Japanese occupation they were invited to live with her brother Dr. Sisenando Rizal in Calamba. There were times during which he did not sleep there. There were occasions on which husband and wife were not on speaking terms. Justina went to the extent of complaining to her brothers and sisters against her husband.

On March 31, 1946, her brother Taciano V. Rizal came from Calamba to Manila in a weapons carrier, accompanied by appellants Alejandro Mendiola, Florentino Zapanta and Gregorio Reyes, his townmates. In the evening of the same day, Taciano borrowed an ambulance car from Arturo Gomez. Later, Taciano alone went to the house of his sister Justina at 514 Aviles, Manila, and talked with her for a short time. On that same evening, appellants passed the night together in the same sala in a house in Paco.

Early in the morning of the next day, Taciano and the three appellants got the ambulance of Arturo Gomez and drove it to Teofilo's house in Aviles. Upon seeing Teofilo they forced him to go with them in the ambulance. After sometime they were driving through Taft Avenue. At about 7 o'clock in the morning, upon reaching the intersection of Libertad, Teofilo jumped out of the car through the back door. Alejandro Mendiola shot him. After the shooting, Taciano and appellants scampered away. Teofilo was helped by traffic policeman Leonardo Roxas, who took him to the Philippine General Hospital, where a few days later he died due to generalized peritonitis and hyphostatic pneumonia, secondary to gunshot wounds through the abdomen, lacerating the omentum and transversing the colon.

Sometime later appellant Alejandro Mendiola was arrested and some time after him the other two appellants. Taciano V. Rizal continues to be at large.

There cannot be any question as to the participation of the three appellants in the commission of the crime in question. The three of them have testified, about their joining Taciano from Calamba until all of them boarded the ambulance car with Teofilo, up to the corner of Taft Avenue and Libertad, where Teofilo was shot. They disagree, however, as to who fired the fatal shot. Mendiola says it was Taciano who fired it, while the other two appellants say that it was Mendiola. We are convinced that the latter's version is the correct one, although for the purposes of this case the effect would be the same whether the shot was fired by Taciano or by Mendiola.

The circumstances of the case, as proved by the evidence, lead us to the conclusion that each and everyone of appellants took part with Taciano V. Rizal in a conspiracy to kidnap as they did Teofilo Ampil and they are all equally responsible for his killing, which was perpetrated in accordance with the plan of the kidnapers. Once the

kidnaping has been decided, the authors necessarily had to entertain the killing as one of the means of accomplishing the purposes of kidnaping.

The three appellants were correctly found by the trial court guilty as authors of the crime of murder. It sentenced them to death and to pay jointly and severally the heirs of Teofilo Ampil in the sum of P2,000 with subsidiary imprisonment in case of insolvency and to pay the costs.

With regard to appellants Gregorio Reyes and Florentino Zapanta, the principal penalty must be changed to reclusion perpetua, insufficient votes having been cast to affirm the appealed judgment, and there is even a minority opinion that they can be held only as accomplices.

The case with respect to Alejandro Mendiola calls for the application of Sections 9 and 11 of Rule 115 which read as follows:

"SEC. 9. Discharge of one of several defendants to be witness for the prosecution.—When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged with the latter's consent that he may be a witness for the government when in the judgment of the courts

"(a) There is absolute necessity for the testimony of the defendant whose discharge is requested;

"(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

"(c) The testimony of said defendant can be substantially corroborated in its material points;

"(d) Said defendant does not appear to be the most guilty;

"(e) Said defendant has not any time been convicted of any offense involving moral turpitude.

"SEC. 11. Discharge of defendants operate as acquittal.—The order indicated in the two preceding sections shall amount to an acquittal of the defendant discharged and shall be a bar to future prosecution for the same offense, unless the defendant, in the case provided in section 9 fails or refuses to testify against his co-defendant."

It appears that the original information for murder committed on the person of Teofilo Ampil was filed on April 27, 1946, against Taciano V. Rizal alone. On October 30, 1946, an amended information was filed including new defendants, among them Alejandro Mendiola. On November 6, 1946, assistant city fiscal Engracio Abasolo filed a motion to discharge defendant Alejandro Mendiola in order that he may be utilized as witness for the prosecution, which motion was granted.

On December 26, 1946, another independent information was filed for the same murder against Gregorio Reyes.

On January 31, 1947, a new information was filed for the same murder against Taciano V. Rizal, Vicente Llamas and the three appellants, including Alejandro Mendiola.

On February 7, 1947, counsel moved to quash the new information against Alejandro Mendiola on the ground that he has previously been acquitted of the offense charged. The motion was denied, and erroneously.

The prosecution contends that appellant Mendiola is not entitled to the benefits of Section 11 of Rule 115 on the following grounds:

- Because Mendiola, upon developments subsequent to his discharge on November 6, 1946, appears to be one of the most guilty, for having fired the fatal shot, his discharge having been based on the main proposition that by

using him as a witness the prosecution would be enabled to prove its case against the most guilty accused, and the prosecution no longer wanted to avail, as it never availed, of his testimony to successfully prosecute the real and most guilty culprits.

- That the failure to testify mentioned in the proviso of Section 11 of Rule 115 comprehends the failure due to the prosecution's omission or refusal to use the discharged accused as its witness.

- That the discharge, to operate as an acquittal under Section 11 of Rule 115, must have taken place after the discharged accused shall have been arraigned and shall have entered his plea and after the trial of the case shall have actually begun, and Mendiola had not even been arraigned when he was discharged on November 6, 1946.

The above three propositions announced by the prosecution are not supported either by law or by reason.

The discharge contemplated in the clear test of Section 9 of Rule 115 is the one effected or which can at be effected any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence. The clause "any time before they have entered upon their defense," used in the section, is so clear as not to give rise to any misunderstanding. The words "any time before" imply an indefinite period of time limited only by the time set by a court's jurisdiction and the very nature of things, and that limit is set at the instant of the filing of the information.

Before the discharge is ordered, the prosecution must show and the trial court must ascertain that the five conditions fixed by Section 9 of Rule 115 are complied with. But once the discharge is ordered, any future development showing that any or all of the five conditions have not actually been fulfilled, may not affect the legal consequences of the discharge, as provided by Section 11 of Rule 115. Any witting or unwitting error of the prosecution in asking for the discharge and of the court in granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided by Section 11 of Rule 115 and of the constitutional guarantee against double jeopardy.

The exception in the proviso of Section 11 of Rule 115 against the defendant who "fails to testify against his co-defendant" refers exclusively to a failure attributable to defendant's will or fault. It is unfair to deprive defendant of an acquittal for a failure attributable to the prosecution, and it would be an abhorrent legal policy to place defendant's fate at the mercy of anyone who may handle the prosecution. The willingness or unwillingness of the discharged defendant is the only test that should be taken to determine whether or not he fails to testify against his co-defendant and, consequently, whether or not he should be excluded from the benefits of the acquittal provided by Section 11 of Rule 115. In the present case, it is not disputed that Alejandro Mendiola had always been willing to testify for the prosecution and upon the same facts bared to the prosecution for which the latter, among other grounds, decided to nova for his discharge from the information. As a matter of fact, although testifying for himself, he reiterated substantially in open court what he had testified before the officers for the prosecution. Under the circumstances and the law, he is protected by the constitutional guarantee against double jeopardy.

Accordingly, the appealed decision is modified and reversed in part, and appellant Gregorio Reyes and Florentino Zapanta are sentenced to reclusion perpetua and to jointly and severally indemnify the heirs of Teofilo Ampil in the sum of P2,000, and to pay the costs, and appellant Alejandro Mendiola is acquitted and shall immediately be released upon promulgation of this decision.

Moran, C.J., Bengzon, Briones, Tuason, and Montemayor, JJ., concur.
Ozaeta, and Reyes, JJ., did not take part.

CONCURRING AND DISSENTING

PARAS, J.:

I dissent from the decision of the majority in so far as it finds the appellants, Florentino Zapanta and Gregorio Reyes, guilty of murder as principals. There can be no doubt that Taciano Rizal, still at large, planned to kidnap his brother-in-law, Teofilo Ampil; but I am not convinced that appellants Zapanta and Reyes conspired with him. Indeed, it is admitted by the trial court and the Solicitor General that there is no direct evidence of conspiracy. In all probability, said appellants were, as testified to by them, invited by Taciano Rizal to leave Calamba, Laguna, for a sightseeing trip to Manila. From the mere fact that Zapanta and Reyes had been with Taciano Rizal from the time they left Calamba to the moment Teofilo Ampil was shot by appellant Alejandro Mendiola while jumping out of the car in which he was asked to ride by Taciano on Aviles Street, we cannot safely deduce that Zapanta and Reyes had previous knowledge of Taciano's murderous designs. The prosecution has not imputed to either Zapanta or Reyes any positive act that would tend to make them principals under Article 17 of the Revised Penal Code. Neither may guilty knowledge on the part of Zapanta and Reyes be inferred from their failure to stop Alejandro Mendiola from shooting Teofilo Ampil or to report the crime to the authorities, because they could not foresee that Ampil would jump out of the car or that Mendiola would shoot Ampil, and because it is not unlikely that they might have been threatened, after the incident, not to make any revelation. In my opinion, appellants Zapanta and Reyes can at most be held guilty as accomplices.

CONURRENTE Y DISIDENTE

PABLO, M.:

Concurro con la opinion de la mayoria que absuelve a Alejandro Mendiola.

Disiento en cuanto condena a los acusados Gregorio Reyes y Florentino Zapanta.

He revisado las pruebas obrantes en autos y en ellas no hay el mas ligero indicio de que dichos acusados hayan tenido participacion en el asesinato de Teofilo Ampil. Las conclusiones de hecho de la mayoria son del tenor siguiente:

Early In the morning of the next day, Taciano and the three appellants got the ambulance of Arturo Gomez and drove it to Teofilo's house in Aviles. Upon seeing Teofilo they forced him to go with them in the ambulance. After sometime they were driving through Taft Avenue. At about 7 o'clock in the morning, upon reaching the intersection of Libertad, Teofilo jumped out of the car through the back door. Alejandro Mendiola shot him. After the shooting, Taciano and appellants scampered away. Teofilo was helped by traffic policeman Leonardo Roxas, who took him to the Philippine General Hospital, where a few days later he died due to generalized peritonitis and hypostatic pneumonia, secondary to gunshot wounds through the abdomen, lacerating the omentum and transversing the colon.

En mi opinion, Taciano y Alejandro fueron los unicos autores del asesinato de Teofilo Ampil. En la mañana del dia primero de Abril, Taciano acompanados por Alejandro, Florentino y Gregorio fueron al lugar donde estaba la ambulancia de Arturo Gomez. Cuando Taciano vio a Teofilo, le invito a que subiera a la ambulancia y Alejandro a punta de su revolver le obligo a Teofilo que se embarcara. Florentino y Gregorio no han hecho nada: solamente estaban sentados dentro del coche. Cuando en la encrueljada de la avenida Taft y calle Libertad, Teofilo se escapo, Alejandro le disparo dos tiros, uno de los cuales causo su muerte en el hospital. Florentino y Gregorio no han tenido ninguna participacion ni en el secuestro de Teofilo, ni en la parada del coche, ni en el disparo del revolver. Cuando oyeron el disparo echaron a correr. No hay ninguna prueba si hubo un acuerdo entre los cinco acusados.

(uno de ellos es Vicente Llamas, que ya fue absuelto por el Juzgado a quo) de lo que habian de hacer en Manila. Por el contrario, segun la declaracion de los acusados Florentino y Gregorio habian seguldo a Taciano en jeep porque fueron invitados para hacer un paseo en Manila No hay nada de ertrafio en que los dos acusados hayan ac opt ado la invitacion de Tacianor cualquiera, en aquellas circunstancias, hublera obrado de la misma manera, para tener oportunidad de ver los efectos que habia dejado el boobardeo de Manila. El mismo ministerlo fiscal admits en su alegato que no existe prueba sobre la conspiracion. El delito de que fueron aeusados los cuatro es el de asesinato Taciano y Alejandro son los verdaderos autores: el primero fue el que manejo la ambulancia en el secuestro, y el otro fue el que amenazo con su revolver a Teofilo a subir al coche y fue el que le disparo el tiro el echar a correr. Florentino y Gregorio no han hecho nada en el asesinato de Teofilo. Son autores, segun el articulo 17 delCodigo Penal Revisado, "1.o Los que toman parte directa en la ejecucion del hecho 2.o Los que fuerzan o indueen directamente a otros a ejeeutarlo 3.o Los que cooperan a la ejecucion del hecho por un acto sin el cual no se hubiera efectuado."

Florentino y Gregorio no nan cometido acto sin el cual no se hubiera efectuado el asesinato. Si ezistlera prueba de que hubo un plan o aeuerdo entre los cuatro en seeustrar y matar a Taciano, desde luego todos serian responsables de las consecuencias de su acuerdo, aunque los dos, Florentino y Grejorio, no hubieran heeho nada Su presenela en la ambulancia no rifie ni es incompatible con su d efensa de que eran simples invitados para pasearse en Manila Pudiera suceder que entre Taciano y Alejandro haya habido aeuerdo de invitarles a los dos como simples compañeros, sin comunicarias su intencion criminal de secuestrar a Teofilo y matarle si fuese necesario. Para que se les pueda considerar como coautores es necesario que haya prueba de que hayan tornado parte con actos positivos en la comision del delito o hayan inducido directamente a Taciano o Alejandro a cometerlo o hayan cooperado en la comision del mismo por un acto sin el eual no se hubiera cometido el delito. Que acto han hecho Florentino y Gregorio? Ninguno. Vamos a suponer por un momento que en aquel momento de la fuga de Teofilo no estuvieran presentes en la ambulancia Florentino y Gregorio, no se hubiera podido cometer el asesinato del mismo modo? La ausencia de los dos no hublera camfelado el tragieo cuadrot los unieos actores fueron Taciano y Alejandro. De manera que la presencia de Florentino y de Gregorio en el momento del disparo del revolver a Teofilo no contribuyo en lo mas minimo en la realizacion del delito. No pueden ser, por tanto, considerados como coautores Florentino y Gregorio.

Tampoco pueden ser complices porque no cooperaron en la ejecucion del hecho por actos anteriores o simultaneos, pues el articulo 18 delCodigo Penal Revisado dice que: "Son complices los que, no hallandose comprendidos an el articulo 17, cooperan a la ejecucion del hecho por actos anteriores o simultaneos."

Tampoco pueden ser encubridores, porque el articulo 19 delCodigo Penal Revisado dispone que: "Son encubridores los que, con conocimiento de la perpetracion del delito, sin haber tenido participacion en el como autores ni complices, intervienen con posterloridad a su ejecucioa de algune de los modos siguientes: 1.o Aprovechandose por si mismos o auxiliando a los dellncuentes para que se aprovechen de los efectos del delito. 2.o Ocultando o inutilizando el cuerpo, los efectos o los instrumentos del delito para impedir su descubrimiento. 3.o Albergando, ocultando o proporcionando la fuga al autor del delito, cuando el encubridor lo hace con abuso de fun ciones publicas o cuando aquel lo fuere da traicion, parricidio, asesinato, atentado contra la vida del Jefe Ejecutivo, o reo conocidamente habitual de otro d elito."

Tampoco hay pruebas de quo los dos acusados hayau proporcionado la fuga de Taciano y Alejandro Los autos demuestran que despues del disparo fatal los cuatro acusados se fugaron a la desbandada: cada uno se escabullo lo mayor que pudo. Nadie ayudo a nadie.

La mera presencia de Gregorio y Florentino, pues, en la comision del delito no les hace responsables/como autores, ni complices, ni encubridores.

El Tribunal Supremo de España en su sentencia de 13 de Marzo de 1884 dijo que:

El presenciar un sujeto un asesinato cometido por su hermano en la persona de un comun enemigo de ambos, con el cual tuvieron anteriormente los dos una cuestion, y el proferir mientras se cometia el crimen algunas palabras amenazadoras, sin que se sepa cuales fuesen ni a quien se dirigian, no es suficiente para determinar la complicidad en el delito, fundandose en que, si bien el procesado dio origen a la primera cuestion, y mas despues acompaño al agresor y estuvo presente a la perpetracion del crimen, vertiendo algunas palabras amenazadoras, que no se dice cuales eran ni a quien se dirigian, a estos hechos aislados, y sin otros antecedentes que los expliquen, no podia diarseles, sin grave peligro de error, grande importancia, ni suponer por ello participacion o cooperacion en el hecho criminal, que es lo que determina legalmente la complicidad de un delito.

En el case citado se puede logicamente suponer que al hermano que estaba presente en el asesinato del "comun enemigo" y que profirio "algunas palabras amenazadoras" puede haber ayudado con su actitud al asesino. Sin embargo, no son suficientes, segun el Tribunal, tales datos para concluir que ayudo en la comision del delito. En caso presente, no hay ninguna prueba ni siquiera sobre la actitud que tuvieron los dos acusados Florentino y Gregorio en el momento del secuestro y en el momento del disparo del revolver.

El Tribunal Supremo de España en su sentencia de 20 de Marzo de 1885, caso la de la Audiencia, declarando que es "indispensable elemento de la responsabilidad del complice que por actos anteriores o simultaneos ayude, facilite o proteja la ejecucion de los hechos constitutivos del delito que otro realice," hechos que no aparecen probados.

Y en su sentencia de 25 de Junio de 1886, al revocar la condena, anuncio la siguiente doctrina:

"Considerando, en cuanto al recurso de Jose Martinez Atalaya, que la Sala sentenciadora declara su responsabilidad en concepto y categoria de complice de los delitos despues de reconocer que por su parte no realizo acto alguno para su comision, por el hecho unico de haber contribuido a su realizacion con un acto simultaneo, con su presencia en el lugar donde se cometieron. Considerando que la responsabilidad del complice se determina por actos de ayuda y de auxilio, anteriores o simultaneos, prestados conscientemente al autor del delito; y que no siendo de esta clase por si solo el mero hecho de presenciar la comision de un delito, cuando no consta, y para los efectos de la casacion, cuando no declara el Tribunal a quo que esta presencia tenga el objeto de alentar siquiera al delincuente principal o de aparentar o hacer en realidad mayor su fuerza ante las victimas, no puede sostenerse la declarada de Martinez Atalaya unicamente por ese hecho, despues de afirmar en absoluto que entre el y Juan Gomez no resultaba que existiera concierto alguno."

Y por ultimo, este Tribunal en Estados Unidos contra Guevara, 2 Jur. Fil., 553, dijo:

"La mera presencia en el tiempo y lugar de la comision del delito no es por si sola bastante para constituir un acto simultaneo de cooperacion constitutiva de complicidad."

"Cuando una o dos personas juntamente hieren y matan en una reyerta a uno de sus adversarios, su compañero no se puede considerar como autor o complice, cuando no se puede probar que ha habido una accion previamente concertada y que haya tenido por objeto inferir la herida mortal, o que dicho compañero tuviese alguna razon para creer que habia de hacerse un ataque moral contra el occiso." (Estados Unidos contra Manayao, 4 Jur. fil., 297; veanse tambien: Estados Unidos contra Naquiraya, 14 Jur. Fil., 246 citando Estados Unidos contra Empeinado, 9 Jur. Fil., 631; Estados Unidos contra Dasal, 3 Jur. Fil., 6.)

En mi opinion, los dos acusados, Florentino Zapanta y Gregorio Reyes, deben ser absueltos.

FERIA, J.:

I concur in this dissenting opinion.

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