

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LAURO TOLENTINO AND VIDAL TOLENTINO, DEFENDANTS, VIDAL
TOLENTINO, DEFENDANT-APPELLANT.**

G.R. No. L-29419. August 31, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

Vidal Tolentino in this appeal impugns the correctness of a judgment finding him guilty of the crime of murder. The information under which he and his co-accused, his brother Lauro Tolentino, were found guilty was worded thus: "That on or about the 18th day of June, 1962, at Barrio Laya, Muni-cipality of Tabuk, Subprovince of Kalinga, Province of Mountain, Philippines and within the jurisdiction of this Hono-rable Court, the said accused, Lauro Tolentino and Vidal Tolentino, conspiring and confederating together and mutually aiding each other, with treachery, evident premeditation and abuse of superior strength, willfully, unlawfully and feloniously attacked, assaulted, stabbed and wounded with a knife one Juan Mundo, thereby inflicting a fatal wound on the vital part of his body which directly caused his death shortly thereafter." [1]

The decision rendered imposed the penalty of reclusion perpetua on both. The brother, Lauro Tolentino, who inflicted the fatal wound, apparently was willing to take the consequences of his act and did not appeal. Not so, appellant Vidal Tolentino, who would have us set aside the decision against him contending that there was no conspiracy, as it was through sheer chance that he made his appearance at the scene of the crime when the combatants were confronting each other and that all he did was to hold the deceased by the collar with the intention of pacifying them. After a careful study of the evidence of record, this Court is of the opinion that while the existence of conspiracy was not completely rebutted, appellant's participation at the most was that of an accomplice. So we decide.

In the appealed decision, there is a brief recital of the facts resulting in the death of the victim Juan Mundo. Thus: "It appears that on the afternoon of June 18, 1962, Saturnino Mundo and his father Juan Mundo, residents of Dagupan, Tabuk, Kalinga-Apayao Province (then Mountain Province) went to the Barrio of Laya, Tabuk to repair or fix the shade of the sugar mill of Francisco Garcia. There were several persons working in the repair and fixing of the shade. Among them were Federico Barlolong, Diosdado Madriaga, Kenis Padua, Gabriel Cabrera and Francisco Madriaga besides Saturnino Mundo and his father Juan Mundo. When they were working between 3:00 and 4:00 o'clock on the said afternoon, the accused Lauro Tolentino came. He invited the deceased Juan Mundo to come with him. At a distance of four (4) meters, Saturnino Mundo heard Lauro Tolentino ask his father what he (Juan Mundo) [was] asking [the day before]. At this instant, Juan Mundo was squatting. Juan Mundo answered 'none'. Suddenly, the other accused Vidal Tolentino appeared from nowhere and seized the collar of Juan Mundo's shirt. Conse-quently, Juan Mundo assumed a stooping position toward Lauro Tolentino who was at his right side. At this moment, Lauro Tolentino pulled his knife, Exhibit 'C' the blade of which was eight (8) inches long from its scabbard at his waist and thrust it at the left side of the abdomen of Juan Mundo. After stabbing him, Juan Mundo said, 'I am dying.' He tumbled down with his back on the ground, * * * dead." [2] The apparent motive, according

to the decision, was that a daughter of the deceased, Rosita Mundo, "left the accused Lauro Tolentino and went to live with her father Juan Mundo in Dagupan, Tabuk. This caused the ire of Lauro Tolentino. Previously, Lauro and Rosita were living as husband and wife without the benefit of marriage ceremony." [3]

As to the participation of appellant Vidal Tolentino, two witnesses testified for the prosecution. The first was the son, Saturnino Mundo, and the second was one of those present at the occurrence, a certain Federico Barlolong. This was what the son testified: "Vidal Tolentino held the collar of my father's shirt and at that instant Lauro Tolentino thrust his knife at the left side of my father's abdomen." [4] What preceded such testimony was his narrating the fact that the other accused, Lauro Tolentino, asked his father that they have a talk for the purpose of finding out whether the latter was looking for him, the answer of the father being in the negative. [5] Not much else of value was elicited from him, as by his own admission and in answer to the question of what he was doing at the time of the incident, he stated in all candor: "I was frightened and I lost consciousness." [6] It is noteworthy, likewise, that he apparently was not even aware of the bad blood that could have existed between his father and Lauro Tolentino, for he did inform the court that both in their previous place of residence in Aurora, Isabela and thereafter in Dagupan, Tabuk, his father and the Tolentino brothers were "in good terms", their relationship being "good." [7] As to the other eyewitness, Federico Barlolong, what he could say on the matter was simply this: "What I saw was, the moment that Juan Mundo seated himself beside Lauro Tolentino, Vidal Tolentino went to Juan Mundo and held the back collar of Juan Mundo." [8] He was ignorant of where Vidal Tolentino, who apparently was not present at the beginning of the incident, came from: "That is what I do not know, all what I saw was when he was holding the collar of Juan Mundo, sir." [9]

Nonetheless, as above noted, the judgment was one of conviction, conspiracy having been shown in the opinion of the lower court. The weakness of such conclusion was stressed in the thorough and exhaustive brief submitted by his counsel de oficio, Attorney Antonio A. Nieva. The brief for the government, submitted by the then Solicitor-General, now Associate Justice, Felix V. Makasiar on the other hand, pointed out that the relationship between the accused and the manner in which his holding the deceased by the collar thus facilitating the thrust of the fatal stab did indicate the concert of design so essential for a finding of conspiracy. While not devoid of persuasive force, this Court, as noted, is not disposed to accord full credence to such an appraisal. It would overlook circumstances favorable to the appellant. What was done by him did not entail the responsibility that the law imposes on a principal. His criminal liability amounts at most to that of accomplice.

So it has been held in the leading case of *People v. Tamayo*, [10] this Court speaking through the then Justice Street. Thus: "Upon this point it is undoubtedly true that concert of action at the moment of consummating the homicide, and the form and manner in which assistance is rendered, may determine complicity where it would not be otherwise evident. Thus, in a decision of December 29, 1884, the case was that after two individuals had beaten another and thrown him to the ground, the accused got upon him, trampling his breast and face. As a consequence of the injuries received from the beating by the first two, the injured person died. It was held by the Supreme Court of Spain that the accused was guilty in the character of accomplice, saying: 'Although the accused did not intervene in giving the mortal injury caused by the cudgel, for which reason he is not comprehended in article 13, he simultaneously trampled upon the deceased who was on the floor; and this simultaneity of acts contributing to the homicide makes him an accomplice in the same.' (Decision, Dec. 29, 1884; Viada, vol. 1, p. 375.)" [11] After referring to several other decisions of the Supreme Court of Spain, as cited by Viada, the opinion went on to state: "Now although, as thus demonstrated, participation on the part of an accomplice in the criminal design of the principal is essential to the same extent as such participation is necessary on the part of one charged as coprincipal, nevertheless, it is evident, - and the cases above cited abundantly prove - that, as against an accomplice, a court will sometimes draw the inference of guilty participation in the criminal design from acts of concert in the consummation of the criminal act and from the form and manner in which assistance is rendered,

where it would not draw the same inference for the purpose of holding the same accused in the character of principal. This is because, in case of doubt, the courts naturally lean to the milder form of responsibility." [12]

Only recently, the same doctrine was reiterated in *People v. Rival*, [13] this Court speaking through the then Chief Justice Bengzon. As set forth therein: "However, lack of complete evidence of conspiracy, that creates the doubt whether they had acted as principals or accomplices in the perpetration of the offense, impels this Court to resolve in their favor the question, by holding like the court below, that they were guilty of the 'milder form of responsibility,' i.e., guilty as mere accomplices." [14]

WHEREFORE, the appealed decision of July 10, 1968 is modified in the sense that Vidal Tolentino is found guilty as accomplice of the crime of murder, and is sentenced to suffer the indeterminate penalty of two years, four months and one day as minimum and eight years and one day as maximum. In all other respects, the appealed decision remains unmodified. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, and Villamor, JJ., concur.

Makasiar, J., did not take part.

[1] Sentence, Annex 1, Brief for Appellant, p. 1.

[2] *Ibid*, pp. 1 and 2.

[3] *Ibid*, p. 8.

[4] T.s.n., Session of March 26, p. 23.

[5] *Ibid*.

[6] *Ibid*, p. 24.

[7] *Ibid*, p. 32.

[8] *Ibid*, p. 71.

[9] *Ibid*.

[10] 44 Phil. 38 (1922).

[11] *Ibid*, pp. 52-53.

[12] *Ibid*, p. 54. The Tamayo case has been cited with approval in the subsequent cases of *People v. Caballero*, 53 Phil. 585 (1929); *People v. Bantagan*, 54 Phil. 834, (1930); *People v. Tumayao*, 56 Phil. 587 (1932); *People v. Azcona*, 59 Phil. 580 (1934); *People v. Aplegido*, 76 Phil. 571 (1946); *People v. Ibañez*, 77 Phil. 664 (1946); *People v. Abarintos*, 81 Phil. 238 (1948); *People v. Mostoles*, 85 Phil. 883 (1950); *People v. Ubiña*, 97 Phil. 515 (1955); *People v. Arranchado*, 109 Phil. 410 (1960); *People v. Rival*, L-14077, March 31, 1964, 10 SCRA 462; *People v. Tividad*, L-21469, June 30, 1967, 20 SCRA 549; *People v. Clemente*, L-23463, Sept. 28, 1967, 21 SCRA 261; *People v. Tatlonghari*, L-22094, March 28, 1969, 27 SCRA 726.

[13] L-14077, March 31, 1964, 10 SCRA 462.

[14] *Ibid*, pp. 468-469.

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