

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUNDO VISTIDO Y SABAYLE, DEFENDANT-APPELLANT.

G.R. No. L-31582. October 26, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In Criminal Case No. CCC-263-P.C. of the Circuit Criminal Court of Rizal, Pasig, Rizal, the accused Raymundo Vistido y Sabayle was charged together with Pepito Montaña and one John Doe (both at large) with the crime of murder, allegedly committed as follows:

"That on or about the 1st day of November, 1969, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with a dagger, with deliberate intent to kill, taking advantage of their superior strength and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and hit with a dagger Restituto Belbes y Marcelino on the lower part of the abdomen, thereby inflicting upon the latter vital wound which caused his instantaneous death." [1]

Upon arraignment, the accused Raymundo Vistido pleaded not guilty.[2] Thereafter, trial proceeded, and in due time, the court rendered its decision finding the accused Raymundo Vistido guilty of the crime of murder, the dispositive portion of which reads as follows:

"WHEREFORE, finding the accused, Raymundo Vistido y Sabayle, GUILTY beyond reasonable doubt, of the commission of the crime of murder, pursuant to Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences him to suffer the penalty of DEATH; to indemnify the heirs of the offended party in the amount of TWELVE THOUSAND (P12,000.00) PESOS; and to pay the costs." [3]

The case is now before Us for mandatory review.

The evidence for the prosecution reveals that on November 1, 1969, between 3:00 and 4:00 o'clock in the morning, the deceased Restituto Belbes and his cousin, Reynaldo Pagtakhan - after coming home from their work at the cemetery - went to eat at the Marzan Restaurant on Taft Avenue, Pasay City.[4] After taking soup,[5] they took a taxi in going home.[6] While they were alighting from the taxi on M. Francisco St., Pasay City, Reynaldo Pagtakhan saw three men drinking wine ("nag-iinuman"), who turned out to be the accused Raymundo Vistido, Pepito Montaña, and one John Doe.[7]

Thereupon, Pepito Montaña told the deceased: "Hoy Resting, pauwiin mo na iyong kasama," to which the latter answered: "Huwag pinsan ko ito." [8] Whereupon, the deceased approached the three, and immediately thereafter, a commotion ensued. While Reynaldo Pagtakhan was trying to pacify them, Pepito Montaña suddenly stabbed the deceased, hitting him below the abdomen, and in the process also hit the right hand of Reynaldo Pagtakhan. The deceased fell to the ground. When he stood up, the accused Raymundo Vistido boxed him once.[9] Then Pepito Montaña faced Reynaldo Pagtakhan and tried to stab him. The latter ran away but the former with his knife and his other companion, chased him.[10] Upon reaching their house, he called for his mother: "Inay, Inay,

tulungan ninyo ako, dalhin ninyo ako sa hospital, dahil sa may sugat ako." Immediately, his mother called a taxi and brought him to the Philippine General Hospital.[11] Meanwhile, his cousin, the deceased Restituto Belbes, who also fled from the scene of the crime, arrived in their house.[12] He was, likewise, taken to the Philippine General Hospital but was pronounced dead on arrival.[13] Reynaldo Pagtakhan's wound was treated at the same hospital, and after the treatment he and his mother went home.[14]

In the meantime, the accused Raymundo Vistido was picked up, as a suspect in the killing of the deceased, on M. Francisco St., Pasay City, by Pat. Loreto Aguna, who brought him to the police precinct.[15] At this time, Reynaldo Pagtakhan who was fetched by the police from their house, arrived at the police precinct.[16] He saw the accused Raymundo Vistido and identified him to the investigator, Sgt. Francisco Tirona, as one of the perpetrators of the crime.[17]

The accused Raymundo Vistido denied any participation in the commission of the crime. According to him, on the night of October 31, 1969, he was at home. Around 9:00 o'clock in the evening, his wife asked him to buy milk at a nearby store but was not able to do so because the store was already closed. In front of the store, he saw Conrado Catadrilla, Antonio Ramos, Pepito Montaña, and Esteban Pugna. The group offered him one-half glass of tanduay rum. After drinking it, he felt tipsy and requested them to take him home. Conrado Catadrilla and Antonio Ramos accompanied the accused to his house, arriving thereat at about 10:00 o'clock in the evening, and immediately, he went to sleep.[18]

Around 4:00 o'clock in the morning of November 1, 1969, a Metrocom Unit came to his house and asked him to go with them as they would show to him some papers which he would sign. As he could not do anything, he went with them to the Pasay City Police Department. Immediately upon his arrival, he was maltreated by the police and repeatedly asked him: "Who were your companions in the killing?" to which query he repeatedly answered: "I do not know because I was sleeping at home." [19]

The trial court rejected his alibi, and finding that there was conspiracy in the commission of the crime, convicted the accused of the crime of murder and imposed upon him the penalty of death. In this appeal, the accused as appellant does not question the correctness of the trial court's conclusion as to his alibi. However, he assails the court a quo in holding that there was conspiracy in the commission of the offense.[20] The Solicitor General maintains that there was conspiracy because the following proven facts show a concerted action among the accused, to wit: (1) Upon alighting from the taxi at M. Francisco Street, appellant Raymundo Vistido, accused Pepito Montaña, and John Doe, who were together drinking wine called the deceased; (2) The three accused, including the appellant, attacked the deceased as soon as he approached them, one of them, Pepito Montaña (at large) stabbed the deceased while appellant immediately boxed the deceased after he was thus stabbed; and (3) When Reynaldo Pagtakhan, a companion of the deceased, tried to pacify them, the three accused turned on him and attacked him.[21]

We disagree. There is no question that "a person may be convicted for the criminal act of another where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charged." [22] It is, likewise, settled that "to establish conspiracy, it is not necessary to prove previous agreement to commit a crime, if there is proof that the malefactors have acted in consort and in pursuance of the same objective." [23] Nevertheless, "the evidence to prove the same must be positive and convincing. As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle in criminal law requiring proof beyond reasonable doubt before conviction." [24]

In the case at bar, the evidence for the prosecution does not comply with this basic requirement. To begin with,

there is no evidence that appellant and his co-accused had any enmity or grudge against the deceased. On the contrary, the cousin of the deceased, Reynaldo Pagtakhan, testified that prior to the stabbing incident, they did not have any quarrel with them.[25] In the absence of strong motives on their part to kill the deceased, it can not safely be concluded that they conspired to commit the crime involved herein.[26]

Neither could it be assumed that when the appellant and his co-accused were together drinking wine, at the time and place of the incident, they were there purposely to wait for and to kill the deceased. For, they could not have surmised beforehand that between 3:00 and 4:00 o'clock in the morning of November 1, 1969, the deceased and his cousin - after coming home from their work at the cemetery - would go to the Marzan Restaurant, and thereafter, would take a taxi for home, and then, alight at M. Francisco Street. The meeting between the appellant's group and the deceased appears to be purely ac-cidental which negates the existence of conspiracy between the appellant and his co-accused.

Besides, the appellant was unarmed; only his two companions (Pepito Montaña and one John Doe) were armed with daggers.[27] If he (appellant) had really conspired with his co-accused to kill the deceased, he could have provided himself with a weapon. But he did not. Again, this fact belies the prosecution's theory that the appellant had entered into a conspiracy with his co-accused to kill the deceased.[28]

Moreover, although the appellant and his co-accused acted with some degree of simultaneity in attacking the deceased, nevertheless, the same is insufficient to prove conspiracy. The rule is well-settled that "simultaneous-ness does not of itself demonstrate the concurrence of will nor the unity of action and purpose which are the basis of the responsibility of two or more individuals." [29] To establish common responsibility it is not sufficient that the attack be joint and simultaneous; it is necessary that the assailants be animated by one and the same purpose.[30] In the case at bar, the appellant Raymundo Vistido and the accused Pepito Montaña, did not act pursuant to the same objective. Thus, the purpose of the latter was to kill as shown by the fact that he inflicted a mortal wound below the abdomen of the deceased which caused his death. On the other hand, the act of the appellant in giving the deceased one fist blow after the latter was stabbed by the accused Pepito Montaña - an act which is certainly unnecessary and not indispensable for the consummation of the criminal assault - does not indicate a purpose to kill the deceased, but merely to "show off" or express his sympathy or feeling of camaraderie with the accused Pepito Montaña. Thus, in *People vs. Portuguesa*, [31] this Court held that:

"Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. (*People vs. Caayao*, 48 Off. Gaz. 637). On the contrary, from the nature and gravity of the wounds inflicted on the deceased, it can be said that the appellant and the other defendant did not act pursuant to the same objective. Florentino Gapole's purpose was to kill the deceased, as shown by the fact that he inflicted a mortal wound which almost severed the left arm. The injury inflicted by the appellant, merely scratching the subcutaneous tissue, does not indicate a purpose to kill the victim. It is not enough that appellant had participated in the assault made by his co-defendant in order to consider him a co-principal in the crime charged. He must have also made the criminal resolution of his co-accused his own. x x x."

and, in *People vs. Vicente*, [32] this Court likewise held:

"In regard to appellant Ernesto Escorpizo, there seems to be no dispute that he stabbed Soriano several times with a small knife only after the latter had fallen to the ground seriously wounded, if not already dead. There is no showing that this accused had knowledge of the criminal intent of Jose Vicente against the deceased. In all likelihood, Escorpizo's act in stabbing the fallen Soriano with a small knife was not in furtherance of Vicente's aim, which is to kill, but merely to 'show off' or express his sympathy or feeling of camaraderie with Vicente. x x x."

By and large, the evidence for the prosecution failed to show the existence of conspiracy which, according to the settled rule, must be shown to exist as clearly and convincingly as the crime itself. In the absence of conspiracy, the liability of the defendants is separate and individual, each is liable for his own acts, the damage caused thereby, and the consequences thereof.[33] While the evidence shows that the appellant boxed the deceased, it is, however, silent as to the extent of the injuries, in which case, the appellant should be held liable only for slight physical injuries.[34]

ACCORDINGLY, the judgment of the trial court is modified and another one entered holding the appellant Raymundo Vistido y Sabayle guilty of the crime of slight physical injuries. He is hereby sentenced to suffer fifteen (15) days of *arresto menor*.^[35] Considering the period of preventive imprisonment that he has undergone, he is hereby ordered released immediately from custody. With costs against the appellant.

SO ORDERED.

Ruiz Castro, C.J., Fernando, Barredo, Makasiar, Muñoz Palma, Martin, Santos, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., concurred in the dissent of J. Aquino.

Antonio J., agrees that appellant is guilty as accomplice in homicide.

[1] p. 1, Record.

[2] pp. 4, 11, Record.

[3] p. 92, Record.

[4] pp. 2, 3, 4, 14, 15, 17, t.s.n., Nov. 6, 1969.

[5] p. 16, t.s.n., Nov. 6, 1969.

[6] p. 6, t.s.n., Nov. 6, 1969.

[7] pp. 4, 5, 6, 7, t.s.n., Nov. 6, 1969.

[8] Exh. "A", p. 33, Record; p. 4, t.s.n., Nov. 6, 1969.

[9] Exh. "A", *ibid.*; pp. 4, 7, 11, 18, t.s.n., Nov. 6, 1969.

[10] *ibid.*; pp. 4, 7, 13, 19, t.s.n., Nov. 6, 1969.

[11] *ibid.*; p. 9, t.s.n., Nov. 6, 1969.

[12] p. 8, t.s.n., Nov. 6, 1969.

[13] pp. 9, 10, t.s.n., Nov. 6, 1969.

[14] p. 10, t.s.n., Nov. 6, 1969.

[15] p. 22, t.s.n., Nov. 6, 1969.

[16] pp. 12, 23, t.s.n., Nov. 6, 1969.

[17] pp. 12, 23, t.s.n., Nov. 6, 1969; Exh. "A", p. 33, Record.

[18] pp. 3-6, t.s.n., Nov. 26, 1969.

[19] pp. 8-9, t.s.n., Nov. 26, 1969.

[20] pp. 6-9, Appellant's Brief.

[21] pp. 5-6, Appellee's Brief.

[22] *People vs. Ibañez*, 44 Off. Gaz. 30.

[23] *People vs. Estrada*, L-26103, Jan. 17, 1968, 22 SCRA 111.

[24] *People vs. Tividad*, L-21469, June 30, 1967, 20 SCRA 549.

[25] p. 18, t.s.n., Nov. 6, 1969.

[26] See *People vs. Tumulip, et al.*, L-28451, Oct. 28, 1974, 60 SCRA 303, 317-318.

[27] p. 13, t.s.n., Nov. 6, 1969.

[28] *People vs. Anin*, L-39046, June 30, 1975, 64 SCRA 729, 735-736.

[29] *U.S. vs. Magcomot*, 13 Phil. 385, 389, See also *People vs. Portuguesa*, L-22604, July 31, 1967, 30 SCRA 901; *People vs. Tividad*, L-21469, June 30, 1967, 20 SCRA 549.

[30] *People vs. Anin*, *supra*; *People vs. Bar-tolay*, L-30610, Oct. 22, 1971, 42 SCRA 1.

[31] *supra*.

[32] L-26241, May 21, 1969, 28 SCRA 247.

[33] *U.S. vs. Solis*, 4 Phil. 178; *U.S. vs. Magcomot*, *supra*; *U.S. vs. Abiog*, 37 Phil. 137; *People vs. Cajandab*, 52 SCRA 161.

[34] *People vs. Dorico*, L-31568, Nov. 29, 1973, 54 SCRA 172.

[35] *People vs. Bautista*, L-27638, Nov. 28, 1969, 30 SCRA 558.

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