

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAFAEL MARCO, SIMEON MARCO AND DULCISIMO BELTRAN,
DEFENDANTS, RAFAEL MARCO, DEFENDANT-APPELLANT.**

G.R. Nos. L-28324-25. May 19, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by accused Rafael Marco from the judgment of the Court of First Instance of Zamboanga del Sur in Criminal Case No. 2757, entitled People of the Philippines versus Rafael Marco, Dulcisimo Beltran and Simeon Marco, the dispositive part of which reads thus:

"WHEREFORE, the Court renders judgment as follows:

(1) In Criminal Case No. 2757, the Court finds Rafael Marco, Dulcisimo Beltran, and Simeon Marco, guilty beyond reasonable doubt of the crime of Murder, qualified by abuse of superior strength; and hereby sentences Rafael Marco, who has neither aggravating circumstance against him or any mitigating circumstance in his favor, to RECLUSION PERPETUA. Simeon Marco and Dulcisimo Beltran, who surrendered voluntarily, are hereby sentenced EACH to an indeterminate penalty consisting of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of reclusion temporal, as maximum.

"The Court further sentences the three defendants to pay, jointly and severally, to the heirs of Bienvenido Sabelbero, the amount of P6,000.00, to suffer the accessory penalties of the law, and to pay the costs." (Page 69, Record.)

Actually, there were two cases filed against appellant in connection with two successive phases of a single occurrence. The two cases were consolidated and tried together. In Criminal Case No. 2757, he was charged together with his son Simeon and one Dulcisimo Beltran with the alleged murder of one Bienvenido Sabelbero.[1] In Criminal Case 2758, he was charged together also with his son Simeon with frustrated murder allegedly committed against Constancio Sabelbero, a brother of Bienvenido. In this second case, herein appellant was found guilty only of slight physical injuries and sentenced to twelve (12) days of arresto menor. He did not appeal. Simeon was acquitted.

The incident in question took place on November 5, 1964 at about 2:30 o'clock in the afternoon within the vicinity of the market place of Barrio Subang, Pagadian, Zamboanga del Sur. There was a fiesta being celebrated, but it was raining. The details, according to the evidence, were as follows:

Constancio Sabelbero was approached by Simeon Marco who asked him if he was the one who boxed the latter's brother the previous year. Constancio denied. Then Simeon asked if he had cigarettes and when he said he had none, Simeon said, "I have cigarettes; here is my cigarette", as he pulled out a one-foot long hunting knife. Frightened, Constancio ran away and Simeon chased him. As Constancio was passing by the place where appellant Rafael Marco, the father of Simeon, was standing, Rafael struck Constancio with a round cane, hitting

him on the left ear and left shoulder. This was the basis of the information in Criminal Case No. 2758, where appellant was convicted of slight physical injuries and his son, Simeon, was acquitted.

Vicente, the father of Constancio, happened to be standing in the crowd and heard shouts of "Fight! Fight!" He saw Simeon about to stab Constancio, so he grabbed the hand of Simeon that was holding the knife.

At this juncture, Rafael Marco approached Vicente armed with a cane and a hunting knife. Sensing danger, Vicente shouted to his son Constancio, who had been hit by Rafael, and his other son Bienvenido, who appeared on the scene, to run away because the Marcos were armed. Constancio was able to run away. So also Vicente. Bienvenido who was being chased by Rafael was stabbed by the latter, and when he parried the blow, he was wounded on the left hand. After being stabbed by Rafael, Bienvenido still tried to run farther, but unluckily, his foot got caught in a vine on the ground and he fell, whereupon, out of nowhere, Dulcisimo Beltran, who was accused with herein appellant and who did not appeal his conviction, arrived and stabbed Bienvenido near his anus while he was in the position described in the record thus "(Witness demonstrating with his two hands touching the floor and his both feet (sic) in a forward position)". (p. 24, t.s.n.) Beltran was followed by Simeon,[2] who stabbed Bienvenido on the left breast and the upper part of the left arm. Afterwards, Rafael, Simeon and Beltran ran away. "Bienvenido Sabelbero stood up slowly and walked zigzagly towards the store of Pinda and when he arrived in front of the store, he fell to the ground." (p. 27, t. s. n.)

When Vicente came to know that his son Bienvenido was wounded, he went to the store of Pinda and found him lying there. Vicente asked him what happened, "Bienvenido Sebelvero answered that he was wounded because he was ganged up by them and immediately after that he died." (p. 28, t.s.n.)

For the purposes of this appeal, the foregoing facts We have gathered from the recorded evidence and which coincide substantially with the findings and basis of the appealed decision are more or less admitted by appellant in the brief of his counsel de oficio to be the more credible version of what happened. Nevertheless, counsel has assigned seven alleged errors of the trial court, although the whole thrust of this appeal revolves around the issue of whether or not with what has been proven, as narrated above, to be the participation of appellant in the phase of the incident that led to the death of Bienvenido, said appellant, Rafael Marco, may be held liable for murder, as found by the court below.

It will be recalled that the whole incident was started by Simeon Marco, the son of Rafael, who approached Constancio and after asking him if he was the one who boxed his (Simeon's) brother the year before, brandished a hunting knife, which caused Constancio to run away. While thus running, he passed by appellant who hit him with a round cane. Such was the first phase of the incident subject of this case. According to the trial court for such act of Rafael, he was guilty of slight physical injuries, since "it is safe to assume that at that moment there was no intent to kill any one."

As to the second phase, according to the evidence, when Simeon was about to pursue Constancio, Vicente grabbed Simeon's hand that was holding the knife. But when Vicente saw that Rafael, who was holding a round cane and a hunting knife, was approaching them, he shouted to Constancio and to his other son Bienvenido who was around to run away, which they did, as he himself released Simeon and ran away. Rafael followed Bienvenido and stabbed him, but the latter parried the blow with his left hand. And as Bienvenido was trying to run farther, unluckily, his feet got entangled with some vines and he fell down. Whereupon, Beltran, who came from nowhere, stabbed him near the anus, followed by Simeon who stabbed him on the left side of the breast.

Upon these facts, the People maintain that appellant is as guilty as Simeon and Beltran of the killing of Bienvenido, the theory being that there was obvious conspiracy among them.

The trouble with the evidence of the prosecution is that it is vague and incomplete. For instance, as to the first phase of the incident, the relative positions and distances from each other of the three protagonists, Simeon, Constancio and Rafael are not revealed. How far Rafael was from Simeon and Constancio when Simeon sort of threatened him with a knife is not clear. Neither is it shown how Rafael happened to be in the path of Constancio when the latter was running away from Simeon, such that Rafael was able to hit him with a cane. In this situation, We do not feel safe in concluding that there was concerted connection between the act of Simeon, on the one hand, and that of Rafael, on the other. Thus, the trial court was correct in acquitting Simeon and holding Rafael guilty only of slight physical injuries instead of frustrated murder as charged.

Likewise, in regard to the second phase of the incident, We are at a loss as to what Bienvenido was actually doing and what participation he had at the early stages of the incident, when Vicente shouted to him to run away.[3] The pertinent portion of testimony of the lone eye-witness, Dominador Carbajosa, is as follows:

"Q Then what happened?

"A Then Vicente Sebolvero held the arm of Simeon Marco and at the same time Vicente Sebolvero shouted to his sons, Constancio and Bienvenido Sebolvero to run away because they were all armed.

Q This Vicente Sebolvero you mentioned, how is he related to Constancio and Bienvenido Sebolvero?

A Vicente Sebolvero is the father.

Q Do you know if Constancio Sebolvero and Bienvenido Sebolvero ran away?

A Yes, they ran away.

Q This Bienvenido Sebolvero, where was he when this incident happened?

A He was only a few meters away.

Q What happened to him?

A He was overtaken by Rafael Marco and he was stabbed by Rafael Marco.

Q Who stabbed him?

A Rafael Marco.

Q Will you tell the Honorable Court what part of the body of Bienvenido Sebolvero did Rafael Marco stab?

A Bienvenido Sebolvero was able to parry the thrust which was directed to his left side and he was not wounded and instead in parrying the thrust he was wounded on the hand.

Q Do you know what kind of weapon did Rafael Marco use in inflicting injuries upon Bienvenido Sebolvero?

A I know.

Q What kind of weapon?

A A Flamingco or hunting knife.

Q Then after Rafael Marco inflicted injuries upon Bienvenido Sebolvero, what happened to Bienvenido Sebolvero?

A While Bienvenido Sebolvero was trying to run away his feet were wrapped by the vine of the cover crop and he fell down and right at that time Dulcisimo Beltran approached him and stabbed Bienvenido Sebolvero near his anus.

"ATTY. ORGANO -

(Addressing the Court)

If Your Honor please, I would like to make it of record that the witness indicated to a portion above his body

which is above the anus.

(To the witness)

Q What was the position of Bienvenido Sebolvero when this Dulcísimo Beltran stabbed him?

A In this manner. (Witness demonstrating with his two hands touching the floor and his both feet in a forward position).

Q Then when Dulcísimo Beltran stabbed him in that position, what happened next?

A While Bienvenido Sebolvero was in that position, he was stabbed by Simeon Marco on the left breast and because he was able to parry the weapon he was wounded on the upper part of his left hand.

Q This Dulcísimo Beltran whom you said stabbed Bienvenido Sebolvero, do you know what was his weapon?

A I know.

Q What was his weapon?

A Bayonet.

Q This Dulcísimo Beltran, according to you, stabbed Bienvenido Sebolvero near the buttock?

ATTY. PIELAGO -

Misleading, Your Honor.

COURT -

This witness testified that this Bienvenido Sebolvero was stabbed near the anus.

(To the witness)

Q This Dulcísimo Beltran whom you said also stabbed Bienvenido (Beltran,) is he here in court?

A Yes, sir.

Q Please point to him?

A That one. (Witness pointing to accused Dulcísimo Beltran).

"Q This Simeon Marco whom you said stabbed Bienvenido Sebolvero on the left breast and hand, is he here in court?

A Yes, sir.

Q Where is he?

A That one. (Witness pointing to accused Simeon Marco).

Q Do you know what kind of weapon did Simeon Marco use in stabbing the left arm of Bienvenido Sebolvero?

A I know.

Q What kind of weapon?

A A bayonet.

(To the direct examiner)

Proceed.

ATTY. ORGANO -

(continuing)

Q Presenting to you this weapon (counsel hands over the same to the witness)

Will you tell the Honorable Court whether this is the very weapon used by Simeon Marco in stabbing Bienvenido Sebolvero?

A It is shorter than this one.

Q Now, during that time that Rafael Marco, Simeon Marco and Dulcisimo Beltran were inflicting injuries on the body of Bienvenido Sebolvero, what did the father of Bienvenido Sebolvero do? Where were they at that time?

A Constancio Sebolvero and the father ran away and they have not seen the incident.

Q Do you remember if the father of Bienvenido Sebolvero ever ran afterwards?

A No, sir.

Q Now, what happened to Bienvenido Sebolvero after Rafael Marco, Dulcisimo Beltran and Simeon Marco stabbed him?

A They ran away and after they ran away, Bienvenido Sebolvero stood up slowly and walked zigzagly towards the store of Pineda and when he arrived in front of the store he fell down to the ground.

(Pp. 23-27, t. s. n.)

The nearest indication of Bienvenido's position vis-a-vis those of the Marcos and Beltran at the moment that Vicente was holding the hand of Simeon appears only in the cross-examination of Garbajosa, when he said that "Bienvenido Sabelvero was nearer to the three accused" than either Vicente or Constancio, which makes the whole matter more confusing.

As matters stand, Our problem is to determine whether or not the act of Rafael in stabbing Bienvenido is a separate one from the stabbing of said deceased by the two other accused who did not appeal, Simeon Marco and Dulcisimo Beltran. To be sure, the acts of each of the three of them followed one after the other in rather fast succession, as if propelled by a common and concerted design, but this circumstance alone does not prove criminal conspiracy. In order that mere simultaneity or near simultaneity of the acts of several accused may justify the conclusion that they had conspired together, the inference must be ineludible.

It would seem that there must have been some bad blood between the Sabelberos and the Marcos but Vicente categorically denied that there was any misunderstanding between them and although Constancio suggested that there was, he was quick in adding that the same had been patched up. This makes commonality of intent on the part of the three accused not necessarily existent.

As already stated, Simeon and Beltran did not appeal from the decision of the trial court which Credited them with the mitigating circumstance of voluntary surrender and imposed on them the penalty of only Ten (10) Years and One (1) Day of prision mayor, as minimum, to Seventeen (17) Years, Four (4) Months and One (1) Day of reclusion temporal as maximum. And indeed there can be no doubt as to the homicidal character of their assault on Bienvenido. In the case of herein appellant, while it is true that he somehow started the aggression by trying to stab Bienvenido, and did cause him injury on the left hand, there is no clear evidence connecting his act with those of Beltran and Simeon. As We have noted earlier, Beltran came out of nowhere and it is not shown that Rafael saw him before the latter stabbed Bienvenido near the anus. On the other hand, the most that We can gather from Carbajosa's testimony is that Simeon was being held by Vicente, when Rafael tried to chase Bienvenido. In any event, if Rafael had any intention to really kill Bienvenido, he did not have to await for Simeon and Beltran to do it. Bienvenido had fallen to the ground, and that was the chance to finish with him. But here is precisely where the prosecution's evidence is incomplete. The distance and relative position of Rafael from where Bienvenido fell are not indicated. What appears instead is that Beltran and Simeon were the ones who stabbed him fatally. What Rafael did or where he was after Bienvenido fell and while Beltran and Simeon were

assaulting has not been shown.

We find the following ratiocination of appellant's counsel de officio to be well taken:

"2. The evidence on record does not show beyond reasonable doubt that appellant acted in conspiracy with the two other accused in the actual killing of the decedent.

"This Honorable Court has established the rule that conspiracy, although implied or indirect, must, nonetheless, be positively and convincingly proved and established (*People vs. Aplegido*, 76 Phil. 571). Only recently, this Honorable Tribunal said, through the pen of Mr. Justice Fred Ruiz Castro, that:

"x x x 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 of criminal law requiring proof beyond reasonable doubt before conviction. x x x" (*People vs. Tividad*, L-21469, June 30, 1967; 20 SCRA 549, 554; italics supplied).

The Court also laid down the following norm in the said case of *People vs. Tividad*:

"x x x It is indubitably clear from the record that the accused did not attack the deceased simultaneously. Even if they did, this would not of itself indicate the existence of a conspiracy among them as simultaneity per se is not a badge of conspiracy, absent the requisite concurrence of wills. It is not sufficient that the attack is joint and simultaneous; it is necessary that the assailants are animated by one and the same purpose (*U.S. vs. Magcomot*, 13 Phil. 386, 389; *People vs. Caballero*, 53 Phil. 584, 595-596). Evidently, in a situation where the assaults were not simultaneous but successive, greater proof is demanded to establish concert of criminal design. The evidence for the prosecution shows that the assaults on the deceased were carried out by the accused successively." (*Id.*, pp. 554-555; italics supplied)

"As happened in the *Tividad* case, the facts established by the evidence here show that appellant did not attack the decedent simultaneously and in concert with the two other accused. From the testimony of Dominador Carbajosa, it will be seen that: (1) It was the appellant who went after the decedent first. And the situation at that moment was this: Simeon Marco was chasing Constancio Sebelbero while appellant, on the other hand, was approaching Vicente Sebelbero. The latter had just shouted to his two sons to run away when the appellant overtook the decedent and stabbed at him. Accused Dulcisimo Beltran, it will be noted, was not yet a participant. (2) After the appellant wounded the decedent on the hand, the latter continued running. There is no evidence however that appellant continued running after him. (3) While running, the decedent tripped and fell down. Accused Dulcisimo Beltran just came from nowhere and stabbed the decedent near the anus. It will be noted that from the time appellant wounded the decedent on the hand up to the time Dulcisimo Beltran stabbed him at the back, an appreciable length of time lapsed. There is no evidence just how far Dulcisimo Beltran was from the decedent when the latter fell. Neither is there evidence that the decedent was running in the direction of Dulcisimo Beltran. The evidence is only that Dulcisimo Beltran came upon the decedent who had fallen to the ground and immediately stabbed him. (4) After Dulcisimo Beltran had stabbed the decedent, Simeon Marco, who earlier had been chasing Constancio Sebelbero, came also and stabbed the decedent. From Dominador Carbajosa's testimony, it appears that there was no appreciable lapse of time between the stabbing by Dulcisimo Beltran and that by Simeon Marco. (5) There is no showing that appellant joined his two other accused during or immediately after their stabbing of the decedent. Carbajosa merely stated that after the stabbing, "they ran away" (Session of Sept. 13, 1965; t. s. n., p. 27).

"From all the foregoing, this Honorable Court will see that the stabbing of the decedent by the three accused (including appellant) was not simultaneous. Rather, it was successive, with appellant inflicting the first blow. And, Dulcisimo Beltran and Simeon Marco were nowhere around yet. It was only after the decedent fell down that the latter two came and successively stabbed him. The manner in which the incident occurred indicates that there was no pre-conceived plan among the three accused to kill the decedent. It strongly suggests, on the other hand, that Dulcisimo Beltran and Simeon Marco participated suddenly, unexpectedly and without any

previous agreement.

"Another interesting point to observe is that there is absolutely no showing that appellant knew of the criminal intentions of Dulcisimo Beltran or Simeon Marco as to the decedent. There is no proof that appellant chased the decedent in the direction of Simeon Marco or Dulcisimo Beltran. It was not even shown that appellant knew that Dulcisimo Beltran was around at the start. As to Simeon Marco, it will be remembered that when appellant started after the decedent, Simeon Marco was running after Constancio Sebelbero. Hence, appellant could not have intentionally chased the decedent in the direction of Simeon Marco. Besides, as previously pointed out already, there is no evidence showing that appellant ran after or chased the decedent at all. Dominador Carbajosa said only that appellant overtook the decedent who was just nearby and then stabbed at him (Session of Sept. 13, 1965; t.s.n., p. 23). Likewise, there is no evidence that after the decedent ran again, the appellant continued going after him.

"Neither is there any showing that after the decedent was able to run away from the appellant with only a slight wound on the hand, the latter shouted to Dulcisimo Beltran or Simeon Marco for assistance. As the facts were related by the star prosecution witness, Dulcisimo Beltran and Simeon Marco just came upon the fallen decedent and stabbed him. There is no showing that Dulcisimo Beltran and Simeon Marco fell upon the decedent in response to shouts or cries from the appellant. Lastly, there is no proof that while Simeon Marco and Dulcisimo Beltran were stabbing the decedent, appellant gave them any inciting or encouraging words, or that he even joined them.

"The point appellant wants to establish with all the foregoing considerations is that the prosecution utterly failed to establish the guilty knowledge and assent of appellant concerning the criminal design of Dulcisimo Beltran and Simeon Marco. And the established rule is that:

xxx xxx xxx

"x x x 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. In other words, the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. It is not enough that there be a relation between the acts done by the principal and those attributed to the person charged as co-principal or accomplice; it is furthermore, necessary that the latter, with knowledge of the former's criminal intent, should cooperate with moral or material aid in the consummation of the crime x x x. " (People vs. Ibañez, 77 Phil. 664, 665-666; italics supplied).

"The trial court, therefore, seriously erred in holding appellant responsible together with Dulcisimo Beltran and Simeon Marco for the death of the decedent on the basis of indirect conspiracy.

"3. Appellant cannot be held liable for the death of decedent under Article 4(1) of the Revised Penal Code.

"Article 4, paragraph 1, of the Revised Penal Code provides that, 'criminal liability shall be incurred by any person committing a felony (delito) although the wrongful act done be different from that which he intended.' Under this provision, one who commits an intentional felony is responsible for all the consequences which may naturally and logically result therefrom, whether foreseen or intended or not. (I Reyes, The Revised Penal Code, 6th ed., p. 62).

"It cannot be denied that the stabbing of the decedent by the appellant which caused a slight wound on the former's hand was intentionally made; hence, a felony. However, the ensuing death of the decedent was not the direct, natural, and logical consequence of the wound inflicted by the appellant. There was an active intervening cause, which was no other than the sudden and unexpected appearance and participation of Simeon Marco and Dulcisimo Beltran. And there is authority that if the consequences produced have resulted from a distinct act or

fact absolutely foreign from the criminal act, the offender is not responsible for such consequence. (People vs. Rellin, 77 Phil. 1038; I Reyes, 75). (Pp. 18-22, Appellant's brief - pp. 53-57, Record.)

All circumstances considered, We are not convinced beyond reasonable doubt that appellant was in any conspiracy with Simeon and Beltran to kill Bienvenido or any of the Sabelberos. In the absence of clear and convincing evidence, We can only speculate as to why appellant did not join his son, Simeon, and Beltran in attacking Bienvenido after he had fallen to the ground. Either the two were too fast for him and were thus able to act ahead of him or that he voluntarily desisted from further pursuing the deceased after hitting him on the left hand. In line with the presumption of innocence which We are constitutionally bound to accord him, We are constrained to hold that he had no homicidal intent. He can be held criminally responsible only for the wound on the back of the left hand of the deceased which is described as a "stab wound, 2-1/2 inches wide at the back of the left hand" by witness Felix S. Toledo, the Sanitary Inspector, who examined the corpse. And there being no evidence as to the period of incapacity or medical attendance consequent of said wound, appellant is guilty only of slight physical injuries. (Aquino, The Revised Penal Code, Vol. II, p. 1258, 1961 ed.)

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby modified, and in its stead, appellant is found guilty only of slight physical injuries and hereby sentenced to suffer the penalty of twenty (20) days of arresto menor, and to pay the costs.

Fernando, (Chairman), Aquino, Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., did not take part.

[1] In the record, the surname is spelled also as Sebelbero and Sobelbero.

[2] Who also did not appeal his conviction by the trial court.

[3] Unless We are to believe the claim of the defense that it was Bienvenido who first tried to stab Simeon, which does not appear to Us to be reliable.

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