

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO SABORNIDO, ACCUSED-APPELLANT.

*G.R. No. 102141. September 18, 1992*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

With the affirmance by the Court of Appeals of the conviction of accused Wilfredo Sabornido as co-principal in the murder of Felipe Daaco and the imposition upon him of the penalty of reclusion perpetua, the decision[1] of the appellate court dated 28 June 1991, together with the records of the case, was elevated to this Court for review pursuant to Sec. 13, Rule 124 of the 1985 Rules on Criminal Procedure. The events, as found by the trial court, that led to the tragic death of the victim are as follows:

Before the commencement of its mining operations in sitio Pamuayan, barangay Port Barton, San Vicente, Palawan, Vulcan Mining Co. held its traditional festivities, known as the "sagda" on 31 October 1984. A public dance was held inside the compound of the company. At around 6:00 o'clock in the evening, the guests started to arrive and they were served with food and drinks. Apart from the officers of the company, about forty (40) to fifty (50) visitors attended the celebration. Among those present were: Felipe Daaco, Alberto Yala, Narding Magbanua, Blario Flores, Marina Valeriano, her daughter Rosalinda Valeriano, Nimfa Camposano, accused Wilfredo Sabornido and Mordido Petero, and several dance girls.

Mordido Petero arrived at the dance hall inside the compound of Vulcan Mining Co. shortly after 6:00 o'clock in the evening. Soon thereafter, accused Wilfredo Sabornido (hereinafter referred to as Sabornido) also arrived at the dance hall carrying a sickle (or scythe), a hook-shaped farm implement used for gathering "tuba" or coconut wine, which was placed inside a scabbard. Sabornido proceeded to the table where the radio phono owned and operated by Marina Valeriano was set up and deposited his sickle on top of said table. Afterwards, he joined Mordido Petero who was seated on a bench on one side of the dance hall and they started to drink liquor.

After the guests had eaten, the dancing commenced at around 8:00 o'clock in the evening. The music was supplied by the radio phono owned and operated by Marina Valeriano and the dance hall was illuminated by an electric light provided by the company.

At about 8:30 o'clock in the evening, Sabornido got his sickle from the table where he had deposited the same beside the radio phono and handed it to his co-accused Petero. Immediately after Petero received the sickle from Sabornido, the former stealthily approached Felipe Daaco from behind. Without any warning, Petero slashed the throat of Felipe Daaco with the sickle while Sabornido who was armed with a knife stood in front of the victim at about two (2) meters away.

After his throat was slashed, Felipe Daaco ran out of the dance hall. He was pursued by Petero and Sabornido. When the victim fell to the ground, Petero and Sabornido, both armed with a sickle and a knife, respectively, stood on the opposite sides of the victim glowering over his fallen body. After they made sure that their victim was already dead, both accused simultaneously left the scene of the crime.

That same night, both accused disappeared from San Vicente, Palawan. A month after the incident, Sabornido returned to Pamuyan, Port Barton, San Vicente, Palawan and he was apprehended by the police authorities, while Petero was nowhere to be found.

On 7 May 1985, an information for murder was filed against Petero and Sabornido before the RTC of Palawan, Branch 52, docketed as Criminal Case No. 5685. The information reads:

"That on or about the 31st day of October, 1984 in the evening at Sitio Pamuyan, Barangay Port Barton, Municipality of San Vicente, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and hack with a bladed weapon, to wit: a scythe, one Felipe Daaco wounding him on vital part of his body and inflicting upon him mortal injury which was the direct and immediate cause of his death immediately thereafter." [2]

When arraigned, Sabornido entered a plea of not guilty while Petero has remained at large. During the trial, Sabornido set up the defense of alibi, alleging that: he was not in the scene of the incident nor in its immediate vicinity when the incident occurred; that from his place of work, he passed by the compound of Vulcan Mining Co. at about 5:30 o'clock in the afternoon where he was invited to partake of the food and drinks, but that he did not stay long for he left at about 6:00 o'clock in the evening; that while he was inside the compound of Vulcan Mining Co., he never met nor saw his co-accused Petero; that he was not engaged in gathering tuba and that he does not own a sickle nor was he the one who handed to Petero the sickle used by Petero to slash Felipe Daaco's throat.

On the other hand, Marina Valeriano, Alberto Yala and Nimfa Camposano testified for the prosecution that they saw Sabornido together with Petero inside the compound of Vulcan Mining Co. at about 8:30 o'clock in the evening of 31 October 1984 during the celebration of the "sagda". Marina Valeriano also testified to the fact that Sabornido was the owner of the sickle and upon his arrival at the dance hall, he deposited the same on top of the table beside the radio phono operated by said witness; that before the incident occurred, Sabornido took the sickle from where he had earlier placed it, and handed said instrument to Petero who, thereafter, stealthily approached the victim from behind and used the sickle in slashing the neck of said victim; that armed with a knife, Sabornido posted himself in front of their victim when Petero slashed the neck of the victim; that both accused pursued said victim when the latter tried to run away after he was injured; and, that Sabornido left the scene of the crime together with his co-accused. [3]

Alberto Yala, likewise, testified to having seen Petero stealthily approaching the victim from behind while Sabornido posted himself in front of their victim holding a knife when Petero slashed the throat of their victim; that both accused pursued their injured victim and together, they left the dance hall after the incident. [4]

In the decision of the trial court dated 9 June 1989, [5] Sabornido was found guilty beyond reasonable doubt as co--principal in the murder of Felipe Daaco in the light of the following combined circumstances -

"(1) Earlier in the evening of the incident the sickle used by Mordido Petero in slashing the throat of the deceased Felipe Daaco was in the possession and control of co-accused Wilfredo Sabornido;

"(2) It was co-accused Wilfredo Sabornido himself who handed the same sickle to Mordido Petero;

"(3) After handing the sickle to Mordido Petero both accused approached Felipe Daaco and the former treacherously slashed the throat of the victim;

"(4) When Mordido Petero slashed the throat of Felipe Daaco, co-accused Wilfredo Sabornido was holding a

knife close in front of the victim;

“(5) When Felipe Daaco ran away after having been slashed by his throat both accused pursued him still holding their respective weapons;

“(6) When Felipe Daaco fell both accused posted themselves on opposite sides of the fallen victim glowering at him, still holding the sickle and the knife earlier referred to; and

“(7) That same evening after the incident both accused disappeared from their respective places of residence and Sabornido returned only after the lapse of more than one month; it can readily be deduced that co-accused Mordido Petero must have acted pursuant to a common design and unity of purpose with co-accused Wilfredo Sabornido. The accused Sabornido could (not) have acted the way he did except and unless he was actuated by a common design with co-accused Mordido Petero.[6]

The dispositive portion of the trial court's decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding co-accused Wilfredo Sabornido guilty beyond reasonable doubt as co--principal of the crime of murder and there being no mitigating circumstances appreciated and not being entitled to the benefits of the Indeterminate Sentence Law, he is hereby sentenced to Eighteen (18) Years, Eight (8) Months and One (1) day to Twenty (20) Years of reclusion temporal in its maximum period; to pay the heirs of the deceased Felipe Daaco, by way of civil indemnity, the sum of P30,000.00, Philippine Currency and to pay the costs.

SO ORDERED.”[7]

Not satisfied with the decision of the trial court, Sabornido filed an appeal[8] with the Court of Appeals. In a decision dated 28 June 1991, the appellate court affirmed with modification the conviction of Sabornido as co-principal in the crime of murder, imposing the penalty of reclusion perpetua and increasing the civil indemnity to be paid by the accused to P50,000.00. The dispositive part of the appellate court's decision reads:

“WHEREFORE, the judgment of conviction is AFFIRMED with the modification that he is hereby sentenced to reclusion perpetua. Further, in accordance with the ruling in the case of *People v. Sison*, the civil indemnity to be paid by the accused to the heirs of the victim is hereby increased to P50,000.00 Philippine Currency. (189 SCRA 643 [1990]).

Pursuant to Section 13, Rule 124 of the 1985 Rules on Criminal Procedure, let the entire records of these proceedings be elevated to the Supreme Court, to which We certify the case for review.”

After a review of the decision of the Court of Appeals and the entire records of the case, we find no ground or reason to disturb the decision of the appellate court. From the evidence presented before the trial court, there is no doubt in our mind that there was conspiracy between Sabornido and his co-accused Petero in the killing of Felipe Daaco.

To establish conspiracy, it is not essential that all the accused commit together each and every act constitutive of the offense.[9] One is considered a party to a conspiracy when he intentionally participates in an act or deed with a view to the furtherance of a common design and purpose. There must be unity of purpose and unity in the execution of the unlawful objective. Conspiracy implies concert of design but not necessarily participation in every detail of execution. The concert of action at the moment of consummating the crime and the form and manner in which assistance was rendered to the person inflicting the fatal wound established their common criminal design.[10]

Sabornido's act of providing his co-accused with the murder weapon, posting himself while armed with a knife in front of the victim when Petero slashed the throat of the former, to ensure that their common victim would not be

able to escape, and then pursuing the victim when the latter tried to run after he was injured, can not be viewed as a minor participation in the crime committed. In fact, the assistance and moral support which Sabornido extended to his co-accused Petero were material and indispensable; they emboldened the latter to pursue and execute their plan.

The series of acts performed by Sabornido and his co-accused Petero showed a concerted effort to accomplish their intent to kill the victim. Although it was Petero alone who inflicted the fatal wound which caused the death of the victim and Sabornido did not cause any actual physical injury upon the person of the deceased, yet, his acts before, during and after the incident showed his own single-mindedness and unwavering intent to achieve a premeditated goal of killing the victim.

Moreover, the fact that Sabornido left the scene of the crime after the incident together with his co-accused Petero and that they both disappeared from San Vicente, Palawan on that same night only adds to the already overwhelming evidence of his being a co-conspirator of Petero.

Direct proof is not essential to prove conspiracy, as it may be inferred from the acts of the accused. It is enough that at the time the offense was committed, the accused had the same purpose and were united in its execution.<sup>[11]</sup> It may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of the common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, then conspiracy has been established. If such be the case, then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others.<sup>[12]</sup>

Sabornido's defense of alibi cannot prevail over his positive identification made by no less than three (3) prosecution witnesses.<sup>[13]</sup> It has been said many times that alibi is one of the weakest defenses an accused can invoke. Easily lending itself to concoction and fabrication, it must be invariably viewed with suspicion and may be considered only when established by positive, clear and satisfactory evidence. To be given credence, it must not only appear that the accused interposing the same was at some other place, but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.<sup>[14]</sup> The house of Sabornido was only about three hundred (300) meters away from the scene of the crime. Assuming then that he had already left the dance hall at about 6:00 o'clock in the evening as he claimed, nonetheless, it was not physically impossible for him to have been back at the compound of Vulcan Mining Co. when the incident occurred.

The Court of Appeals was correct in modifying the penalty imposed upon Sabornido from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal in its maximum period to reclusion perpetua, there being no aggravating nor mitigating circumstances that attended the commission of the offense. Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion temporal maximum to death, although where death appears to be the proper penalty, the court shall not impose it, but shall sentence the accused to reclusion perpetua.<sup>[15]</sup>

WHEREFORE, the decision of the Court of Appeals dated 28 June 1991 is hereby AFFIRMED. Costs against the accused-appellant.

### **SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

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[1] CA-G.R. No. 07766, penned by Justice Consuelo Ynares Santiago, with the concurrence of Justices Ricardo L.

Pronove, Jr. and Nicolas P. Lapena.

[2] CA-G.R. No. 07766, Rollo, p. 9

[3] TSN, Testimony of Marina Valeriano taken on 17 March 1986.

[4] TSN, Testimony of Alberto Yala, taken on 19 March 1987.

[5] CA-G.R. 07766, Rollo, pp. 10 to 10-9

[6] Ibid, pp. 10-7 to 10-8

[7] Ibid, pp. 10-9

[8] CA-G.R. No. 07766

[9] Antonio vs. Sandiganbayan, G.R. No. 57937, 21 October 1988, 166 SCRA 595

[10] People vs. Salvador, G.R. No. 77964, 26 July 1988, 163 SCRA 574

[11] People vs. Montealegre, G.R. No. 67948, 31 May 1988, 161 SCRA 700

[12] People vs. Taaca, G.R. No. L-35652, 29 September 1989, 178 SCRA 56

[13] People v. Plaza, G.R. No. 69511, 22 November 1985, 140 SCRA 277

[14] People v. Pasco, G.R. No. 68520, 22 January 1990, 181 SCRA 233

[15] People vs. Deslate, G.R. No. 87807, 21 December 1990, 192 SCRA 644

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