

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRENEO SILVESTRE AND ROLANDO SILVESTRE, ACCUSED-APPELLANTS.

G.R. No. 109142. May 29, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an Information dated 22 August 1989[1] and filed with the Regional Trial Court (RTC) of Quezon, the accused, Ireneo Silvestre[2] and his son Rolando, were charged with the crime of murder allegedly committed, as follows:

That on or about the 20th day of June 1989, at Barangay Gumubat, Municipality of Quezon, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Rolando Silvestre alias Lando, armed with a small bolo (itak-itakan), conspiring and confederating together with Ernesto Silvestre alias Erning and mutually helping each other, with intent to kill, with treachery and evident premeditation and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with said weapon one Dario Cantillana, thereby inflicting upon the latter a stab wound on vital part of his body which directly cause[ed] his death.

The case, docketed as Criminal Case No. 89-1596, was assigned to Branch 63 of the said court.

Upon their arraignment on 5 December 1989, each of the accused entered a plea of not guilty. Trial thereafter ensued over the course of more than two years, with the accused presenting their evidence only after their demurrer to evidence[3] was denied by the trial court on 6 February 1992.[4]

In its decision dated 22 December 1992[5] but promulgated on 25 January 1993, the trial court found the accused guilty beyond reasonable doubt of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code and sentenced each of them

to suffer the penalty of RECLUSION PERPETUA and to jointly and severally indemnify the heirs of the deceased DARIO CANTILLANA in the amount of FIFTY THOUSAND PESOS (P50,000.00) plus the costs of the suit.

The version of the prosecution as established through the testimonies of Simon Cantillana, Alberto Limbo, Sr., Cpl. Eladio Matriano, Dr. Amador Nanola, and Marcela Cantillana is as follows:

At about 3:45 p.m. of 20 June 1989, Dario Cantillana and his brother Simon were in the coconut land of a certain Tañada in barangay Gumubat, Quezon, Quezon, and were walking toward home. They saw the accused Rolando Silvestre, who was with his father, Ireneo Silvestre, and talked to him and he said: "Hoy, ikaw pala!" Suddenly, Ireneo held Dario's left arm, and when Dario turned his back, Rolando stabbed Dario at his back with an "itak--itakan" measuring about "one and one-half palm stretches." Dario fell to the ground. Simon wanted to help Dario but he was blocked by Ireneo who had a long bolo. Almost simultaneously, Rolando said to Simon, "Isa ka pa." The latter just retreated from them, and when he was retreating, Rolando and Ireneo left toward the town. Simon ran towards the nearest house, which was that of Cpl. Eladio Matriano of the Philippine Army, to ask for

help.[6] Eladio and his brother Alex responded to the plea and proceeded to the place indicated by Simon as the spot where Dario was stabbed.[7] Simon proceeded to the house of barangay captain Alberto Limbo, Sr., to report the stabbing incident.[8]

Upon reaching the spot, Eladio saw a bloodied Dario lying down and he asked Dario what happened to him. Dario answered that he was stabbed by Rolando Silvestre while Ireneo Silvestre held his right arm. Eladio then ordered his brother Alex to carry Dario so that he could be brought to the poblacion for treatment. On their way, they met barangay captain Alberto Limbo, Sr. and Simon. Alberto asked Dario who stabbed him, but the latter could not answer anymore; he was moaning. They then rode a banca and brought him to the police station at the poblacion. Dario was already dead when Dr. Amador Nanola, the Municipal Health Officer of Quezon, Quezon, arrived to attend to him.[9]

Dr. Nanola conducted a post-mortem examination of Dario's body. He found a stab wound, 3½ inches x 1 cm. located at the lower back of the chest, and an incised wound 2 x 1½ cm., which could have been caused by a sharp pointed weapon like a knife. He concluded that the cause of Dario's death was internal and external hemorrhage due to the stab wounds, and he recorded this in the death certificate (Exhibit "C" which was originally marked as Exhibit "A"). He made no post-mortem report but wrote his findings in his record book and copied the said entries therein for purposes of the trial in a document marked as Exhibit "B." [10]

Dario was only 28 years old when he died. He was a fisherman by occupation and earned an average of P300.00 a day. His wife, Marcela, and four children aged 10, 8, 6, and 4, survived him. Marcela spent P10,000.00 for the coffin and the expenses during the wake and contracted the services of her counsel who assisted her in the prosecution of this case for P15,000.00. She said that she was sad because her children kept on asking for the whereabouts of their father.[11]

The prosecution further established that prior to the incident in question, accused Rolando Silvestre had also stabbed Dario Cantillana for which an information for frustrated homicide was filed with the trial court against him. The case was docketed as Criminal Case No. 1530-C.[12]

On the other hand, the accused had another story to tell. Rolando Silvestre interposed self-defense. He testified that on 24 October 1989, he and his father, Ireneo, went to barangay Gumubat, Quezon, Quezon. At about 4:00 p.m., while he was on his way to the poblacion to hire a coconut picker, he met Dario and Simon Cantillana. Dario immediately drew out his bolo and started stabbing him. He held Dario's arm and the two of them rolled on the ground. When he got up, Simon unsheathed his bolo and hacked him (Rolando). Fortunately, he was not hit. Upon seeing that Dario was getting up with his back toward him, he hacked Dario with the latter's bolo. He did so because he found himself in a "gipit na kalagayan" and could not do anything else. After he had stabbed Dario, Rolando proceeded to the poblacion of Quezon, Quezon. When he arrived at their house, policemen were already waiting for him. He asked them why they came, and they requested him to go with them to the municipal building. Upon arrival at the municipal building, he was placed inside the jail.[13]

Ireneo Silvestre declared that in the morning of 20 June 1989, he and his son Rolando left their house at the poblacion of the municipality of Quezon, Quezon, for their other house in barangay Gumubat of the said municipality "to make copras." At 4:00 p.m. of that day, he sent Rolando back to the poblacion to fetch a "coconut picker" while he stayed behind to tend to the carabao. At 4:30 p.m., he left for the poblacion, and upon arrival at his house he saw policemen who told him that his son, Rolando, was involved in an incident. They brought Rolando to the municipal building and he also went with them. Rolando was locked up in jail, and a month later he was also detained in jail. He ended his testimony with a claim that he was not present when Dario was hacked.[14]

The trial court gave full faith and credit to the version of the prosecution. It disregarded Rolando's claim of self-defense and Ireneo's defense of alibi and ratiocinated as follows:

This Court deemed it proper to accord much weight to the testimony of Simon Cantillana, the prosecution's eyewitness to the fatal killing of Dario Cantillana by the two accused Rolando and Ernesto (Ireneo) Silvestre. Simon Cantillana's testimony was clear, positive, explicit and rings truth throughout. Rolando Silvestre failed to prove by clear and convincing evidence the main ingredient of his defense of self defense. Even granting without admitting that Rolando Silvestre's version of the incident was true, his allegation that he merely defended himself cannot still be countenanced by this Court. Rolando Silvestre testified that when Dario Cantillana hacked him, he grappled for the bolo and the two of them rolled on the ground. He further added that he was able to wrestle away the bolo of Dario Cantillana and he used it in stabbing the victim. (see TSN, p. 10, Aug. 4, 1992) From that testimony of Rolando Silvestre it is clear that there was no more unlawful aggression on the part of Dario Cantillana when he was stabbed by Rolando Silvestre. Verily, the defense cannot claim that Rolando Silvestre was merely defending himself from Dario Cantillana when he stabbed the victim. Moreover, this Court reiterates that Rolando Silvestre's version of the incident is too good to be true. (see TSN, p. 10, Aug. 4, 1992). As to the other accused Ernesto (Ireneo) Silvestre, he also failed to strengthen his defense of alibi. He was not able to show the physical impossibility of his presence at the site of the crime at the time of its commission. He alleged that during the incident he was at their house at Barangay Gumubat, Quezon, Quezon, but he also declared that the said house was only one (1) kilometer away from the site of the crime and that it will only take him about ten (10) minutes by walking for him to reach the place of incident. (TSN, pp. 17-18, Aug. 4, 1992).[15]

In holding them guilty of murder, the trial court considered the qualifying circumstance of treachery. It held:

This Court is also convinced that the attack on Dario Cantillana by the two accused was attended with treachery. The attack was made suddenly while one of the accused Ernesto (Ireneo) Silvestre was holding the left hand of Dario Cantillana and the other accused Rolando Silvestre delivered the fatal blows upon the victim. Because of the mode of the concerted attack perpetuated by the two accused, the offended party, Dario Cantillana was not able to properly defend himself. The two accused are father and son who acted in conspiracy and in concerted efforts in the killing of Dario Cantillana.[16]

The accused immediately appealed to us their conviction.[17] Because of miscommunication between their counsel and their relatives who were in contact with the former, the Brief for the Appellants was filed only on 15 June 1994.[18] Therein they pray for their acquittal because the trial court:

- ... GRAVELY ERRED IN DENYING THE DEMURRER TO EVIDENCE FILED BY THE ACCUSED.
- ... ACT[ED] WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT TOTALLY DISREGARDED THE TESTIMONIES OF THE DEFENSE WITNESSES AND IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION.
- ... GRAVELY ERRED IN CONVICTING THE ACCUSED AND IN NOT APPRECIATING ACCUSED ROLANDO'S DEFENSE OF SELF-DEFENSE and BY DISREGARDING THE TESTIMONIES OF DEFENSE WITNESSES THAT IRENEO WAS NOT PRESENT AT THE TIME OF THE INCIDENT.[19]

In its Brief for the Appellee, the Office of the Solicitor General submits that no error was committed by the trial court and prays for the affirmance of the challenged decision.

The first assigned error calls for a review of the denial by the trial court of the demurrer to evidence.[20] The ground involved therein is the insufficiency of the evidence for the prosecution. In effect, they claimed that Simon Cantillana "was not telling the truth" and that the only conclusion that could be reached is that he "was not present

during the alleged incident." They also alleged that the death of Dario was not sufficiently established because the death certificate (Exhibit "A") was not properly identified and the post-mortem report is unsigned and undated.

The trial court committed no error in denying the demurrer to evidence. It was not persuaded by the claim of the accused that Simon Cantillana lied. This perception of the trial court was confirmed when in its challenged decision it believed Simon's testimony.

With respect to the death certificate, it was properly identified by Dr. Nanola. When asked whose signature is that appears above the typewritten name "Amador Nanola, MD," he answered, "Mine, sir." [21] Besides, the death certificate is a public document. Proof of its authenticity and due execution is not required. Death certificates and notes by a municipal health officer in the regular performance of his duty are prima facie evidence of facts therein stated. [22]

The post-mortem report, although unsigned and undated, was established to have been copied from Dr. Nanola's record book. He extensively testified thereon without any objection from the defense. [23] Moreover, since accused Rolando Silvestre admitted having killed Dario allegedly in self-defense, the fact of the death of the latter is no longer open to dispute.

The second assigned error is focused on the alleged inconsistencies with one another of the testimonies of Simon Cantillana, Alberto Limbo, Sr., and Eladio Matriano, and on the bias of Simon due to his relationship to the victim who is his brother.

The accused contend that while Simon testified that when he and his brother Dario were waylaid by the accused, they were on their way to Barangay Gumubat from the house of Alberta Limbo, Sr. where they discussed making copra with the latter, [24] Alberto Limbo, Sr. testified that he saw Simon on that day only when the latter reported the stabbing of Dario Cantillana. [25] They also point to Simon's testimony that Ireneo was holding the left arm of Dario when Rolando hacked the latter, [26] but Eladio Matriano testified that Dario told him that Rolando Silvestre stabbed him while Ernesto Silvestre held his right arm. [27] We find these inconsistencies to be on minor or trivial points which do not impair the essential integrity of the evidence for the prosecution as a whole or reflect on the witnesses' honesty. [28]

As to Simon's relationship to the victim, it does not per se establish bias and cannot be a valid basis to discredit his testimony. We have repeatedly held that the relation of the witness to the victim does not in itself disqualify him on grounds of bias and undue interest. [29] On the contrary, a witness's relationship to the victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit. [30] Other than relationship, no improper motive has been convincingly ascribed to Simon as would render his testimony unworthy of credence.

On the third assigned error, the accused wants this Court to appreciate favorably their defense. Rolando insists that he stabbed and killed Dario in self-defense and, therefore, he incurred no criminal liability. Ireneo claims that he was somewhere else at the time Dario was stabbed.

It is hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was justified and that he incurred no criminal liability therefor. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. [31] He must present proof of the existence of the three requisites of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. [32] Of these three requisites, unlawful aggression is the most essential for,

in its absence, self-defense cannot exist.[33]

Rolando's testimony miserably failed to prove the existence of these requisites of self-defense. How he was able to obtain possession of the bolo from Dario as he claims has not been convincingly explained in the records. Furthermore, there is evidence that Dario was unarmed. In the cross-examination of Simon by counsel for the accused, the former categorically declared that Dario had no bolo, thus:

Q And your brother had also with him a bolo?

A None, sir.[34]

That Dario had, indeed, no bolo with him is further borne out by the lack of evidence to show that the bolo claimed by Rolando to be owned by Dario was turned over to the police. Its whereabouts had not been disclosed. The witnesses who went to the scene of the crime immediately after it occurred did not say anything about finding a bolo there. And if Rolando kept the bolo after the stabbing incident and if it were true that the bolo he used against Dario belonged to the latter, then he should have surrendered it to the police. Rolando did not even offer the bolo in evidence.

Then, too, assuming that Dario had been the aggressor and was armed with a bolo, Rolando failed to offer satisfactory evidence to explain why he did not sustain any injury while, on the other hand, Dario suffered a fatal stab wound. Based on the foregoing, we are thus convinced beyond doubt that Rolando used his own bolo and that Dario was unarmed.

Finally, Rolando's subsequent conduct is inconsistent with his claim of legitimate self-defense. There is no evidence to prove that he reported to the policemen who were already waiting for him at his house in the poblacion that he was attacked by Dario and that he stabbed him with his (Dario's) own bolo in self-defense. He had the same opportunity to do so on the way to or at the municipal building. Yet, it did not occur to him to reveal such an important fact. He never said that when he was locked up in jail for the commission of the crime, he protested his incarceration.

And now on the alibi of accused Ireneo Silvestre.

Alibi is one of the weakest defense that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because it is easy to fabricate. For the said defense to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but that he must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[35] It cannot prevail over the positive identification of the accused.[36]

The presence of Ireneo at the scene of the crime was duly established not only by the testimony of Simon Cantillana, but also by that of Eladio Matriano who told the court that when he asked Dario what happened to him, Dario answered, "Ako po ay sinaksak ni Rolando Silvestre na ang kanang kamay ko ay hawak ni Ernesto Silvestre." [37] While the statement of Dario may not qualify as a dying declaration for failure of the prosecution to prove its requisites,[38] it can still be admitted as part of the *res gestae* under Section 42, Rule 130 of the Rules of Court because it was made immediately subsequent to a startling occurrence — the stabbing of Dario — and before Dario, the declarant, had time to contrive or to devise.[39]

But would Ireneo's presence equally make him guilty as Rolando? The answer would clearly depend on a finding of conspiracy. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[40] Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence; it exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Direct proof of previous agreement to commit a crime is not necessary.

It may be deduced from the mode and the manner in which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[41] In the instant case, the only participation of Ireneo was in holding the arm of Dario -- the left according to Simon, the right according to Eladio Matriano. If Ireneo had the intention to kill Dario, then he could have simply used his long bolo which, Simon said, he was armed with. There is also not enough evidence to show that Ireneo knew of the plan of Rolando to stab Dario since Rolando did it when Dario turned his back. The absence of evidence that Rolando and Ireneo had been waiting to ambush Dario and Simon and the fact that Simon did not actually disclose to Eladio Matriano and the policemen that Ireneo had something to do with the death of Dario creates reasonable doubt on the participation of Ireneo. It must be recalled that the policemen who were waiting at the Silvestre residence invited to the municipal building and incarcerated only accused Rolando. Ireneo, who accompanied Rolando to the municipal building, was not investigated nor detained. He was arrested only a month later. This simply means that when Simon and Alberto Limbo, Sr. reported the incident, nothing was mentioned of the participation of Ireneo. Our minds then cannot rest easy on the moral certainty of the guilt of Ireneo.

The next issue to be resolved is the extent of the criminal liability of Rolando Silvestre. Is he guilty of murder as charged and as found by the trial court, or is he liable for the crime of homicide only under Article 249 of the Revised Penal Code?

The Information alleges the qualifying circumstances of treachery, evident premeditation, and abuse of superior strength. The trial court found that treachery attended the commission of the crime because "[t]he attack was made suddenly while one of the accused Ernesto (Ireneo) Silvestre was holding the left hand of Dario Cantillana and the other accused Rolando Silvestre delivered the fatal blows upon the victim," as a consequence of which "Dario Cantillana was not able to properly defend himself." [42] Treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing itself.[43] The prosecution failed to do so in this case. The attack on Dario by Rolando cannot be characterized as sudden. Simon Cantillana testified that Rolando and Dario even talked to each other before the stabbing took place.[44] Given the existence of animosity between the two brought about by the pending case of frustrated homicide against Rolando that was initiated by Dario, the victim in that case,[45] each was put on guard. As for having stabbed Dario at the back while Ireneo was holding the deceased's arm, the prosecution failed to show that the said method was deliberately adopted by the accused. For treachery to be present, two conditions must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) that the said means of execution was deliberately or consciously adopted.[46] The attack by the accused, not being sudden or deliberate, was not "risk-free" as what treachery would ensure if it was present.

Evident premeditation does not also exist in this case. Three requisites must be duly proved before evident premeditation may be appreciated as a qualifying circumstance, namely: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused has clung to his determination, and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act. The mere lapse of time is not enough, i.e., premeditation is not presumed from the mere lapse of time.[47] The prosecution did not adduce any evidence to prove these requisites. That the deceased had earlier filed a case for frustrated homicide against the accused Rolando is not enough to prove premeditation.

Nor was there evidence of abuse of superior strength. Mere numerical superiority does not always mean abuse of superiority to qualify the killing to murder.[48] It means to use purposely excessive force out of proportion to the means of defense available to the person attacked.[49]

In the absence of any qualifying circumstance, the accused Rolando Silvestre should be held liable only for the

lesser crime of homicide as defined in Article 249 of the Revised Penal Code. The penalty therefor is reclusion temporal. Since no modifying circumstance exists, the penalty imposable would then be the medium period of reclusion temporal. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed would be within the range of the penalty next lower in degree, i.e., prision mayor and the maximum penalty would be within the medium period of reclusion temporal.

WHEREFORE, judgment is hereby rendered MODIFYING the appealed decision of Branch 63 of the Regional Trial Court of Quezon in Criminal Case No. 89-1596. As modified, accused IRENEO SILVESTRE is ACQUITTED on ground of reasonable doubt and ordered immediately released from detention unless further confinement is warranted for any other lawful cause, while accused ROLANDO SILVESTRE is hereby found GUILTY beyond reasonable doubt as principal of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code and, applying the Indeterminate Sentence Law, is hereby sentenced to suffer imprisonment of Ten (10) years of prision mayor, as minimum, to Seventeen (17) years and Four (4) months of reclusion temporal as maximum. In all other respects, the appealed judgment shall stand.

No pronouncements as to costs.

SO ORDERED.

Bellosillo and Kapunan, JJ., concur.

Padilla, J., (Chairman), see concurring and dissenting opinion.

Quiason, J., on official leave.

[1] Original Records (OR), 6; Rollo, 13.

[2] He was originally designated in the Information as ERNESTO Silvestre; however, when identified by witness Simon Cantillana during the trial and while he was under direct examination, Ernesto Silvestre gave his name as IRENEO (TSN, 2 October 1991, 4; 4 August 1992, 14). Accordingly, the prosecution was authorized by the trial court to amend the caption of the information by changing Ernesto to Ireneo.

[3] Annex "A" of Brief for Accused-Appellants; OR, 120-126.

[4] Id., 137.

[5] Id., 155-170; Rollo, 20-35. Per Judge Rodolfo V. Garduque.

[6] TSN, 2 October 1991, 5-10.

[7] TSN, 16 October 1991, 5-6.

[8] TSN, 2 October 1991, 11.

[9] TSN, 16 October 1991, 5-9; TSN, 2 October 1991, 24-26.

[10] TSN, 24 October 1991, 3-11.

[11] Id., 17-20.

[12] TSN, 2 October 1991, 12-13.

[13] TSN, 4 August 1992, 3-7.

[14] TSN, 4 August 1992, 14-16.

[15] OR, 167-168; Rollo, 32-33.

[16] OR, 168-169; Rollo, 33-34.

[17] OR, 172.

[18] Id., 67-82.

[19] Id., 73.

[20] Annex "A" of Brief for Appellants; OR, 120-127; Rollo, 83-90.

[21] TSN, 24 October 1991, 11.

[22] People vs. Crisostomo, 160 SCRA 47 [1988]; Section 44, Rule 130, Rules of Court.

[23] TSN, 24 October 1991, 8-11.

[24] TSN, 2 October 1991, 14-15.

[25] Id., 27-30.

[26] Id., 8.

[27] TSN, 16 October 1991, 11.

[28] See People vs. Fernandez, 209 SCRA 1 [1992]; People vs. Madriaga, 211 SCRA 698 [1992].

[29] People vs. Dela Cruz, 207 SCRA 632 [1992].

[30] People vs. Viente, 225 SCRA 361 [1993].

[31] People vs. Gomez, 235 SCRA 444 [1994].

[32] People vs. Boniao, 217 SCRA 653 [1993]. See Article 11(1), Revised Penal Code.

[33] See People vs. Curaraton, 224 SCRA 372 [1993].

[34] TSN, 2 October 1991, 16.

[35] People vs. Penillos, 205 SCRA 546 [1992]; People vs. Martinado, 214 SCRA 712 [1992]. See People vs. Buka, 205 SCRA 567 [1992]; People vs. Devaras, 205 SCRA 676 [1992]; People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Florida, 214 SCRA 227 [1992].

[36] See People vs. Lee, 204 SCRA 900 [1991]; People vs. Taneo, 218 SCRA 494 [1993]; People vs. Kempis, 221 SCRA 628 [1993]; People vs. Kyamko, 222 SCRA 183 [1993]; People vs. Dural, 223 SCRA 201 [1993]; People vs. Enciso, 223 SCRA 675 [1993].

[37] TSN, 16 October 1991, 11.

[38] See Section 37, Rule 130, Rules of Court.

[39] See People vs. Sanchez, 213 SCRA 70 [1992]. See also People vs. Villagrancia, 221 SCRA 136 [1993]; People vs. Israel, 231 SCRA 155 [1994].

[40] Article 8, Revised Penal Code.

[41] People vs. Martinado, supra note 35. See People vs. de La Cruz, 207 SCRA 632 [1992].

[42] OR, 169; Rollo, 34.

[43] *People vs. Narit*, 197 SCRA 334 [1991]; *People vs. Lubreo*, 200 SCRA 11 [1991]; *People vs. Simon* 209 SCRA 148 [1992].

[44] TSN, 2 October 1991, 5.

[45] *Id.*, 12-13; TSN, 24 October 1991, 22.

[46] *People vs. Ybeas*, 213 SCRA 793 [1992].

[47] *People vs. Narit*, *supra* note 43; *People vs. Barba*, 203 SCRA 436 [1991].

[48] *People vs. Salvador*, 224 SCRA 819 [1993].

[49] *People vs. Canciller*, 206 SCRA 827 [1992]. See *People vs. Empacis*, 222 SCRA 59 [1993].

CONCURRING AND DISSENTING OPINION

PADILLA, J.:

I agree with the ponencia of my distinguished colleague, Mr. Justice Hilario G. Davide, Jr., insofar as it finds accused-appellant Rolando Silvestre guilty beyond reasonable doubt of the crime of homicide. However, after pondering on certain facts established in the trial court, I believe Ireneo Silvestre's guilt as an accomplice has likewise been established with the moral certainty required for conviction.

The presence of Ireneo Silvestre at the scene of the crime at the time it was committed was established by no less than two (2) witnesses: eyewitness Simon Cantillana and Eladio Matriano. The latter's testimony to the effect that the victim Dario Cantillana, just before dying, stated to him, "Ako po ay sinaksak ni Rolando Silvestre na ang kanang kamay ko ay hawak ni Ernesto (Ireneo) Silvestre.", is admissible as part of the *res gestae*.

While it may be true that the absence of strong and convincing proof of conspiracy will not make Ireneo Silvestre guilty as a co-principal in the killing of the victim, I believe that the evidence established is adequate to hold him guilty as an accomplice to the homicide, since the fact that he held the victim's arm while Rolando Silvestre hacked the former to death has been convincingly shown and has not been rebutted by evidence to the contrary.

Article 18 of the Revised Penal Code defines an accomplice as a person, who not being included as a principal under Article 17, cooperates in the execution of the offense by previous or simultaneous acts.

In a case with similar facts,[1] this Court held that a person, who holds the victim in a way that his act becomes a contributing factor to the killing, is an accomplice to the crime. And as in that case, accused Ireneo Silvestre did not show that he tried to prevent the attack on the victim.

In view of the foregoing, while accused-appellant Rolando Silvestre is correctly held LIABLE for homicide, Ireneo Silvestre should be held GUILTY beyond reasonable doubt as an accomplice thereto and punished accordingly.

[1] *People v. Manansala, Jr.*, 31 SCRA 401.

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