

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SILVESTRE MIRANDAY AND CRESENCIO MIRANDAY,
DEFENDANTS-APPELLANTS.**

G.R. No. 111581. March 23, 1995

Ponente: FRANCISCO, R., J.

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FRANCISCO, R., J.:

This is an appeal from the decision dated May 27, 1993 of the Regional Trial Court of Dapa, Surigao del Norte finding accused Emilio, Silvestre and Cresencio, all surnamed Miranday, guilty of the murder of Barangay Captain Anastacio Convicto, and who were sentenced in this wise:

"x x x. Without any modifying circum-stances for consideration, all of them are sentenced to suffer an indivisible penalty of RECLUSION PERPETUA. Likewise, they are soli-darily liable to pay the heirs of victim through Mrs. Adela Añasco Vda. de Convicto the following: (1) Fifty Thousand (P50,000.00) Pesos as indemnification; (2) Forty-four Thousand One Hundred Fifty (P44,150.00) Pesos as reimbursement for actual expenses incurred for burial, etc. and (3) Ten Thousand (P10,000.00) Pesos for moral and exemplary damages, but without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties imposed by law and to pay the cost.

For Emilio Miranday, his total detention from October 25, 1990 up to today, May 27, 1993 which is computed to be two (2) years, seven (7) months and four (4) days is deductible in full from the penalty imposed herein.

For Silvestre and Cresencio Miranday, they were detained last October 25, 1990 but released on October 31, 1990 or a detention of only six (6) days each and deductible also from their penalties." (Records, pp. 109, 110, dispositive portion, RTC Decision dated (May 2, 1993)

As culled from the collective testimonies of prosecution witnesses Esperanza Rocacolba, Russel Elimanco and the victim's wife Adela Convicto, this was how Barangay Captain Convicto met his bloody fate. While Convicto and Silvestre Miranday were engaged in a somewhat cordial conversation at around 7:30 in the morning of July 16, 1990 on the street fronting Convicto's house, Emilio Miranday who was carrying two (2) paddles on his left shoulder and holding a bolo in his right hand arrived and suddenly hacked Convicto on the back portion of his right shoulder. Convicto was able to run towards the yard of a neighbor's house where he stumbled, but pursued by Emilio. Convicto struggled for possession of the bolo being held by Emilio in the presence of an unarmed Silvestre and Cresencio who was all the time holding the handle of his bolo tucked in his waist. During the struggle, Silvestre pushed Con-victo away and ordered Emilio to "finish him". The victim's wife Adela Convicto picked up a piece of wood to throw at Emilio but was prevented by Silvestre. Convicto thereafter ran towards his house, only to be overtaken by Emilio who pulled him towards the street and hacked him in the head. Despite the hack wounds, Convicto gallantly ran towards another neighbor's gate with Cresencio, this time, ordering Emilio to "finish him". Emilio again caught up with Convicto and hacked him several times, sealing Convicto's death. Emilio left, only to return with two (2) bottles of wine. And for some disgusting reason known only to him,

Emilio hacked open the epigastric region of Convicto's already lifeless body, dipped his hand therein, and licked his bloodied hand before proceeding to the wharf where he drank his wine.

On the other hand, the defense sought to establish alibi but only with respect to Silvestre and Cresencio, as defense witnesses testified that it was Emilio alone who perpetrated the crime. Thus, defense witness Serlia Sapuras testified that Cresencio was at his farm in the island of Talisay which is just across the poblacion of Pilar at the time of the incident. (TSN, pp. 5-7, March 10, 1992). Defense witness Carmelita Blase testified that it was Emilio alone whom he saw at the crime scene, and that she was at the same time conversing with Silvestre at the waiting shed situated at the quay of Barangay Salvacion (TSN, pp. 6-8, March 10, 1992). Defense witness Bibiano Anasco testified that he saw the fight between Emilio and Convicto, but that Silvestre and Cresencio were not present at the scene (TSN, pp. 7-8, October 7, 1992). Defense witness Rita Antolin initially testified seeing Emilio hacking Convicto, adding that Silvestre and Cresencio were not present thereat (TSN, pp. 2-4, October 8, 1992). But after her cross-examination, she admitted not having seen the actual hacking (TSN, p. 11, October 8, 1992). The last defense witness, Aurora Fermilan, likewise testified that it was Emilio alone who hacked Convicto and belied the presence of Silvestre and Cresencio at the crime scene (TSN, pp. 6 and 11, March 18, 1993).

Rebuttal witness Bartolome Literato testified as having seen Convicto and Silvestre conversing near Convicto's fence before Convicto was hacked several times, and thereafter saw Cresencio going home with bolo on scabbard tucked to the waist (TSN, pp. 20-24, March 18, 1993).

With respect to accused Emilio Miranday who did not appeal, the basis for his conviction was simply overwhelming. All the prosecution and defense eye-witnesses unanimously pinpointed accused Emilio as having personally and singlehandedly carried out the hacking rampage on Convicto. And the rule is that the positive identification of the accused by the witnesses that he killed the victim establishes his guilt to a moral certainty (*People vs. Demeterio*, 124 SCRA 914; *People vs. Cunanan*, 75 SCRA 15). Furthermore, the gravity of all these witnesses' categorical identification of him being the active perpetrator of Convicto's merciless killing did not even move accused Emilio to take the witness stand and attempt to exculpate himself, nor to take an appeal after judgment. Accused Emilio's uncanny silence amidst a charge as serious as murder hurled on him by all the eye-witnesses in his presence, can only mean as an admission of his guilt. We thus once said in *People vs. Peran*, et al., 215 SCRA 152 that: "A guilty conscience makes a man such a coward as to bring himself out in the open, whereas a strong conviction of being innocent makes him fearless."

The instant appeal thus concerns only Silvestre and Cresencio Miranday, herein appellants, who were pinned down by the trial court as co-conspirators. Appellants attempt to extricate themselves by claiming that there was no conspiracy between them and accused Emilio Miranday in the killing of Bgy. Capt. Convicto.

It appears from their appeal brief that appellants have abandoned their initial theory of alibi and instead seemingly admit, although hesitantly, their presence at the crime scene. Nonetheless, they argue that their respective conducts thereat were not indicative of a common purpose and design with accused Emilio Miranday to kill Convicto.

Indeed, there is no other recourse for appellants but to desert the defense of alibi considering that prosecution witnesses Rocacolba, Elimanco and widow Adela Convicto, whose testimonies were apparently considered by the trial court to be more credible than those of the defense's as having been made in a "straightforward, credible and unmotivated manner" (p. 32, Decision), consistently affirmed the appellants' immediate presence before and during the fatal assault on Convicto. We will not disturb the trial court's finding on the credibility of the prosecution witnesses, for the trial judge had the unmatched opportunity, denied to appellate courts, to weigh their testimonies in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a

more competent position to discriminate between the true and the false (People vs. Castillo, 208 SCRA 62; See also People vs. Juma, G.R. No. 90391, March 24, 1993; People vs. Sangil, G. R. No. 91158, May 8, 1992; People vs. Precioso, G.R. No. 95890, May 12, 1993). Thus, the clear and convincing testimony of eyewitnesses who have no reason to testify falsely against appellants cannot be overthrown by appellants' alibi (People vs. Espinoza, 112 SCRA 421). And more the defense of alibi is worthless in the face of positive identification by the prosecution witnesses, as was held in People vs. Dominguez, 217 SCRA 170, citing People vs. Plandez (132 SCRA 70) where We stressed that "it is a well-settled rule that alibi - the much abused sanctuary of felons and which is considered as an argument with a bad reputation, cannot prevail over the positive testimonies of the prosecution witness. It is, to say the least, the weakest defense and must be taken with caution being easily fabricated." (See also People v. Claudio, 216 SCRA 647; People vs. Yadao, 216 SCRA 1; People v. Cabuang, 217 SCRA 675). Besides, it was not sufficiently shown that the alleged whereabouts of appellants at the time of the killing, as testified to by the defense witnesses, were far enough so as to foreclose any possibility for appellants to be at the crime scene. For alibi to further prosper, it does not suffice to prove the whereabouts of the accused at the time the crime was committed; it must be undisputably demonstrated that at the time of the commission of the crime, it was physically impossible for the suspect to have been at, or near the scene of the crime (People vs. Manzanares, G.R. No. 82696, Sept. 8, 1989; People vs. Tamayo, et al., G.R. Nos. 79418-21, March 20, 1990; People vs. Mateo, et al., G.R. Nos. 53926-29, Nov. 13, 1989).

The more crucial issue however is whether there is sufficient proof to establish conspiracy. Appellants principally argue that there was no evidence tending to show that they went to the scene of the incident because of a joint purpose or a common plan to kill Convicto, and that while accused Emilio Miranday was hacking Convicto to death, appellants did not even make any attempt to harm Convicto. Appellants likewise argue that no evil motive was imputed by the prosecution to them.

Appellants asseverations must fail. Admittedly, no proof of previous actual agreement among the appellants and accused Emilio Miranday to kill Convicto was adduced below. But direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy maybe, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, then a conspiracy maybe inferred though no actual meeting among them to concert means is proved (People vs. Carbonel, 48 Phil. 868; See also People vs. Viray, 147 SCRA 146; People vs. Balignasay, G.R. No. 76743, May 22, 1992; People vs. Galit, 230 SCRA 486). Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only (People vs. Cory, 26 Cal. A. 735m 741, 148 p. 532).

If it were true that they did not harbor the same criminal resolve of accused Emilio, appellant Cresencio, being Emilio's brother, and appellant Silvestre who, aside from being Emilio's uncle, happened to be a municipal councilor of the locality, would have naturally endeavored to quell Emilio's vicious and relentless assault on Convicto being committed in their very presence. But appellants did not even lift a finger. On the contrary, appellant Silvestre even pushed Convicto away from Emilio during their scuffle for possession of the bolo thereby exposing Convicto to a more vulnerable and injurious position, and thereafter instructed Emilio to "finish him", as testified to by prosecution witnesses Rocacolba and widow Adela Convicto. Appellant Cresencio was likewise heard by prosecution witnesses Elimanco and widow Adela Convicto uttering the same instructions

to Emilio. Appellants' flagrant indifference despite the killing being perpetrated before their very eyes depicted their unspoken assent and approval of the criminal plot of liquidating Convicto, while appellants' subsequent utterances (finish him) which are in the nature of a command that has to be obeyed, were apparently made to further embolden Emilio with the end view of insuring Convicto's death. These circumstances are indeed tell-tale signs of appellants' and accused Emilio's concerted efforts towards one criminal purpose, and that is to murder Convicto. And far from being mere apathetic spectators, the appellants in fact acted as insurers to the unhindered consummation of the crime.

The correctness of appellants' and accused Emilio Miranday's conviction of the crime of murder is out of the question. Convicto was certainly taken by surprise and rendered defenseless when accused Emilio Miranday inflicted the initial hack blows on the former's back. So settled is that treachery is present when the attack is sudden and unexpected (*People vs. Alfaro*, 119 SCRA 204). It does not even matter when the subsequent hack blows which eventually killed Convicto were done frontally, for it has been held that the killing of the victim frontally does not negate treachery when the victim was killed after already being in a helpless condition (*People vs. Paras*, 147 SCRA 594).

The appellants' participation in the conspiracy having thus been duly established, it must now visit equal punishment on all the conspirators, on the legal theory that the act of one is the act of all. This is settled jurisprudence. Indeed, even if it be argued that some did less than the others, or as in this case where appellants did not even attempt to harm Convicto, it cannot be denied that their very participation in the conspiracy added to its strength, emboldened the actual killer, and contributed to the success of the common design. In the eyes of the law, each conspirator is a co-principal and equally guilty with the other members of the plot (*People vs. Rojas, et al.*, 147 SCRA 169). And anent the prosecution's alleged failure to impute any evil motive on the part of appellants, We reiterate Our ruling in *People vs. Cabanit* (139 SCRA 94) that: "Proof to establish motive for the killing of the victim in this case is of little significance because as stated in *People vs. Lumantas*, 28 SCRA 764, even lack of motive for committing the crime does not preclude conviction when the crime and the participation of the accused therein are definitely shown." And more, motives do not have to be established where the malefactors have been positively identified (*People vs. Aruta, et al.*, G.R. No. 73907, May 18, 1993; *People vs. Campa*, 230 SCRA 431).

WHEREFORE, appellants' conviction of the crime of Murder and the penalty imposed on them are hereby AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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