

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO CORBES Y OLAZO, MANUEL, VERGEL Y PASCUAL, AND SIX (6) JOHN DOES, ACCUSED. DANILO CORBES Y OLAZO AND MANUEL VERGEL Y PAS...

G.R. No. 113470. March 26, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DANILO CORBES y OLAZO and MANUEL VERGEL y PASCUAL appeal from the decision dated 27 December 1991 of the Regional Trial Court of Caloocan City, Br. 124, finding them guilty as principals by conspiracy of the crime of robbery with homicide under par. 1, Art. 294 of the Revised Penal Code and sentencing them to suffer the penalty of reclusion perpetua plus damages.[1]

The antecedents: At about nine o'clock in the morning of 17 November 1990 six (6) armed men entered the premises of the Caloocan Consortium Corporation at No. 305 Cordero Street, Caloocan City, and took away from the establishment P169,000.00 in cash and P4,500.00 from Mateo Figuracion, an employee therein. They also took with them the .38 calibre revolver of security guard Timoteo Palicpic whom they shot to death. The malefactors then ran towards 8th Avenue where Daniel Corbes and Manuel Vergel had parked their getaway vehicle, a blue passenger jeep. They then sped away.

That same day, Manuel Vergel went to the Caloocan Police Station and reported the incident. He claimed that the robbers used his passenger jeep in fleeing from the Caloocan Consortium Corporation, but he denied any previous knowledge of the robbery or of any intentional participation therein. However, upon further interrogation by P/Cpl Daniel G. Del Rosario, Supervisor of the Dayshift Investigation Section, Caloocan City Investigation Division, Vergel retracted his earlier statements and pointed to Danilo Corbes who together with the other accused allegedly planned the robbery and convinced him to drive for them.[2] When apprehended and brought to the police station, Corbes in turn pointed to a certain "Benny" as the brains behind the crime.[3]

Corbes, Vergel and six (6) John Does (still at large) were charged as principals by conspiracy. On the witness stand Vergel however diverged from his earlier story and insisted that the jeep he was driving was merely hired by Corbes and Benny on the pretext of hauling scrap metal from Caloocan City. As soon as he parked his jeep along 8th Avenue, Benny alighted from the jeep leaving him with Corbes. Vergel maintained that at that time he knew nothing of the robbery being perpetrated at the Caloocan Consortium Corporation and that he became aware of it only when Benny came back from the direction of Cordero Street about ten (10) to fifteen (15) minutes later with several armed men who boarded the jeep and threatened him with bodily harm if he would not start its engine and drive. So he did as they ordered. After the men alighted at 9th Avenue, he proceeded to the house of Avelino Vergel, the owner of the jeep, and together they went to the Caloocan City Police Station to report the matter.

Daniel Corbes likewise professed innocence. Although he admitted having approached Vergel, he contended that

he did so only to accommodate Benny who had sought his help in looking for a jeep for hire. Being the Vice-President of DAMATA (Damayan ng Maralitang Tahanan), a neighborhood association in Letre, Malabon, he accompanied Benny to Sangandaan and there waited for Vergel who agreed to have the jeep he was driving hired for a fee of P250.00. Then together with Vergel and Benny he left for Caloocan City allegedly upon Vergel's invitation.

The trial court rejected the pretensions of Corbes and Vergel; instead, it convicted the two (2) accused on the basis of the eyewitness account of Elena San Jose whose testimony established their participation in the robbery as lookout and driver, respectively.

Specifically, Elena San Jose testified that while she was rocking her baby to sleep in the veranda of her house at 8th Avenue she noticed a blue-colored jeep parked about three (3) meters away. Vergel was at the driver's seat. She saw Vergel alight several times from the jeep ostensibly to inspect its engine and other parts as if something was wrong with them, while Vergel's companion whom she identified as Corbes walked to and fro along 8th Avenue up to the corner of Cordero Street. Half an hour later Elena saw four (4) men in a jolly mood approaching and shouting "Yahoo! Yahoo!" from the direction of Cordero Street. They immediately boarded the jeep as Vergel hurried them up: "Dalian n'yo, baka tayo mahuli!" The vehicle then drove away in the direction of F. Roxas Street.[4]

The court a quo accorded evidentiary weight to the testimony of Dante Despida, owner of the Gulf-Pacific Security Agency, Inc., who testified that on 19 November 1990 Vergel and Corbes admitted to him inside the Caloocan Police Station that they participated in the robbery holdup as driver of the getaway vehicle and as lookout, respectively. Thus, Vergel and Corbes were sentenced to suffer the penalty of reclusion perpetua and ordered to pay jointly and severally, (a) the amount of cash stolen, (b) the value of the .38 cal. revolver taken, and (c) P50,000.00 as consequential damages to the heirs of Timoteo Palicpic.

Appellants contend in this appeal that conspiracy was not sufficiently proved since it cannot be inferred solely from their mere presence at the crime scene. In addition, Vergel disparages the testimony of Elena San Jose as being rehearsed and replete with inconsistencies, while that of Dante Despida relative to the oral confessions allegedly made to him inside the Caloocan Police Station as unworthy of belief considering that he had no business inside the detention cell since he was not even a police investigator, and considering further that he was the uncle[5] of security guard Timoteo Palicpic who was gunned down during the robbery.

We sustain the claim of appellants that the evidence failed to meet the quantum of proof required by law to establish conspiracy which jurisprudence dictates must be shown to exist as clearly and convincingly as the commission of the crime itself.[6] No less than proof beyond reasonable doubt is required.[7]

In the instant case, no conclusive proof was presented that appellant Manuel Vergel conspired with the other accused to commit robbery. What is indubitable is that he was approached by Corbes who was tasked to look for a getaway vehicle and was persuaded to act as driver in fetching the group from the venue of the robbery. Vergel's feigned ignorance of any prior knowledge of the robbery is negated by his remark, "Dalian n'yo, baka tayo mahuli!" made to the robbers as they were boarding the jeep. Such utterance, which indicates knowledge of the criminal design of the malefactors, coupled with his act of driving for the robbers, makes appellant Vergel guilty as an accomplice, i.e., one who knows the criminal design of the principal and cooperates knowingly or intentionally therewith by an act which even if not rendered the crime would be committed just the same.[8] In one case,[9] we held that the driver of the taxicab, knowing that his co-accused were going to commit robbery permitted them to use his taxicab in going to the place where the robbery was committed, is an accomplice.

As regards appellant Danilo Corbes, there is similarly a lack of adequate evidence of conspiracy. The evidence

merely points out that Corbes looked for a jeep to be used as getaway vehicle of the robbers and, to that end, he intentionally sought out and convinced Manuel Vergel to act as driver. Moreover, he went with Vergel and Benny to Caloocan City where the robbery was staged. We have also held that the liability of one whose participation was limited to looking for a banca and providing one to a gang of bank robbers,[10] or one who went with the actual perpetrators of a crime without conspiring with them, is only that of an accomplice.[11] Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of liability, that of a mere accomplice.[12] Besides, in several cases wherein the Court confirmed the existence of conspiracy, some accused were held liable as mere accomplices only because their role in the commission of the crime was not indispensable; in other words, minor.[13] Courts sometimes draw the inference of guilty participation in the criminal design from concerted acts in the consummation of the criminal act and from the form and manner in which assistance is rendered. To reiterate, in case of doubt, the courts naturally lean to the milder form of responsibility.[14]

Furthermore, we reduce appellants' liability to the crime of robbery only. It was not established by the evidence that the other accused, who are at large, had agreed to kill if necessary to carry out successfully the plan to rob. On the contrary, the records show that one of the robbers berated the gunman for having shot the security guard.[15] Therefore, what appellants may be said to have joined was merely the criminal design to rob, which makes them accomplices. Their complicity must accordingly be limited to the robbery, not to the killing of Timoteo Palicpic. Waiting only at the parked jeep at 8th Avenue could not have given them the opportunity to prevent the killing, as is required of one seeking relief from liability for assaults committed during the robbery.[16] The Court had occasion to rule that the jeep driver, who was unaware of the killing perpetrated inside the building as he stayed always near his jeep, could not be deemed a co-conspirator in the killing of the guards, as the killing was not part of the original plan but arose only during the exigency of the moment.[17]

The penalty for robbery under par. 5, Art. 294 of the Revised Penal Code is prision correccional in its maximum period to prision mayor in its medium period the duration of which is four (4) years two (2) months and one (1) day to ten (10) years. As the robbery was committed by a band under Art. 295 the penalty should be imposed in its maximum period. Since accused-appellants are found guilty only as accomplices to the robbery in band, the imposable penalty shall be one degree lower which is arresto mayor in its maximum period to prision correccional in its medium period or four (4) months and one (1) day to four (4) years and two (2) months. Applying the Indeterminate Sentence Law, if only for the purpose of determining the penalty to be imposed, the minimum shall be taken from the penalty next lower in degree, i.e., destierro in its maximum period to arresto mayor in its medium period or four (4) years two (2) months and one (1) day of destierro to four (4) months of arresto mayor medium, while the maximum shall be taken from the maximum of the imposable penalty as herein before stated or four (4) years and two (2) months of prision correccional medium. Both accused-appellants having already been detained since 20 November 1990,[18] or more than the maximum of their indeterminate penalty, they should now be immediately released from custody pursuant to B. P. Blg. 85.

WHEREFORE, the judgment appealed from is MODIFIED. Accused-appellants DANILO CORBES y OLAZO and MANUEL VERGEL y PASCUAL are declared GUILTY merely as ACCOMPLICES to the crime of robbery and sentenced accordingly to an indeterminate prison term of four (4) months of arresto mayor medium as minimum to four (4) years and two (2) months of prision correccional medium as maximum.

Accused-appellants Danilo Corbes y Olazo and Manuel Vergel y Pascual having already been detained for more than the maximum of their indeterminate penalty, their immediate release from custody is likewise ordered unless they are held for another lawful cause. Costs de oficio.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ, concur.

[1] Decision penned by Judge Rene Victoriano, RTC-Br. 124, Caloocan City; Rollo, pp. 22-31.

[2] TSN, 1 April 1991, pp. 16-17.

[3] Id.; Exh. "G," Folder of Exhibits.

[4] TSN, 6 February 1991, pp. 4-9.

[5] Id., 28 January 1991, p. 2.

[6] *People v. Jorge*, G.R. No. 99379, 22 April 1994, 23 SCRA 693; *People v. Argawanon*, G.R. No. 106538, 30 March 1994, 231 SCRA 614; *People v. Garcia*, G.R. No. 94817, 4 November 1992, 215 SCRA 349; *People v. Donato*, G.R. No. 94530, 6 March 1992, 207 SCRA 125; *People v. Campos*, G.R. No. 91716, 3 October 1991, 202 SCRA 387; *People v. Laurio*, G.R. No. 95351, 9 August 1991, 200 SCRA 465; *People v. Cruz*, G.R. No. 74048, 14 November 1990, 191 SCRA 377; *Bayan v. Court of Appeals*, G.R. No. 77050, 6 February 1990, 181 SCRA 844; *De la Concepcion v. People*, G.R. No. 73854, 9 May 1989, 173 SCRA 253; *Valdez v. People*, G.R. Nos. 75896-99, 5 May 1989, 173 SCRA 163; *People v. Sabilano*, Nos. L-32866-7, 21 September 1984, 132 SCRA 83; *People v. Custodio*, No. L-30463, 30 October 1972, 47 SCRA 289, 302.

[7] *Magsuci v. Sandiganbayan*, G.R. No. 101545, 3 January 1995, 240 SCRA 13; *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655; *People v. Villagonzalo*, G.R. No. 105388, 18 November 1994, 238 SCRA 215; *People v. Manuel*, G.R. Nos. 93926-28, 28 July 1994, 234 SCRA 532; *People v. Orehuela*, G.R. Nos. 108780-81, 29 April 1994, 232 SCRA 82; *People v. Gaoat*, G.R. No. 97028, 21 May 1993, 222 SCRA 385; *People v. Divina*, G.R. Nos. 93808-09, 7 April 1993, 221 SCRA 209; *People v. Camaddo*, G.R. No. 97934, 18 January 1993, 217 SCRA 162; *People v. Lacao Sr.*, G.R. No. 95320, 4 September 1991, 201 SCRA 317; *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, 6 December 1989, 180 SCRA 9; *People v. Tacaa*, No. L- 35652, 29 September 1989, 178 SCRA 56; *Castañeda v. Sandiganbayan*, G.R. No. 61243, 16 March 1989, 171 SCRA 263; *Navarro v. Court of Appeals*, G.R. No. 84423, 31 January 1989, 169 SCRA 861; *People v. Elizaga*, G.R. No. 78794, 21 November 1988, 167 SCRA 516; *People v. Drilon Jr.*, No. L- 33431, 28 June 1983, 123 SCRA 72.

[8] *People v. Lingad*, 98 Phil. 5, 12 (1955); *People v. Fronda*, G.R. Nos. 102361-62, 14 May 1993, 222 SCRA 71; *People v. Custodio*, No. L-30463, 30 October 1972, 47 SCRA 289.

[9] *People v. Lingad*, 98 Phil. 5, 12 (1955); see also *People v. Ubiña*, 97 Phil. 515 (1955); *People v. Balotan*, 45 Phil. 573, 576 (1923) citing *United States v. Lagmay*, No. L-15009, G.R. No. 15009, 30 August 1919 (unreported).

[10] *People v. Doble*, No. L- 30028, 31 May 1982, 114 SCRA 131.

[11] *People v. Balili*, No. L-14044, 5 August 1966, 17 SCRA 892.

[12] *People v. Bongo*, No.L-26909, 22 February 1974, 55 SCRA 547; *People v. Torejas*, No. L-29935, 31 January 1972, 43 SCRA 158; *People v. Tolentino*, No. L-29419, 31 August 1991, 40 SCRA 514; *People v. Pastores*, No. L-29800, 31 August 1971, 40 SCRA 498; *People v. Ablog*, No. L-15310, 31 October 1962, 6 SCRA 437.

[13] *People v. San Miguel*, Nos. L-30722-30725, 31 July 1981, 106 SCRA 290; *People v. Doble*, No. L-30028, 31 May 1982, 114 SCRA 131; *People v. Nierra*, No. L-32624, 12 February 1980, 96 SCRA 1; *People v. Crisostomo*,

46 Phil. 775 (1923).

[14] *People v. Tolentino*, No. L-29419, 31 August 1971, 40 SCRA 514; *People v. Tatlonghari*, No. L-22094, 28 March 1969, 27 SCRA 726; *People v. Clemente*, No. L-23463, 28 September 1967, 21 SCRA 261; *People v. Tividad*, No. L-21469, 30 June 1967, 20 SCRA 549; *People v. Rival*, No. L-14077, 31 March 1964, 10 SCRA 462.

[15] TSN, 5 June 1991, p. 18.

[16] Art. 296, The Revised Penal Code; *People v. Doble*, No. L-30028, 31 May 1982, 114 SCRA 131; *People v. Hamiana*, 89 Phil. 225, (1951).

[17] *People v. Adriano*, Nos. L-25977, 22 January 1980, 95 SCRA 107.

[18] Records, p. 194.

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