

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO ROCHE Y NICANOR, MARCELINO FALLORE Y NICANOR, FRANCISCO GREGORIO Y MONCADA AND DORICO CABALLES Y NICANOR, ACCUSED.

G.R. No. 115182. April 06, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from a decision[1] of the Regional Trial Court, Branch 120, Kaloocan City, finding accused-appellant Restituto Roche guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Roderick Ferol, in the amount of P50,000.00.

The facts are as follows:

On June 4, 1992, an information for murder was filed against accused-appellant Restituto Roche and three others, namely, Marcelino Fallore, Francisco Gregorio, and one John Doe. The information, filed in the Regional Trial Court of Kaloocan City, alleged -

That on or about the 31st day of May 1992 in Kaloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill, with treachery, taking advantage of superior strength, and being armed, did then and there wilfully, unlawfully and feloniously attack and stab one RODERICK FEROL Y TUDIC @ DIKDIK with bladed weapons on different parts of his body, thereby inflicting upon the latter serious physical injuries, which injuries caused the victim's death.

CONTRARY TO LAW.[2]

When arraigned on June 18, 1992, all of the accused, with the exception of John Doe, pleaded "not guilty" to the crime charged, whereupon they were tried. The prosecution presented Dr. Dario L. Gajardo, Helen Amarille,[3] Rodel Ferol, PO3 Orlando Valencia, Rosalinda Ferol, and Rogelio Rossel whose testimonies and documentary evidence showed that, at around 5 o'clock in the afternoon of May 31, 1992, Roderick and Rodel Ferol were having drinks with a friend named Bobot inside the Ferol compound at Block 4, Lot 40, Bagong Silang, Kaloocan City. Without any warning, accused-appellant Restituto Roche and Francisco Gregorio barged into the compound. Francisco tried to hit Rodel Ferol with an empty beer bottle marked "Beer Grande" but failed because his common-law wife, Helen Amarille, pulled him away on time.[4] Roderick Ferol was not as lucky as his brother. Roderick was stabbed on the back with an ice pick by accused-appellant. Roderick ran towards the house of his friend Bobot[5] but, outside the compound, Dorico Caballes caught up with him. Roderick fell to the ground and was repeatedly stabbed with a knife by Dorico. Rogelio Rossel tried to stop Dorico but he was chased by the latter. A brother of the victim, Jon-Jon, threw bottles at Dorico, forcing the latter to run away, and leave his victim behind. Roderick was then taken to his house by Rogelio and Jon-Jon.[6] But at the time, Roderick was already

dead.[7]

Helen Amarille sought assistance from the police station in Bagong Silang.[8] She led PO3 Orlando Valencia, PO3 Celerino Vertez, PO3 Jose Marle, and PO2 Gil Torres, all of the Kaloocan City Police Station, to the scene of the crime, but as the victim was no longer there, they proceeded to Roche's residence. Helen pointed to accused-appellant, Marcelino Fallore and Francisco Gregorio as the assailants of Roderick Ferol. The suspects were taken to the Bagong Silang Police Station for investigation.[9]

Dr. Dario L. Gajardo, Medico-Legal Officer of the PNP Laboratory Service Station, conducted an autopsy on the body of Roderick Ferol. His findings were embodied in Medico-Legal Report No. M-0899-92[10] which, in pertinent parts, reads:

...

SPECIMEN SUBMITTED:

Cadaver of Roderick T. Ferol, about 21 years old, student, 165 cm in height and a resident of Phase 5, Pkg 4, Blk G Lot 2, Bagong Silang, Kalookan City.

PURPOSE OF LABORATORY EXAMINATION:

... To determine the cause of death.

FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctivae and lips are pale. Nailbeds are cyanotic.

HEAD, TRUNK AND UPPER EXTREMITIES:

(1) Stab wound, left maxillary region, measuring 3 by 0.8 cm, 10 cm from the anterior midline, 4 cm deep, directed downwards, anteriorwards and medialwards, fracturing the left maxilla.

(2) Stab wound, left shoulder, measuring 2 by 0.6 cm, 21 cm from the anterior midline, 4 cm deep, directed downwards, posteriorwards and medialwards.

(3) Stab wound, chest, measuring 5.5 by 2 cm, 2 cm right of the anterior midline, 5 cm deep, directed downwards, posteriorwards and lateralwards, fracturing the sternum at the level of the 2nd thoracic rib, lacerating the upper lobe of the right lung.

(4) Abrasion, right shoulder, measuring 1.5 by 1 cm, 12 cm from the anterior midline.

(5) Linear abrasion, right infraclavicular region, measuring 2 by 0.5 cm, 12 cm from the anterior midline.

(6) Stab wound, chest, measuring 2 by 1 cm, 1.5 cm right of the anterior midline, 4 cm deep, directed downwards, posteriorwards and lateralwards, fracturing the 5th right thoracic rib, lacerating the middle lobe of the right lung. novero

(7) Stab wound, left lumbar region, measuring 2 by 1 cm, 12 cm. from the posterior midline, 3 cm deep, directed downwards, posteriorwards and medialwards, passing thru the 9th left intercostal space, lacerating the lower lobe of the left lung.

(8) Stab wound, left lumbar region, measuring 2.8 by .8 cm, 12 cm from the posterior midline, directed downwards, medialwards and anteriorwards.

(9) Stab wound, left costal region, measuring 1 by 2.5 cm, 2 cm from the anterior midline, 5 cm deep, directed downwards, posteriorwards and medialwards, lacerating the left lobe of the liver.

- (10) Abrasion, right cubital fossa, measuring 3 by 2 cm, 2 cm medial to its anterior midline.
- (11) Grace abrasion, middle 3rd of the right forearm, measuring 7 by 7 cm, along its anterior midline.
- (12) Incised wound, distal 3rd of the right forearm, measuring 4 by 0.5 cm, along its anterior midline.
- (13) Incised wound, proximal 3rd of the left forearm, measuring 8.5 to 0.3 cm, 2 cm lateral to its anterior midline.
- (14) Incised wound, distal 3rd of the left forearm, measuring 2 by 0.2 cm, 3.5 cm lateral to its anterior midline.
- (15) Abrasion, distal 3rd of the left forearm, measuring 3.5 by 0.7 cm, 2 cm medial to its posterior midline.

There are 1,500 cc of blood and blood clots accumulated in the thoracic and abdominal cavities.

Stomach is full of dinuguan.

xxx xxx xxx

C O N C L U S I O N :

Cause of death is cardio-respiratory arrest due to shock and hemorrhage secondary to stab wounds in the head and trunk.

...

EXAMINED BY: (signed)
DARIO L. GAJARDO
Superintendent MS (PNP) nigel
Medico-Legal Officer &
Chief

The defense presented as witnesses accused-appellant, Francisco Gregorio, Marcelino Fallore, and Leticia Costo whose testimonies are as follows:

At about 10:00 o'clock in the morning of May 31, 1992, accused-appellant's son was baptized in a church with Francisco Gregorio as godfather. After the baptism, at around 12:00 o'clock, as the party was on its way to accused-appellant's residence, accused-appellant noticed Roderick and Rodel Ferol having drinks inside their compound.

After reaching his residence, accused-appellant went out to buy two cases of beer from a nearby store. On his way back to his house, he was stopped by Roderick and Rodel Ferol. Roderick tripped him, so he fell to the ground. As Roderick drew a knife, accused-appellant did not fight him, rather, he ran home. After learning what had happened, some of the guests, among whom were Francisco Gregorio, Marcelino Fallore, and Dorico Caballes tried to help him, but they were initially prevented from going out of the house by the women. However, Dorico Caballes and the other guests were later able to get out of the house. Dorico Caballes, with knife in his hand, went after Roderick Ferol. Francisco Gregorio followed Dorico, holding in his hand a beer bottle marked "Grande."

At past 5:00 o'clock in the afternoon, policemen, accompanied by Helen Amarille, arrived at the house of accused-appellant. On the information of Amarille, the police arrested Francisco Gregorio, Marcelino Fallore, and accused-appellant.[11] Dorico Caballes escaped and has remained at large.[12]

On the basis of the evidence presented by the prosecution and the defense, the trial court rendered a decision on December 21, 1993 the dispositive portion of which reads:

WHEREFORE, the Court finds that the prosecution evidence has established beyond reasonable doubt the

guilt of accused Restituto Roche for the crime of murder but could not make a pronouncement as to the guilt of accused Dorico Caballes because he remained at large and therefore could not be arraigned.

The Court hereby sentences accused Restituto Roche to suffer a penalty of reclusion perpetua in accordance with Article 248 of the Revised Penal Code, there being no aggravating and mitigating circumstance, and to indemnify the heirs the sum of P50,000.00.

Finding that the prosecution evidence failed to establish the guilt of accused Francisco Gregorio and Marcelino Fallore, both accused are hereby ACQUITTED.

SO ORDERED.[13]

Hence this appeal. Accused-appellant contends:

1. The finding of guilt against the accused-appellant is contrary to the evidence;

2.

The trial court erred in failing to consider in favor of the accused-appellant the testimony and/or affidavit of prosecution witness Rogelio Rossel and other facts in the case at bar;

3.

For clear lack or absence of conspiracy among the accused, the accused-appellant herein should have been acquitted.[14]

First. Accused-appellant contends that he could not have stabbed the victim with an ice pick, considering the nature and extent of the injuries suffered by the latter. He questions the credibility of witnesses Helen Amarille and Rodel Ferol, both of whom stated they saw accused-appellant barge into the Ferol compound and stab Roderick Ferol at the back with an ice pick.

To be sure, Helen Amarille's testimony is, by itself, clear, categorical and consistent. She testified that in the afternoon of May 31, 1992, she was in the kitchen doing the laundry while her common-law husband, Rodel Ferol, was having drinks with Roderick Ferol and a friend named Bobot when all of a sudden accused-appellant and Francisco Gregorio came. Immediately, accused-appellant started stabbing Roderick Ferol on his left side with an ice pick. On the other hand, Francisco Gregorio tried to attack Rodel with a beer bottle marked "Grande," but she was able to pull him away. Marcelino Fallore also tried to attack Rodel Ferol with a stainless knife but she intervened and stop Marcelino from harming Rodel. Angered by her intervention, Marcelino threw a stone at her. Rodel then ran away. Roderick also ran but Dorico Caballes was able to catch up with him. Accused-appellant and Francisco Gregorio followed. She ran to the police station in Bagong Silang for help.[15]

We note, however, that Helen Amarille's testimony detailed the events leading to Roderick Ferol's death with such thoroughness it raises the suspicion that it had been rehearsed. "A witness whose testimony is perfect in all aspects, without a flaw and remembering even the minutest details which jibe beautifully with one another, lays herself open to suspicion of having been [coached] or having memorized statements earlier rehearsed. . ."[16]

Amarille's testimony sounds so perfect that instead of inspiring belief, it becomes suspect. It differs so substantially from the testimony of her common-law husband Rodel Ferol, who also claims to have been present during the incident, that its credibility is placed in doubt. In contrast to Amarille's version, Rodel Ferol testified:

Q: At about 5:00 p.m., on May 31, 1992, do you remember where you were?

A: I was in our house, sir.

Q: Who was with you at your house on said date?

A: My brother Roderick, sir. marinella

Q: What were you doing at that time?

A: We have a drinking spree in front of our house, sir.

Q: Aside from your brother Rodel and you, were there other persons who were drinking with you at that time?

A: Yes, sir.

Q: Who were these other person who were with you at that time?

A: The friend of my brother, sir.

Q: What is the name?

A: Bobot, sir.

Q: Aside from Bobot, are there other persons with you?

A: No more, sir.

Q:

Do you remember any unusual incident that happened at about 5:00 o'clock of May 31, 1992 while you and your brother were having a drinking spree?

A: Yes, sir.

Q: What was that unusual incident that you are referring to?

A: When Restituto Roche entered our compound, sir.

Q:

You mentioned the name of Restituto Roche, how many persons were there who entered your compound with Restituto Roche?

A: Three (3) sir.

Q: Do you know who are these three (3) other persons?

A: Yes, sir.

Q: Who are these three (3) other persons?

A: Restituto, Marcelino and Francisco, sir.

Q:

What happened when these three (3) persons entered your compound at about 5:30 in the afternoon on said date?

A: They suddenly stabbed my brother, Restituto stabbed my brother, sir.

Q: With what instrument was your brother stabbed by this Restituto Roche?

A: Ice pick, sir. alonzo

Q: On what part of the body of your brother was he hit by this instrument?

A: At the back, sir.

Q: How many times was your brother Roderick Ferol stabbed by Restituto?

A: Two (2) times, sir.

Q: You mentioned that he was stabbed at the back portion near your left side, where was the other stab made?

A: Also at the back portion but I cannot be sure [where] exactly, sir.

Q:

When Restituto Roche stabbed your brother at the back, what was these Mario [or Marcelino Fallore] and Afran [or Francisco Gregorio] doing at that time?

A: Mario boxed me while Afran was holding a bottle, sir while standing, sir.

Q: What kind of bottle was Afran holding at that time?

A: A bottle of Grande, sir.

Q: You mentioned that you were boxed by Mario, where were you hit?

A: At my nose, sir.

Q: Now what was Restituto Roche saying at that time he was stabbing Roderick [Ferol] at that time, if any?

A: He was not saying anything because I already fell down [when] I was boxed, sir.

Q: How about this Mario, what was he saying at that time this incident was [occurring]?

A: He is not saying anything, sir.

Q: How about this Afran, was he saying anything at that time?

A: None, sir.

Court :

This Mario refers to Marcelino?

A: Yes, [Your] Honor.

Court :

And Afran refers to Francisco Gregorio?

A: Yes [Your] Honor.

Fiscal Quimpo:

How about your brother Roderick Ferol was he saying anything at that time he saw Restituto Roche?

A: None, sir.

Q: How about you did you say anything?

A: None, sir.

Q: What happened when your brother was stabbed and you were boxed by Mario?

A: My brother ran away, he was able to [run] away, sir.

Q: Towards, what direction did he [run] to?

A: Going towards his friend, sir.

Q: And where is that friend that you are referring to?

A: At the house of Bobot, our drinking companion, sir.

Q: Now when Roderick Ferol ran towards the house of his friend, what if any did Restituto Roche do?

A: He ran after him, sir.

Q: And what was Restituto Roche holding at that time when he was running after Roderick Ferol?

A: An itak, sir, bolo.

Q:

How about the ice pick that you mentioned that he used in stabbing, where was that ice pick at that time he ran after Roderick Ferol?

A: I do not know where he left the ice pick, sir.

Q:

When you first saw him [arrive] at your compound referring to Roche, what [was] Restituto Roche holding at that time ... that you first saw him?

A: Ice pick, sir.

Q: Is it ice pick only?

A: Yes, sir, but when he ran after my brother he was holding a bolo, sir.

Q: When your brother ran towards the house of his friend, what did you do if any?

A: I followed him, sir. micks

Q: How about this Mario and Afran, what were they doing when Roche was running after your brother?

A: I was not able to see what they did, sir.

Q: Why did you not go after Restituto Roche and your brother?

A: I was not able to see what [they] are doing because I was not able to catch up with them, sir.

Q:

Now after Restituto Roche ran after your brother Roderick Ferol when was the last time that you saw your brother Roderick Ferol?

A: When he was already lying face down in front of the house of his friend, sir.

Q: How far was that place [where] he was lying down from the place where you had a drinking session?

A: It is far sir more or less five (5) meters, sir.

Q: When you saw your brother lying down on the ground where was Restituto Roche?

A: I was not able to see him there, sir.

Q: What did you do with your brother Roderick Ferol when you saw him lying down?

A: I carried him, sir.

Q: What was his condition at that time you saw him?

A: He was already dead, sir.

Q: And how did you know that he was already dead?

A: He was not breathing anymore, sir.[17]

A comparison of the testimonies of Helen Amarille and Rodel Ferol reveals discrepancies on material points. While Amarille claimed that Marcelino Fallore tried to attack Rodel Ferol with a stainless knife, Rodel Ferol stated that Marcelino boxed him (Rodel) in the nose. Amarille said she intervened to protect Rodel Ferol from the attack. However, Rodel Ferol makes no mention of Helen's presence during the incident. Neither did he mention any attempt by Marcelino Fallore to hit him with a knife. On the other hand, Helen Amarille remembered no "itak" or "bolo" which accused-appellant carried. It taxes one's credulity that while Helen Amarille and Rodel Ferol could remember such details as to the kind of bottle Francisco Gregorio was carrying, they could not remember who tried to punch whom and who carried what kind of weapon, or even who was present during the incident. These are inconsistencies concerning substantial matters that cannot just be overlooked. It is settled that "where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction." [18]

Whose testimony then may be believed by this Court? The testimony of neither one.

There is no question that Rodel Ferol was present at the time of the incident. He was having drinks with the victim Roderick and a friend. He belied Amarille's claim that she was present when the incident happened. Rodel testified: nigella

Q: How about your wife did you see her [get] out from the compound?

A: Yes, sir.

Q: Where did she go if you know?

A: She went to the house of my grandmother, sir.

Q: What time was that when she went to the house of your grandmother?

A: Around 4:00 o'clock sir.

Q: And she never came back up to the time this incident happened?

A: She returned sir but it was after the incident, sir.

Q: So at that time of the incident your wife was not in your house?

A: Yes, sir.[19]

On the other hand, Rodel's testimony is contrary to the physical evidence. Rodel testified that accused-appellant stabbed the victim with an ice pick. Recalling the events, he said:

Q: Now Mr. Witness you said you were present when Restituto Roche stabbed your brother with an ice pick, where were you [at] that time when you saw for the first time Roche holding an ice pick?

A: He was inside our compound, sir.

Q: Where was your brother when you claimed you saw Roche holding an ice pick?

A: I was also inside the compound, sir.

Q: Now, you mentioned that Roche was able to [approach] your brother with that ice pick?

A: Yes, sir.

Q: This ice pick that you saw which Roche was holding was this the kind of ice pick which you used in breaking ice?

A: I did not say it is being used to break ice, sir.

Q: Why did you say that the one he was holding was an ice pick?

A: Because it is sharp, sir.

Q: It is pointed and round that is why you said it is an ice pick?

A: Yes, sir.

Q: How far were you from Roche when you saw that ice pick being held by him?

A: Five (5) steps away, sir.

Q: So you could clearly see this ice pick being held by the hand of Roche?

A: Yes, sir.[20]

Contrary to Rodel Ferol's testimony, however, the autopsy report reveals that the stab wounds sustained by Roderick Ferol at the back, (stab wound nos. 7 and 8), measuring 2 x 1 cm., with a depth of 3 cms. and 2.8 x 0.8 cm. respectively, could not have been inflicted by an ice pick. As the medical examiner Dr. Gajardo observed, these injuries were caused by a pointed single-bladed weapon.[21]

The victim sustained stab wounds in the front and back parts of his body. "[Stab or puncture wounds] are wounds whose depth is greater than their length or breadth, and are produced by an instrument being driven through the skin. The size and shape varies with the instrument." [22] Different types of weapons, as well as the manner in which the victim was stabbed, can produce different types of wounds:

. . . With a sharp-edged weapon like a knife the form of the skin opening is determined not only by the shape of the blade but also by the direction in which the elastic fibers in the dermis of the wounded area happen to be directed. If a flat blade enters in a direction parallel with the fibers a slit-like or elliptic wound with sharp edges and pointed ends is produced. On the other hand, if the elastic fibers are severed transversely, the wound usually gapes because of the contraction of this tissue. If the fibers are severed obliquely, the opening in the skin may gape unevenly and assume an asymmetrical oval shape. If the knife blade is drawn out in a slightly different direction from that in which it entered, other fibers are cut and the wound may show a notch . . . An instrument with three-cornered edges, like a triangular file, produces a three-cornered wound . . . An implement with a thin circular shaft like an ice pick inflicts a round hole or a slit in the skin. If the shaft is comparatively thick and roughened there may be a marginal abrasion around the opening . . . Other weapons produce their own characteristic lesions.[23]

Undoubtedly, an ice pick would cause a wound that is considerably smaller than that inflicted on Roderick Ferol. That an ice pick could not have produced surface wounds measuring 1 x 2 cms. and 2.8 x 0.8 cm., (stab wound nos. 7 and 8 respectively) is a material fact which the trial court obviously overlooked.

The wounds found in the front parts of the victim's body (stab wounds nos. 1, 2, 3, 6 and 9) measured as follows:

...

(1) Stab wound, left maxillary region, measuring 3 by 0.8 cm, 10 cm from the anterior midline, 4 cm deep, directed downwards, anteriorwards and medialwards, fracturing the left maxilla.

(2) Stab wound, left shoulder, measuring 2 by 0.6 cm, 21 cm from the anterior midline, 4 cm deep, directed downwards, posteriorwards and medialwards.

(3) Stab wound, chest, measuring 5.5 by 2 cm, 2 cm right of the anterior midline, 5 cm deep, directed downwards, posteriorwards and lateralwards, fracturing the sternum at the level of the 2nd thoracic rib, lacerating the upper lobe of the right lung.

...

(6) Stab wound, chest, measuring 2 by 1 cm, 1.5 cm right of the anterior midline, 4 cm deep, directed downwards, posteriorwards and lateralwards, fracturing the 5th right thoracic rib, lacerating the middle lobe of the right lung.

...

(9) Stab wound, left costal region, measuring 1 by 2.5 cm, 2 cm from the anterior midline, 5 cm deep, directed downwards, posteriorwards and medialwards, lacerating the left lobe of the liver.[24]

Dr. Gajardo testified that the stab wounds found at the front and back of the deceased could have been inflicted by a single-bladed weapon.[25] They could not have been caused by an ice pick. As clearly stated, an ice pick is a pointed circular shaft, not a pointed single-bladed weapon. A puncture wound resulting from an ice pick attack would obviously be different from that produced by a single-bladed weapon. It has been held that a cane knife, having a maximum width of five inches, cannot cause a fatal wound which is only one centimeter in length.[26] Conversely, an ice pick cannot create a surface wound that is more than one inch, such as stab wound no. 8, but would produce a wound so minuscule in length and width that it can be missed even by an experienced medical examiner.

Time and again, we have upheld the primacy of physical evidence over biased and uncorroborated testimony of witnesses. We have held:

. . . Physical evidence is a mute but an eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. In criminal cases such as murder or rape where the accused stands to lose his liberty if found guilty, this Court has, in many occasions, relied principally upon physical evidence in ascertaining the truth. In *People v. Vasquez*, where the physical evidence on record ran counter to the testimonial evidence of the prosecution witnesses, we ruled that the physical evidence should prevail.[27]

Thus, among the testimonial evidence, only the testimony of Rogelio Rossel remains. He declared:

Q -

Do you remember any unusual incident at about 5:00 o'clock in the afternoon of May 31, 1992 while you were standing in front of your house?

A - Me and my companions were telling story when somebody shouted there is trouble.

Q - And what did you do when you heard somebody shouting that there is trouble?

A - I tried to see it.

Q - And what is that trouble that you saw?

A - There were persons who were [stabbing] sir.

Q -

How many persons that were stabbing?

A - Two (2) sir.

Q - And who was the person if you know being stabbed?

A - Roderick Ferol, the victim sir.

Q - And do you know this Roderick Ferol referring to the victim?

A - Yes, sir.

Q - Do you know these persons that were stabbing Roderick Ferol?

A - I know them sir.

Q - How many were they?

A - I only saw one (1) person.

Q - And who is that person you saw stabbing Roderick Ferol?

A - Doric sir.

Q - Now, will you look around this courtroom and check if that Doric is present today?

A - He is not here, he escaped.

Q - Now, what was the position of Roderick Ferol when he was being stabbed by Doric?

A - He was lying down, sir.

Q - Aside from this Doric were there other persons you saw in the trouble?

A - No more, sir.

Q - What did you do after that?

A - I pacified Doric so that he would stop stabbing the victim, sir.

Q - And what happened when you approached Doric?

A - He attempted to chase me, sir.

Q - And what did you do when Doric attempted to chase you?

A - I ran away, sir.

Q - Towards what direction did you [run] to?

A - I turned left of our house, sir.

Q - And what happened after that when you turned left to your house?

A - The brother of Roderick by the name of Jon-Jon arrived sir.

Q - And what happened when Jon-Jon arrived?

A -

He threw bottles against me, sir.

Q - Against who?

A - Against Doric, sir.

Q - And who were there aside from Doric and Jon-Jon?

A - No more, sir we are only three (3) persons at that time.

Q - What happened after that?

A - Doric ran away, sir.

Q - And how about you what did you do?

A - I went to the person who [was] stabbed.

Q - Are you referring to Roderick Ferol?

A - Yes, sir.

Q - What did you do when you approached Roderick Ferol?

A - Jon-Jon, Rodel and me carried him, sir.

Q - Towards what direction or to where did you carry Roderick [Ferol]?

A - In front towards our house, sir.

Q - Do you know certain person by the name of Restituto Roche or Toto?

A - Yes, sir I saw him because he is one of my friends.

Q - Was there any occasion that you saw him in the afternoon of May 31, 1992?

A - I did not see him.

Q -

How about Marcelino Fallore also known as Mario was there any occasion that you saw him in the afternoon of May 31, 1992 at 5:00 o'clock?

A - I did not see him there, sir.

Q - How about Francisco Gregorio also known as Afran, did you know him?

A - Yes, sir.

Q - Was there any occasion when you saw him Francisco Gregorio in the afternoon of May 31, 1992?

A - I did not see him, sir.[28]

Rogelio Rossel positively identified Dorico Caballes as the assailant. Dorico Caballes is the brother of accused-appellant. He escaped after the incident and until now is still at large. It is quite probable that the victim's relatives pointed an accusing finger at one they perceive could be responsible for the victim's death.

They blame accused-appellant for the incident because it was the latter who, by telling Dorico that it was the victim who had caused him (Restituto) to fall to the ground, made Dorico angry. Had not accused-appellant told Dorico Caballes that the victim was the one who had tripped him, Dorico Caballes would not know the person responsible and would not have killed Roderick Ferol.

Second. Nor can accused-appellant be held liable for the killing of Roderick Ferol on the ground of conspiracy. "[F]or conspiracy to exist, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest." [29]

In the case at bar, Rogelio Rossel testified that he did not see Restituto Roche at the time Dorico Caballes was stabbing Roderick Ferol. [30] Apart from Helen Amarille and Rodel Ferol, whose testimonies are highly suspect, no other witness was presented to prove that accused-appellant directly participated in the commission of the offense or performed an act which would show community of purpose with Dorico Caballes. Even if it is assumed as true that accused-appellant was responsible for telling Dorico Caballes it was Roderick Ferol who had tripped him (Restituto), this would not suffice to find accused-appellant in conspiracy with Dorico Caballes. As we ruled in *People v. Eljorde*: [31]

. . . Conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence, not merely by conjecture. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Hence, conspiracy exists in a situation where at the time the malefactors were committing the crime, their actions impliedly showed unity of purpose among them, a concerted effort to bring about the death of the victim. In a great majority of cases, complicity was established by proof of acts done in concert, i.e., acts which yield the reasonable inference that the doers thereof were acting with a common intent or design. Therefore, the task in every case is determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference.

Indeed, there is no proof to show accused-appellant, together with Dorico Caballes, had resolved to attack Roderick Ferol. Instead, we think the assault on Roderick Ferol was an impulsive act by Dorico Caballes borne out of the desire to get even with him for the offense committed against his brother. In no way can such act be attributed to accused-appellant.

Neither can accused-appellant be held liable as an accomplice for the crime charged. The following requisites must concur in order that a person may be considered an accomplice:

- (a) community of design, i.e., knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose;
- (b) he cooperates in the execution of the offense by previous or simultaneous acts; and,
- (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice. [32]

There is no evidence to show that accused-appellant performed any previous or simultaneous act to assist Dorico Caballes in killing Roderick Ferol. In fact, it has not been proven that he was aware of Dorico Caballes' plan to attack and kill Roderick Ferol. Absent any evidence to create the moral certainty required to convict accused-appellant, we cannot uphold the trial court's finding of guilt. "Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty, or even property. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them." [33] This is certainly not the case here.

WHEREFORE, the decision of the Regional Trial Court, Branch 120, Kaloocan City, is REVERSED and accused-appellant is ACQUITTED of the crime of murder. He is, therefore, ordered immediately released from custody unless he is lawfully held for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof. Sppedä jo

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Arturo A. Romero.

[2] Records, p. 1.

[3] Also referred to as Helen Amarillo in the records.

[4] TSN, pp. 3-5, July 15, 1992.

[5] TSN, p. 14, Sept. 8, 1992.

[6] TSN, pp. 3-5, July 28, 1992.

[7] TSN, p. 15, Sept. 28, 1992.

[8] TSN, pp. 7-8, July 15, 1992.

[9] TSN, pp. 2-5, Sept. 8, 1992.

[10] Exh. C.

[11] TSN, pp. 3-7, Jan. 24, 1993.

[12] TSN, p. 12, Feb. 1, 1993.

[13] RTC Decision, p. 6; Records, p. 149.

[14] Rollo, p. 59.

[15] TSN, pp. 4-8, July 15, 1992; TSN, pp. 2-9, July 22, 1992.

[16] *People v. Rosario*, 159 SCRA 192, 198 (1988).

[17] TSN, pp. 12-15, Sept. 8, 1992.

[18] *People v. Noay*, 296 SCRA 292, 302 (1998).

[19] TSN, p. 18, Sept. 8, 1992.

[20] TSN, p. 19, Sept. 8, 1992.

[21] TSN, pp. 11-12, July 14, 1992.

[22] Douglas J.A. Kerr, *Forensic Medicine*, 77 (5th ed., 1954).

[23] Thomas A. Gonzales, M.D., *Legal Medicine: Pathology And Toxicology*, 335-336 (2nd ed., 1954). Emphasis added.

[24] Exh. C.

[25] TSN, p. 15, July 14, 1992.

[26] *People v. Balderas*, 342 Phil. 435 (1997).

[27] *Jose v. Manila Central Bus Lines*, G.R. Nos. 118441-42, Jan. 18, 2000.

[28] TSN, pp. 3-6, July 20, 1992. Emphasis added.

[29] *People v. Andales*, G.R. No. 130637, Aug. 19, 1999.

[30] TSN, p. 12, July 28, 1992.

[31] G.R. No. 126531, April 21, 1999.

[32] *Ibid.*

[33] *Pepito v. Court of Appeals*, G.R. No. 119942, July 8, 1999.

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