

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN ORTEGA, JR. Y CONJE, MANUEL GARCIA Y RIVERA AND JOHN DOE, ACCUSED, BENJAMIN ORTEGA, JR. Y CONJE AND MANUEL GARCIA Y R...

G.R. No. 116736. July 24, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A person who commits a felony is liable for the direct, natural and logical consequences of his wrongful act even where the resulting crime is more serious than that intended. Hence, an accused who originally intended to conceal and to bury what he thought was the lifeless body of the victim can be held liable as a principal, not simply as an accessory, where it is proven that the said victim was actually alive but subsequently died as a direct result of such concealment and burial. Nonetheless, in the present case, Appellant Garcia can not be held liable as a principal because the prosecution failed to allege such death through drowning in the Information. Neither may said appellant be held liable as an accessory due to his relationship with the principal killer, Appellant Ortega, who is his brother-in-law.

Statement of the Case

This case springs from the joint appeal interposed by Appellants Benjamin Ortega, Jr. and Manuel Garcia from the Decision,[1] dated February 9, 1994 written by Judge Adriano R. Osorio,[2] finding them guilty of murder.

Appellants were charged by State Prosecutor Bernardo S. Razon in an Information[3] dated October 19, 1992, as follows:

“That on or about October 17, 1992 in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with treachery and evident premeditation and with abuse of superior strength (sic) and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab repeatedly with a pointed weapon on the different parts of the body one ANDRE MAR MASANGKAY y ABLOLA, thereby inflicting upon the latter serious physical injuries which directly caused his death.”

During arraignment, Appellants Ortega and Garcia, assisted by counsel de oficio,[4] pleaded not guilty to the charge.[5] Accused “John Doe” was then at large.[6] After trial in due course, the court a quo promulgated the questioned Decision. The dispositive portion reads:[7]

“WHEREFORE, finding accused Benjamin Ortega, Jr. y Conje and Manuel Garcia y Rivera [g]uilty beyond reasonable doubt of the crime charged, the Court hereby sentenced (sic) them to suffer the penalty of RECLUSION PERPETUA and to pay the costs of suit.

Accused are hereby ordered to pay the offended party the sum of P35,000.00 for funeral expenses of deceased

Andre Mar Masangkay and death indemnity of P50,000.00.”

The Notice of Appeal, dated March 9, 1994, was thus filed by Atty. Evaristo P. Velicaria[8] who took over from the Public Attorney’s Office as counsel for the accused.

The Facts Evidence for the Prosecution

The trial court summarized the testimonies of the prosecution witnesses as follows:[9]

“Diosdado Quitlong substantially testified that on October 15, 1992 at about 5:30 in the afternoon, he, the victim Andre Mar Masangkay, Ariel Caranto, Romeo Ortega, Roberto San Andres were having a drinking spree in the compound near the house of Benjamin Ortega, Jr. at Daangbakal, Dalandanan, Valenzuela, Metro Manila. That while they were drinking, accused Benjamin Ortega, Jr. and Manuel Garcia who were [already] drunk arrived and joined them. That victim Andre Mar Masangkay answered the call of nature and went to the back portion of the house. That accused Benjamin Ortega, Jr. followed him and later they [referring to the participants in the drinking session] heard the victim Andre Mar shouted, ‘Don’t, help me!’ (Huwag, tulungan ninyo ako!) That he and Ariel Caranto ran towards the back portion of the house and [they] saw accused Benjamin Ortega, Jr., on top of Andre Mar Masangkay who was lying down in a canal with his face up and stabbing the latter with a long bladed weapon. That Ariel Caranto ran and fetched Benjamin Ortega, Sr., the father of accused Benjamin, Jr. That he [Quitlong] went to Romeo Ortega in the place where they were having the drinking session [for the latter] to pacify his brother Benjamin, Jr. That Romeo Ortega went to the place of the stabbing and together with Benjamin Ortega, Jr. and Manuel Garcia lifted Andre Mar Masangkay from the canal and brought Andre Mar to the well and dropped the latter inside the well. That Romeo Ortega, Benjamin Ortega, Jr. and Manuel Garcia then dropped stones measuring 11 to 12 inches high, 2 feet in length and 11 to 12 inches in weight to the body of Andre Mar Masangkay inside the well. That Romeo Ortega warned him [Quitlong] not to tell anybody of what he saw. That he answered in the affirmative and he was allowed to go home. That his house is about 200 meters from Romeo Ortega’s house. That upon reaching home, his conscience bothered him and he told his mother what he witnessed. That he went to the residence of Col. Leonardo Orig and reported the matter. That Col. Orig accompanied him to the Valenzuela Police Station and some police officers went with them to the crime scene. That accused Benjamin Ortega, Jr. and Manuel Garcia were apprehended and were brought to the police station.

On cross-examination, he said that he did not talk to the lawyer before he was presented as witness in this case. That he narrated the incident to his mother on the night he witnessed the killing on October 15, 1992. That on October 15, 1992 at 5:30 in the afternoon when he arrived, victim Andre Mar Masangkay, Romeo Ortega, Serafin and one Boyet were already having [a] drinking spree and he joined them. That accused Benjamin Ortega, Jr. and Manuel Garcia were not yet in the place. That the stabbing happened between 12:00 midnight and 12:30 a.m. That they drank gin with finger foods such as pork and shell fish. That he met the victim Andre Mar Masangkay only on that occasion. That accused Benjamin Ortega, Jr. and Manuel Garcia joined them at about 11:00 p.m. That there was no altercation between Benjamin Ortega, Jr. and Manuel Garcia in one hand and Andre Mar Masangkay, during the drinking session. That at about 12:30 a.m. Andre Mar Masangkay answered the call of nature and went to the back portion of the house. That he cannot see Andre Mar Masangkay from the place they were having the drinking session. That he did not see what happened to Andre Mar Masangkay. That he only heard Masangkay asking for help. That accused Manuel Garcia was still in the drinking session when he heard Masangkay was asking for help. That Benjamin Ortega, Jr. and Manuel Garcia are his friends and neighbors. That when he heard Andre Mar Masangkay was asking for help, he and Ariel Caranto ran to the back portion of the house and saw Benjamin Ortega, Jr. on top of Andre Mar Masangkay and stabbing the latter. That Andre Mar Masangkay was lying down with his back in the canal and Benjamin Ortega, Jr. on top stabbing the former. That he did not see any injuries on Benjamin Ortega, Jr. That he called Romeo Ortega to pacify his brother Benjamin, Jr. That he did not do anything to separate Benjamin Ortega, Jr. and Masangkay. That he knows that Andre Mar Masangkay was courting Raquel Ortega. That Raquel Ortega asked permission from Andre Mar Masangkay when she left between 8:00 and 9:00 p.m. That there was no

trouble that occurred during the drinking session.

PNP Superintendent Leonardo Orig substantially testified that Diosdado Quitlong is his neighbor for about 9 years. That on October 16, 1992 at 5:00 in the morning, he was summoned by Diosdado Quitlong and reported to him the stabbing incident that occurred at Daangbakal near the subdivision he is living. That he relayed the information to the Valenzuela Police Station and a police team under police officer Param accompanied them to the place. That he asked the police officers to verify if there is a body of person inside the well. That the well was covered with stones and he asked the police officers to seek the help of the neighbors (sic) to remove the stones inside the well. That after the stones were removed, the body of the victim was found inside the well. That the lifeless body was pulled out from the well. That the body has several stab wounds. That he came to know the victim as Andre Mar Masangkay. That two men were arrested by the police officers.

On cross-examination, he said that he saw the body when taken out of the well with several stab wounds. That Diosdado Quitlong told him that he was drinking with the victim and the assailants at the time of the incident. That Benjamin Ortega, Jr. stabbed the victim while the latter was answering the call of nature.

NBI Medico Legal Officer Dr. Ludivico J. Lagat substantially testified that he conducted [an] autopsy on the cadaver of Andre Mar Masangkay on October 16, 1992 at the Valenzuela Memorial Homes located at Macarthur Highway. That he prepared the autopsy report and the sketch of human head and body indicating the location of the stab wounds. That the cause of death is multiple stab wounds, contributory, [a]sphyxia by submersion in water. That there were 13 stab wounds, 8 of which were on the frontal part of the body, 2 at the back and there were contused abrasions around the neck and on the left arm. There was stab wound at the left side of the neck. That the contused abrasion could be produced by cord or wire or rope. That there is (an) incised wound on the left forearm. That the stab wounds which were backward downward of the body involved the lungs. That the victim was in front of the assailant. That the stab wound on the upper left shoulder was caused when the assailant was in front of the victim. That the assailant was in front of the victim when the stab wound near the upper left armpit was inflicted as well as the stab wound on the left chest wall. That the stab wound on the back left side of the body and the stab wound on the back right portion of the body may be produced when the assailant was at the back of the victim. That the assailant was in front of the victim when the stab wound[s] on the left elbow and left arm were inflicted. That the large airway is filled with muddy particles indicating that the victim was alive when the victim inhaled the muddy particles. The heart is filled with multiple hemorrhage, loss of blood or decreased of blood. The lungs is filled with water or muddy particles. The brain is pale due to loss of blood. The stomach is one half filled with muddy particles which could [have been] taken in when submerged in water.

On cross-examination, he said that he found 13 stab wounds on the body of the victim. That he cannot tell if the assailant or the victim were standing. That it is possible that the stab wounds was (sic) inflicted when both [referring to participants] were standing or the victim was lying down and the assailant was on top. That he cannot tell the number of the assailants.”

Evidence for the Appellants

Appellant Manuel Garcia testified that in the early morning of October 15, 1992, he and his wife, Maritess Garcia, brought their feverish daughter, Marjorie, to the Polo Emergency Hospital. He left the hospital at seven o’ clock in the morning, went home, changed his clothes and went to work.[10] After office hours, he and Benjamin Ortega, Jr. passed by the canteen at their place of work. After drinking beer, they left at eight o’ clock in the evening and headed home. En route, they chanced on Diosdado Quitlong alias Mac-mac and Andre Mar Masangkay, who invited them to join their own drinking spree. Thereupon, Appellant Garcia’s wife came and asked him to go home because their daughter was still sick. To alleviate his daughter’s illness, he fetched his mother-in-law who performed a ritual called “tawas.” After the ritual, he remained at home and attended to his sick daughter. He then fell asleep but was awakened by police officers at six o’ clock in the morning of the

following day.

Maritess Garcia substantially corroborated the testimony of her husband. She however added two other participants in the drinking session aside from Diosdado Quitlong alias Mac-mac and Andre Mar Masangkay, namely, a Mang Serafin and Boyet Santos.[11]

Benjamin Ortega, Jr. likewise substantially corroborated the testimony of Appellant Manuel Garcia.[12] According to him, between eleven and twelve o' clock in the evening, Masangkay left the drinking session. Thirty (30) minutes after Masangkay left, he also left the drinking place to urinate.[13] He went behind the house where he saw Masangkay peeping through the room of his sister Raquel. He ignored Masangkay and continued urinating.[14] After he was through, Masangkay approached him and asked where his sister was. He answered that he did not know. Without warning, Masangkay allegedly boxed him in the mouth, an attack that induced bleeding and caused him to fall on his back. When he was about to stand up, Masangkay drew a knife and stabbed him, hitting him on the left arm, thereby immobilizing him. Masangkay then gripped his neck with his left arm and threatened to kill him. Unable to move, Ortega shouted for help. Quitlong came and, to avoid being stabbed, grabbed Masangkay's right hand which was holding the knife. Quitlong was able to wrest the knife from Masangkay and, with it, he stabbed Masangkay ten (10) times successively, in the left chest and in the middle of the stomach. When the stabbing started, Ortega moved to the left side of Masangkay to avoid being hit.[15] Quitlong chased Masangkay who ran towards the direction of the well. Thereafter, Ortega went home and treated his injured left armpit and lips. Then, he slept.

When he woke up at six o' clock the following morning, he saw police officers in front of his house. Taking him with them, the lawmen proceeded to the well. From the railroad tracks where he was asked to sit, he saw the police officers lift the body of a dead person from the well. He came to know the identity of the dead person only after the body was taken to the police headquarters.[16]

The Trial Court's Discussion

The trial court explained its basis for appellants' conviction as follows:[17]

"The Court is convinced that the concerted acts of accused Benjamin Ortega, Jr., Manuel Garcia, Jr. and one Romeo Ortega in lifting, carrying and dumping the victim Andre Mar Masangkay who was still alive and breathing inside the deep well filled with water, head first and threw big stones/rocks inside the well to cover the victim is a clear indication of the community of design to finish/kill victim Andre Mar Masangkay. Wounded and unarmed victim Andre Mar Masangkay was in no position to flee and/or defend himself against the three malefactors. Conspiracy and the taking advantage of superior strength were in attendance. The crime committed by the accused is Murder.

Concert of action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the fatal wound may determine complicity where it would not otherwise be evidence (People vs. Yu, 80 SCRA 382 (1977)).

Every person criminally liable for a felony is also civilly liable. Accused (m)ust reimburse the heirs of victim Andre Mar Masangkay the amount of P35,000.00 for the funeral expenses of the deceased."

The Issues

In their ten-page brief, appellants fault the trial court with the following: [18]

"I. The trial court erred in holding that there is conspiracy on the basis of the prosecution's evidence that at the time both accused and one Romeo Ortega lifted the body of Andrew Masangkay from where he succumbed due to stab wounds and brought and drop said body of Andrew Masangkay to the well to commit murder;

II. The trial court erred in finding and holding that Andrew Masangkay was still alive at the time his body was dropped in the well;

III. The trial court erred in convicting Manuel Garcia and in not acquitting the latter of the crime charged; and

IV. The trial court erred in not finding that if at all Benjamin Ortega Jr. is guilty only of homicide alone.”

On the basis of the records and the arguments raised by the appellants and the People, we believe that the question to be resolved could be simplified thus: What are the criminal liabilities, if any, of Appellants Ortega and Garcia?

The Court’s Ruling

We find the appeal partly meritorious. Appellant Ortega is guilty only of homicide. Appellant Garcia deserves acquittal.

First Issue: Liability of Appellant Ortega

The witnesses for the prosecution and defense presented conflicting narrations. The prosecution witnesses described the commission of the crime and positively identified appellants as the perpetrators. The witnesses for the defense, on the other hand, attempted to prove denial and alibi. As to which of the two contending versions speaks the truth primarily rests on a critical evaluation of the credibility of the witnesses and their stories. In this regard, the trial court held:[19]

“The Court has listened intently to the narration of the accused and their witnesses and the prosecution witnesses and has keenly observed their behavior and demeanor on the witness stand and is convinced that the story of the prosecution is the more believable version. Prosecution eyewitness Diosdado Quitlong appeared and sounded credible and his credibility is reinforced by the fact that he has no reason to testify falsely against the accused. It was Diosdado Quitlong who reported the stabbing incident to the police authorities. If Quitlong stabbed and killed the victim Masangkay, he will keep away from the police authorities and will go in hiding. x x x”

Because the trial court had the opportunity to observe the witnesses’ demeanor and deportment on the stand as they rendered their testimonies, its evaluation of the credibility of witnesses is entitled to the highest respect. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of credibility must be respected.[20]

In the instant case, we have meticulously scoured the records and found no reason to reverse the trial court’s assessment of the credibility of the witnesses and their testimonies[21] insofar as Appellant Ortega is concerned. The narration of Eyewitness Diosdado Quitlong appears to be spontaneous and consistent. It is straightforward, detailed, vivid and logical. Thus, it clearly deserves full credence.

On the other hand, in asserting alibi and denial, the defense bordered on the unbelievable. Appellant Ortega claimed that after he was able to free himself from Masangkay’s grip, he went home, treated his injuries and slept.[22] This is not the ordinary reaction of a person assaulted. If Ortega’s version of the assault was true, he should have immediately reported the matter to the police authorities, if only out of gratitude to Quitlong who came to his rescue. Likewise, it is difficult to believe that a man would just sleep after someone was stabbed in his own backyard. Further, we deem it incredible that Diosdado Quitlong would stab Masangkay ten (10) times successively, completely ignoring Benjamin Ortega, Jr. who was grappling with Masangkay. Also inconsistent with human experience is his narration that Masangkay persisted in choking him instead of defending himself from the alleged successive stabbing of Quitlong.[23] The natural tendency of a person under attack is to defend himself and not to persist in choking a defenseless third person.

Murder or Homicide?

Although treachery, evident premeditation and abuse of superior strength were alleged in the information, the trial court found the presence only of abuse of superior strength.

We disagree with the trial court's finding. Abuse of superior strength requires deliberate intent on the part of the accused to take advantage of such superiority. It must be shown that the accused purposely used excessive force that was manifestly out of proportion to the means available to the victim's defense.[24] In this light, it is necessary to evaluate not only the physical condition and weapon of the protagonists but also the various incidents of the event.[25]

In his testimony, Witness Dominador Quitlong mentioned nothing about Appellant Ortega's availment of force excessively out of proportion to the means of defense available to the victim to defend himself. Quitlong described the assault made by Appellant Ortega as follows:[26]

“ATTY. ALTUNA:

Q Will you please tell me the place and date wherein you have a drinking spree with Andrew Masangkay and where you witnessed a stabbing incident?

A It was on October 15, 1992, sir, at about 5:30 in the afternoon we were drinking in the house of Mr. Benjamin Ortega, Sr., because the house of Benjamin Ortega Sr. and the house of his son Benjamin Ortega, Jr. are near each other.

xxx xxx xxx

Q Mr. Witness, who were the companions of said persons, Benjamin Ortega, Jr., Manuel Garcia, you (sic) in drinking in said place?

A The other companions in the drinking session were Ariel Caranto y Ducay, Roberto San Andres and Romeo Ortega.

Q What about this victim, Andrew Masangkay, where was he at that time?

A Also the victim, Andrew Masangkay, he was also there.

Q You said that the two accused, Manuel Garcia and Benjamin Ortega, Jr. arrived drunk and joined the group?

A Yes, sir.

Q What happened next?

A While we were there together and we were drinking ... (interrupted by Atty. Altuna)

Q Who is that 'we'?

A Referring to Benjamin Ortega, Jr., Manuel Garcia, Ariel Caranto, Romeo Ortega, Roberto San Andres, myself and Andrew Masangkay. Andrew Masangkay answer to a call of nature and went to the back portion of the house, and Benjamin Ortega, Jr. followed him where he was.

Q What happened next?

A And afterwards we heard a shout and the shout said 'Huwag, tulungan n'yo ako'.

Q From whom did you hear this utterance?

A The shout came from Andrew Masangkay.

Q After Benjamin Ortega, Jr. followed Andrew Masangkay to answer a call of nature and after you heard 'huwag, tulungan n'yo ako' coming from the mouth of the late Andrew Masangkay, what happened next?

A Ariel Caranto and I ran towards the back portion of the house.

Q And what did you see?

A And I saw that Benjamin Ortega, Jr. was on top of Andrew Masangkay and he was stabbing Andrew Masangkay.

Q Will you please demonstrate to the Honorable Court how the stabbing was done telling us the particular position of the late Andrew Masangkay and how Benjamin Ortega, Jr proceeded with the stabbing against the late victim, Andrew Masangkay?

INTERPRETER:

(At this juncture, the witness demonstrating.)

Andrew Masangkay was lying down on a canal with his face up, then Benjamin Ortega, Jr. was 'nakakabayo' and with his right hand with closed fist holding the weapon, he was thrusting this weapon on the body of the victim, he was making downward and upward motion thrust.

ATTY. ALTUNA: (To the witness)

Q How many times did Benjamin Ortega, Jr. stabbed Andrew Masangkay?

A I cannot count the number of times."

It should be noted that Victim Masangkay was a six-footer, whereas Appellant Ortega, Jr. was only five feet and five inches tall.[27] There was no testimony as to how the attack was initiated. The accused and the victim were already grappling when Quitlong arrived. Nothing in the foregoing testimony and circumstances can be interpreted as abuse of superior strength. Hence, Ortega is liable only for homicide, not murder.

Second Issue: Liability of Appellant Manuel Garcia

Appellants argue that the finding of conspiracy by the trial court "is based on mere assumption and conjecture x x x." [28] Allegedly, the medico-legal finding that the large airway was "filled with muddy particles indicating that the victim was alive when the victim inhaled the muddy particles" did not necessarily mean that such muddy particles entered the body of the victim while he was still alive. The Sinumpaang Salaysay of Quitlong stated, "Nilubayan lang nang saksak nang mapatay na si Andrew ni Benjamin Ortega, Jr." Thus, the prosecution evidence shows Masangkay was already "dead" when he was lifted and dumped into the well. Hence, Garcia could be held liable only as an accessory.[29]

We do not agree with the above contention. Article 4, par. 1, of the Revised Penal Code states that criminal liability shall be incurred by "any person committing a felony (delito) although the wrongful act done be different from that which he intended." The essential requisites for the application of this provision are that (a) the intended act is felonious; (b) the resulting act is likewise a felony; and (c) the unintended albeit graver wrong was primarily caused by the actor's wrongful acts. In assisting Appellant Ortega, Jr. carry the body of Masangkay to the well, Appellant Garcia was committing a felony. The offense was that of concealing the body of the crime to prevent its discovery, i.e. that of being an accessory in the crime of homicide.[30] Although Appellant Garcia may have been unaware that the victim was still alive when he assisted Ortega in throwing the body into the well, he is still liable for the direct and natural consequence of his felonious act, even if the resulting offense is worse than that intended.

True, Appellant Garcia merely assisted in concealing the body of the victim. But the autopsy conducted by the NBI medico-legal officer showed that the victim at that time was still alive, and that he died subsequently of drowning.[31] That drowning was the immediate cause of death was medically demonstrated by the muddy particles found in the victim's airway, lungs and stomach.[32] This is evident from the expert testimony given by the medico-legal officer, quoted below:[33]

ATTY. ALTUNA:

“Q Will you please explain this in simple language the last portion of Exhibit N, beginning with ‘tracheo-bronchial tree’, that is sentence immediately after paragraph 10, 2.5 cms. Will you please explain this?

A The tracheo-bronchial tree is filled with muddy particles.

Q I ask you a question on this. Could the victim have possibly get this particular material?

A No, sir.

Q What do you mean by no?

A A person should be alive so that the muddy particles could be inhaled.

Q So, in short, you are telling or saying to us that if there is no inhaling or the taking or receiving of muddy particles at that time, the person is still alive?

A Yes, sir.

Q Second point?

A The heart is pale with some multiple petechial hemorrhages at the anterior surface.

Q And this may [be] due to stab wounds or asphyxia?

A These are the effects or due to asphyxia or decreased amount of blood going to the heart.

Q This asphyxia are you referring to is the drowning?

A Yes, sir.

Q Next point is the lungs?

A The lungs is also filled with multiple petechial hemorrhages.

Q What could have caused this injury of the lungs?

A This is due to asphyxia or the loss of blood.

Q Are you saying that the lungs have been filled with water or muddy particles?

A Yes, sir.

Q And, precisely, you are now testifying that due to stab wounds or asphyxia, the lungs have been damaged per your Report?

A Yes, sir.

Q Continuing this brain and other visceral organs, pale. What is this?

A The paleness of the brain and other visceral organs is due to loss of blood.

Q And, of course, loss of blood could be attributed to the stab wound which is number 13?

A Yes, sir.

Q And the last one, under the particular point ‘hemothorax’?

A It indicates at the right side. There are around 1,400 cc of blood that accumulate at the thoracic cavity and this was admixed with granular materials?

Q And what cause the admixing with granular materials on said particular portion of the body?

A Could be muddy particles.

Q Due to the taking of maddy (sic) materials as affected by asphyxia? Am I correct?

A It’s due to stab wounds those muddy particles which set-in thru the stab wounds.

Q So, because of the opening of the stab wounds, the muddy particles now came in, in that particular portion of

the body and caused admixing of granular materials?

A Yes, sir.

Q Continuing with your report, particularly, the last two portions, will you please explain the same?

A The hemoperitoneum there are 900 cc of blood that accumulated inside the abdomen.

Q And what could have cause the same?

A [T]he stab wound of the abdomen.

Q The last one, stomach 1/2 filled with muddy particles. Please explain the same?

A The victim could have taken these when he was submerged in water.

Q What is the take in?

A Muddy particles.

Q And he was still alive at that time?

A Yes, sir.” (Underscoring supplied)

A Filipino authority on forensic medicine opines that any of the following medical findings may show that drowning is the cause of death:[34]

“1. The presence of materials or foreign bodies in the hands of the victim. The clenching of the hands is a manifestation of cadaveric spasm in the effort of the victim to save himself from drowning.

2. Increase in volume (emphysema aquosum) and edema of the lungs (edema aquosum).

3. Presence of water and fluid in the stomach contents corresponding to the medium where the body was recovered.

4. Presence of froth, foam or foreign bodies in the air passage found in the medium where the victim was found.

5. Presence of water in the middle ear.”

The third and fourth findings were present in the case of Victim Masangkay. It was proven that his airpassage, or specifically his tracheo-bronchial tree, was filled with muddy particles which were residues at the bottom of the well. Even his stomach was half-filled with such muddy particles. The un rebutted testimony of the medico-legal officer that all these muddy particles were ingested when the victim was still alive proved that the victim died of drowning inside the well.

The drowning was the direct, natural and logical consequence of the felony that Appellant Garcia had intended to commit; it exemplifies praeter intentionem covered by Article 4, par. 1, of the Revised Penal Code. Under this paragraph, a person may be convicted of homicide although he had no original intent to kill.[35]

In spite of the evidence showing that Appellant Garcia could be held liable as principal in the crime of homicide, there are, however, two legal obstacles barring his conviction, even as an accessory – as prayed for by appellants’ counsel himself.

First. The Information accused Appellant Garcia (and Appellant Ortega) of “attack[ing], assault[ing], and stab[bing] repeatedly with a pointed weapon on the different parts of the body one ANDRE MAR MASANGKAY y ABLOLA” The prosecution’s evidence itself shows that Garcia had nothing to do with the stabbing which was solely perpetrated by Appellant Ortega. His responsibility relates only to the attempted concealment of the crime and the resulting drowning of Victim Masangkay. The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or

information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right.[36] Section 14, par. 2, of the 1987 Constitution explicitly guarantees the following:

“(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.” (Underscoring supplied)

In *People vs. Pailano*,[37] this Court ruled that there can be no conviction for rape on a woman “deprived of reason or otherwise unconscious” where the information charged the accused of sexual assault “by using force or intimidation,” thus:

“The criminal complaint in this case alleged the commission of the crime through the first method although the prosecution sought to establish at the trial that the complainant was a mental retardate. Its purpose in doing so is not clear. But whatever it was, it has not succeeded.

If the prosecution was seeking to convict the accused-appellant on the ground that he violated Anita while she was deprived of reason or unconscious, such conviction could not have been possible under the criminal complaint as worded. This described the offense as having been committed by ‘Antonio Pailano, being then provided with a scythe, by means of violence and intimidation, (who) did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant, Anita Ibañez, 15 years of age, against her will.’ No mention was made of the second circumstance.

Conviction of the accused-appellant on the finding that he had raped Anita while she was unconscious or otherwise deprived of reason -- and not through force and intimidation, which was the method alleged -- would have violated his right to be informed of the nature and cause of the accusation against him.[Article IV, Sec. 19, Constitution of 1973; now Article III, Sec. 14(2)] This right is safeguarded by the Constitution to every accused so he can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. This right was, of course, available to the herein accused-appellant.

In *People vs. Ramirez*, [fn: 69 SCRA 144] we held that a person charged with rape could not be found guilty of qualified seduction, which had not been alleged in the criminal complaint against him. In the case of *People vs. Montes*, [fn: 122 SCRA 409] the Court did not permit the conviction for homicide of a person held responsible for the suicide of the woman he was supposed to have raped, as the crime he was accused of -- and acquitted -- was not homicide but rape. More to the point is *Tubb v. People of the Philippines*, [fn: 101 Phil. 114] where the accused was charged with the misappropriation of funds held by him in trust with the obligation to return the same under Article 315, paragraph 1(b) of the Revised Penal Code, but was convicted of swindling by means of false pretenses, under paragraph 2(b) of the said Article, which was not alleged in the information. The Court said such conviction would violate the Bill of Rights.”

By parity of reasoning, Appellant Garcia cannot be convicted of homicide through drowning in an information that charges murder by means of stabbing.

Second. Although the prosecution was able to prove that Appellant Garcia assisted in “concealing x x x the body of the crime, x x x in order to prevent its discovery,” he can neither be convicted as an accessory after the fact defined under Article 19, par. 2, of the Revised Penal Code. The records show that Appellant Garcia is a brother-in-law of Appellant Ortega,[38] the latter’s sister, Maritess, being his wife.[39] Such relationship exempts Appellant Garcia from criminal liability as provided by Article 20 of the Revised Penal Code:

“ART. 20. Accessories who are exempt from criminal liability. -- The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.”

On the other hand, “the next preceding article” provides:

“ART. 19. Accessories. – Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.”

Appellant Garcia, being a covered relative by affinity of the principal accused, Benjamin Ortega, Jr., is legally entitled to the aforequoted exempting provision of the Revised Penal Code. This Court is thus mandated by law to acquit him.

Penalty and Damages

The award of actual damages should be reduced to P31,790.00 from P35,000.00. The former amount was proven both by documentary evidence and by the testimony of Melba Lozano, a sister of the victim.[40] Of the expenses alleged to have been incurred, the Court can give credence only to those that are supported by receipts and appear to have been genuinely incurred in connection with the death of the victim.[41] However, in line with current jurisprudence,[42] Appellant Ortega shall also indemnify the heirs of the deceased in the sum of P50,000.00. Indemnity requires no proof other than the fact of death and appellant’s responsibility therefor.[43]

The penalty for homicide is reclusion temporal under Article 249 of the Revised Penal Code, which is imposable in its medium period, absent any aggravating or mitigating circumstance, as in the case of Appellant Ortega. Because he is entitled to the benefits of the Indeterminate Sentence Law, the minimum term shall be one degree lower, that is, prision mayor.

WHEREFORE, premises considered, the joint appeal is PARTLY GRANTED. Appellant Benjamin Ortega, Jr. is found GUILTY of homicide and sentenced to ten (10) years of prision mayor medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum. Appellant Ortega, Jr. is also ORDERED to pay the heirs of the victim P50,000.00 as indemnity and P31,790.00 as actual damages. Appellant Manuel Garcia is ACQUITTED. His immediate release from confinement is ORDERED unless he is detained for some other valid cause.

SO ORDERED.

Narvasa C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Original Records, pp. 183-198; rollo, pp. 29-44.

[2] Regional Trial Court of Valenzuela, Metro Manila, Branch 171.

[3] Original Records, p. 1; rollo, p. 8.

[4] Atty. Ricardo Perez of the Public Attorney's Office.

[5] Original Records, p. 25.

[6] After promulgation of judgment, John Doe was identified as Romeo Ortega and the latest trial court's Order in this case was for the state prosecutor to conduct a preliminary investigation to determine his liability. (Original Records, pp. 207-210).

[7] Original Records, p. 198; rollo, p. 44; Decision, p. 16.

[8] Original Records, p. 205.

[9] Ibid., pp. 185-187.

[10] TSN, June 14, 1993, pp. 12-45.

[11] Ibid., pp. 11-20.

[12] TSN, August 16, 1993, pp. 7-19.

[13] Ibid., pp. 21-22.

[14] Ibid., pp. 23-25.

[15] Ibid., pp. 26-35.

[16] TSN, September 22, 1993, pp. 3-22.

[17] Original Records, pp. 197-198; rollo, pp. 43-44; Decision, pp. 15-16.

[18] Rollo, p. 63; original text in upper case.

[19] Original Records, pp. 196-197; rollo, pp. 42-43; Decision, pp. 14-15.

[20] People vs. De Guzman, 188 SCRA 405, 410-411, August 7, 1990.

[21] People vs. Gabris, 258 SCRA 663, 671, July 11, 1996 citing the cases of People vs. Vallena, 244 SCRA 685, 691, June 1, 1995; People vs. Jaca, 229 SCRA 332, January 18, 1994; People vs. Tismo, 204 SCRA 535, 552, December 4, 1991; and People vs. Uycoque, 246 SCRA 769, 779, July 31, 1995.

[22] TSN, September 22, 1993, pp. 6-14.

[23] Ibid., pp. 4-6.

[24] People vs. Casingal, 243 SCRA 37, 46, March 29, 1995.

[25] People vs. Escoto, 244 SCRA 87, 97-98, May 11, 1995 citing the cases of People vs. Martinez, 96 SCRA 714, March 31, 1980 and People vs. Cabiling, 74 SCRA 285, December 17, 1976.

[26] TSN, February 12, 1993, pp. 11-15.

[27] TSN, October 27, 1993, p. 12.

[28] Rollo, p. 64.

[29] Ibid., pp. 65-66.

[30] Paragraph no. 2 of Article 19 of the Revised Penal Code provides for accessories' manners of participation:

ARTICLE 19. Accessories. -- Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder or attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

Under this Article, it is required that: (1) the accessory should have knowledge of the crime, (2) he did not take part in its commission as principal or accomplice, and (3) subsequent to its commission, he took part in any of the three ways enumerated above.

[31] The exact words used by the medico-legal officer were: "The multiple stab wounds sustained by the victim and asphyxia by submersion in water." (TSN, April 16, 1993, p. 8).

[32] TSN, April 16, 1993, pp. 20-24.

[33] TSN, April 16, 1993, pp. 20-24.

[34] Pedro Solis, Legal Medicine, 1987, p. 448.

[35] Aquino, The Revised Penal Code, 1987 edition, Volume 1, p. 70 citing *Pico vs. U.S.*, 57L.Ed.812, 40 Phil. 117, 15 Phil. 549.

[36] *People vs. Guevarra*, 179 SCRA 740, 751, December 4, 1989 citing the cases of *Matilde, Jr. vs. Jabson*, 68 SCRA 456, 461, December 29, 1975 and *U.S. vs. Ocampo*, 23 Phil. 396.

[37] 169 SCRA 649, 653-654, January 31, 1989.

[38] TSN, June 14, 1993, p. 39; TSN, August 16, 1993, p. 9.

[39] TSN, October 13, 1993, p. 16.

[40] The following receipts were offered as evidence: (1) receipt of the Diocese of Lucena for funeral and electricity charges (350.00); (2) receipt for transportation expense for the transfer of remains of Andre Mar Masangkay (3,500.00); (3) receipt of Funeral Helen for home and coach services (5,000.00); (4) receipt of the Diocese of San Pedro Bautista Parish for mortuary rental (350.00); (5) receipt of the Most Holy Redeemer Parish for use of mortuary (2,590.00); and (6) receipt of La Funeraria Paz for their services (20,000.00).

[41] *People vs. Cayabyab*, G.R. No. 123073, June 19, 1997 citing the cases of *People vs. Rosario*, 246 SCRA 658, 671, July 18, 1995 and *People vs. Degoma*, 209 SCRA 266, 274, May 22, 1992.

[42] *People vs. Quinao, et al.*, G.R. No. 108454, March 13, 1997; *People vs. Azugue*, G.R. No. 110098, February 26, 1997; *People vs. Ombrog*, G.R. No. 104666, February 12, 1997.

[43] *People vs. Cayabyab*, *supra*.

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