

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR RAFAEL Y LEGASPI, MARIO RAFAEL Y LEGASPI, AND MAXIMO RAFAEL Y MACASIEB, ACCUSED,*G.R. No. 123176. October 13, 2000*

Ponente: QUISUMBING, J.

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On automatic review is the consolidated decision[1] of the Regional Trial Court of Quezon City, Branch 217, in Criminal Cases No. Q-94-59454, and No. Q-94-59453. In the first case, it convicted appellant of the crime of murder, sentencing him to suffer the penalty of death, and ordering him to pay the heirs of the victim the amount of P50,000.00 as indemnity, P94,000.00 as funeral expenses, and to pay the costs. In the second, it convicted appellant of the crime of frustrated murder, sentencing him to suffer an indeterminate penalty of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum, and ordering him to indemnify the victim the amount of P36,500.00, and to pay the costs.

Appellant and his two sons, Melchor and Mario, were accused of the crime of murder for stabbing to death Gloria Tuatis-Rafael, niece-in-law of appellant, and of the crime of frustrated murder of Alejandra Macaraeg-Rafael, sister-in-law of appellant.

The facts, based on the records, are as follows:

On August 28, 1994, at around 8:00 P.M., at Rosal Street, Pingkian III, Pasong Tamo, Quezon City, Alejandra and her daughter-in-law Gloria, were preparing dinner in the kitchen when they heard a commotion outside the house. Without warning, appellant and his two sons, Melchor and Mario, barged inside the kitchen. Appellant was unarmed while Melchor and Mario were armed with bolos. Suddenly, Melchor hacked Alejandra's left hand, severing it from her body. Alejandra slumped in a corner and pleaded with Melchor not to kill her. Appellant stood in front of the kitchen door watching the grisly incident unfold. After hacking Alejandra, Melchor turned to Gloria and hacked her on the head. Gloria managed to run outside the house but Mario chased her. At this point, Alejandra could no longer see what was happening to Gloria because of the continuous bleeding of her hand. Melchor turned to Alejandra anew and continued to stab her on the different parts of the body. Alejandra feigned death by lying still. Believing that Alejandra was dead, Melchor left her and went outside. Alejandra heard appellant telling his two sons in the Pangasinan dialect, "Patayin, patayin iran amen!" (Kill them all!).[2]

The commotion woke Rogelio Rafael, who was sleeping upstairs.[3] When Rogelio peeped through the jalousie window, he saw Melchor and Mario chasing his wife Gloria. The scene was illuminated by a light coming from the nearby piggery. When Gloria stumbled, Melchor and Mario repeatedly hacked her. Rogelio shouted at them to have mercy on his wife. He frantically rushed downstairs to help her. When he got outside, however, the assailants had already fled. He tried to run after them but failed. When Rogelio went back to check on his wife and mother, he found his wife, Gloria, dead, and his mother, Alejandra, with her left hand severed. He requested his brother-in-law, Paking Aragon, to rush Alejandra to the hospital.[4] Paking brought Alejandra to the East

Avenue Medical Center where she was diagnosed to have "traumatic amputation, L. wrist. Hacking wound base of 2nd finger and base of mid phalanx 3rd finger, R." [5] Thereafter, Rogelio reported the stabbing incident to the Batasan Police Detachment. [6]

On October 25, 1994, appellant and his two sons were charged under the following Informations: [7]

Criminal Case No. Q-94-59454 (MURDER)

That on or about the 28th day of August 1994, in Quezon City, Philippines, the said accused, conspiring and confederating together and mutually helping one another, with evident premeditation, treachery and superior strength, by then and there hacking her with the use of a bolo and hitting her on the different parts of her body, thereby inflicting upon her serious and mortal wounds which was the direct and immediate cause of her death, to the damage and prejudice of the herein (sic) of said GLORIA TUATIS-RAFAEL.

Criminal Case No. Q-94-59453 (FRUSTRATED MURDER)

That on or about the 28th day of August, 1994, in Quezon City, Philippines, the said accused, conspiring and confederating together and mutually helping one another, with evident premeditation, treachery and superior strength, did then and there, wilfully, unlawfully, and feloniously with intent to kill, attack, assault and employ personal violence upon the person of ALEJANDRA MACARAEG-RAFAEL, by then and there hacking her with a bolo and hitting her on the different parts of her body, thereby inflicting upon her serious and mortal wounds which ordinarily would cause the death of said ALEJANDRA MACARAEG-RAFAEL, thus performing all the acts of execution which should have produced the crime of MURDER, as a consequence but nevertheless did not produce it by reason of causes independent of their will, that is the timely and able medical attendance rendered to said ALEJANDRA MACARAEG-RAFAEL which prevented her death, to her damage and prejudice.

Only appellant was arrested. His two sons remain at large. Upon arraignment, appellant entered a plea of not guilty. [8] Joint trial on the merits ensued.

The prosecution presented the following witnesses: (1) Alejandra Macaraeg-Rafael, the victim whose left hand was severed; (2) Leonardo Rafael, her husband, and brother of appellant, who testified that a possible motive for the killing was a dispute over an aborted sale of a parcel of land, whose sale Alejandra blocked, which angered appellant; (3) Elvira Hamoy, sister of Gloria, who witnessed the killing of Gloria from her house; (4) Rogelio Rafael, husband of Gloria; (5) Dr. Florante F. Baltazar, Chief of the Philippine National Police Central Crime Laboratory Service, who conducted the autopsy on the body of Gloria and who testified that Gloria suffered 18 wounds and the cause of death was the hacking and stab wounds on her head, body, and extremities. [9]

The defense presented the following witnesses: (1) Benedicto Dizon, a factory worker and friend of appellant, (2) appellant, (3) Leo Rafael, appellant's 15 year-old son, and (4) Lisa Rafael, appellant's daughter.

Appellant interposed the defense of alibi and denial. He claimed that on August 28, 1994, at around 7:30 P.M., he and his son Leo were on their way home from the FEU FERN where appellant works as a caretaker. When they passed by Dizon's house in Sapphire St., Fern Village, Quezon City, they saw Dizon, one Mang Samuel and Jaime Mayapis engaged in a conversation about fighting cocks. Appellant and his son joined the conversation for about 30 minutes. Thereafter, they headed towards their house which was located some 400 meters away. That same night, while appellant and Leo were resting, several policemen came to their house looking for Melchor and Mario. Appellant and Leo were ordered to step out of the house and lie on the ground while the policemen searched their house for Melchor and Mario. When these two could not be found, appellant and Leo were brought to Precinct No. 6 where they saw Rogelio, Gloria's husband. They were later brought to Precinct No. 3 which had jurisdiction over the crime. Thereafter, they proceeded to the house of Rogelio where they found a severed hand.

Afterwards, they went home and the policemen got the pictures and identification cards of Melchor and Mario.[10]

On October 30, 1995, the trial court rendered a decision[11] finding appellant guilty as charged. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing and in consideration of the aggravating circumstance of dwelling, MAXIMO RAFAEL is hereby sentenced:

In Criminal Case No. Q-94-59453 - to suffer the indeterminate penalty of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum and to indemnify Alejandra Rafael y Macaraeg the amount of thirty six thousand five hundred pesos (P36,500.00) and to pay the costs.

In Criminal Case No. Q-94-59454 - to suffer the penalty of death and to pay the heirs of Gloria Rafael the amount of P50,000.00 as death indemnity (People v. Molas, G.R. No. 93437-39, February 5, 1993, 218 SCRA 473) and ninety-four thousand pesos (P94,000.00), representing the funeral expenses and to pay the costs.

SO ORDERED.

Hence, the present automatic review. Appellant prays for acquittal or, in the alternative, for a lower penalty by being held liable merely as an accomplice. He claims that the trial court committed the following errors:[12]

- THE COURT A QUO ERRED IN FINDING THE EXISTENCE OF CONSPIRACY RELATIVE TO THE INCIDENT IN QUESTION.
- THE COURT A QUO ERRED IN GIVING FULL FAITH AND UNDUE CREDENCE TO THE INCREDIBLE, UNPERSUASIVE, INCONSISTENT IF NOT CONTRADICTORY TESTIMONY OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.
- THE COURT A QUO MANIFESTLY ERRED IN RENDERING A VERDICT OF CONVICTION IN CRIM. CASE NOS. Q-59453 AND Q-94-59454 DESPITE THE FACT THAT ACCUSED-APPELLANT'S GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

In brief, we are asked to consider the following issues: (1) whether the witnesses for the defense were credible; (2) whether conspiracy was sufficiently proved; and (3) whether the guilt of appellant was proved beyond reasonable doubt either as a principal or merely as an accomplice.

On the first issue, regarding credibility of witnesses, appellate courts generally do not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule admits of certain exceptions, such as: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence.[13] The Court is likewise not precluded from making its own assessment of the probative value of the testimony of the witnesses on the basis of the transcript of stenographic notes (TSNs) thereof.[14]

After conducting a thorough review of the records, however, we see no cogent reason to fault the factual findings of the trial court. The testimonies of the prosecution witnesses, when pieced together, jibe in material points to give the whole picture of the stabbing incident. Alejandra testified as to the circumstances surrounding the inception of the attack, while prosecution witnesses Elvira and Rogelio testified as to subsequent events which occurred outside the house. Further, the alleged inconsistencies pointed out by appellant pertain to minor details which do not detract from the credibility of the prosecution witnesses. The test is whether their testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole.[15] When queried, appellant

himself could not think of any reason why the prosecution witnesses would falsely implicate him in the commission of the crimes.[16] Absent any evidence showing any reason or motive for prosecution witnesses to perjure themselves, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[17]

Moreover, it appears that appellant's own version of the incident lacks persuasiveness. He denies participating in the gory incident, claiming that he was not at the crime scene but on his way home from the FEU FERN and that he passed by Dizon's house in Sapphire St., Fern Village, Quezon City. However, two prosecution witnesses, namely Alejandra and Elvira, saw appellant at the locus criminis, Gloria Rafael's residence in Pingkian III, Pasong Tamo, Quezon City. Being his relatives, they could not have possibly been mistaken as to his identity. Thus, in the face of his positive identification as one with the assailants, his defense of denial and alibi must fail.[18]

Regarding the second issue, appellant insists that conspiracy was not established by clear and convincing evidence. The prosecution, appellant claims, failed to prove that he and his two sons had a prior plan to kill the victims. Even granting that appellant shouted "Patayin, patayin iran amen," he could not be held liable as a principal because when he uttered those words, the other accused had already fatally wounded the victims.

Further, appellant points out the following inconsistencies in the testimonies of prosecution witnesses - First, Alejandra testified that after Gloria ran from the kitchen, she did not see what happened next. However, she later testified that she saw accused Melchor and Mario hacking Gloria. Second, it was unclear from Alejandra's testimony whether the kitchen door was open or closed at the start of the attack. Third, Elvira, a neighbor testified that she was attending to her children when the incident occurred, but later testified that she and her husband (actually, he was the husband of Gloria, not Elvira) were already sleeping in their bedroom with their children. Fourth, Elvira testified that during the attack, appellant was shouting in front of the kitchen but later testified that he was merely watching the incident. Fifth, while Elvira testified that Gloria suffered injuries on her breast and right side of the face, Alejandra testified that Gloria was merely stabbed in the head once. Sixth, Alejandra wavered in her testimony as to whether appellant was carrying a bolo at the time of the incident. Appellant also argues that because prosecution witness Elvira testified that when she saw the gruesome incident, she "lost her presence of mind", she could not have been in a proper state of mind to recall the details of the incident. Further, he points out that while Alejandra testified that appellant was present at the crime scene, prosecution witness Rogelio testified seeing only accused Mario and Melchor at the locus criminis.

The Office of the Solicitor General counters that conspiracy was duly proven by the prosecution. The culprits arrived together at the crime scene, and acted in concert in their criminal design. Appellant oversaw the carnage and directed his sons to kill the victims, shouting "Patayin, patayin iran amen." Thereafter, appellant and his sons fled together. Thus, the surrounding circumstances indicate a community of criminal intent, which is the essence of conspiracy.

Appellant was convicted of the crime of murder and frustrated murder because of the alleged conspiracy among the three accused. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[19] Conspiracy, like the crime itself, must be proven beyond reasonable doubt.[20] Mere presence, knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.[21]

On record, appellant's participation in the commission of the crimes consisted of his presence at the locus criminis, and his shouting "Patayin, patayin iran amen!" (Kill them all!) during the later stage of the fatal incident. The prosecution witnesses did not see him bearing any weapon or using one to inflict any injury on the victims.

He did not run away with the two other accused still at large. Thus, we are far from convinced that conspiracy existed between appellant and any of his sons. Conspiracy cannot be logically inferred from the overt acts of herein appellant. We have previously ruled that relationship or association alone is not a badge of conspiracy.[22] When there is doubt as to whether a guilty participant in the killing has committed the role of a principal or that of an accomplice, the court should favor the milder form of responsibility.[23]

Article 18 of the Revised Penal Code penalizes as accomplices those who, not being included in Article 17 (which enumerates those liable as principals), cooperate in the execution of the offense by previous or simultaneous acts. Appellant herein had no direct part in the execution of the killing and maiming of the victims. Nothing on record shows that he had induced his two sons to go on a stabbing frenzy. The prosecution witnesses themselves testified that appellant shouted "Patayin, patayin iran amen!" after Melchor had already hacked Alejandra's hand and after Mario gave chase to Gloria outside the house.[24] Evidently, appellant's utterances could not have been the determining cause of the commission of the crimes.[25] If at all, it merely had further inflammatory effect on the accused. As such, appellant cannot be considered a principal by inducement. Neither can appellant be held liable as a principal by indispensable cooperation. By his proven acts, appellant could be held liable only as an accomplice.

In order that a person may be considered an accomplice, the following requisites must concur: (1) community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution of the offense by previous or simultaneous acts, with the intention of supplying material and moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts and those attributed to the person charged as an accomplice.[26] In this case, appellant's acts of going to Gloria's house with his sons and his encouraging shouts clearly demonstrated his concurrence in their aggressive design and lent support to their nefarious intent and afforded moral and material support to their attack against the victims. Hence, we are convinced he must be held liable as accomplice in the commission of the crimes.

May the liability of an accomplice be determined in the absence of trial of the supposed principals? In *Vino v. People of the Philippines* and *Court of Appeals*,[27] we held that "[t]he corresponding responsibilities of the principal, accomplice, and accessory are distinct from each other. As long as the commission of the offense can be duly established in evidence the determination of the liability of the accomplice or accessory can proceed independently of that of the principal." Hence, we find no legal impediment in the determination of appellant's liabilities for the crimes committed.

The qualifying circumstance of treachery clearly attended the killing of Gloria and the maiming of Alejandra, as the two conditions for the existence of treachery are present, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him.[28] Appellant's sons went to Gloria's house armed with bolos, which ensured the execution of their nefarious deed evidently without risk to themselves and without affording their victims any real chance to defend themselves.[29] The killing of Gloria having been attended by treachery, it is without doubt murder.

As to Alejandra, the crime committed was frustrated murder because Melchor performed all the acts of execution which would produce the felony as a consequence but which, nevertheless, did not produce it by reason of causes independent of his will.[30] The numerous wounds inflicted on Alejandra displayed the clear intent to kill. She was hacked on the right wrist, the palm, lower wrist, fingers, and her head.[31] These wounds would have caused her death had there been no timely medical intervention.[32] Melchor desisted from further assault when the gravely wounded Alejandra feigned death. He then turned to Gloria believing that he had already killed

Alejandra.[33] Thus, the crime committed against Alejandra was frustrated murder.

While both Melchor and Mario were armed with bolos, the two victims, who were women, were not armed. Hence, abuse of superior strength, which was alleged in the information, attended the commission of the crime. But treachery absorbs the aggravating circumstance of abuse of superior strength so the same need not be appreciated separately.[34] However, the elements of evident premeditation in the commission of the offenses charged and the pertinence of dwelling in regard to appellant's participation were not sufficiently proven.

Appellant should therefore be found guilty as an accomplice in the crimes of frustrated murder and murder.

The penalty for murder under Article 248 of the Revised Penal Code, as amended by the death penalty law, is reclusion perpetua to death. The penalty for an accomplice in murder is one degree lower than that prescribed by law for the consummated felony.[35] One degree lower would be reclusion temporal.[36] There being no mitigating or aggravating circumstances, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum of the penalty should be taken from reclusion temporal medium, and the minimum of the penalty should be within the range of prision mayor.

The penalty for an accomplice in frustrated murder is the penalty next lower in degree than that prescribed by law for the frustrated felony.[37] In effect, the penalty for an accomplice in the crime of frustrated murder is two degrees lower than reclusion perpetua to death, which after applying the rules on graduating penalties, would be prision mayor.[38] Considering that no mitigating or aggravating circumstances attended the commission of the crime, the penalty should be imposed in its medium period.[39] Applying the Indeterminate Sentence Law, the maximum of the penalty should be taken from prision mayor medium and the minimum thereof taken within the range of prision correccional.

The actual damages awarded by the trial court were duly supported by receipts,[40] and should be allowed. Moral damages should likewise be awarded pursuant to Article 2219 (1) of the New Civil Code which provides that moral damages may be recovered in a criminal offense resulting in physical injuries,[41] understood in the generic sense. Rogelio categorically stated during his testimony that he suffered mental anguish over the death of his wife.[42]

WHEREFORE, the decision of the trial court is hereby MODIFIED as follows:

(1) In Criminal Case No. Q-94-59454, appellant is found guilty as an ACCOMPLICE in the crime of MURDER for the death of Gloria Tuatis-Rafael, and sentenced to suffer the penalty of eight (8) years, eight months and one (1) day of prision mayor medium as minimum to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal medium as maximum, and to pay the heirs of the victim P50,000.00 as civil indemnity, P94,000.00 as actual damages and P50,000.00 as moral damages;

(2) In Criminal Case No. Q-94-59453, appellant is found guilty as an ACCOMPLICE in the crime of FRUSTRATED MURDER of Alejandra Macaraeg-Rafael, and sentenced two (2) years, eleven (11) months and eleven (11) days of prision correccional medium as minimum to eight (8) years, eight (8) months and one (1) day of prision mayor medium as maximum, and ordered to pay the victim Alejandra Macaraeg-Rafael the amount of P36,500.00 as actual damages, and P20,000.00 as exemplary damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

- [1] Rollo, pp. 17-24.
- [2] TSN, March 29, 1995, pp. 4, 8-21, 27; TSN, June 7, 1995, pp. 7-8, 12-13, 16-17.
- [3] TSN, June 21, 1995, p. 8.
- [4] TSN, June 21, 1995, pp. 8-11, 19, 33.
- [5] Id. at 20; Exhibit "G," Records, p. 19.
- [6] Id. at 14.
- [7] Records, pp. 2, 6.
- [8] Id. at 30.
- [9] TSN, May 15, 1995, pp. 5-6; Exhibit "A," Records, p. 105.
- [10] TSN, September 4, 1995, pp. 7-13, 28-37; TSN, September 6, 1995, pp. 4-9.
- [11] Records, pp. 656-663.
- [12] Appellant's Brief, Rollo, pp. 41-42.
- [13] People v. Acaya, G.R. No. 108381, March 7, 2000, p. 6.
- [14] Id. at 7.
- [15] People v. Realin, 301 SCRA 495, 511 (1999).
- [16] TSN, September 6, 1995, p. 10.
- [17] People v. Rendoque, G.R. No. 106282, January 20, 2000, pp. 10-11.
- [18] People v. Sanchez, 302 SCRA 21, 47 (1999).
- [19] Article 8, second par., Revised Penal Code.
- [20] People v. Marquita, G.R. Nos. 119958-62, March 1, 2000, p. 9.
- [21] People v. Quinao, 269 SCRA 495, 510 (1997).
- [22] People v. Ferras, 289 SCRA 94, 107-108 (1998); People v. Saavedra, 149 SCRA 610, 627 (1987).
- [23] People v. De Vera, G.R. No. 128966, August 18, 1999, p. 27; People v. Bongo, 55 SCRA 547, 554-555 (1974).
- [24] TSN, March 29, 1995, p. 21; TSN, April 5, 1995, p. 15.
- [25] People v. Agapinay, 186 SCRA 812, 821 (1990); People v. Canial, 46 SCRA 634, 651 (1972).
- [26] People v. Cual, G.R. No. 131925, March 9, 2000, p. 24; People v. Villanueva, 270 SCRA 456, 462-463 (1997).

[27] 178 SCRA 626, 632 (1989).

[28] *People v. Galano*, G.R. No. 111806, March 9, 2000, p. 12; *People v. Gutierrez, Jr.*, 302 SCRA 643, 665 (1999).

[29] *People v. Panaga*, 306 SCRA 695, 707 (1999).

[30] Article 6, second par., Revised Penal Code.

[31] TSN, June 7, 1995, p. 12.

[32] *People v. Sabalones*, 294 SCRA 751, 799 (1998).

[33] See *People v. Bacalto*, 277 SCRA 252, 266 (1997)

[34] *People v. Gutierrez*, 302 SCRA 643, 665 (1999).

[35] Art. 52, Revised Penal Code.

[36] Art. 61, second par., Revised Penal Code.

[37] Art. 54 in relation to Art. 50, Revised Penal Code.

[38] Art. 61, Revised Penal Code.

[39] Art. 64, third par., Revised Penal Code.

[40] Records, pp. 111-127.

[41] *People v. Tambis*, G.R. No. 124452, July 28, 1999, p. 11.

[42] TSN, June 21, 1995, pp. 23-24.

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