

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD HILARIO Y IGTING, ACCUSED-APPELLANT.

*G.R. No. 123455. January 16, 1998*

Ponente: ROMERO, J.

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### ROMERO, J.:

Arnold Hilario y Igting, herein accused-appellant, together with three John Does, was charged with murder in an information that reads:

“That on or about the 18th day of January 1992 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring together and mutually helping one another, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously maul and stab on the different parts of his body one Juan Placer y Loreno, thereby inflicting upon the latter serious physical injuries which caused his death.

Contrary to Law.”[1]

The identities of the three John Does, having been subsequently established, the information was amended to include the names of Felix Almaden, Antonio Igting and Obet Bello. The three, however, still remained at large. Hence, the trial proceeded only as against accused-appellant who pleaded not guilty at his arraignment.

Shermie Maglalang, a niece of the victim testified that at about 10:00 o’clock in the evening of January 18, 1992, accused-appellant, Antonio Igting, Felix Almaden and Obet Bello were having a drinking spree in front of a sari-sari store at Baltazar Bukid, 10th Avenue, Kalookan City. While the four were drinking, Maglalang’s uncle, victim Juan Placer and his companion Bernie Abalos went to the same sari-sari store to buy cigarettes. Suddenly and without any provocation at all, Antonio Igting stood up and struck the unsuspecting Placer with a steel chair causing the latter to fall down. When the latter was already lying prone on the ground, accused-appellant, Obet Bello and Felix Almaden ganged up on him, hitting their victim repeatedly with chairs on different parts of his body. Not content with merely using chairs, Antonio Igting and Felix Almaden pulled out their balisong and stabbed the victim. Thereafter, Antonio Igting, Obet Bello and Felix Almaden scampered away from the crime scene. Accused-appellant remained and continued bashing the head of the victim with a steel chair.

Maglalang, accompanied by her boyfriend (now her husband) Marwin Aclaw, found themselves helpless in the face of the onslaught. First, they were outnumbered by the aggressors, two as against four. Second, they were unarmed. Third, Antonio Igting and Felix Almaden warned them against intervening. To manifest their intention, Igting and Almaden even brandished their balisong at them.

The victim was immediately brought to Dr. Jose Reyes Memorial Hospital but he expired at 3:00 o’clock in the morning of January 19, 1992. Maglalang positively identified accused-appellant in open court.

Marwin Aclaw testified that at the time of the incident, Juan Placer and his companion Bernie Abalos, were drinking in front of the sari-sari store. The four accused were likewise having a drinking spree in front of the same

store. One of accused-appellant's companions offered Bernie Abalos a drink which the latter refused. Feeling slighted, accused Antonio Igting hit Abalos on the head with a glass. When Abalos fled, the four accused vented their ire on Placer. Antonio Igting grasped the victim's neck and punched him on his face. When Placer attempted to run away, accused-appellant ran after him and kicked him from behind. Then Felix Almaden pulled out his balisong and repeatedly stabbed the victim on different parts of his body. Thereafter, the assailants, with the exception of accused-appellant, fled from the scene of the crime. Accused-appellant remained, grabbed a chair with steel legs and hit Placer several times on the head.

When accused-appellant was brought to the hospital where the victim was confined, the victim identified him as one of the culprits.

On cross-examination, Aclaw further testified that while Felix Almaden was stabbing the victim, the latter was being held by Obet Bello, while accused-appellant and Antonio Igting stood guard around the victim.

Accused-appellant denied any participation in the crime; instead, he averred that it was Felix Almaden who should be held answerable for the death of Juan Placer.

The trial court was not convinced by accused-appellant's denials. Thus, on October 11, 1993 the Regional Trial Court-Br. 129 of Kalookan City found him guilty of the crime charged and accordingly sentenced him to suffer the indeterminate penalty of fourteen (14) years of reclusion temporal, as minimum, to reclusion perpetua, as maximum, and to indemnify the heirs of Juan Placer in the amount of P50,000.00.

The court a quo ruled -

"Upon the evidence, the conscience of this Court would never be at rest if it absolves accused Arnold Hilario from his proven liability for the death of Juan Placer.

Concededly, Arnold Hilario was not the accused who repeatedly plunged the deadly blade of the "29 balisong" into the vital parts of the victim's body. Admittedly, too, there is no showing that Arnold Hilario was the one who started the one-sided acts of aggression against the victim whose misfortune was to engage in what turned out to be his last drinking spree with 4 men whose inclination was to destroy and to kill when inebriated. Even so, Arnold Hilario's hand is clearly stained with the victim's blood. He appears to have acted in concert with his co-accused in kicking the victim first, and in subsequently hitting him with a chair until Felix Almaden finally dealt the coup de grace in the form of repeated stabs on the victim's body. As if Arnold Hilario wanted more blood from the fallen victim who was already mortally wounded, he still repeatedly struck and hit him on the head with a chair, even after his (Arnold's) 3 co-accused had already fled from the scene, thereby adding the element of cruelty to the victim's condition of pain and helplessness.

The concerted attack was so unexpectedly sudden that the victim had no semblance of defense. This utterly unequal footing in the mode of execution of the attack is pure and simple alevosia. The crime charged is well-taken. The 4 accused did not simply kill the victim. They murdered him."[2]

On appeal, accused-appellant insisted that he did not perform any of the acts imputed to him, but the appellate court was not persuaded. It affirmed the findings of the court a quo. However, it modified the penalty to reclusion perpetua. Hence, pursuant to Sec. 13, par. (2), Rule 124 of the Rules of Court, the case was certified to this Court for review.

Both the lower court and the appellate court found that accused-appellant clearly and actively participated in causing the death of Juan Placer. Accused-appellant's alleged participation consisted in kicking the buttocks of the victim, hitting the victim's body and bashing the head with a steel chair. The two prosecution eyewitnesses, Magalang and Aclaw, substantially testified to this effect.

These assertions were, however, refuted by the medical findings of Dr. Maximo Reyes who testified that the victim suffered no contusion, abrasion, laceration or hematoma. The autopsy report precisely indicated stab wounds as cause of death. His postmortem findings are the following:

“Marked pallor, generalized.

Hemothorax, 900 c.c. right, consisting of fluid and clotted blood.

Surgical incision, suture, 27.0 cm. running obliquely, right side of chest.

**STAB WOUNDS:**

- Elliptical, gaping, 3.0 cm. with clean cut edges and one extremity sharp, other is contused, located over the sternal area, level of 5th rib, non-penetrating.

- Three (3) in number, all with clean cut edges and with one extremity sharp, other is contused, varying in size, upper is 2.5 cm. and level of 3rd intercostal space; middle is 1.0 cm. level of 4th intercostal space and lower is 1.0 cm. level of 8th intercostal space, all directed medially, backward and downward, all entering the right thoracic cavity, severing the three lobes of right lung with an approximate depth of 10.0 cm. to 11.0 cm.

- Elliptical, gaping, 2.5 cm. with clean cut edges and one extremity sharp, other is contused, located over the right posterior axillary line, non-penetrating.

- Stab wound, 2.0 cm. located over the sternal area, non-penetrating.

Heart and all other visceral organs are pale.

Stomach, 1/4 filled with partly digested food materials.”[3]

Thus, in his direct examination:

Fiscal Inciong:

**“Q**

Have you seen other injuries that were inflicted on the body of the deceased?

**A**

Well, nothing more except the stabbed (sic) wounds.

**Q**

Are there contusions?

**A**

There was none.

x x x x x x x x.”[4]

In his cross-examination, Dr. Reyes further testified:

Atty. Ongtenco:

“X X X X X X X X

**Q**

Now, in your diagrammatic illustration of the cadaver of the decedent, you have been indicating only stab wounds sustained by the decedent. Were there no other injuries aside from these stab wounds?

**A**

There was none, sir.

**Q**

Have there been any contusions, laceration? It would not have escaped your keen observation?

**A**

No, sir. All the injuries that I noted should be on this particular reports even abrasion.

**Q**

There was no sign that the decedent was ever or the decedent ever received any blows by a blunt instrument?

**A**

There was none, sir.

X X X X X X X X.”[5]

This Court is more inclined to believe the testimony of Dr. Maximo Reyes who is an impartial and disinterested witness. His medical findings belied the testimonies of prosecution witnesses. If it were true that accused-appellant hit the victim with a steel chair, not only once but several times, then in all probability, the victim’s body would have borne witness to such an attack. Interestingly however, no such indications were found. If indeed accused-appellant hit the victim’s head with a steel chair a number of times, then surely, there would have been wounds in that area, but none were found. All these lead to the conclusion that accused-appellant did not hit the victim with a steel chair on different parts of his body, including the head. The defense successfully cast doubt on the credibility of the testimonies of prosecution witnesses Maglalang and Aclaw on this particular aspect.

However, even without the autopsy report belying the testimonies of Maglalang and Aclaw, the credibility of Shermie Maglalang as a prosecution witness is already suspect. Maglalang, in her Sinumpaang Salaysay,[6] stated that it was only Felix Almaden who stabbed her uncle Juan Placer, but in her direct testimony, she alleged that Antonio Igting and Felix Almaden stabbed her uncle. Antonio Igting allegedly stabbed the victim on the side and the back while Felix Almaden allegedly stabbed the victim near his heart, his side, left arm and his back. Maglalang allegedly saw Igting stabbing her uncle through the movements of his hands while claiming that the other accused surrounded the victim to “cover” him.[7]

The allegation that Maglalang keenly observed all the hand movements of Antonio Igting and saw where the fatal thrusts specifically landed is not credible. As stated earlier, these testimonies were not borne out by the testimonial evidence of the medico-legal officer and the autopsy report. Hence, this Court cannot give due weight to the above testimonies.

The only way accused-appellant could be held liable for the death of the victim Juan Placer is through the finding of the existence of conspiracy. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy, to exist, does not require an agreement for an appreciable period prior to the occurrence; it exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Direct proof of previous agreement to commit a crime is not necessary. It may be deduced from the mode and the manner in which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[8]

With the finding that the victim did not suffer any injury other than those stab wounds, this Court is constrained to rule that accused-appellant's participation in the commission of the crime was his mere presence in the crime scene, but mere presence of the accused at the scene of the crime does not imply conspiracy.[9]

The only way by which appellant may be held culpable is proof beyond reasonable doubt that he was a conspirator, but conspiracy, like the crime itself, must be proven beyond reasonable doubt. The presence of the element of conspiracy among the accused can be proven by their conduct before, during and after the commission of the crime showing that they acted in unison with each other, evincing a common purpose or design. In other words, the accused must participate, even by a single overt act, in the perpetration of the crime. It is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill the victim. Evidence of intentional participation is imperative. One's mere presence in the crime scene, by itself, does not make him a conspirator.[10]

It is hornbook knowledge that flight from the locus criminis is a strong indication of a guilty mind.[11] Unlike his co-accused, accused-appellant did not flee from the crime scene. He even proceeded to clean the tables, arrange the chairs and wash the utensils used during the drinking spree. The Court finds his non-flight indicative of innocence.

Aclaw testified that when accused-appellant was brought to the hospital where the victim was confined, he was identified by the latter as one of his assailants. The prosecution insists that this Court accord weight to said testimony and treat it as a dying declaration.

The circumstances that should be taken into consideration in determining the weight to be given to dying declarations are:

(a)

The trustworthiness of the reporters;

(b)

The capacity of the declarant at the time to accurately remember the past;

(c)

His disposition to tell what he remembers; and

(d)

Such circumstances as may be attendant such as the fact that the declarations were the result of questions propounded by an attorney, the presence only of friends and prosecuting officers, the lack of belief of the declarant in a future life, rewards and punishment, the fact that the statements in the dying declarations are contrary to facts satisfactorily proven by other evidence, and the fact that the declaration might have been influenced by the passion of anger and vengeance, or jealousy.[12]

When the dying declaration was made by Juan Placer pointing to Arnold Igting as one of his assailants, only prosecution witnesses Marwin Aclaw, married to the niece of the victim Shermie Maglalang, Julia Joregue, sister of the victim and PO3 Vivencio Gamboa, the investigating officer of the case, were present. Of the three present, only Aclaw and Joregue testified as to the alleged dying declaration made by Juan Placer.

As pointed out earlier, the evidence, as well as the autopsy report, cast doubt on Marwin Aclaw's credibility. On the other hand, Julia Joregue, being the sister of the victim, may be expected to be partial to her brother. Interestingly, PO3 Gamboa did not corroborate the testimony of Aclaw and Joregue. In any case, the so-called dying declaration is contrary to facts proven by the evidence presented by the defense, particularly the autopsy report. Hence, this Court cannot accord weight to it.

The Constitution provides that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. It is thus axiomatic that an accused under our law is entitled to an acquittal unless his guilt is proved beyond reasonable doubt. In fact, unless the prosecution discharges the burden of proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[13]

WHEREFORE, the decision of the Court of Appeals dated January 26, 1996 affirming the decision of the Regional Trial Court-Branch 129 of Kalookan City convicting accused-appellant of murder is REVERSED and SET ASIDE. Accused-appellant Arnold Hilario y Igting is ACQUITTED and ordered RELEASED from confinement unless he is being held for some other legal grounds. No costs.

**SO ORDERED.**

Narvasa, C.J., Chairman, Melo, Francisco, and Panganiban, JJ., concur.

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[1] Additional Appellant's Brief, Rollo, p. 5.

[2] Decision, pp. 4-5; Rollo, pp. 178-179.

[3] Autopsy Report No. N-92-154, Rollo, p. 132.

[4] TSN, April 5, 1993, p. 4.

[5] Supra, p. 6.

[6] Records, p. 14.

[7] TSN, July 28, 1992, pp. 3-4.

[8] People v. Silvestre, 244 SCRA 481 [1995].

[9] People v. Cedon, 233 SCRA , 187 [1994].

[10] People v. Dulatre, 248 SCRA 109 [1995].

[11] Supra.

[12] Francisco, Evidence, Vol. VII, Part I, 476-477 (1973 ed.).

[13] People v. Abellanos, 264 SCRA 747 [1996].

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