FIDELINO GARCIA, PETITIONER, VS. THE COURT OF APPEALS, THE PRESIDING JUDGE OF THE RTC, GUMACA, QUEZON, BRANCH 62, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124036. October 23, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal by certiorari is the decision of the Court of Appeals dated February 22, 1996, in CA-G.R. CR No. 13358. The decision affirmed the judgment of the Regional Trial Court of Gumaca, Quezon, Branch 62 in Criminal Case No. 2307-G, finding petitioner Fidelino Garcia with his co-accused Leopoldo Garcia and Wilfredo Garcia guilty of homicide.

In an Information dated December 13, 1983, Fidelino Garcia, Leopoldo Garcia, and Wilfredo Garcia were charged with murder allegedly committed as follows:

> That on or about the 30[th] day of July 1983, at Barangay II, in Poblacion, Municipality of Mulanay, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, a piece of wood and a broken bottle with intent to kill, and taking advantage of their superior strength and with treachery, did then and there willfully, unlawfully and feloniously attack, hit with said piece of wood and stab with the said knife and broken bottle one Paulino Rodolfo y Olgena, thereby inflicting upon the latter the following injuries, to wit:
>
> "Wound lacerated mid parietal area 4cm with linear fracture of underlying skull;
>
> Wound lacerated 3 cm mid frontal area;
> Wound lacerated T shape right frontal ½ cm;
> Abrasion right nasolridge;
> Contusion with laceration nose;
> Multiple contusion chest right #3 6cm deep non-penetrating;
> Wound lacerated left temporal 1 cm;
> Wound stab left arm medial aspect 1½ cm."
>
> which directly caused his death.
>
> Contrary to law.[1]

Petitioner and Wilfredo Garcia are brothers, while their co-accused in Criminal Case No. 2307-G, Leopoldo, is their first-degree cousin.[2]

Earlier, a separate charge sheet docketed as Criminal Case No. 2165-G had been filed against petitioner Fidelino Garcia, charging him with direct assault upon an agent of a person in authority. On March 8, 1984, he was arraigned in said case and entered a plea of not guilty.

In 1985, the accused in Criminal Case No. 2307-G were separately arraigned. All pleaded not guilty to the charge.

As Criminal Cases Nos. 2165-G and 2307-G arose from the same incident, a joint trial ensued.

The facts, as established by the prosecution before the trial court and affirmed by the appellate court, are as follows:

At around 2:30 P.M., July 30, 1983, P/Cpl. Francisco Rollera was on his way to mail a letter. He was waiting at the crossing near the police outpost in the town proper of Mulanay, Quezon, when he saw petitioner, Wilfredo and Leopoldo, ganging up on Paulino Rodolfo y Olgena.[3] While Leopoldo held the victim, petitioner hit him with an empty bottle. Wilfredo then stabbed the victim once with a stainless steel fan knife (balisong). The knife got stuck in Paulino's body. Paulino succeeded in wrestling free from Leopoldo's grasp and pulling out the knife from his body. He used the knife to stab petitioner in the stomach.

Rollera tried to stop the fight. He pulled out his service pistol and fired three successive warning shots, calling upon the combatants to stop their fight, but to no avail. Still holding Wilfredo's knife, the wounded Paulino beat a hasty retreat to the store of one Manuel Roberto. Wilfredo pursued him. Inside the store, Paulino stabbed Wilfredo twice in the neck and stomach. Unable to stop the affray, Rollera then asked the other people around to summon other policemen.

Paulino went back to the street. Seeing that Wilfredo was about to hit him with a piece of wood, Rollera stepped in and wrestled the stick away from Wilfredo. The latter, however, managed to get hold of an empty bottle. Before Rollera could react, petitioner approached him, holding a broken bottle. Rollera moved back and Fidelino chased him around a parked vehicle.

At this point, two other policemen arrived and pacified the antagonists. A third responding policeman grabbed and caught petitioner chasing Rollera around the parked vehicle.

Paulino Rodolfo subsequently died. The medico-legal certificate issued by Dr. Mario A. Cuento of the Bondoc Peninsula District Hospital at Catanauan, Quezon, revealed that the cause of death was "cerebral hemorrhage."[4]

Predictably, the defense gave a slightly different version of the incident. Wilfredo testified that between 2:00 and 3:00 P.M. of July 30, 1983, he was on his way to the tricycle parking space in Nanadiego St., Mulanay, Quezon, with his two co-accused following a short distance behind him. He met P/Cpl. Rollera and Paulino, both of whom appeared to be intoxicated. Paulino put an arm around Wilfredo's shoulder and invited him to have a drink. The latter removed Paulino's arm and refused, explaining that he had to go to the barrio. Wilfredo was about to leave, when Paulino suddenly collared him and poked a balisong at his throat. Wilfredo stepped back, but Paulino nonetheless succeeded in stabbing him in the neck, chest, and stomach. He did not know what transpired next as he lost consciousness as a result of his wounds, regaining it only next morning when he found himself at the Quezon Memorial Hospital where he was confined for four (4) days.

Although petitioner and he were closely following Wilfredo, Leopoldo claimed that he did not actually see how Paulino attacked Wilfredo. What he heard were the voices of persons heatedly arguing. When he advanced to investigate, he saw Wilfredo already wounded. Leopoldo ran towards the municipal hall to get police assistance. On his way, he met police officers Pobeda and Roadilla and he told them what happened. They then proceeded to the scene of the incident where Leopoldo allegedly saw Rollera chasing a wounded Fidelino around a parked vehicle. Pobeda and Roadilla then pacified Rollera and petitioner. Because Leopoldo and petitioner were both wounded, the peace officers brought them to the Catanauan Hospital. Leopoldo claimed that he never saw the victim at the scene.

On February 14, 1992, the trial court rendered its decision and disposed of the two cases as follows:

> WHEREFORE, in view of the foregoing, on ground of reasonable doubt, accused Fidelino Garcia is hereby

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> ACQUITTED of the crime charged under Criminal Case No. 2165-G for Direct Assault Upon An Agent of a Person in Authority.
>
> In Criminal Case No. 2307-G, the judgment of conviction is hereby entered. Accused FIDELINO, WILFREDO and LEOPOLDO, all surnamed GARCIA are found guilty beyond reasonable doubt of the crime of HOMICIDE, and this Court hereby sentences them, applying the Indeterminate Sentence Law, to suffer an imprisonment of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as maximum.
>
> Furthermore, all the accused are solidarily liable and are ordered to indemnify the heirs of the late Paulino Rodolfo y Olgena, the sum of FIFTY THOUSAND PESOS (P50,000.00) plus the sum of TEN THOUSAND PESOS (P10,000.00) as actual damages and to pay the costs of this suit.
>
> SO ORDERED.[5]

The accused seasonably filed their respective notices of appeal to the appellate court.[6] The Court of Appeals, in a resolution dated May 17, 1994 ordered Wilfredo Garcia's appeal deemed "abandoned and ordered dismissed for failure to furnish the Court (with) his forwarding address."[7] On September 3, 1994, the resolution dismissing Wilfredo's appeal became final and executory. The Court of Appeals, in CA-G.R. CR No. 13358, thus resolved only the appeals interposed by Leopoldo and Fidelino Garcia.

On February 22, 1996, the appellate court affirmed the lower court's decision finding them guilty beyond reasonable doubt of homicide, thus:

> WHEREFORE, with the modification that the indeterminate sentence should be from six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, the decision appealed from is AFFIRMED in all respects.
>
> Costs against accused-appellants.
>
> SO ORDERED.[8]

Although the three accused were represented by one counsel before the trial court, said counsel filed an appellant's brief only for accused Leopoldo Garcia. Before us now is the separate appeal of petitioner Fidelino Garcia filed by a court appointed counsel de oficio from the Free Legal Assistance Group (FLAG).[9] In his brief, petitioner Fidelino Garcia assigns the following as errors committed by the appellate court:

> First Assigned Error
>
> THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION FOR CONSPIRACY WHEN IT WAS NEVER ALLEGED IN THE INFORMATION NOR PROVEN DURING TRIAL.
>
> Second Assigned Error
>
> THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER'S CONVICTION IN THE ABSENCE OF ANY EVIDENCE REGARDING THE FACT, MANNER AND CAUSE OF THE ALLEGED VICTIM'S DEATH.
>
> Third Assigned Error
>
> THE COURT OF APPEALS ERRED IN GIVING GREATER WEIGHT TO THE EVIDENCE OF THE PROSECUTION AND FINDING NO ILL-MOTIVE ON THE PART OF THE PROSECUTION WITNESS.
>
> Fourth Assigned Error
>
> PETITIONER SHOULD BE ACQUITTED BECAUSE THE EVIDENCE DOES NOT ESTABLISH HIS

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CULPABILITY AS A PRINCIPAL, CO-CONSPIRATOR OR ACCOMPLICE.[10]

In sum, the issues for our resolution are: (1) Whether the appellate court erred in convicting petitioner as a conspirator in the killing of Paulino Rodolfo y Olgena; and (2) Whether or not there was sufficient evidence to establish petitioner's guilt with moral certainty.

On the first issue, petitioner contends that an accused cannot be convicted of any offense not alleged in the information, as he has the right to be informed of the nature of the offense with which he is charged before he is put on trial. He points out that the Information in Criminal Case No. 2307-G did not allege that he conspired, confederated, mutually helped, and/or acted in concert and with consent in committing the offense charged. He submits that an allegation of conspiracy cannot be presumed or implied in an information. In finding him to be a conspirator in the killing of the victim, appellant claims that his rights to be informed of the nature and cause of the accusation against him; to a fair trial; to due process of law; and to equal protection of law were violated by respondent appellate court.

For the State, the Office of the Solicitor General (OSG) contends that it is not essential that the allegation of "conspiracy" be expressly stated in the indictment. It is enough that the narration in the Information shows that the accused acted in concert in the commission of the crime.

On this point, we are not in agreement with the OSG.

In all criminal prosecutions, the accused shall first be informed of the nature and cause of the accusation against him.[11] The right of the accused to be informed of the charges against him is explicit in Sec. 1(b) Rule 115 of the Rules of Criminal Procedure.[12] To ensure that the due process rights of an accused are observed, every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof. One such particular circumstance is conspiracy where two or more persons are charged in an information. Conspiracy denotes an intentional participation in a criminal transaction, with a view to the furtherance of a common design and purpose. It imputes criminal liability to an accused for the acts of another or others, regardless of the nature and extent of his own participation. In a conspiracy, the act of one becomes the act of all and the particular act of an accused becomes of secondary relevance. Thus, it is essential that an accused must know from the information whether he is criminally accountable not only for his acts but also for the acts of his co-accused as well.[13] An indictment for conspiracy is sufficient if: (1) it follows the words of the statute creating the offense and reasonably informs the accused of the character of the offense he is charged with conspiring to commit;[14] or (2) following the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy;[15] or (3) alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them.[16]

In the present case, the appellate court held that an allegation of conspiracy is implied in, or may be inferred from, the statement that "the said accused, armed with a knife, a piece of wood and a broken bottle, with intent to kill, and taking advantage of their superior strength and with treachery, did then and there willfully, unlawfully, and feloniously attack, hit with said piece of wood and stab with the said knife and broken bottle one Paulino Rodolfo y Olgena." But we agree with appellant that here the information does not satisfy the requirement that the conspiracy must be conveyed in "appropriate language."[17] The words "conspired," "confederated," or the phrase "acting in concert" or "in conspiracy," or their synonyms or derivatives do not appear in the indictment.[18] The language used by the prosecution in charging the three accused contains no reference to conspiracy. Conspiracy must be alleged, not merely inferred, in the information. Absence of a particular statement in the accusatory portion of the charge sheet concerning any definitive act constituting conspiracy in Criminal Case No. 2307-G renders the indictment insufficient to hold one accused liable for the individual acts of his co-accused. An accused

must be furnished with a description of the charge against him to enable him to make a proper defense and, later, to avail himself properly of either a conviction or acquittal for his protection against further prosecution for the same cause.[19] In our view, petitioner Fidelino Garcia cannot be convicted as a conspirator in the killing of Paulino Rodolfo, for the simple reason that the information against the accused contained no clear and definite allegation of conspiracy.

It follows that in Criminal Case No. 2307-G, petitioner can only be held responsible for an act as could be proved to have been committed by him personally. Stated otherwise, his criminal accountability, if any, should be determined on an individual rather than on a collective basis. Responsibility for acts done by his co-accused could not be heaped on the shoulders of appellant unless it be shown that he participated directly and personally in the commission of those acts.

Thus, anent the second issue, we find merit in petitioner's argument that the prosecution's evidence is insufficient to support his conviction for homicide. There appears no proof to show the connection between the acts he allegedly committed and the lethal injuries sustained by the victim. Petitioner points out that the only act he allegedly did was that of hitting the victim with an empty bottle while the latter was being held down by Leopoldo Garcia and stabbed by Wilfredo Garcia. He submits that there is no showing whatsoever that his blow caused any injury to the victim, much less caused his death. He stresses that the medico-legal certificate prepared by one Dr. Mario Cuento, marked as the prosecution's Exhibit "B" cannot even be found in the record, nor did the doctor take the witness stand to identify it. The medical certificate in effect has no probative value.

The OSG counters that while Exhibit "B" cannot be found in the records, nonetheless, the fact stands that the number and nature of the victim's injuries are enumerated in the Information, which the petitioner failed to rebut or object to during the trial. Moreover, petitioner did not object when Exhibit "B" was offered in evidence by the prosecutor before the trial court to prove the victim's injuries causing his death.

In general, factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[20] The rule, however, does not apply in the present case. For one, the judge who penned the trial court's judgment was not the same one who heard the prosecution witnesses testify.[21] For another, our review of the records indicates that both the trial court and the appellate court have overlooked some material facts and circumstances of weight which could materially affect the result of this case.

First, the Court of Appeals heavily relied on the testimony of prosecution eyewitness, P/Cpl. Francisco Rollera. However, we find his testimony riddled with inconsistencies, particularly the exact role played by petitioner in the affray leading to Paulino Rodolfo's death. On direct examination, Cpl. Rollera averred that petitioner struck the victim with a bottle while his co-accused were ganging up on the latter, thus:

> Q - Now, you stated a while ago that the accused in this case ganged up on the deceased Rodolfo Olgena. Will you please tell before this Honorable Court how the accused ganged up on him?
>
> A - While Leopoldo Garcia was holding Rodolfo Olgena, Rodolfo Olgena was hit by a bottle by Fidelino Garcia and Wilfredo Garcia stabbed him on the lower groin with a stainless [f]an knife, sir. (Stress supplied)[22]

The cross-examination of Rollera, however, reveals a contradictory version in that apparently, petitioner Fidelino Garcia was not the aggressor but the victim of stabbing by the deceased Paulino Rodolfo. Thus, Cpl. Rollera testified on cross:

> Q - According to you, the three were ganging up on Rodolfo Olgena until Wilfredo Garcia stabbed him. As the three were ganging up on Rodolfo Olgena, where were Fedelino Garcia and Leopoldo Garcia when Rodolfo Olgena was stabbed by Wilfredo?

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A - Leopoldo was holding Olgena while Fedelino was approaching Olgena when Wilfredo stabbed Olgena, sir. When Rodolfo Olgena was stabbed by Wilfredo, as regards Fedelino, he was then also approaching Rodolfo Olgena and that was the reason why he was also stabbed by Olgena. Because when Fedelino approached Rodolfo Olgena, the latter had pulled the knife, so that when Olgena pulled out the knife, he was able to stab Fedelino, sir.

ATTY. CERILLA:

Let us straighten this out. Correct me if I am wrong. This, according to you, took place.

Q - Rodolfo Olgena while being held by Leopoldo Garcia was stabbed by Wilfredo Garcia, is that correct?

A - Yes, sir.

Q - The weapon which was used by Wilfredo Garcia got stuck in that portion of the body of Rodolfo Olgena that was hit?

A - Yes, sir.

Q - And Rodolfo Olgena was able to pull out that knife and while Fedelino Garcia was approaching he stabbed the latter?

A - Yes, sir.

Q - Now, are you telling us that although Rodolfo Olgena was being held by Leopoldo Garcia he was still able to pull the knife from his thigh and then used it in stabbing Fedelino Garcia?

A - Rodolfo Olgena was able to get loose from the hold of Leopoldo that was why when Fedelino approached Olgena the latter who had pulled out the knife from his body was able to stab Fedelino, sir. (Stress supplied).[23]

That petitioner Fidelino Garcia was stabbed by Paulino Rodolfo is perfectly clear to us. What is doubtful is whether he had an active, direct and personal role in the killing of Paulino Rodolfo. On cross-examination, it appears petitioner was still approaching the deceased when the latter was stabbed by co-accused Wilfredo Garcia. Cpl. Rollera stated under direct examination that Fidelino had hit Rodolfo with a bottle. But Cpl. Rollera did not say where and when petitioner struck the victim with a bottle, or if the blow was hard or not. Further, the prosecution's evidence does not establish any direct link between the petitioner's act with the bottle and any injury suffered by the deceased, much less the mortal wound which caused his death. If we are to believe Cpl. Rollera's account, petitioner was merely approaching the victim, who was then trying to get loose from Leopoldo's hold and ward off Wilfredo's attack. It appears unclear to us, however, whether petitioner succeeded to hit the victim, Rodolfo, with a bottle. As it turned out, it was petitioner who was stabbed by Rodolfo, using Wilfredo's balisong, with the result that petitioner was hospitalized.

Second, the Court of Appeals likewise heavily relied upon Exhibit "B" to establish the injuries suffered by Paulino Rodolfo. As stated earlier, Exhibit "B" is nowhere in the records.[24] The only mention we find of it is in the transcript of stenographic notes of November 19, 1987.

FISCAL ENCOMIENDA:

We will now be resting our case.

COURT:

Go ahead.

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FISCAL ENCOMIENDA:

But before we do so, we would like to prove the existence of the medico legal certificate although it has been admitted by the defense counsel and likewise the fact of death. We would like to request the same to be marked as Exhibit "B" in both cases and the findings therein as stated as Exhibit "B-1" and the signature of Dr. Mario Cuento as Exhibit "B-2." We are offering, Your Honor, Exhibit "A" and "A-1" the affidavit of Francisco Llorera [should read Rollera] as part of his testimony. And we are likewise offering Exhibits "B", "B-1", and "B-2" to show the fact of death and the nature of the wounds sustained by the victim.

COURT:

Is that all? Any objection to the annexes of the exhibits?

ATTY. CERILLA:

No objection, Your Honor, except to the affidavit of the policeman.

COURT:

The Court will admit all these exhibits in evidence.[25]

Notwithstanding its absence from the records, the Court of Appeals held that said Exhibit "B" "sufficiently indicates the nature, number, location, and extent of the injuries sustained by the victim. The cause of death stated therein is purportedly `cerebral hemorrhage.'"[26] The appellate court likewise held that "These were deemed admitted by the accused-appellants for their failure to make a timely objection at the time the offer was made."[27] We find nothing in the record, however, to support the prosecution's sweeping statement that the "existence of the medico-legal certificate had been admitted by defense counsel and likewise the fact of death." In fact, per the transcript quoted above, Atty. Cerilla's response has a reservation, "except to the affidavit of the policeman," when asked about the annexes of the exhibits. But we shall not belabor this point, for the decision of the trial court is barren of any reference to admissions or stipulations. On record now, the medico-legal report is missing. And we find that the prosecution's evidence nowhere shows that petitioner by his own act killed the victim or contributed directly to his death.

To conclude, there is a dearth of evidence as to the specific role played by petitioner Fidelino Garcia in the commission of the crime charged. Petitioner enjoys the presumption of innocence, which can only be overcome by proof beyond reasonable doubt. Mere conjectures, no matter how strong, can never substitute for this required quantum of proof.[28] Failing to meet the needed quantum of proof, petitioner's conviction as principal in the killing of Paulino Rodolfo cannot be sustained.

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals, dated February 22, 1996, in CA-G.R. CR No. 13358, which had affirmed that of the Regional Trial Court of Gumaca, Branch 62, is hereby REVERSED and SET ASIDE on the ground of insufficiency of evidence to convict petitioner Fidelino Garcia beyond reasonable doubt. Consequently, he is ACQUITTED and ordered RELEASED immediately from confinement unless held for another lawful cause.

SO ORDERED.

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

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[1] Records, Criminal Case No. 2307-G, pp. 2-3.

[2] TSN, August 29, 1989, p. 7; TSN, October 18, 1989, p. 12.

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[3] Also referred to as "Rodolfo Olgena" in some portions of the records.

[4] Rollo, p. 145.

[5] Records, pp. 417-418.

[6] Id. at 422-425.

[7] Supra Note 4, at 142.

[8] Id. at 56.

[9] Id. at 147.

[10] Id. at 18-19.

[11] Const. Art. III, Sec. 14.

[12] SEC. 1. Rights of accused at the trial.--In all criminal prosecutions, the accused shall be entitled:

x x x

(b) To be informed of the nature and cause of the accusation against him;

[13] People v. Quitlong, 292 SCRA 360, 376 (1998).

[14] Hill v. US, 42 F.2d. 812 (1930) cert. den. 282 US 884, 75 L.Ed. 780, 51 S. Ct. 87 (1930).

[15] Williams v. US, 3 F2d. 933 (1925). See also State v. Buttner, 180 Neb. 529, 143 NW 2d 907 (1966).

[16] Landis v. State, 196 Ind. 699, 149 NE 438 (1925). See also Miller v. Commonwealth, 248 Ky. 717, 59 SW 2d 969 (1933) followed up in 248 Ky. 726, 59 SW 973 (1933).

[17] Asgill v. US, 60 F2d. 780 (1932).

[18] People v. Quitlong, supra, at 378.

[19] Pecho v. People, 262 SCRA 518, 527 (1996) citing US v. Karelsen, 3 Phil. 223, 226 (1904).

[20] Lagandaon v. Court of Appeals, 290 SCRA 330, 341 (1998).

[21] People v. Cawaling, 293 SCRA 267, 294 (1998).

[22] TSN, August 7, 1985, pp. 6-7.

[23] TSN, October 17, 1985, pp. 15-16.

[24] Supra Note 4.

[25] TSN, November 19, 1987, pp. 2-3.

[26] Rollo, p. 145.

[27] Ibid.

[28] People v. Maing, G.R. No. 122112, May 12, 2000, p. 7, citing People v. Dela Rosa, 284 SCRA 158 (1998).

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