

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABELO RAGUNDIAZ Y AUREGUE AND ROLANDO FLORES Y SAN MIGUEL, ACCUSED. ROLANDO FLORES Y SAN MIGUEL, ACCUSED-APPELLANT.

G.R. No. 124977. June 22, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is the appeal interposed by accused-appellant Rolando Flores y San Miguel from the decision[1] dated February 16, 1996 of the Regional Trial Court of Valenzuela, Metro Manila, Branch 75, in Criminal Case No. 4425-V-94 finding him and co-accused Isabelo Ragundiaz y Auregue guilty of acting in conspiracy with one another in killing BILLY CAJUBAN on July 9, 1994. The appeal of accused-appellant Isabelo Ragundiaz y Auregue was dismissed in a Resolution[2] of the Court dated October 22, 1997 which became final and executory on December 4, 1997 and recorded in the Book of Entries of Judgments.[3]

The Amended Information[4] filed on July 27, 1994 by State Prosecutor Esteban A. Molon, Jr. before Branch 75 of the Regional Trial Court of Valenzuela, charged Isabelo Ragundiaz y Auregue and Rolando Flores y San Miguel, both detained, and John Doe, Peter Doe, and Jack Doe, all at large, of the crime of murder committed as follows:

"That on or about the 9th day of July 1994 in Valenzuela, Metro Manila 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, evident premeditation, abuse of superior strength and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack and shoot on the head one BILLY CAJUBAN, thereby inflicting upon said victim serious physical injuries which directly caused his death."

When arraigned, both accused entered separate pleas of not guilty. Thereafter, upon motion filed by the accused and hearing conducted thereon by the trial court, an order[5] dated November 9, 1994 was issued granting bail to both accused in the amount of Thirty Thousand (P30,000.00) Pesos in cash each which was later reduced to a cash bond of P20,000.00 each. Only accused Isabelo A. Ragundiaz posted a cash bond of P20,000.00 and was provisionally discharged from police custody. Accused-appellant Rolando Flores remained detained at the Valenzuela Municipal Jail.

During the trial, the prosecution presented seven (7) witnesses, namely: Alberto Castillo, Lito Salinas, Lina Cajuban, Ludivino Lagat, SPO1 Josefino Canary, Jr., Honorato A. Flores, and SPO1 Arnold Alabastro, while the defense had as witnesses accused Isabelo Ragundiaz, his common-law wife Rachelle Ragundiaz and accused Rolando Flores.

The trial court summed up the evidence adduced by the parties, and stated its findings as follows:

"From an evaluation of the records, prosecution established that the victim Billy Cajuban was murdered on July 9, 1994, whose body was found at De los Reyes St., Gen. T. de Leon, Valenzuela, Metro Manila, in a muddy portion of the roadside. The victim died of gunshot wound on the head (Exh. Q). Prosecution witnesses

SPO1 Josefino Canary and SPO1 Edgar Lim who immediately responded to the report found fresh blood on the body of the victim, which bring to point the probability that the killing might have been perpetrated at same place.

While admittedly, there is no eyewitness of the killing per se, the Court nonetheless appreciates the finding of conviction on circumstantial evidence. Circumstantial evidence may be sufficient to sustain a verdict of guilty beyond reasonable doubt on accused (Article III, Sec. 12 (1), 1987 Constitution). This is so because crimes are usually committed in secret and under conditions where concealment is highly improbable. To require direct testimony in all cases would result in the acquittal of guilty parties leaving them free to once more wreak havoc on society (People vs. Lavuzo, 175 SCRA 47, cited in People vs. Gonzaga, G.R. No. 90036, August 21, 1992).

Prosecution witness Alberto Castillo saw on July 9, 1994 at 12:30 early morning Isabelo Ragundiaz having an altercation with Billy Cajuban, the former boxed, poked a gun and dragged the latter and boarded him in a taxicab (El Salvador) then driven by Rolando Flores. They had three (3) other companions, who were not identified.

Prosecution witness Lito Salinas testified that while on duty as waiter at Skyblue Beerhouse located at 8th Avenue cor. Rizal Avenue, Kalookan City, at around 3:30 in the morning of July 9, 1994, he saw Rolando Flores, Isabelo Ragundiaz and three others entered the beerhouse. He noticed that the shirt of Flores was stained with blood and that there was wound on his left hand. They boarded an El Salvador taxi.

A post-mortem examination conducted on the victim shows that the victim died of gunshot wound (Exh. Q).

The statement of Isabelo Ragundiaz that he was at his common law wife's place of work in Makati is corroborated by no less than his common law wife Rachelle Ragundiaz.

Accused Rolando Flores, on the other hand, testified that he went to his residence at 8th Avenue, Kalookan City at 9:00 in the evening of July 9, 1994 to sleep after plying his route and woke up at 5:00 o'clock the next morning. No other witness was presented to corroborate his testimony. In fact, the distance from his residence at 8th Avenue to the place where he was seen together with Isabelo Ragundiaz and three (3) others boarded Billy Cajuban in an El Salvador taxi at 3rd Avenue does not render impossible his participation in the commission of the crime.

With the turn out of events, from the time accused Isabelo Ragundiaz, Rolando Flores and three others were seen along 3rd Avenue, Caloocan City, with Ragundiaz poked a gun and dragged Billy Cajuban inside an El Salvador taxi around 12:30 early morning of July 9, 1994 up to the time the group arrived at Skyblue Beerhouse at 8th Avenue cor. Rizal Avenue, Kalookan City boarding the same taxi, with Rolando Flores sporting a stained shirt and wounded hand at around 3:30 that morning, added the fact that SPO1 Josefino Canary and SPO1 Edgar Lim responded to the report at around 2:00 o'clock that morning and saw the dead body of Billy Cajuban along De los Reyes St., Gen. T. de Leon, Valenzuela, these circumstances are consistent such that the Court is convinced that accused in conspiracy are the perpetrators of the crime.

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Circumstances established by the prosecution are consistent and if collated constitute an unbroken chain of events leading to a reasonable conclusion that points to the guilt of the accused.

The allegation of the defense that prosecution witnesses Alberto Castillo and Lito Salinas are relatives of the victim Billy Cajuban does not render inadmissible their testimonies. In fact, even the testimony of accused Isabelo Ragundiaz is corroborated by no less than his common-law-wife, while the testimony of Rolando Flores remained uncorroborated. In People vs. Libungan, G.R. No. 102351, March 22, 1993, the Supreme Court ruled:

"Relationship alone is not a ground for discrediting a witness testimony. It is a well-established rule that the

mere fact that the witness is a relative of the victim is not a valid on (sic) sufficient ground to disregard the former's testimony nor does it render the same less worthy of credit. In *People vs. Cuyo*, 196 SCRA 447 (1991), we held that the closeness of the prosecution witnesses' relationship to the victim should not be deemed erosive of their credibility as witnesses. The weight of their evidence must be assessed by the same norms applicable to other witnesses."

Absence (sic) proof of ulterior motive on the part of the prosecution witnesses to testify against the accused, such testimonies are admissible. In fact, after observing the demeanor and deportment of said witnesses together with the variations of their expressions while on the witness stand, the Court concludes that their testimonies are credible.

The killing perpetrated on the victim having been qualified by the circumstance of abuse of superior strength, the charge of murder is in order. The felons having taken advantage of their collective strength to overwhelm their comparatively defenseless victim, the qualifying circumstance of taking advantage of superior strength is present. The culprits used their dominance in number to over power the deceased. They also used force entirely out of proportion to the means of defense available to the victim who was unarmed unsuspecting of his impending fate and left alone at the mercy of his tormentors (*People vs. Waggay, et al.*, G.R. No. 98154, February 9, 1993)."[6]

On February 16, 1996, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the prosecution having established by proof beyond reasonable doubt the guilt of both accused of the crime of Murder punishable by Article 248(1) of the Revised Penal Code, accused ISABELO RAGUNDIAZ y AUREGUE and ROLANDO FLORES y SAN MIGUEL are hereby found GUILTY as charged acting in conspiracy and are sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law and to indemnify the family of the victim in the amount of P50,000.00 each as death indemnity, P70,000.00 as actual damages and P50,000.00 as moral damages.

Accused Rolando Flores shall be credited with the full term of his preventive imprisonment.

The cash bond posted by accused Isabelo Ragudiaz for his preventive imprisonment is hereby ordered forfeited in favor of the government.

SO ORDERED."[7]

Accused Rolando Flores and accused Isabelo Ragundiaz filed separate notices of appeal, the former on February 20, 1996[8] and the latter on March 5, 1996[9]. As stated earlier, the appeal of accused Isabelo Ragundiaz was dismissed by the Court for jumping bail pursuant to Section 8, Rule 124 of the Rules of Court. Accordingly, the judgment against Isabelo Ragundiaz finding him guilty of murder is now final.

In his appeal brief, accused-appellant Rolando Flores raises the following assignment of errors[10]:

I
THE TRIAL COURT GRAVELY ERRED WHEN IT CONVICTED THE ACCUSED DESPITE THE INSUFFICIENCY OF EVIDENCE.

II
THAT THE TRIAL COURT GRAVELY ERRED IN NOT GIVING DUE CONSIDERATION TO THE DEFENSE OF ACCUSED.

Appellant avers that only two of the prosecution witnesses provided the court with circumstantial evidence which were used as basis in rendering a judgment of conviction against the accused. These two witnesses, Alberto Castillo and Lito Salinas, testified only on matters which transpired before and after the killing and as such, there

was no eyewitness to the actual killing of victim Billy Cajuban. Thus, it is the contention of accused-appellant Flores that the testimonies of these two witnesses do not constitute circumstantial evidence sufficient to establish the guilt of accused Rolando Flores beyond reasonable doubt.

As previously stated, the court a quo convicted accused-appellant Flores as co-principal of the crime of murder for the killing of Billy Cajuban. The conviction was based purely on circumstantial evidence because there was no eyewitness to the actual killing of the victim. Thus, the core issue in the instant appeal is whether or not the circumstantial evidence linking accused-appellant to the killing is sufficient to sustain a judgment of conviction beyond reasonable doubt.

The settled rule is that a judgment of conviction based purely on circumstantial evidence can be upheld only if the following requisites concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.[11] The corollary rule is that the circumstances proven must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person;[12] i.e. the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with any other rational hypothesis except that of guilt.[13]

Based on the testimonies of the prosecution witnesses, the trial court appreciated the following two pieces of circumstantial evidence in convicting accused-appellant of the crime of murder:

(1) Accused-appellant Rolando Flores was present and witnessed the altercation between accused Isabelo Ragundiaz and Billy Cajuban which took place at the basketball court located at 3rd Avenue, Caloocan City at about 12:30 A.M. on July 9, 1994. Appellant Flores stood by and watched his co-accused Ragundiaz box Cajuban on the face and then a poke a gun at him. Finally, appellant Flores allegedly helped Ragundiaz drag Cajuban into an El Salvador Taxi and Flores drove the taxi away from the basketball court with Billy Cajuban, accused Ragundiaz, and three (3) other companions on board;

(2) At around 3:30 of that same morning of July 9, 1994, accused-appellant Rolando Flores entered the Sky Blue Beerhouse in Caloocan City together with co-accused Ragundiaz and three other companions but without Billy Cajuban. They arrived at the beerhouse on board an El Salvador Taxi. At that time, the white T-shirt of accused-appellant Flores was stained with blood and he had a wound on the thumb of his left hand.

These two circumstances, coupled with the fact that the dead body of the victim Billy Cajuban was found at around 2:00 A.M. of that same day, were deemed sufficient by the trial court to convict the accused-appellant of the crime of murder beyond reasonable doubt.

Verily, these circumstances cited by the trial court in justifying the conviction of the accused-appellant satisfies the first two requisites for judgments of conviction based on circumstantial evidence. There was more than one circumstance and these circumstances were duly proven by the testimonies of prosecution witnesses Alberto Castillo and Lito Salinas. We are not prepared to say however that the combination of these circumstances is sufficient to convict accused-appellant as co-principal for the crime of murder beyond reasonable doubt.

The principals in the commission of a crime are (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it could not have been accomplished.[14] As such, in order to convict accused-appellant as principal in the crime of murder, the prosecution must prove specific acts done by him which fall under any of the abovementioned acts.

From the evidence presented by the prosecution, it is apparent that accused-appellant Rolando Flores was not

involved in and had no participation in the verbal jousting and physical altercation between co-accused Isabelo Ragundiaz and Billy Cahuban that took place in the early morning of July 9, 1994. The pertinent portions of the testimony of witness Alberto Castillo on this point are reproduced hereunder as follows:

"PROS. NOCHE:

Q: Now, on July 9, 1994, at about 12:30 in the evening, did you have any opportunity to see Billy Cahuban?

A: Yes, sir.

Q: Where?Where?

A: In 3rd Avenue, Caloocan City, sir.

Q: And what was he doing along 3rd Avenue, Caloocan City?

A: He alighted from the taxi and wiping the taxi, sir.

Q: And what is the name of the taxi being driven by Billy Cahuban at that night?

A: El Salvador, sir.

Q: And did you have any opportunity to confer Billy Cahuban at that night.

A: No, sir.

Q: While...(pause) Now when you saw Billy Cahuban that night, did you notice any unusual incident that happen that night?

A: Yes, sir.

Q: Please tell us?

A: When I was washing car that night, at about 12:30 in the evening of July 9, 1994 I saw Billy Cahuban and another person (witness pointing to a person at the Gallery, whom latter identified as Isabelo Ragundiaz) having an altercation with each other, sir.

Q: How far were you from the place where Isabelo Ragundiaz and Billy Cahuban were having altercation with one another?

A: More or less ten (10) armslength, sir.

Q: And this altercation took place at nighttime. How were you able to recognize that this two (2) persons having altercation were Isabelo Ragundiaz and Billy Cahuban?

A: Because the place was bright due to a lighted Meralco post, sir.

Q: Now were you able to overhear the altercation between Billy Cahuban and Isabelo Ragundiaz?

A: No, sir.

Q: How were you able to know that Isabelo Ragundiaz and Billy Cahuban were having an altercation?

A: Because they were shouting at each other, sir.

Q: And how long did this altercation between Isabelo and Billy last?

A: Just a short time, sir.

Q: Would you kindly approximate the duration of this altercation?

A: About five (5) minutes, sir.

Q: And in the meantime that they were having altercation with each other, what were you doing?

A: I was washing taxi, sir and watching them.

Q: Were there other people around, other than Isabelo, Billy and you at that time, at that place along 3rd Avenue Caloocan City?

A: We were the only ones (sic) but there were other people passing by at that time, sir.

Q: After this altercation, what happened?

A: Billy was boxed "sinapak" and was dragged inside the taxi and drove away with him, sir.

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PROS. NOCHE:

Q: Of course you recognize the persons, who delivered the blow on Billy?

A: Yes sir. (Witness pointing inside the court room, a man wearing yellow orange-t-shirt, whom he identified as Isabelo Ragundiaz) and when asked his name answered Isabelo Ragundiaz).

Q: And where was Billy Cahuban hit by that blow?

A: On the right side of his face, sir.

Q: How far were you from Billy Cahuban, when you saw Isabelo delivering blows on the face of Billy?

A: More or less about ten (10) armslength, sir.

Q: Earlier you stated in open court that "sinapak nila at tinulak nila sa loob ng taxi." What do you mean by "nila"?

A: Because they were three (3) persons sir. The two were at the corner, sir.

Q: So how many times did you see Isabelo delivering that kind of blow at the person of Billy?

A: Once sir.

Q: Alright, did you recognize the companions of Isabelo Ragundiaz at that night?

A: I only know the two (2), sir.

Q: One of the two. What are the names of these two (2) persons that you know?

A: I recognized them only by the face, sir.

Q: Now, if you will be given the chance to see that person again, will you be able to recognize them?

A: Yes, sir.

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PROS. NOCHE:

Q: Do you know a person in the name of Rolando Flores?

A: I saw him at the Municipal Hall of Valenzuela, sir.

Q: Okey, let us go back to the time when Isabelo delivered a blow on the face of Billy. So what happened to Billy when he was hit by that blow?

A: He fell down, sir.

Q: Where?

A: At the side of his taxi, sir.

Q: And was Isabelo the only person who delivered that blow, on the person of Billy?

A: Yes, sir.

Q: So after Billy fell beside his taxi, what happened next?

A: They dragged him inside the taxi and boarded him and drove away with him, sir.

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Q: To which direction . . . (pause) By the way, who was driving that taxi where Isabelo boarded Billy that night?

A: Rolando Flores was the one driving the taxi, sir.

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PROS. NOCHE:

Q: Now, during the incident at that time (sic), there was an altercation between Isabelo Ragundiaz and Billy Cahuban, (what was Rolando Flores doing) up to the time Billy was forcibly entered (sic) inside the taxi and driven away?

A: He was just standing sir. And when Isabelo boxed Billy, he helped in dragging Billy inside the taxi, sir.

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Q: You said that one of those who assisted Isabelo Ragundiaz in this incident was Rolando Flores. Do you remember testifying that?

A: Yes sir.

Q: Prior to the incident, did you already know the person, Rolando Flores?

A: No sir.

Q: When was the first time you came to know the name of Rolando Flores?

A: Only last July 26, at the municipal hall of Valenzuela, sir.

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PROS. NOCHE:

Q: At that time, the incident happened, were Ragundiaz and his companion armed with anything?

A: There was sir.

Q: And who among these persons did you see in possession of a weapon?

A: Isabelo Ragundiaz, sir.

Q: Who else if any?

A: No more, sir.

Q: What kind of weapon did you see, in possession of Ragundiaz at that time?

A: As I see, it was a gun, sir.

Q: And where was it placed?

A: He was holding it and poked it to Billy Cahuban, sir.

COURT:

How far were you, when you saw that?

A: More or less ten (10) armslength, sir."^[15]

From, this testimony, it is clear that accused-appellant Flores was a mere bystander when the altercation between accused Ragundiaz and Billy Cajuban was taking place. Likewise, it was accused Isabelo Ragundiaz and not accused Rolando Flores who boxed Billy Cajuban on the face, poked a gun at him and dragged the victim to the El Salvador taxi. As such, from Castillo's testimony, it cannot be inferred that accused-appellant took a direct part in the execution of the crime or that he forced or induced others to commit it. The only participation of accused-appellant Flores was that he allegedly helped in dragging the victim to the taxicab and that he allegedly drove the taxicab away from the basketball court. These acts however have not been shown to be indispensable to the commission of the crime so as to consider him as a principal by indispensable cooperation.

With respect to the second piece of circumstantial evidence allegedly linking accused-appellant Flores to the killing, we note that witness Lito Salinas only testified that he saw accused-appellant, in the company of Ragundiaz and three others, arrive at the Skyblue Beerhouse at 3:30 A.M. of that same day. They arrived on board an El Salvador Taxi and accused-appellant Rolando Flores was sporting a blood-stained shirt. However, he also saw that accused-appellant Flores had a wound on his left hand thumb. Witness Salinas did not see the actual killing of Billy Cajuban nor did he witness any act of accused-appellant Flores done in furtherance of the crime.

Thus, the evidence adduced by the prosecution points only to accused Isabelo Ragundiaz as the principal in the murder of Billy Cajuban. Ragundiaz was seen by a witness as having a fight with the victim and that he was in the possession of a gun. Moreover, as testified by witness Rachele Ragundiaz, the common-law wife of accused Isabelo Ragundiaz, it was Ragundiaz who had a probable motive to kill Billy Cajuban. She testified that prior to the incident, accused Ragundiaz had a misunderstanding with Billy Cajuban as the latter was suspected of stealing Ragundiaz's wristwatch a week earlier^[16]. This case of theft was the subject of a complaint^[17] which she had earlier filed with the Barangay authorities on July 4, 1994 and which caused a confrontation between the victim and Ragundiaz before the Barangay Captain of 3rd Avenue, Caloocan City.

In contrast, the evidence of the prosecution is insufficient to prove beyond reasonable doubt that accused-appellant Flores was likewise a principal to the killing of Billy Cajuban. The acts performed by accused-appellant are not, by themselves, indispensable to the killing of Billy Cajuban. As aforesaid, to be considered as a principal by indispensable cooperation, there must be direct participation in the criminal design by another act without which the crime could not have been committed. We note that the prosecution failed to establish that the accused-appellant's acts were of such importance that the crime would not have been committed without him or that he participated in the actual killing. As such, the acts of accused-appellant only raise the suspicion that he was somehow involved in the killing of Billy Cajuban. These circumstances however do not inexorably lead to the conclusion that he is guilty as co-principal in the perpetration of the crime.

Similarly, the circumstantial evidence that accused-appellant Flores, who was sporting a bloody t-shirt, together with accused Ragundiaz, and two other unidentified companions, arrived at the Sky Blue Beerhouse at 3:30 A.M. of July 9, 1994, does not conclusively indicate that accused-appellant actively participated in the commission of the crime. It must be noted that the witness also testified that accused-appellant had a wound on the thumb of his left hand and as such, the blood on the t-shirt may have come from the said wound. This circumstance however does not in any way shed light on the actual degree of his participation in the killing.

Finally, accused-appellant Flores did not have any motive to kill Billy Cajuban. While we are aware that the motive of the accused in a criminal case is generally held to be immaterial, not being an element of the crime, motive becomes important when, as in this case, the evidence on the commission of the crime is purely circumstantial or inconclusive.[18]

At best, therefore, the evidence before us merely shows that accused-appellant Flores was somehow involved in the commission of the crime. However, the evidence does not clarify the actual degree of his participation in the killing of Billy Cajuban.

To justify its conviction of accused-appellant as a principal to the crime, the trial court appreciated the existence of an alleged conspiracy between him and Isabelo Ragundiaz without stating however, how it came to such a conclusion. At this point, It is well to recall here the rule established by this Court to the effect that conspiracy must be shown to exist, by direct or circumstantial evidence, as clearly and convincingly as the commission of the offense itself.[19] Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it or if at the time of the commission of the offense, the offenders have the same criminal purpose and were united in its execution. Therefore, in order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy.[20] The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[21]

In the light of these legal principles, the Court finds that proof beyond reasonable doubt has not been established as to the existence of conspiracy between Isabelo Ragundiaz and accused-appellant Rolando Flores. While direct proof is not essential to prove conspiracy as it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged, the evidence to prove the same must be positive and convincing considering that conspiracy is a facile device by which an accused may be ensnared and kept within the penal fold.[22]

In the instant case, there was no adequate proof presented that accused-appellant Rolando Flores conspired with the other accused to commit the crime of murder. The evidence merely points out that he helped in dragging the victim to a taxicab and that he was the one who drove the said taxicab. These acts of accused-appellant show some degree of participation on the part of the accused-appellant on the criminal design of Isabelo Ragundiaz but it is now well-settled that neither joint nor simultaneous action is per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design.[23] And independent of these acts of accused-appellant, there appears to be no proof adduced by the prosecution that he was motivated by the same criminal design entertained by his co-accused Isabelo Ragundiaz. Likewise, the fact that accused-appellant was seen later that day in the company of Isabelo Ragundiaz and three other persons is not sufficient indication that the former conspired with the latter in killing Billy Cajuban as conspiracy transcends mere companionship.[24]

As such, the prosecution failed to present evidence sufficient to establish accused-appellant's conspiracy with the evil designs of co-accused Isabelo Ragundiaz. Neither was it established that the accused-appellant's acts were of

such importance that the crime would not have been committed without him or that he participated in the actual killing. However, the actions of accused-appellant as proven by the evidence do not totally clear him from any criminal liability for the death of Billy Cajuban.

We have previously held that the liability of one whose participation in a crime was limited to driving for the killers[25], or one who himself tied the victim's hands and joined armed men in taking the victim to the hills[26], is only that of an accomplice. The rationale for these rulings is that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice.[27]

In the instant case, the trial court erred in holding accused-appellant equally liable with his co-accused Isabelo Ragundiaz. Accused-appellant's conspiracy with the criminal design of Ragundiaz was not proven beyond reasonable doubt. Neither has it been shown that the acts committed by accused-appellant were indispensable to the commission of the crime. Thus, the lack of complete evidence of conspiracy, which creates the doubt whether he has acted as a principal or as an accomplice, impels this Court to resolve the question as to his liability in his favor by holding that he is guilty of the minor form of responsibility.[28] Accordingly, accused-appellant Rolando Flores should be convicted as an accomplice to the murder of Billy Cajuban.

As an accomplice, Rolando Flores should be imposed the penalty next lower in degree than that prescribed by law for the consummated felony.[29] The penalty for murder is reclusion perpetua to death. The penalty one degree lower is reclusion temporal and there being no aggravating nor mitigating circumstances, the penalty should be reclusion temporal medium. Applying the Indeterminate Sentence Law, accused-appellant Rolando Flores should therefore be meted out the penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal as maximum.[30]

We sustain the trial court's grant of P50,000 as indemnity ex delicto, which may be awarded without need of proof other than the commission of the crime. We likewise affirm the award of moral damages in the amount of P50,000.00. We reduce however, the award of actual and compensatory damages from P70,000.00 to P11,500.00 as it is only the latter amount which was properly supported by receipts.[31] As an accomplice, accused-appellant is solidarily liable with Isabelo Ragundiaz for one-half of the said amount, or P55,750.00, and is subsidiarily liable for the rest in case the latter is found insolvent.[32]

WHEREFORE, premises considered, accused-appellant Rolando Flores is hereby found guilty as an accomplice to the murder of Billy Cajuban. He is sentenced to an indeterminate penalty of 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. He is likewise held solidarily liable with co-accused Isabelo Ragundiaz for one-half of the amounts of P50,000.00 as death indemnity, P11,500.00 as actual damages, and P50,000.00 as moral damages or a total amount of P55,750.00 and he is held subsidiarily liable for the other half, in case of the latter's insolvency.

SO ORDERED.

Melo, (Chairman), Panganiban, and Purisima, JJ., concur.

Vitug, J., Abroad, On Official Business.

[1] Rollo, pp. 32-45.

[2] Rollo, p. 67.

[3] Rollo, p. 68.

[4] Records, p. 8.

[5] Records, p. 35.

[6] RTC Decision, pp. 11-13; Rollo, pp. 42-44.

[7] RTC Decision, pp. 13-15; Rollo, pp. 44-45.

[8] Records, p. 116.

[9] Records, pp. 117-118.

[10] Rollo, p. 79.

[11] Section 4, Rule 133 of the Rules of Court; People vs. de Guzman, 250 SCRA 118; People vs. Llaguno, 285 SCRA 124; People vs. Bato, 284 SCRA 223; People vs. Ferras, 289 SCRA 94; People vs. Rivera, 295 SCRA 99.

[12] People vs. Maqueda, 242 SCRA 565; People vs. Paguntalan, 242 SCRA 753; People vs. Danao, 253 SCRA 146; People vs. Gargar, 300 SCRA 542.

[13] People vs. Casingal, 243 SCRA 37; People vs. Dulatre, Jr. 248 SCRA 107; People vs. Ragon, 282 SCRA 90; People vs. Maluenda, 288 SCRA 225.

[14] People vs. Galapin, 293 SCRA 474.

[15] T.S.N., August 31, 1994, pp. 6-18.

[16] T.S.N., August 21, 1995, pp. 15-17.

[17] Exhibit "4" for the Defense.

[18] People vs. Cayetano, 223 SCRA 770.

[19] People vs. Vicente, May 21, 1969.

[20] People vs. de Roxas, 241 SCRA 369.

[21] People vs. Tami, 244 SCRA 1; People vs. De Roxas, 241 SCRA 369.

[22] People vs. Madali, 188 SCRA 69; People vs. Tingson, 47 SCRA 243.

[23] People vs. Elefano, 125 SCRA 702; People vs. Vicente, 28 SCRA 247; People vs. Ibanez, 77 Phil. 664.

[24] People vs. Padrones, 189 SCRA 496.

[25] People vs. Corbes, 270 SCRA 465

[26] People vs. Fronda, 222 SCRA 71.

[27] People vs. Corbes, supra; People vs. Sotto, 255 SCRA 344; People vs. Bongo, 55 SCRA 547; People vs. Torejas, 43 SCRA 158; People vs. Tolentino, 40 SCRA 514.

[28] People vs. de Vera, G.R. No. 128966, August 18, 1999; People vs. Rivalal 10 SCRA 462.

[29] Art. 52, Revised Penal Code.

[30] People vs. Magno, G.R. No. 134535, January 19, 2000.

[31] Exhibits "G", "H", and "J".

[32] Articles 109 and 110, Revised Penal Code; People vs. Sotto, 255 SCRA 344; People vs. Barbosa, 86 SCRA 217.

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