

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERT ELIJORDE Y DE LA CRUZ AND REYNALDO PUNZALAN Y ZACARIAS ALIAS “KIRAT,” ACCUSED-APPELLANTS.*G.R. No. 126531. April 21, 1999*

Ponente: BELLOSILLO, J.

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GILBERT ELIJORDE Y DE LA CRUZ and REYNALDO PUNZALAN Y ZACARIAS alias Kirat were convicted of murder by the Regional Trial Court of Bulacan for the killing of Eric Hierro. Both accused were sentenced to death and ordered jointly and severally to indemnify the heirs of Eric Hierro P50,000.00 plus P35,000.00 for actual damages, P100,000.00 for moral damages and P25,000.00 for exemplary damages. The case is now with us on automatic review.

The records show that at around 6:00 o'clock in the evening of 21 May 1995 Eric Hierro, Benjamin Visbal and Rodel Contemplado were drinking in the house of the latter. Sometime later, Hierro and Visbal went out to buy mango at a nearby sari-sari store. Accused Gilbert Eljorde, Reynaldo Punzalan and a certain Edwin Menes were at the time in front of the store. As Menes approached Hierro the latter warned Menes, "Don't touch me, my clothes will get dirty." Suddenly Menes punched Hierro on the face, followed by Eljorde who also boxed Hierro on the face, and Punzalan who kicked Hierro at the back. Hierro and Visbal ran for their lives. They sought shelter at Contemplado's house. After some three (3) minutes, Hierro went out of the house to go home together with Visbal and the latter's wife.

As they walked home, Visbal noticed the accused Eljorde, Punzalan and Menes waiting for them. As Hierro and company drew near, Punzalan kicked Hierro at the back for the second time. Visbal tried to retaliate by punching Punzalan on the face but was held back by his wife. Hierro ran away pursued by Eljorde. They were followed by Visbal. Eljorde stabbed Hierro at the back. When Hierro fell down, Eljorde placed himself on top of Hierro who was now raising his arms defensively and pleading, "Maawa na kayo, huwag ninyo akong patayin, wala akong kasalanan sa inyo." Despite the pleas of Hierro for mercy, Eljorde stabbed him with a knife on the chest and then fled. Visbal and his wife brought Hierro to the hospital where he died soon after.

Dr. Benito Caballero, Medico-Legal Officer of Bocaue, Bulacan, conducted a post-mortem examination of Eric Hierro, and reported that the cause of his death was shock resulting from multiple stab wounds in the thorax penetrating the aorta and vena cava.[1]

Gilbert Eljorde, Reynaldo Punzalan and Edwin Menes alias Nonong[2] were accordingly charged in an Information for murder of Eric Hierro qualified by treachery, evident premeditation and abuse of superior strength. But only Eljorde and Punzalan were arrested and tried. Menes has since remained at large.

Both accused contend that the court a quo erred in finding that treachery qualified the killing of Hierro to murder, and in finding Punzalan guilty of murder by reason of conspiracy with Eljorde. The defense argues that Punzalan did not conspire with Eljorde because the only participation of Punzalan in the commission of the offense was his

kicking of Hierro twice: first, after Hierro was boxed by Elijorde and Menes in front of the nearby sari sari store, and the second time, when Hierro was on his way home; that Punzalan remained in the place where he kicked Hierro and did nothing more"; that he did not join or cooperate with Elijorde in pursuing and stabbing the deceased; and, that the acts of kicking Hierro were neither in pursuance of the same criminal design of Elijorde nor done in concert aimed at the attainment of the same objective of killing Hierro.

Indeed, with respect to accused Reynaldo Punzalan, the Court cannot assert with moral certainty that he is guilty of murder. To convict him as a principal by direct participation in the instant case, it is necessary that conspiracy between him and his co-accused Elijorde be proved. That, precisely, is wanting in the present case. Conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence, not merely by conjecture.[3] To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.[4] Hence, conspiracy exists in a situation where at the time the malefactors were committing the crime, their actions impliedly showed unity of purpose among them, a concerted effort to bring about the death of the victim.[5] In a great majority of cases, complicity was established by proof of acts done in concert, i.e., acts which yield the reasonable inference that the doers thereof were acting with a common intent or design. Therefore, the task in every case is determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference.[6]

Clearly, the testimony of eyewitness Benjamin Visbal narrated the circumstances surrounding the killing of Hierro, to wit:

Q:

Now, you said that Eric Hierro went to the store to buy mango, do you know the reason why there was a boxing incident?

A: Yes, Your Honor.

Q: What was the reason?

A: When Nongnong approached Eric, Eric stated, "Don't touch me, my clothes will become dirty."

Q: Who is this Nongnong?

A: Edwin Meneses,[7] Your Honor.

Q: When Eric Hierro said that what did Edwin Menes(es) do?

A: He suddenly punched Eric Hierro.

Q: When Eric Hierro (was) punched what did this Gilbert Elijorde do?

A: Gilbert Elijorde also punched Eric Hierro.

Q: How about Reynaldo Punzalan?

A:

Reynaldo Punzalan kicked Hierro at the back, Your Honor.

Q: That was during the first incident?

A: Yes, Your Honor.

Q: You mean to say they were three at that time?

A: Yes, Your Honor.

Q: Now, after that Eric Hierro went home?

A:

Yes, Your Honor.

Q: How long did Eric Hierro stayed (sic) at that place?

A: For about three (3) minutes, Your Honor.

Q: When Eric Hierro went out you went with him together with Eric Hierro?

A: Yes, Your Honor.

Q: Together with your wife?

A: Yes, Your Honor.

Q: When the three of you went out what happened?

A: While we were walking home this "Kirat" (Reynaldo Punzalan) suddenly kicked Eric Hierro at the back.

Q:

Do you mean to say aside from the first incident Kirat kicked Eric Hierro, (during) the second incident Kirat kicked Eric Hierro?

A: Yes, Your Honor.

Q: When you were approaching, how many of them were there waiting for Eric Hierro?

A:

The three of them were waiting for Eric Hierro but during the chasing it was only Gilbert Elijorde who chased us.

Q: What did Edwin do during the second incident?

A: He did nothing.

Q: How about Kirat?

A: He kicked Eric Hierro at the back.

Q: After that what did you do?

A:

I can't (sic) do anything, Your Honor, because I was being held by my wife.

Q: How about Eric Hierro what did he do?

A: He ran away x x x x

Q: While Eric Hierro was running did you see that Gilbert stab Eric at the back?

A: Yes, Your Honor.

Q: That was the first stab that was made by Gilbert is that correct?

A: Yes, Your Honor.

Q: What happened to Eric when he was stabbed at the back?

A: He continued running, Your Honor.

Q: And how about Gilbert what did Gilbert do?

A: He continued chasing, Your Honor.

Q: How about your wife where was your wife?

A: At my back, Your Honor.

Q: When you met Eric Hierro at a certain point what did you actually see?

A: That was when I saw Gilbert stab Eric Hierro right on the chest.

Q: And when Eric Hierro was already lying (facing?) up?

A: Yes, Your Honor.

Q: And Gilbert was on top of Eric Hierro?

A: Yes, Your Honor.

Q: And you saw Gilbert stab Eric Hierro?

A: Yes, Your Honor.

Q: How many times?

A: Only once, Your Honor.

Q: During those incidents where was Kirat?

A: He did not run after Eric Hierro. He remained in front of the house of my cousin Rodel.

On the basis of the above testimony, the only involvement of Punzalan was kicking Hierro at the back before the latter was pursued and stabbed by accused Eljorde. After kicking the victim, Punzalan remained where he was and did not cooperate with Eljorde in pursuing Hierro to ensure that the latter would be killed. There is no other evidence to show unity of purpose and design between Punzalan and Eljorde in the execution of the killing, which is essential to establish conspiracy. His act of kicking Hierro prior to the actual stabbing by Eljorde does not of itself demonstrate concurrence of wills or unity of purpose and action. For it is possible that the accused Punzalan had no knowledge of the common design, if there was any, nor of the intended assault which was committed in a place far from where he was. The mere kicking does not necessarily prove intention to kill. The evidence does not show that Punzalan knew that Eljorde had a knife and that he intended to use it to stab the victim.[8] Neither can Punzalan be considered an accomplice in the crime of murder. In order that a person may be considered an accomplice in the commission of the offense, the following requisites must concur: (a) community of design, i.e., knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and, (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice. The cooperation that the law punishes is the assistance knowingly or intentionally rendered which cannot exist without previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable either as a principal by indispensable cooperation or as an accomplice that the accused must unite with the criminal design of the principal by direct participation. There is nothing on record to show that accused Punzalan knew that Eljorde was going to stab Hierro, thus creating serious doubt on Punzalan's criminal intent.[9]

In the absence of a previous plan or agreement to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and that each of the participants is liable only for his own acts.[10] Consequently, accused Punzalan must be absolved from all responsibility for the killing of Hierro. It may be emphasized that at the time accused Eljorde intervened in the assault, Punzalan had already desisted from his own acts of aggression. He did nothing in fact to assist Eljorde in the immediate commission of the murder. Moreover, the act of kicking by Punzalan prior to the actual stabbing by

Elijorde was evidently done without knowledge of the criminal design on the part of the latter as that design had not yet been revealed prior to the killing of Hierro.

As regards the kicking of the victim by Punzalan, which the latter admits, there is nothing on record to show that the kicking resulted in any injury on any part of the body of Hierro. Neither is there any evidence that the victim was hit at all when Punzalan kicked him. Of what then can Punzalan be held liable?

With regard to the principal accused Gilbert Elijorde, the trial court correctly ruled that treachery attended the killing of Hierro thus qualifying the crime to murder. Treachery exists when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make. The fact that a verbal confrontation accompanied by physical assault by the group of Elijorde preceded the actual killing did not negate the treacherous character of the stabbing which resulted in the death of Hierro. After the first physical assault which sent Hierro retreating and seeking shelter in the house of a friend, the victim did not expect that the accused would persist in inflicting harm upon him who, unaware of the impending danger, proceeded home with his friends. Unfortunately, however, Elijorde was waiting for the deceased and pursued him to his end. After stabbing Hierro at the back, and if only to ensure the success of his criminal design, accused Elijorde persistently chased his unarmed quarry until he finally overpowered his victim and delivered the fatal stab on his chest. In one case, treachery was present where the accused stabbed the victim with a bladed weapon even as his hands were raised and he was pleading for mercy.[11] In another case where the accused who was armed with a revolver had an altercation with the victim, fired at him, pursued him, and when cornered he (victim) threw himself on the floor, raised his hands and begged the defendant not to shoot him as he was already wounded, but the malefactor just the same shot him thrice, we held that there was treachery in the killing.[12]

We likewise agree with the trial court when it disregarded the aggravating circumstances of evident premeditation and abuse of superior strength alleged in the Information. No sufficient evidence exists to show that the requisites of evident premeditation were present, to wit: (a) the time when the offender decided to commit the crime; (b) an act manifestly indicating that he had clung to his determination to commit it; and, (c) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act and for his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[13] Where there is no showing that the accused Elijorde prior to the night of the commission of the crime resolved to kill the victim nor proof that such killing was the result of meditation, calculation or resolution on his part, evident premeditation cannot be appreciated against him.[14] Moreover, the time interval of three (3) minutes between the first and the second assault on Hierro is too brief to have enabled Elijorde to ponder over what he intended to do with Hierro. The circumstance of abuse of superior strength is absorbed in treachery; hence, it cannot be appreciated as an independent aggravating circumstance when treachery is already present.[15]

The penalty for murder under Art. 248 of the Revised Penal Code as amended by RA 7659 is reclusion perpetua to death. As regards the accused Gilbert Elijorde, the killing although qualified by treachery was not attended by any generic modifying circumstance; consequently, the penalty to be imposed upon him must be the indivisible penalty of reclusion perpetua.[16] With respect to the accused Reynaldo Punzalan, he should be acquitted of the crime charged for insufficiency of evidence.

Although not objected to by the accused, we modify the award of damages adjudged by the court a quo in favor of the heirs of the victim, particularly with regard to the moral and exemplary damages. The award of P100,000.00 for moral damages may seem excessive considering the purpose of the award which is not to enrich the heirs but to compensate them for injuries to their feelings.[17] For this reason, an award of P50,000.00 may be adequate and reasonable.[18] The exemplary damages awarded by the trial court may be deleted since they are granted only

when the crime is committed with one (1) or more aggravating circumstances. In the instant case, treachery may no longer be considered as an aggravating circumstance since it was already taken as a qualifying circumstance in the murder, and abuse of superior strength which would otherwise warrant the award of exemplary damages was already absorbed in the treachery.[19] But the indemnity for death fixed at P50,000.00 and the actual damages representing uncontested funeral expenses of P35,000.00 should be affirmed.

On the part of accused Reynaldo Punzalan as there is no finding of criminal responsibility against him, only accused Gilbert Eljorde should bear the liability for such civil indemnity as well as the actual and moral damages.

WHEREFORE, the decision of the court a quo is MODIFIED. Accused GILBERT ELIJORDE y DE LA CRUZ is found GUILTY of MURDER and is accordingly sentenced to reclusion perpetua. Accused REYNALDO PUNZALAN y ZACARIAS is ACQUITTED of the crime charged and is ordered RELEASED FROM CUSTODY IMMEDIATELY unless legally held for another cause. In this regard, the Director of Prisons is directed to report to the Court his compliance herewith within five (5) days from receipt hereof. Accused ELIJORDE is solely held responsible for the payment to the heirs of the victim Eric Hierro the amounts of P50,000.00 for civil indemnity, P35,000.00 for actual damages and P50,000.00 for moral damages.

SO ORDERED.

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

[1] Records, p. 77.

[2] Also referred to as "Nongnong" in the transcript of stenographic notes.

[3] *People v. Lug-aw*, G.R. No. 85735, 18 January 1994 229 SCRA 308.

[4] *People v. de Roxas*, G.R. No. 106783, 15 February 1995 241 SCRA 369.

[5] *Sison v. People*, G.R. Nos. 108280-83 and 114931-33, 16 November 1995, 250 SCRA 58.

[6] *People v. Orehuela*, G.R. Nos. 108780-81, 29 April 1994 232 SCRA 82.

[7] "Meneses" should read "Menes" as corrected in the Amended Decision of the trial court dated 25 September 1996.

[8] *People v. Agapinay*, G.R. 77776, 27 June 1990, 186 SCRA 812.

[9] *People v. Jorge*, G.R. No. 99379, 22 April 1994, 231 SCRA 693.

[10] *US v. Macuti*, 26 Phil. 170 (1913).

[11] *People v. Ricohermoso*, Nos. L-30527-28, 29 March 1974 56 SCRA 431.

[12] *People v. Kamantigue*, 90 Phil. 872 (1952).

[13] *People v. Ruelan*, G.R. No. 106152, 19 April 1994 231 SCRA 650.

[14] *People v. Ilaoa*, G.R. No. 94308, 16 June 1994 233 SCRA 231.

[15] *People v. de Leon*, G.R. No. 115367, 28 September 1995 248 SCRA 609.

[16] *People v. Saliling*, G.R. No. 117732, 10 October 1995, 249 SCRA 185.

[17] People v. Verde, G.R. No. 119077, 10 February 1999.

[18] Id., citing People v. Aringue, 283 SCRA 291.

[19] People v. Patrolla, Jr., G.R. No. 112445, 7 March 1996, 254 SCRA 467.

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