

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSTICO TILOS AND MATEO MAHINAY (AT LARGE), ACCUSED.

G.R. No. 138385. January 16, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Upon a finding of conspiracy with accused-at-large, accused-appellant was convicted of murder and sentenced to reclusion perpetua by the Regional Trial Court (Branch 34) of Dumaguete City. Pertinent portions of the information under which the two accused were charged read:

The undersigned 2[nd] Asst. Prov'l. Prosecutor hereby accuses RUSTICO TILOS and MATEO MAHINAY of the crime of Murder, committed as follows:

That on or about 7:00 in the evening of April 1, 1994, at Poblacion, Ayungon, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously ATTACK, ASSAULT and BOX one Teotimo Narciso, a sickly man who was 60 years of age, causing injuries on different parts of his body and as a result of said injuries said Teotimo Narciso died about two (2) days thereafter, to the damage and prejudice of the heirs of the same victim.

An act defined and penalized by Art. 248 of the Revised Penal Code.

The offense is attended by the aggravating circumstance of disregard of respect due to age.

xxx[1]

The material witnesses of the prosecution included three eyewitnesses, and the doctor who attended to the victim and issued the death certificate. The eyewitnesses included the victim's wife and daughter.

Geralyn Narciso, the 12-year old daughter of the victim, was on her way to a neighbor's house to watch a betamax movie when she came upon accused-appellant inflicting fist blows on her father. From a distance of about 15 meters, she saw accused-appellant holding the victim by the nape with his right hand, and boxing him on the abdomen with his left hand.[2] Geralyn called to her mother, Florida Narciso, for help and the latter arrived and pulled the victim away from accused-appellant. While Florida was hugging the victim, accused-at-large Mateo Mahinay came from behind them and struck the victim three times: on the left eye, the right eye, and the nape.[3] The victim fell to the ground. Florida sought the help of two bystanders, Mercy Siquijod and Paniong Agustino, in bringing the victim home. Teotimo Narciso died two days later.

Geralyn positively identified accused-appellant in the courtroom. She claimed that she knew both of the accused well because accused-appellant was their neighbor and accused-at-large often visited her uncle.

The second eyewitness, Eduardo Devero, also a resident of Poblacion, Ayungon, Negros Oriental, came to know of a "quarrel" from a certain Elsa. Upon his arrival at the crime scene, he saw Teotimo Narciso being collared by

accused-appellant. Teotimo was in a squatting position and accused-appellant appeared to be forcing him to stand up, while boxing him on the abdomen. Then accused-appellant held Teotimo on the nape and punched him on the chest several times. Thereafter accused-at-large boxed Teotimo on the right eye and nape, causing the latter to collapse to the ground. Geralyn then shouted to her mother for help, and Florida led her husband away with the help of some other persons.

Rogelio Mollenido, a neighbor of the victim, testified on the latter's sickly condition at the time of the attack. He recalled that in 1992 Teotimo Narciso suffered a stroke; he has since walked in a stooping manner and stuttered when he talked, rendering his speech incoherent.

Mollenido's observations were corroborated by the victim's wife, Florida Narciso, who described her husband as "an invalid" since his heart attack on February 16, 1992. Before the stroke, the victim worked as a carpenter aide to support his wife and their ten children. At the time of her husband's death, Florida was the sole breadwinner of their family.

Florida testified that she also witnessed the beating up of her husband. She narrated that she heard her daughter, Geralyn, call out "Ma, Papa is being manhandled," at which she rushed to her husband and pulled him away from accused-appellant. As she pulled and hugged her husband, accused-at-large boxed him on the nape and he fell to the ground.[4] When she reported the matter to the police, SPO2 Nicolas Indico, the investigator who entertained her complaint, refused to include the name of accused-appellant in the police blotter.[5] The victim was treated at the Bindoy District Hospital, where she requested for a photographer named Serapio dela Serna to take pictures of the swollen face of her husband. (De la Serna also testified as a prosecution witness to identify the pictures he had taken.) At the district hospital, she was advised to bring her husband to the Negros Oriental Provincial Hospital for further treatment, where he died on April 3, 1994.

Dr. Dante Domingo remembers performing a brain operation on Teotimo Narciso. The patient had a hematoma, a sizeable blood clot on the right side of his brain, which caused compression of the brain's vital centers and eventually led to the patient's death.[6] At the time of the incident, Dr. Domingo was the chairman of the Department of Surgery of the Negros Oriental Provincial Hospital. Although not a neurosurgeon, he was experienced in trauma cases and had undergone a six-month training course in neuro-head trauma at the National Orthopedic Hospital.[7] Dr. Domingo stated that it is possible for the trauma that caused the head injury of the victim to have been brought about by heavy fistblows on the head or neck,[8] but he does not believe it could have been caused by fistblows on the abdomen.[9] The defense admitted the injuries as indicated in the death certificate issued by Dr. Domingo dated April 3, 1994.[10]

Accused-appellant himself took the stand as a defense witness. He denied the allegations of Geralyn Narciso and Eduardo Devero that he punched the victim on the chest and abdomen. Instead, he insisted that he averted a fight between the victim, on one hand, and Dodong Abordo and Lito Romano, on the other. Going by his version of the incident, Teotimo Narciso was standing at the intersection of Barangays Tambo and Poblacion, Ayungon when Dodong Abordo poured cold water on his (Teotimo's) back as a prank. Angered, the victim picked up a bamboo stick and attempted to hit Abordo; instead he hit Romano, who was nearby, and who tried to hit him back. As accused-appellant was a barangay councilman, he stepped in and pacified the parties; then he instructed Teotimo Narciso to go home as he was causing trouble. While he was leading the victim away, accused-at-large struck the victim from behind, causing the latter to collapse. Then Geralyn Narciso called out, "Igo na Tio Mat, patay na si papa." (That's enough, Uncle Mat, Father is already dead.)[11][11] TSN, July 9, 1997, 3.11 One Berto Rubio pulled accused-at-large away from the victim, and when asked why he attacked the latter, accused-at-large allegedly answered that it was because the victim was causing trouble. Florida Narciso then arrived and brought her husband home.

The trial court, noted, however, that accused-appellant's testimony, which ran the course of four hearings, was confusing and fraught with innumerable inconsistencies on material points.[12] At one point, he stated that Lito Romano was not hit by the victim.[13] Then he claimed that a certain Popet also tried to hit the victim,[14] and added that one Nadette Deluvio also pacified Teotimo Narciso.[15] At another portion of his statement, he was not sure where Teotimo Narciso got the bamboo stick he used to strike at Dodong Abordo;[16] then, he claimed that Teotimo got the stick from the side of the road where there was a wooden fence.[17] Then he tried to imply that he did not actually see the victim strike with the bamboo stick as he was only told about it.[18] Once he declared that he saw accused-at-large box the victim;[19] next he denied actually seeing it happen, but only heard an "impact".[20]

The other defense witnesses fared no better in the assessment of the trial court. Jun Eric dela Zerna, a neighbor of both the victim and accused-appellant, was also an eyewitness to the incident. He said he was at the store of a certain Tasing when Teotimo Narciso, who was sitting under a coffee tree, was approached by accused-appellant and told to go home because he was causing trouble. Teotimo was about to heed accused-appellant's advice when Lito Romano suddenly attacked him. Then accused-at-large hit Teotimo on the mouth, at which accused-appellant cried out, "That's enough, Dong!"[21]; nonetheless, accused-at-large kept hitting Teotimo. When Florida Narciso arrived, accused-appellant told her to bring her husband home.

On cross-examination, however, dela Zerna admitted that the contents of his affidavit were not true as he was forced and threatened into signing it by the "witnesses of Rustico Tilos".[22] He recanted on his affidavit and said that it was not true that Teotimo Narciso was drunk at the time,[23] and that he saw Teotimo beat Lito Romano and Dodong Abordo with a stick.[24] It was also not true that accused-appellant pacified the victim.[25] He said that the portions of his affidavit which were untrue were upon the advice of one Atty. Timtim.[26]

SPO2 Nicolas Indico, the investigating officer that Florida Narciso named as the one who refused to enter accused-appellant's name in the police blotter report, insisted that Florida did not mention any person other than accused-at-large Mateo Mahinay. Justifying the failure of the police to investigate the incident when it happened, he said it was because Florida left immediately after reporting that it was just a small matter.[27]

Senior Inspector Zacarias Rodriguez, the Chief of Police of Tanjay, Negros Oriental, identified the certification issued by him respecting the entry in the police blotter prepared by SPO2 Indico.

The trial court, however, dismissed accused-appellant's reliance on the testimony of SPO2 Indico and the police blotter report naming only Mateo Mahinay in this manner:

The accused tried to rely on the police blotter as recorded by SPO2 Nicolas Indico who was presented as a defense witness. The court takes cognizance of the fact that police blotters are on many occasions inaccurate and do not reflect the entire account of what actually transpired. Also, the court is not persuaded to give full credence to the assertion of SPO2 Nicolas Indico that when Florida Narciso went to their police station to report the mauling incident involving her old and sickly husband, she only mentioned the name of co-accused Mateo Mahinay and did not mention the name of accused Rustico Tilos as a co-assailant. Firstly, SPO2 Indico admitted that actually he was not the officer of the day then but simply assumed the responsibility of recording because the other policemen allegedly responded to an incident involving a hand grenade-wielding person. Yet, he could not show in the police blotter, which he brought, the incident involving the hand grenade. Secondly, he mentioned that he did not respond to the police report of Florida because the latter allegedly left and told him that the incident was a small matter involving contusions only. It should be noted that as admitted by him, the mauling incident happened only about 400 meters from their police station (TSN, August 8, 1995, p. 13), and he could have easily responded had he not been negligent in his duties or biased in favor of the accused. The court gives more credence to the declaration of Florida that when she went to the police station, she reported that accused Rustico Tilos and Mateo Mahinay mauled her husband, but that SPO2 Indico did not

reflect the name of Rustico in the police blotter because he was a protegee of the municipal mayor, being an employee of the latter's bank. Besides, it is not in accord with human experience that the wife of the victim would go to the extent of reporting the mauling incident to the police station and while there would simply say that it was a small matter, especially taking into account the admission of accused Rustico Tilos that even Geralyn Narciso, daughter of the victim, pleaded to stop the beating, thinking that her father was already dead as he lay sprawled on the ground.[28]

Eleanor Emperado, the barangay chairman of Poblacion, Ayungon, testified that she knew accused-appellant, he having been a barangay councilor from 1989 to 1994, and attested to his good moral character.[29] She also knew the victim, described him as jobless and often drunk, and narrated an incident when Florida Narciso, the victim's wife, approached her and asked that the victim be temporarily detained in the municipal jail because he was so drunk.[30] She was not a witness to the beating up of Teotimo Narciso, but was only informed about it by one Filomena Barraquias;[31] later, she stated that she was told of the incident by a certain Nestor Ferreron, who likewise was not shown to be a witness to the incident.[32] She claimed to have visited the victim's house the day after the incident and to have seen the victim's swollen face.

Salvador Deguit, the owner of the store where the victim allegedly bought a glass of bahal (coconut wine) before the incident, testified that Teotimo was drunk at the time. He insisted that it was only accused-at-large who attacked Teotimo while the latter was being led home by his wife. He claimed that he accompanied Florida Narciso in bringing Teotimo to the district hospital, and then to the provincial hospital.

Dr. Virgilio de Guzman, a Senior Resident Physician of the Department of Surgery of the Negros Oriental Provincial Hospital at the time of the trial, was brought in by the defense to testify on a medical certificate on the deceased victim dated April 5, 1994. Dr. de Guzman admitted to preparing the said medical certificate, which essentially confirmed the findings of Dr. Domingo in the death certificate dated April 3, 1995 that Teotimo died of a hematoma in the brain.[33] Like Dr. Domingo, Dr. de Guzman opined that the hematoma and contusions were likely caused by external trauma, particularly on the head, such as fistblows on the head or the victim hitting his head on a hard surface like the ground.[34] He does not believe that external trauma on other parts of the victim's body could have caused the brain contusions and hematoma.[35]

Upon evaluation of the above evidence, the trial court upheld the credibility of the prosecution witnesses, especially the categorical declarations of the three eyewitnesses that accused-appellant was the one who first assaulted Teotimo Narciso by boxing the sickly old man on the abdomen.[36] In contrast, the defense of accused-appellant was a mere denial, which was not improved by his numerous conflicting and irreconcilable statements on the witness stand. The trial court also disregarded the testimonies of Jun Eric dela Zerna and Eleanor Emperado: the former, for his own admission that the contents of his affidavit were untrue and he was simply forced to sign it by the witnesses of accused-appellant, and the latter, for her conflicting declarations. The trial court also pointed out that the obvious contradiction in the versions of accused-appellant and his witnesses renders doubt on the former's credibility.[37]

The trial court found the presence of conspiracy between the accused, inasmuch as they "almost simultaneously" mauled the victim. All the prosecution eyewitnesses stated that immediately after accused-appellant boxed Teotimo on the abdomen, accused-at-large began hitting Teotimo on the nape and face. Citing the principle that conspiracy need not be proved by direct evidence, but may be inferred from the acts of the accused before, during, and after the commission of the crime, the trial court concluded that the concerted action of the accused was duly proven.

The trial court also held the killing to be qualified to murder by the attendance of abuse of superior strength and disregard of respect due to age.[38] The victim being a sickly and debilitated 60-year old man, there was a marked

difference in physical strength between him and the accused which rendered him virtually defenseless to their attacks. Moreover, considering that accused-appellant was only 41 years old, the aggravating circumstance of disregard of respect to the offended party due to age was also appreciated.

The presence of treachery was also noted by the trial court, although it was appreciated as only a generic aggravating circumstance, not having been alleged in the information. The court said that treachery was evident from the victim's being weak and unarmed, and from the fact that accused-at-large came from behind the victim to box him on the nape and face. There being a finding of conspiracy, accused-appellant should also bear the consequences of the treacherous attack of his co-accused.

The dispositive portion of the decision of the RTC states:

WHEREFORE, accused RUSTICO TILOS is hereby found guilty beyond reasonable doubt of the crime of Murder and the Court hereby imposes upon him the penalty of RECLUSION PERPETUA. Accused is likewise directed to indemnify the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) for the death of the victim.[39]

In this appeal, accused-appellant contests the lower court's finding of conspiracy and points to accused-at-large as the person solely responsible for the death of Teotimo Narciso. He argues that the medical findings, the entry in the police blotter, and the testimonies (even of the prosecution witnesses) all point to Mateo Mahinay as the perpetrator of the blows on the head that killed the victim, and the allegations of Geralyn Narciso and Eduardo Devero that he (accused-appellant) boxed the victim on the chest and abdomen were not borne out by the medical certificates. He stands by his version that he was not the victim's aggressor, but in fact defended the victim from the persons, including accused-at-large, who were trying to hurt him. If, at worst, the Court upholds the prosecution's version that accused-appellant also inflicted blows on the victim, the Court should find him as having acted independently from accused-at-large, and be held liable for maltreatment only.

Our review of the evidence brings us to conclude that the trial court's assessment of the credibility of the prosecution witnesses and the cause of death of Teotimo Narciso (brainstem herniation resulting from hematoma) is accurate and worthy of being upheld. Whatever inconsistencies there may be in the accounts of Geralyn Narciso, Eduardo Devero and Florida Narciso are too minor to inflict damage upon the incriminatory facts established by the prosecution, namely: that accused-appellant assaulted Teotimo by punching him on the abdomen; that thereafter, accused-at-large attacked Teotimo from behind and boxed him on the face and nape; and, that Teotimo collapsed from the blows inflicted by accused-at-large. The head injuries sustained by the victim from the attack of accused-at-large were manifest in the diagnosis of Dr. Domingo, who performed the brain operation on the victim, as well as in the findings of Dr. de Guzman, who conducted the autopsy. Therefore, the only material issues remaining are: (1) whether a conspiracy between the two accused was duly proven to merit accused-appellant's conviction for murder, and (2) whether the crime was committed with the attendance of abuse of superior strength, disregard of respect due to age, and treachery.

The essence of conspiracy is community of criminal intent. It exists when two or more persons come to an agreement concerning the commission of a felony and perform overt acts to commit it.[40] The overt act may consist of active participation in the actual commission of the criminal act, or it may be in the form of moral assistance such as the exertion of moral ascendancy over the other co-conspirators by moving them to implement the conspiracy.[41] Conspiracy may be proven by direct evidence, or deduced from the manner in which the offense was committed, as when the accused acted in concert to achieve the same objective.[42] A finding of conspiracy results in grave consequences to the accused, as each is held responsible for the acts of all the co-conspirators which proceeded from the same criminal intent. Thus, it is required that conspiracy be established as any element of the crime and proven beyond reasonable doubt.[43]

In the case before us, the trial court's finding that accused-appellant and accused-at-large "almost simultaneously" attacked the victim is not clearly borne out by the evidence. A comparison of the accounts of the three prosecution eyewitnesses indicate that only Eduardo Devero stated that the attacks of accused-appellant and accused-at-large on Teotimo Narciso immediately followed one another. Notably, the victim's own daughter and wife declared that it was only after the victim's wife arrived and pulled him away from accused-appellant that accused-at-large attacked him. This inconsistency in the sequence of events poses a significant doubt on the unity of purpose between the two accused. Besides, even assuming the veracity of Devero's version of the story, it is settled that neither joint nor simultaneous action is per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design.[44]

Neither can accused-appellant be considered an accomplice of accused-at-large. An accomplice is one who, not being a principal, cooperates in the execution of the offense by previous or simultaneous acts.[45] Thus, conviction as an accomplice entails that the accused be aware of the criminal intent of the principal and knowingly or intentionally cooperates with him towards the efficacious execution of the crime.[46] These requirements were not convincingly met in the instant case where there is no indication that accused-appellant knew of Mateo Mahinay's intent to kill the victim. Moreover, the medical findings of the two doctors who testified in this case support the conclusion that Mahinay could have accomplished the killing of Teotimo Narciso without the cooperation and assistance of accused-appellant. The victim died of a serious head injury, brought about by either or both Mahinay's fistblows to the nape and face, and the victim's resultant collapse to the ground. Both the doctors opined that fistblows on other parts of the body could not have caused the victim's death. While we do not dispute the credibility of the testimonies of Geralyn Narciso and Eduardo Devero that accused-appellant punched the victim on the chest and abdomen, these injuries were not reflected in the two doctors' medical certificates.

In view of the above considerations, we hold that accused-appellant is guilty of slight physical injuries only. In *People vs. Laurio*, 200 SCRA 465 (1991), the Court held that where conspiracy to murder is not proved, and the gravity or duration of the physical injury resulting from the fistblows by the accused on the victim was not established by the evidence, the accused is presumed, and is held, liable for slight physical injuries under Article 266 of the Revised Penal Code.[47]

The Court affirms the attendance of the aggravating circumstances of abuse of superior strength and disregard of respect due to age. Teotimo Narciso was 60 years old, sickly, and debilitated --- accused-appellant decidedly exploited his physical strength and superiority over the victim, who was simply unable to do anything to fend off the blows to his chest and abdomen. Also, accused-appellant, who was nearly 20 years younger than the victim, manifestly showed grave disrespect to the latter.

Needless to say, we are ruling out the presence of treachery, such having been noted by the trial court from Mateo Mahinay's stealthy approach to the victim from behind, the application to accused-appellant having been premised upon the erroneous finding of conspiracy.

The attendance of abuse of superior strength and disregard of respect due to age merit the imposition of *arresto menor*, the punishment for slight physical injuries under Article 266, paragraph 1 of the Revised Penal Code, to its maximum duration of thirty (30) days. Subject to a showing that accused-appellant had been confined in prison for more than thirty (30) days, he may be released unless there be any reason for his continued detention.

WHEREFORE, the judgment appealed from is REVERSED, and accused-appellant is found guilty of slight physical injuries and sentenced to suffer the penalty of thirty (30) days of *arresto menor*. The award of Fifty Thousand Pesos (P50,000.00) as civil indemnity to the heirs of deceased victim Teotimo Narciso is

WITHDRAWN.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

- [1] RTC Decision; Rollo, 30.
- [2] TSN, October 4, 1994, 5.
- [3] Ibid., 9.
- [4] TSN, October 5, 1994, 13.
- [5] Ibid., 26.
- [6] TSN, October 7, 1994, 7.
- [7] Ibid., 10.
- [8] Ibid., 17.
- [9] Ibid.
- [10] Ibid., 18.
- [11] Ibid., 18.
- [12] RTC Decision; Rollo, 34.
- [13] TSN, July 8, 1997, 7-8, 18.
- [14] Ibid., 12.
- [15] Ibid., 16.
- [16] Ibid., 7.
- [17] Ibid., 10.
- [18] Ibid., 13; TSN, July 14, 1997, 6.
- [19] TSN, May 5, 1997, 8, 9; TSN, July 9, 1997, 15.
- [20] TSN, July 9, 1997, 8.
- [21] TSN, July 29, 1996, 3.
- [22] TSN, September 17, 1996, 32.
- [23] Ibid., 29.
- [24] Ibid., 24-25.
- [25] Ibid., 30.
- [26] Ibid., 22-23.
- [27] RTC Decision; Rollo, 33.

- [28] Ibid., 38.
- [29] TSN, October 5, 1995, 5-6.
- [30] Ibid., 8.
- [31] Ibid., 5.
- [32] Ibid., 10.
- [33] TSN, August 10, 1998, 6-8.
- [34] Ibid., 9.
- [35] Ibid.
- [36] RTC Decision; Rollo, 37.
- [37] Ibid., 39. Citing *People vs. Gondora*, 265 SCRA 408 (1996).
- [38] Ibid., 40.
- [39] Ibid.
- [40] *People vs. Santiago*, G.R. No. 129371, October 4, 2000.
- [41] Ibid., *People vs. Ragundiaz*, G.R. No. 124977, June 22, 2000.
- [42] *People vs. Bautista*, G.R. No. 131840, April 27, 2000.
- [43] *People vs. Santiago*, supra; *People vs. del Rosario*, 305 SCRA 740 (1999).
- [44] *People vs. Santiago*, supra; *People vs. Ragundiaz*, supra.
- [45] Revised Penal Code, Art. 18.
- [46] *People vs. Quinao*, 269 SCRA 495 (1997).
- [47] See also *People vs. Francisco*, G.R. No. 130490, June 19, 2000; *People vs. Cardenas*, 118 SCRA 458 (1982).

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