

THIRD DIVISION COVERDALE ABARQUEZ, Y EVANGELISTA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 150762. January 20, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 23 June 2000 Decision[2] and the 7 November 2001 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 21450. The Court of Appeals affirmed the 30 September 1997 Decision[4] of the Regional Trial Court of Manila, Branch 50 ("trial court") in Criminal Cases Nos. 94-135055-56. The trial court found Coverdale Abarquez y Evangelista ("Abarquez") guilty beyond reasonable doubt as an accomplice in the crime of homicide in Criminal Case No. 94-135055.

The Charge

The prosecution charged Abarquez with the crimes of homicide and attempted homicide in two Informations,[5] as follows:

Criminal Case No. 94-135055

The undersigned accuses COVERDALE ABARQUEZ Y EVANGELISTA of the crime of HOMICIDE, committed as follows:

That on or about November 21, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating with one ALBERTO ALMOJUELA Y VILLANUEVA, who has already been charged for the same offense before the Regional Trial Court of Manila, under Crim. Case No. 93-129891 and mutually helping each other, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault and use personal violence upon one RICARDO QUEJONG Y BELLO, by then and there stabbing him twice with a bladed weapon and hitting him with a gun at the back, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[6]

Criminal Case No. 94-135056

The undersigned accuses COVERDALE ABARQUEZ Y EVANGELISTA of the crime of ATTEMPTED HOMICIDE, committed as follows:

That on or about November 21, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating with one ALBERTO ALMOJUELA Y VILLANUEVA, who has already been charged for the same offense before the Regional Trial Court of Manila under Crim. Case No. 93-129892 and mutually helping each other, with intent to kill, did then and there wilfully, unlawfully and feloniously commence the commission of the crime of homicide directly by overt acts, to wit: by then and there holding one JOSE BUENJIJO PAZ Y UMALI and stabbing him with a bladed weapon, hitting him on the left arm, but the said

accused did not perform all the acts of execution which should have produced the crime of homicide as a consequence, by reason of causes other than his own spontaneous desistance, that is, the injury inflicted upon said JOSE BUENJIO PAZ Y UMALI is only slight and not fatal.

CONTRARY TO LAW.[7]

Abarquez entered a plea of not guilty to both charges. The cases were tried jointly.

The Version of the Prosecution

On 21 November 1993 at 2:00 p.m., Jose Buenjio Paz[8] ("Paz"), Ricardo Quejong ("Quejong") and their friends were in the house of one Boyet at 3342 San Jose St., Sta. Mesa, Manila. They were drinking liquor in celebration of the birthday of Boyet's son. About 7:45 p.m., Paz and Quejong decided to go home. Boyet Tong, Abarquez's son Bardie and Sonito Masula ("Masula") joined Paz and Quejong. They proceeded towards the exit of San Jose St.

Meanwhile, about six or seven meters away from Boyet's house, Alberto Almojuela also known as Bitoy ("Almojuela"), a certain Ising and Abarquez also known as Dale, were likewise drinking liquor in front of Almojuela's house. As the group of Paz was passing towards the main road, Almojuela and his companions blocked their path.

Almojuela asked Paz, "Are you brave?" Paz replied, "Why?" Almojuela got angry and attacked Paz with a knife. Paz parried the attack with his left arm but sustained an injury. Abarquez held Paz on both shoulders while Bardie pacified Almojuela. Paz asked Abarquez, "What is our atraso, we were going home, why did you block our way?" Abarquez answered, "Masyado kang matapang. Tumigil ka na, tumigil ka na."

Almojuela then confronted Quejong and they had an altercation, followed by a scuffle. Paz tried to get away from Abarquez who continued restraining him. Upon seeing Almojuela and Quejong fall on the ground, Paz struggled to free himself from Abarquez. Paz approached Quejong and found him already bloodied. It turned out the Almojuela stabbed Quejong with a knife. Paz tried to pull up Quejong but failed. Paz left Quejong and ran instead towards the exit of San Jose St. to ask for help. While Paz was running away, he heard Abarquez shout, "You left your companion already wounded!"

When Paz and his companions returned, they found Quejong still on the ground. Almojuela and Abarquez were still in the area. Paz and his companions brought Quejong to the UST Hospital. They next proceeded to Police Precinct No. 4 to report the incident. However, there was nobody in the precinct. With Kagawad Villanio Usorio, Paz went to the WPD General Headquarters to report the incident. At the WPD General Headquarters, they learned that Quejong died at the UST Hospital. Paz then had his injury treated by Dr. Vic Managuelod at Jose Reyes Memorial Hospital. The medico-legal certificate showed that Paz sustained a 3-cm. lacerated wound on his left forearm.

About 9:15 p.m., while SPO1 Danilo Vidad ("SPO1 Vidad") was at the WPD Homicide Division, his station received a call from the UST Hospital informing them of the death of Quejong. SPO1 Vidad and PO3 Ed Co went to the UST Hospital morgue and investigated the incident. They learned that Almojuela, assisted by Abarquez, stabbed Quejong. Upon the execution of sworn statements by Paz and Masula, SPO1 Vidad booked Almojuela and Abarquez for homicide and frustrated homicide and prepared the referral letter to the inquest prosecutor.

Abarquez voluntarily appeared at the police station. Almojuela voluntarily surrendered to one SPO4 Soriano at Police Station No. 10 and was turned over to the WPD Homicide Division.

Dr. Antonio Rebosa[9] ("Dr. Rebosa"), a medico-legal consultant at UST Hospital, conducted the post-mortem

examination and autopsy on Quejong. Dr. Rebosa reported that Quejong sustained two stab wounds and suffered from massive hemorrhage due to penetrating stab wounds to the heart and left lung. According to Dr. Rebosa, a sharp instrument probably caused the wound. Dr. Rebosa also reported that Quejong sustained abrasions and contusions on the right upper body, the wrist and on the lower extremities.

The Version of the Defense

Abarquez countered that on 21 November 1993, he was in his residence at 3363 San Jose St., Sta. Mesa, Manila. About 7:30 p.m., Almojuela's wife informed him that the group of Paz was challenging Almojuela to a fistfight. Abarquez, being a barangay kagawad, proceeded to Almojuela's house. Almojuela's house was about twenty meters away from Abarquez's house. When he arrived at Almojuela's house, Abarquez saw Almojuela on the ground being strangled by Quejong. Paz was holding Almojuela's waist and boxing him at the stomach. Masula was near Almojuela's head holding a piece of stone as if waiting for a chance to hit him. Abarquez shouted at the group to stop. The group did not heed Abarquez, forcing him to fire a warning shot into the air. Still, the group did not heed Abarquez who then fired a second warning shot. Paz, Quejong, and Masula scampered away.

Almojuela told Abarquez that he was merely trying to stop the group of Paz from smoking marijuana. Almojuela then went inside his house while Abarquez went home. On his way home, Abarquez met the Chief Tanod of the barangay and two kagawads. Kagawad Rudy Lego ("Lego") advised him to report the incident to the police. They all proceeded to Precinct No. 4 where Lego reported the incident to the desk officer. The desk officer told them that a person had been stabbed. When Abarquez reached their house, he saw policemen and media men with their barangay chairman. He informed them that he had just reported the incident. Upon the request of SPO1 Vidad, Abarquez then went to the police station to shed light on the incident.

Almojuela testified that he was inside his house when his daughter informed him that there was marijuana smoke coming to their window. He went outside to look for the source of the smoke and saw Quejong, Paz, and Masula smoking marijuana. Almojuela asked the group to move away as there were children inside the house. He was on his way back to the house when Quejong tried to strangle him. Later, Almojuela heard a gunshot. He also heard Abarquez shouting, "Tumigil na kayo." Quejong, Masula, and Paz ran away.

Winfred Evangelista[10] ("Evangelista") testified that he was resting in front of his house when he heard a commotion. He noticed that Paz and Quejong were quarreling. Evangelista saw Paz kicking Almojuela. Abarquez arrived to break up the fight but he was told not to interfere. Abarquez was forced to fire a warning shot and the persons involved in the commotion ran away.

The Ruling of the Trial Court

In its Decision[11] dated 30 September 1997, the trial court found Abarquez guilty as an accomplice in the crime of homicide. The trial court held that the prosecution failed to prove that Abarquez was a co-conspirator of Almojuela in the killing of Quejong. Hence, Abarquez could not be convicted as a principal in the crime of homicide. However, the trial court ruled that Abarquez, in holding and restraining Paz, prevented the latter from helping Quejong and allowed Almojuela to pursue his criminal act without resistance.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, in Criminal Case No. 94-135055, this Court finds the accused, Coverdale Abarquez, guilty beyond reasonable doubt of the crime of homicide only as accomplice and hereby sentences him to suffer an indeterminate penalty ranging from six (6) years of prision correccional to ten (10) years of prision mayor. In Criminal Case No. 94-135056, the accused is hereby acquitted.

With costs de oficio.

SO ORDERED.[12]

Abarquez appealed the trial court's Decision before the Court of Appeals.

In its Decision[13] of 23 June 2000, the Court of Appeals affirmed the trial court's Decision. The Court of Appeals sustained the trial court in giving more credence to the testimony of Paz. The Court of Appeals held that the prosecution was able to establish that Abarquez aided Almojuela in fatally stabbing Quejong. The Court of Appeals rejected Abarquez's allegation that he was merely at the crime scene to pacify the quarreling parties.

In its 7 November 2001 Resolution,[14] the Court of Appeals denied Abarquez's motion for reconsideration.

Hence, the petition before this Court.

The Issues

The issues[15]Abarquez raises before the Court may be summarized as follows:

- Whether the prosecution was able to establish the guilt of the accused beyond reasonable doubt;
- Whether the trial court and the Court of Appeals erred in giving more credence to the testimony of the prosecution witnesses.

Abarquez alleges that the prosecution's evidence does not satisfy the test of moral certainty and is not sufficient to support his conviction as an accomplice. He further alleges that there was a misapprehension of facts and that the trial court and the Court of Appeals reached their conclusion based entirely on speculation, surmises and conjectures. Abarquez also assails the credibility of the witnesses against him.

The Ruling of This Court

The petition is meritorious.

The rule is that the trial court is in the best position to determine the value and weight of the testimony of a witness. The exception is if the trial court failed to consider certain facts of substance and value, which if considered, might affect the result of the case.[16] This case is an exception to the rule.

Concurrence in Criminal Design

Article 18 of the Revised Penal Code defines accomplices as "those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts." [17]

Two elements must concur before a person becomes liable as an accomplice: (1) community of design, which means that the accomplice knows of, and concurs with, the criminal design of the principal by direct participation; and (2) the performance by the accomplice of previous or simultaneous acts that are not indispensable to the commission of the crime.[18] Mere commission of an act, which aids the perpetrator, is not enough.[19] Thus:

The cooperation that the law punishes is the assistance knowingly rendered, which cannot exist without the previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable as an accomplice, that the accused must unite with the criminal design of the principal by direct participation.[20]

Indeed, in one case, the Court ruled that the mere presence of the accused at the crime scene cannot be interpreted to mean that he committed the crime charged.[21]

Here, in convicting Abarquez, the trial court and the Court of Appeals relied mainly on the testimony of Paz. Paz testified that he was held by Abarquez on the shoulders, thus preventing him from helping Quejong who was grappling with Almojuela. Paz testified:

Q.

And what happened in the exchange of words or altercations between Bitoy and Ricardo Quejong?

A.

They grappled with each other, sir.

Q.

When Bitoy and Ricardo grappled with each other, what did you do, if any?

A.

I was intending to help Ricky but I was held back by Dale, sir.

Q.

And how this Dale hold you?

A.

He held my two shoulders, sir.

PROSECUTOR F. G. SUPNET:

I would like to make it of record demonstrated being held by the accused holding both shoulders, your Honor.

Q.

Now, when this Dale Abarquez held both on your shoulders, what happened next, if any?

A.

He got angry scolding us. While scolding me the two who were grappling each other walking away, sir. (sic)

Q.

Now, you said Bitoy and Ricky were moving, what happened in the course of grappling, if any?

You testified that Ricky and Bitoy were grappling each other, what happened in the course of grappling? (sic)

A. They fell to the ground, sir.

Q.

After that what happened next, if any?

A.

When I saw them fall I struggle and I was able to release from the hold of Dale and I approach the two. I saw Ricky blooded so I was trying to pull him, sir. (sic)

Q.

You said you saw Ricky blooded, why was he blooded? (sic)

A.

He was stabbed by Bitoy, sir.

Q.

And did you see what instrument did Bitoy used in stabbing Ricky or Ricardo? (sic)

a.

It was a knife, sir. (Witness indicating a length about 6 inches including the handle).

q.

Now, you said also that while the two were grappling while you were trying to free yourself from the hold Dale Abarquez, "Pinagalitan kayo", in what way or manner did Dale Abarquez reprimanded you? (sic)

a.

You Jose is too brave, sir. (sic) [22]

xxx xxx xxx

q.

You said you were first attacked by Bitoy, is that correct?

a.

Yes, sir.

q.

After Bitoy pacified Bardy Abarquez, he went after Ricky Quejong, is it not? [23]

a.

They were just arguing, sir.

[q.]

And it was during that time when you were held in both shoulders by the accused [C]overdale Abarquez?

a.

Yes, sir.

q.

and that Coverdale Abarquez was in front of you, is it not?

a.

Yes, sir on my side.

q.

And he was holding your shoulder to pacify you and Bitoy from further quarrelling you, is it not?

a.

That is not the way of pacifying, sir.

q.

How can you demonstrate how you were held on the shoulder by Abarquez?

ATTY. GASCON:

Make I make it of record your Honor that the interpreter act as the witness while the witness act as the accused demonstrating holding both hands of interpreter preventing the witness and saying Joey tumigil ka na, joey tumigil ka na.

COURT:

q.

How many times?

a.

Twice, Your Honor.

ATTY. GASCON:

The accused told you Joey tumigil ka na, Joey tumigil ka na because you were trying to attack Bitoy, is it not?

a.

How can I be charged, he was the one holding the knife, sir. (sic)

q.

So what was the reason why the accused restrained you and told you Joey tumigil ka na, Joey tumigil ka na. What would be the reason?

a.

While I was just talking to Bitoy, when he told me to stop.

COURT:

Does the Court get from you that you are trying to explain to Bitoy when the accused tried to hold you and prevent you?

a.

Yes, sir.

q.

That is why the reason you concluded that the accused is not pacifying you but to stop you from helping the victim?

a.

Yes, sir.

xxx xxx xxx

q.

The only word that the accused [C]overdale Abarquez uttered was Joey, tumigil ka na, Joey tumigil ka na, is it not?

a.

He uttered that you are MATAPANG, Joey tumigil ka na, Joey tumigil ka na. [24]

Paz's testimony does not show that Abarquez concurred with Almojuela's criminal design. "Tumigil" literally means "stop." Clearly, Abarquez was trying to stop Paz from joining the fray, not from helping Quejong. Paz claims that he was only trying to talk to Almojuela. However, Paz could not have been merely talking to Almojuela, as he tried to portray, because Almojuela was already grappling with Quejong at that time. Paz interpreted Abarquez's action as an attempt to prevent him from helping Quejong. His interpretation was adopted by the trial court and sustained by the Court of Appeals. Yet, in his testimony, Paz admitted that while restraining him, Abarquez was scolding or reprimanding him and telling him to stop. It was not shown that Abarquez was stopping Paz from helping Almojuela. It is more likely that Abarquez was trying to stop Paz from joining the fight. Abarquez's act of trying to stop Paz does not translate to assistance to Almojuela.

In *People v. Fabros*, [25] the Court explained:

To be deemed an accomplice, one needs to have had both knowledge of and participation in the criminal act. In other words, the principal and the accomplice must have acted in conjunction and directed their efforts to the same end. Thus, it is essential that both were united in their criminal design.

xxx. The mere fact that the (accused) had prior knowledge of the (principal's) criminal design did not automatically make him an accomplice. This circumstance, by itself, did not show his concurrence in the principal's criminal intent.

Paz stated that Abarquez did not do anything to stop Almojuela. However, Paz testified that Abarquez's son Bardie, who was one of Paz's companions, was the one trying to pacify Almojuela. The trial court in its factual findings confirmed this when it stated that while Abarquez was holding Paz, his son Bardie was pacifying Almojuela.[26]

The prosecution argues that Abarquez was remiss in his duties as a barangay kagawad in not extending assistance to the then wounded Quejong. This, however, does not necessarily show concurrence in Almojuela's criminal act. When Paz ran away, Abarquez shouted at him that he left his wounded companion. Apparently, Abarquez was not aware of the extent of Quejong's injury and he expected Paz to look after his own companion.

When there is doubt on the guilt of an accused, the doubt should be resolved in his favor. Thus:

Every person accused has the right to be presumed innocent until the contrary is proven beyond reasonable doubt. The presumption of innocence stands as a fundamental principle of both constitutional and criminal law. Thus, the prosecution has the burden of proving every single fact establishing guilt. Every vestige of doubt having a rational basis must be removed. The defense of the accused, even if weak, is no reason to convict. Within this framework, the prosecution must prove its case beyond any hint of uncertainty. The defense need not even speak at all. The presumption of innocence is more than sufficient.[27]

We apply in this case the equipoise rule. Where the evidence on an issue of fact is in issue or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.[28] Hence:

xxx The equipoise rule finds application if, as in this case, the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction. Briefly stated, the needed quantum of proof to convict the accused of the crime charged is found lacking.[29]

WHEREFORE, we GRANT the petition. We SET ASIDE the 23 June 2000 Decision and 7 November 2001 Resolution of the Court of Appeals in CA-G.R. CR No. 21450, which affirmed the 30 September 1997 Decision of the Regional Trial Court of Manila, Branch 50 in Criminal Cases Nos. 94-135055-56. We ACQUIT Coverdale Abarquez y Evangelista as an accomplice in the crime of homicide in Criminal Case No. 94-135055. No

pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairman), Moralez, and Tinga, JJ., concur

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Ruben T. Reyes with Associate Justices Andres B. Reyes, Jr. and Jose L. Sabio, Jr., concurring. Rollo, pp. 32-48.

[3] Rollo, p. 31.

[4] Penned by Judge Urbano C. Victorio, Sr., CA Rollo, pp. 9-21.

[5] Filed by Assistant City Prosecutor Sed A. Cabangon.

[6] CA Rollo, p. 7.

[7] Ibid., p. 8.

[8] Referred to as Jose Buenhijo Paz in the trial court's Decision.

[9] Referred to as Dr. Antonio Reposo in the TSN.

[10] Also referred to as Winfreed Evangelista.

[11] Supra note 4.

[12] CA Rollo, pp. 20-21.

[13] Supra note 2.

[14] Supra note 3.

[15] Rollo, p. 13.

[16] *People v. Manambit*, 338 Phil. 57 (1997).

[17] Article 17 of the Revised Penal Code defines "principals."

[18] *People v. Cachola*, G.R. Nos. 148712-15, 21 January 2004, 420 SCRA 520.

[19] *People v. Castillo*, G.R. No. 132895, 10 March 2004, 425 SCRA 136.

[20] Ibid., citing *People v. Cual*, 384 Phil 361 (2000).

[21] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312.

[22] TSN, 31 August 1995, pp. 9-12.

[23] It was actually Bardie or Bardy Abarquez who was pacifying Bitoy Almojuela.

[24] TSN, 12 December 1995, pp. 7-9, 11.

[25] 429 Phil. 701 (2002).

[26] CA Rollo, p. 11.

[27] People v. Castillo, G.R. No. 132895, 10 March 2004, 425 SCRA 136.

[28] People v. Natividad, G.R. No. 151072, 23 September 2003, 411 SCRA 587.

[29] Vergara v. People, G.R. No. 160328, 4 February 2005, 450 SCRA 495.

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