

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE NATIVIDAD, CARMELITO NATIVIDAD, ALFREDO QUIAMBAO (AT LARGE) AND ALVIN BRUL (AT LARGE), ACCUSED,

G.R. No. 151072. September 23, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. The same degree of proof necessary in establishing the crime is required to support the attendance thereof, i.e., it must be shown to exist as clearly and convincingly as the commission of the offense itself.[1]

This is an appeal from the decision[2] dated June 8, 2001 of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 9615-SP, convicting appellants Felipe Natividad and Carmelito Natividad of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P50,000.00.

Appellants, together with their co-accused, Alfredo Quiambao and Alvin Brul, were charged with Murder in an information which reads:

That on or about January 27, 1995, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot one ROLANDO NAGUIT @ JOJO with a gun, with which accused Alvin Brul then conveniently provided, thereby inflicting mortal wounds upon said Rolando Naguit which caused his immediate death

CONTRARY TO LAW.[3]

On May 17, 1995 a warrant was issued for the arrest of the four accused,[4] but only appellants Carmelito Natividad and Felipe Natividad were apprehended.[5] Upon arraignment, they both pleaded not guilty.[6] The two other accused remained at large.

The facts as established by the prosecution are as follows: On January 27, 1995, at 4:00 p.m., prosecution witness Rolando Suratos attended a birthday party in the house of Andy Alcantara at San Cornista Street, City Subdivision, San Pablo City. The male guests, including Suratos and the deceased, Rolando Naguit, were having a drinking spree. They were seated around a table in front of Andy's house which was enclosed by a fence of wood and galvanized iron sheets, with a height of approximately four feet.[7]

At about 7:00 p.m., the four accused, namely, Felipe Natividad, Carmelito Natividad, Alfredo Quiambao and Alvin Brul, together with a certain Francisco Luistro, all acquaintances of Suratos, arrived at Andy's house and joined the drinking spree. Alvin Brul, however, left shortly thereafter.[8] At approximately 9:00 p.m. of the same evening, Suratos heard 2 gunshots. After the first burst of gunfire, he heard the deceased shout, "may tama ako"

(I've been hit.). Suratos looked at the direction where the shot emanated and saw the gunman, Alvin Brul, standing just outside the fence, about 2 arms length away from him. He easily recognized him because the area was illuminated by an electric bulb. The second burst of fire came almost instantaneously. The deceased tried to stand and staggered from his seat, but he tripped and fell to the ground.[9]

Meanwhile, Suratos scampered for safety towards the comfort room while the other guests hid at the side of the house. On the other hand, Alfredo Quiambao, Francisco Luistro and appellants, Felipe and Carmelito Natividad, ran towards the area where Alvin Brul was standing. Suratos, however, did not see what appellants and their companions did because his back was turned away from them. As he was running away, he heard 2 more shots but was not able to see who fired the gun. Inside the comfort room, Suratos peeked through the gap between the roof and the wall and saw Alfredo Quiambao, Francisco Luistro and the appellants standing behind Alvin Brul. Immediately thereafter, all of them ran away towards the National Highway.[10]

The deceased was boarded on a tricycle but he died before he reached the hospital.[11]

The Necropsy Report prepared by Medical Officer Azucena Bando revealed the following findings –

1)

Gunshot wound – thru and thru with the point of entrance measuring 0.9 x 0.9 cm., anterior surface middle-third forearm right directed inferior ward and posterior ward with the point of exit measuring 1x1 cm. posterior surface lower third forearm right.

2)

Gunshot wound – with the point of entrance measuring 0.9 x 0.9 cm. 0.5 cm., superior to the left nipple directed inferior ward and lateral ward to the right, lacerating the lower lobe lung left, heart and right lobe of the liver with a slug recovered beneath the tissue at the level between the 5[th] and 6[th] intercostals space right.

CAUSE OF DEATH: SHOCK AND HEMORRHAGE DUE TO GUNSHOT WOUND INVOLVING THE LUNG, HEART AND LIVER.[12]

Earlier that evening, while the celebration was going on, Leticia Naguit, mother of the deceased, overheard Alvin Brul speaking to Felipe Natividad, Carmelito Natividad, Alfredo Quiambao, and Francisco Luistro. Alvin said, "Kaya mo ba pare? Para babarilin lamang",[13] to which Carmelito Natividad replied, "Sige, Pare, nang mawala na ang tinik sa landas natin." [14] Leticia was bothered but she could not determine whom or what the appellants' group was referring to. She recalled a previous stabbing incident between the deceased and the appellants, which was, however, amicably settled. Leticia did not stay long in the house of Andy because she went to the house of a friend to join them in singing on the "videoke" machine.[15]

On January 28, 1995, Felipe, Carmelito and Alfredo were subjected to paraffin testing to determine the presence of gun powder nitrates. The tests conducted on Alfredo and appellant Felipe yielded positive results, while appellant Carmelito turned out negative for powder nitrates.[16]

The version of the defense runs as follows: At around 5:30 p.m. of January 27, 1995, brothers Felipe and Carmelito Natividad, and their brother-in-law Alfredo Quiambao, were invited by Andy Alcantara to join the drinking spree in his house. Among the guests, was the deceased, Rolando Naguit, who sat beside appellant Carmelito. Suddenly, the latter heard a gun burst and the deceased stood up saying, "may tama ako, may tama ako." [17] At this instance, all the visitors including the appellants and Alfredo hurried out of the fence.[18]

Carmelito said that he did not recognize the gunman because his face was covered with a towel.[19] Felipe, on the other hand, testified that he did not see the gunman because his back was turned.[20]

On June 8, 2001, the trial court found that appellants conspired with Alvin Brul, the gunman, in killing the deceased, and rendered the assailed judgment, the dispositive portion of which states:

WHEREFORE, the prosecution having established the guilt of the accused Felipe Natividad and Carmelito Natividad beyond reasonable doubt, each of them is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay costs. Both of them are also ordered jointly and severally to indemnify the heirs of Rolando Naguit in the sum of P50,000.00 as death indemnity.

Let alias warrant of arrest issue against Alfredo Quiambao and Alvin Brul for their immediate apprehension.

SO ORDERED.[21]

Hence, the present appeal.

The issue to be resolved is whether or not conspiracy, which was the basis of the appellants' conviction, was established beyond reasonable doubt.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish conspiracy, direct evidence is not required. It is not even essential that there be proof of the agreement to commit the felony. Proof of concerted action of the accused before, during and after the crime which demonstrates their unity of design and objective is sufficient. This Court had consistently ruled that conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly independent were in fact connected, showing a closeness of former association and concurrence of sentiment. To hold one as a co-principal by reason of conspiracy, it must be shown that he performed an overt act in pursuance of or furtherance of the conspiracy, although the acts performed might have been distinct and separate. This 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 by being present at the time of the commission of the crime, or by exerting a moral ascendancy over the other co-conspirators by moving them to execute or implement the criminal plan. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all. It matters not who among the accused inflicted the fatal blow to the victim.[22]

Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. Considering the far-reaching consequences of criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, i.e., it must be shown to exist as clearly and convincingly as the commission of the offense itself.[23]

In the case at bar, the prosecution failed to satisfy the required quantum of evidence that would produce the conviction of the appellants on the basis of conspiracy. The mere fact that Alvin Brul, the gunman, arrived and left the crime scene together with appellants does not automatically mean that they shared a common design and a unity of purpose in killing the deceased. There is no evidence that appellants performed an overt act in furtherance of a conspiracy. Neither was it established that their act of fleeing towards Alvin was an act of giving moral assistance to the criminal act of the latter. As testified by prosecution witness, Rolando Suratos, he did not see what appellants did when they ran towards Alvin. Clearly, the finding of conspiracy in this case was based merely on conjecture, and thus cannot pass the test of moral certainty. Even if we consider the alleged previous disagreement between the deceased and the appellants as a motive for killing the former, still, conspiracy would

not lie. This is so because mere presence, knowledge, acquiescence in or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.[24]

In the parallel case of *People v. Agda*,[25] the appellant was acquitted because of lack of evidence that would prove conspiracy, thus:

The only incriminating evidence against appellant Romy Gelina are: He arrived and left the drinking spree together with accused Noel Agda. Romy Gelina was standing nearby when witness Almazan saw Noel Agda stab Qutorio. Both Agda and Gelina ran away after the stabbing. It is not true, as nothing appears in the record, that when appellant Romy Gelina ran away after the stabbing he was holding a thing that was "black and looked like a horn."

There is no evidence of appellant Gelina's direct participation in the stabbing.[26]

Likewise in *People v. Viernes*,[27] it was held that the alleged co-conspirators' act of holding the victim while one of the accused was stabbing him does not itself demonstrate conspiracy absent evidence tending to prove that the act of holding the victim was intended to aid the killing of the victim. The Court held that –

The evidence of the prosecution on the matter of conspiracy falls short of [the] requirement. The evidence mainly point to the act of stabbing the deceased and what occurred thereafter. Whatever the prosecution witnesses testified to before the stabbing would be of little or no value as they themselves admitted that minutes before the commotion, they were watching a betamax and their attention was focused on the screen. As the stabbing happened, by the prosecution's own version, outside the fence, or on the road outside the house of Nanding Tomas, it is possible that they only saw that part when Viernes stabbed the deceased while the three (3) co-accused were holding him (the deceased). This picture does not of itself demonstrate a concurrence of will or unity of purpose and action. The mere holding of the deceased's hand does not necessarily prove intention to kill, because it may be that they (co-accused) were trying to prevent the stabbing of the deceased when the prosecution witnesses saw them. Absent any act or circumstances from which may logically be inferred the existence of a common design among the accused to commit the crime, the theory of conspiracy remains a speculation, not a fact.[28]

The testimony of the mother of the deceased that she overheard the group of appellants talking about shooting somebody is of little probative value. The prosecution failed to prove that the group was indeed planning the commission of the crime and that they were intending the plan for the deceased. Under the equipoise rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if, as in the present 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]

Moreover, the fact that appellant Felipe Natividad was positive for nitrates does not conclusively show that he indeed fired the murder weapon. It must be stressed that he was neither seen holding nor firing a gun. Besides, it is well settled in forensic evidence that nitrates are also found in substances other than gunpowder. In *People v. Melchor*,[30] the accused was acquitted despite the finding of gunpowder nitrates on his right hand. It was noted that scientific experts concur in the view that the result of a paraffin test is not conclusive. While it can establish the presence of nitrates or nitrites on the hand, it does not always indubitably show that said nitrates or nitrites were caused by the discharge of firearm. The person tested may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers,

pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. The presence of nitrates, therefore, should be taken only as an indication of a possibility but not of infallibility that the person tested has fired a gun.

Finally, while flight has been said to be an indication of guilt,[31] this alone cannot justify the conviction of appellants. The evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense. In this exacting standard, the prosecution failed. It follows that the judgment of the lower court convicting appellants should be set aside for failure to meet the quantum of evidence constitutionally required.[32]

WHEREFORE, in view of all the foregoing, the decision dated June 8, 2001 of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 9615-SP, is REVERSED and SET ASIDE. Appellants Felipe Natividad and Carmelito Natividad are ACQUITTED on the ground of reasonable doubt, and ordered released from prison unless they are being held for some other lawful cause. The Director of Prisons is DIRECTED to implement this Decision and to report to this Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Azcuna, J., on leave.

[1] *People v. Lorenzo*, G.R. No. 130889, 6 June 2002, citing *People v. Ferras*, 351 Phil. 1020 (1998); *People v. Maluenda*, 351 Phil. 467 (1998); *Dans, Jr. v. People*, G.R. No. 127073, 29 January 1998, 285 SCRA 504.

[2] Penned by Judge Zorayda Herradura-Salcedo.

[3] Records, p. 1.

[4] Records, p. 6.

[5] Return of Warrant of Arrest, Records, pp. 22, 151.

[6] Carmelito was arraigned on October 20, 1998 (Records, p. 35), while Felipe Natividad was arraigned on September 14, 1999 (Records, p. 159).

[7] TSN, 14 December 1998, pp. 4-5; 13 December 1998, pp. 5-6.

[8] TSN, 14 December 1998, p. 9.

[9] TSN, 13 December 1999, pp. 8-10.

[10] *Id.*, pp. 10-12.

[11] *Id.*, p. 13.

[12] Exhibit "K", Folder of Exhibits, Records, p. 25.

[13] TSN, 25 July 2000, pp. 7-8.

[14] TSN, 25 July 2000, p. 8.

[15] *Id.*, pp. 9-11.

[16] Exhibit "E", Folder of Exhibits, p. 8.

[17] TSN, 20 November 2000, p. 12.

[18] *Id.*, pp. 8-12.

[19] *Id.*, p. 13.

[20] TSN, 5 December 2000, pp. 19-20.

[21] Rollo, p. 40.

[22] *People v. Abut*, G.R. No. 137601, 24 April 2003, citing *People v. Ponce*, G.R. No. 126254, 29 September 2000, 341 SCRA 352; *People v. Canoy*, 385 Phil. 73 (2000); *People v. Go-od*, G.R. No. 134505, 9 May 2000, 331 SCRA 612; *People v. Pama*, G.R. Nos. 90297-98, 11 December 1992, 216 SCRA 385; *People v. Liquiran*, G.R. Nos. 105693-96, 19 November 1993, 228 SCRA 62; *People v. Sequiño*, 332 Phil. 90 (1996).

[23] *People v. Loreno*, G.R. No. 130889, 6 June 2002; citing *People v. Ferras*, 351 Phil. 1020 (1998); *People v. Maluenda*, 351 Phil. 467 (1998); *Dans, Jr. v. People*, G.R. No. 127073, 29 January 1998, 285 SCRA 504.

[24] *People v. Campos*, 413 Phil. 657, 667 (2001), citing *People v. Rafael*, G.R. No. 123176, 13 October 2000, 343 SCRA 97.

[25] G.R. No. L-36377, 30 January 1982, 111 SCRA 330.

[26] *Id.*, pp. 336-337.

[27] 331 Phil. 146 (1996).

[28] *Id.*, pp. 167-168.

[29] *Dado v. People*, G.R. No. 131421, 18 November 2002, citing *Tin v. People*, 415 Phil. 1 (2001); *Rivera v. Court of Appeals*, 348 Phil. 734 (1998); *People v. Cawaling*, 355 Phil. 1 (1998).

[30] 366 Phil. 633, 644-645 (1999), citing *People v. Abellanos*, 332 Phil. 760 (1996); *People v. De Guzman*, 320 Phil. 158, 169-170 (1995).

[31] *People v. Cueto*, G.R. No. 147764, 16 January 2003.

[32] *People v. Janson*, G.R. No. 125938, 4 April 2003.

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