

**PEOPLE OF THE PHILIPPINES AND MIRIAM RUTH T. MAGSINO,
PETITIONERS, VS. PO1 RICARDO P. EUSEBIO, SPO2 ROMEO ISIDRO,
AND JOJIT GEORGE CONTRERAS, RESPONDENTS.**

G.R. No. 182152. February 25, 2013

Ponente: ABAD, J.

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ABAD, J.:

On September 27, 2000 the Department of Justice charged the accused PO3 Jesus Bongon, Jr., SPO2 Romeo Isidro, Robert Sy, Jojit George Contreras, Boyet Parilla, and PO1 Ricardo P. Eusebio of murder committed in conspiracy with each other before the Regional Trial Court (RTC) of Pasay City. Since accused Sy and Parilla remained at-large, trial proceeded only with respect to Bongon, Isidro, Contreras, and Eusebio.[1]

The prosecution evidence shows that at around 6:00 p.m. on August 7, 1999 Jaime Magsino received a phone call at home, prompting him to leave on board his motorcycle. He proceeded to the store of accused Bongon on a street in Pasay City, stopping his motorcycle right near where Bongon stood. At this point, accused Eusebio, Isidro, and Contreras, as well as accused Sy and Parilla appeared from a nearby alley and took positions near Magsino.

As Magsino alighted from his motorcycle, Bongon shot him three times, causing him to fall. Eusebio and Isidro, together with Contreras, Sy, and Parilla drew their guns and they, too, fired at the fallen victim. All six shooters, said the witnesses, approached Magsino, turned his body over, and kicked him as they laughed. Bongon then ordered Rommel Gicoso,[2] a tricycle driver, to take Magsino to the Pasay City General Hospital.

Rogelio Amihan, a tricycle driver who parked his vehicle on the same street, testified[3] that shortly before the shooting, he saw the six accused talking in front of Bongon's store. Five of them went into an alley, leaving Bongon behind. Later, Amihan saw Bongon and the other accused shoot Magsino. Renjo Villaraza corroborated Amihan's story. Villaraza said that he was buying cigarettes at the store when he overheard Bongon tell the other accused "O, handa kayo, darating si Jaime Magsino, kailangan itumba na natin siya ngayon, tandaan nyo huwag natin siyang bibigyan ng pagkakataon na makalaban pa, kailangan biglain natin siya." [4]

Bongon admitted shooting Magsino but in self-defense.[5] Bongon claimed that he heard someone shouting and cursing at him in front of his house. When he saw that it was Magsino, he confronted him. Magsino suddenly shot Bongon five times but missed him, prompting Bongon to shoot back.

For his part, Isidro insisted[6] that he was at the Multinational Village in Parañaque City when Magsino was shot dead. Accused Contreras,[7] on the other hand, claimed that he was at his in-laws' residence at Tripa De Gallina in Pasay City.

On January 5, 2006 the RTC rendered judgement,[8] finding the accused Bongon guilty of murder, as principal, meting out to him the penalty of reclusion perpetua, and ordering him to pay the heirs of Magsino damages of P2,669,661.30[9] and costs of suit.[10] It found accused Eusebio, Isidro, and Contreras, guilty as accomplices and

imposed on them the penalty of 8 years and 1 day of prision mayor as minimum to 14 years of reclusion temporal as maximum.[11]

While none of the accused appealed the RTC Decision,[12] the prosecution appealed from it to the Court of Appeals (CA), through the Office of the Solicitor General (OSG), in CA-G.R. CR 30187, assailing the milder sentence that the RTC imposed on accused Eusebio, Isidro, and Contreras. The OSG argued that, since the RTC found the three accused to have conspired with Bongon to kill Magsino, Bongon's act was their act as well based on the collective responsibility of all of the accused in a conspiracy.

On November 21, 2007 the CA granted[13] in part the petition, holding accused Eusebio, Isidro, and Contreras jointly and solidarily liable with Bongon to pay damages to Magsino's heirs. The CA ruled, however, that it could not review and increase the criminal liability of the three accused, from mere accomplices to principals, for such will place them in double jeopardy. Assuming that the RTC erred in imposing the proper penalty, said the CA, its error was one of judgment which could not affect the decision's intrinsic validity. The OSG moved for the reconsideration of the decision but the CA denied the motion.[14]

The issue presented in this petition is whether or not the CA erred in failing to impose on the accused Eusebio, Isidro, and Contreras the same penalty that the RTC imposed on Bongon for the murder of Magsino.

The OSG takes the position that it is not right for the RTC to impose unequal penalties to several accused found guilty of conspiracy in the commission of the crime charged since the rule is that, in conspiracy, the act of one is the act of all. [15] In conspiracy to commit murder by shooting, all of the accused are deemed equally guilty as co-principals, even if one or some of them never fired a gun.

But, actually, the RTC did not find the accused Eusebio, Isidro, and Contreras guilty as principals with Bongon. It rather found them guilty as mere accomplices. The trouble is that, in discussing the liability of these three, the RTC first ventured to say that, based on their concerted actions, Eusebio, Isidro, and Contreras appeared to it to have acted in conspiracy with Bongon in killing Magsino. Said the RTC:

While the Court is convinced that the four accused, Bongon, Jr., Eusebio, Isidro and Contreras were bound by conspiracy or a community of design or purpose to kill the victim, Magsino, and that they committed overt acts to effectively accomplish such design or purpose and hence, their respective acts of shooting Magsino can be attributed to all and each of their co-accused. x x x[16]

This far, the RTC seemed convinced that conspiracy attended the killing. But the above sentence did not stop there. It resumed:

[I]t is believed however that the accused Eusebio, Isidro and Contreras should not be convicted as principals for the crime of murder but should be deemed to be accomplices. Thus it is only accused Bongon, Jr. who remains as the principal in this heinous crime of murder.[17]

And the RTC offered justifications for dropping its initial conspiracy theory after a closer evaluation of the facts. Thus, it continued:

The Court made the finding that when Magsino was alighting from his motorcycle, accused Bongon, Jr., without warning, immediately shot Magsino three times at close range (one arm's length away). When Magsino fell from his motorcycle, it was only then that the accused Eusebio, Isidro and Contreras drew their guns and fired, at the direction of Magsino. No direct evidence was shown as to who from the accused Eusebio, Isidro and Contreras fired the shots that actually hit Magsino. It was established that the three gunshot wounds of Magsino could have emanated from caused by one or two three times firearms (Testimony of Dr. Rolando C. Victoria). Such conclusion is at most a probability but without clear proof to support it. Thus, since Bongon, Jr. was quite near Magsino, then there is a great possibility that it was Bongon, Jr. who fired the shots

that inflicted the three gunshot wounds on Magsino while the gun shots [sic] from the guns of accused Eusebio, Isidro and Contreras merely hit the motorcycle of Magsino, the accordion door of the store, the concrete wall, the cement post and the iron pipe based on the ocular inspection conducted at the scene of the crime. Based on the evidence on record, the Court cannot conclusively say however whether or not the discharge from the firearms of accused Eusebio, Isidro and Contreras actually hit Magsino despite the findings of NBI medico-legal officer (Dr. Rolando C. Victoria) that the three gunshot wounds of Magsino could have been caused by one, two an [sic] or three guns. One thing is certain through which is all the accused are liable for the death of Magsino. x x x[18]

The RTC had ample basis for changing its initial assumption. It noted that Magsino had only three gunshot wounds despite the many shots fired at him. Since Bongon shot Magsino thrice at very close range, causing him to fall, the RTC was convinced that it was only Bongon who inflicted those wounds. And, considering that the prosecution evidence did not show that the shots Eusebio, Isidro and Contreras fired from their guns made their marks, the RTC entertained doubts that the three agreed beforehand with Bongon to kill Magsino. It did not rule out the possibility that they fired their guns merely to scare off outside interference.

At any rate, conspirators are persons who, under Article 8 of the Revised Penal Code (RPC), “come to an agreement concerning the commission of a felony and decide to commit it.” Because witnesses are rarely present when several accused come to an agreement to commit a crime, such agreement is usually inferred from their “concerted actions” while committing it. On the other hand, accomplices, according to Article 18 of the RPC, are the persons who, not being included in Article 17 [which identifies who are principals], “cooperate in the execution of the offense by previous or simultaneous acts.”

The line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is indeed slight. Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment.[19] The solution in case of doubt is that, as the RTC said with ample jurisprudential support, such doubt should be resolved in favor of the accused.

It was held that when there is doubt as to whether a guilty participant in a homicide performed the role of principal or accomplice, the Court should favor the “milder form of responsibility.” He should be given the benefit of the doubt and can be regarded only as an accomplice. (People vs. Jose Tamayo, 44 Phil. 38; People vs. Bantangan, 54 Phil. 834, 840; People vs. Lansang, 82 Phil. 662, 667; People vs. Ubina, 97 Phil. 515; People vs. Raganit, 88 Phil. 467; People vs. Pastores, 40 SCRA 498; People vs. Tolentino, 40 SCRA 514). Hence, in the case at bar, the accused Eusebio, Isidro and Contreras should be granted the benefit of doubt and should be considered merely as accomplices and should be meted a penalty one degree lower than that to be imposed on accused Jesus Bongon, Jr. who is unequivocally the principal.[20]

Consequently, it cannot be said that the RTC maintained its initial belief that the three accused conspired with Bongon to kill Magsino. The evidence of the shooting changed its mind. The RTC’s real error was in stating such initial belief so categorically that it sounded like it regarded such belief as final. Still as demonstrated above, further down its reasoning process, the RTC managed to state clearly the final position it was taking with respect to the role of the three accused in the subject crime.

WHEREFORE, the Court DENIES the petition and AFFIRMS the Decision of the Court of Appeals dated November 21, 2007 in CA-G.R. CR 30187.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Leonen, JJ., concur.

[1] Rollo, p. 133, RTC Decision.

[2] Id. at 109.

[3] Id. at 94.

[4] Id. at 102.

[5] Id. at 104.

[6] Id. at 111.

[7] Id. at 112.

[8] Penned by Judge Pedro De Leon Gutierrez.

[9] P150,000.00 for funeral expenses, P500,000.00 for the memorial lot, P20,000.00 for the damaged Yamaha scooter, P50,000.00 as indemnity for the death of Magsino, P100,000.00 in attorney's fee, P200,000.00 as moral damages, and P1,649,661.30 as loss of unearned income of Magsino.

[10] Supra note 1.

[11] Id.

[12] Id. at 141.

[13] Id. at 143.

[14] Id. at 156.

[15] See *People v. Vivas*, G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242; *People v. Maranion*, 276 Phil. 457, 470 (1991).

[16] Rollo, p.117.

[17] Id.

[18] Id.

[19] *People v. De Vera*, 371 Phil. 563, 585 (1999).

[20] Supra note 16.

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