

MARTINIANO “MARTIN” B. SALDUA A.K.A. MARLON SALDUA, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 210920. December 10, 2018

Ponente: J. REYES, JR., J.

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J. REYES, JR., J.:

The Case

This resolves the Petition for Review on Certiorari[1] questioning the Decision[2] dated April 30, 2013 and the Resolution[3] dated December 10, 2013 of the Court of Appeals (CA)-Cebu City, in CA-G.R. CEB-C.R. No. 01675 which affirmed with modification the Decision dated December 17, 2010 of the Regional Trial Court (RTC) of Dumaguete City in Criminal Case No. 2006-17956 finding Martiniano "Martin" B. Saldua a.k.a. Marlon Saldua (petitioner), guilty as an accomplice for the crime of murder.

The Facts

Petitioner and Gerry Lalamunan (Lalamunan) were charged with murder in an Information, which reads:

That on or about 7:30 o'clock in the evening of November 12, 2005, at Barangay Poblacion, Municipality of Zamboanguita, Province of Negros Oriental, Philippines and within the jurisdiction of this court, the above-named accused, conspiring and confederating with each other, with intent to kill, and with evident premeditation, did then and there willfully, unlawfully and feloniously, attack, assault and shoot Jill Abella with the use of a handgun which accused was then armed and provided thereby inflicting upon said victim the following injuries:

- Gunshot wound, point of entry (R) arm penetrating (R) chest and (L) chest;
- R/I Injury major vessels of the heart; and
- Hypovolemic shock secondary to massive blood loss

that caused his death, to the damage and prejudice of the heirs of said victim.

Contrary to Article 248 of the Revised Penal Code.[4]

Lalamunan fled and remained at-large up to present. Petitioner surrendered and faced his accusers. He was arraigned on February 29, 2008 and pleaded not guilty.

Evidence for the prosecution

From the combined testimonies of its witnesses, the prosecution tends to establish that on November 11, 2005, at 10:00 a.m., Lalamunan, Wilson Vertudez (Vertudez) and petitioner Saldua arrived at the kiosk owned by Victor Palalon (Palalon) on board a red XRM Honda motorcycle. Palalon's son-in-law witness Demetrio Flores (Flores), was also at the kiosk. Lalamunan introduced himself to Palalon and Flores as a nephew of Palalon. He also

introduced Vertudez and petitioner Saldua to them. Petitioner Saldua was in maong pants, while Lalamunan was wearing a black long-sleeved shirt and camouflage shorts. At around noontime, they left the kiosk on board the same motorcycle.

On the following day of November 12, 2005 at 10:00 a.m., Vertudez and petitioner Saldua returned to the kiosk wearing the same clothes. At 6:30p.m., Lalamunan arrived and the three of them left on foot towards the national highway. Lalamunan walked ahead to where the motorcycle was parked at a banana grove beside Magallanes Street, while petitioner Saldua and Vertudez went to the house of the victim, Jill Abella (Abella). Vertudez was next seen to be firing at the garage of the house of Abella, with an armed Saldua behind him. Abella was able to shoot back and hit Vertudez. Saldua and Vertudez left the area on foot towards where the motorcycle was parked. Vertudez collapsed due to his gunshot wound. Meanwhile, Saldua and Lalamunan left the area on board the motorcycle, leaving Vertudez behind. Abella was found dead that day from gunshot wounds. Vertudez was also found dead the next day at the banana grove from gunshot wound.

Evidence for the defense

Only petitioner Saldua was apprehended. The other accused, Lalamunan, remains at-large, while Vertudez died as a result of gunshot wound that he sustained.

Saldua denied killing Abella. He insisted that he was in another place on November 12, 2005. He narrated that he was with his family in their home in Barangay San Jose, Sta. Catalina, Negros Oriental from November 10 to 15, 2005. He accounted for his whereabouts on the entire day of November 12, 2005 as follows: At 6:00 a.m., he went to his farm to weed out his peanut shrubs. At 10:00 a.m., he went home to eat lunch. At 2:00 p.m., he went back to his farm. And at 7:00p.m., he tried to buy medicine for his ailing 5-year-old daughter by borrowing the XRM Honda motorcycle of Rommel Awing, but the river was flooded making him unable to cross it, hence, he went back home. In the afternoon of November 15, 2005, he left for Bacolod City to render duty in time for the South East Asian Games.

Ruling of the RTC

On December 17, 2010, the RTC rendered a Decision convicting petitioner as an accomplice to the crime of murder. The RTC ruled that the prosecution was able to establish by circumstantial evidence that Vertudez killed the victim while Saldua was proven to be armed and behind Vertudez. The RTC also considered the qualifying circumstance of evident premeditation as the attack appeared to be planned. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, accused Martiniano "Martin" B. Saldua is GUILTY beyond reasonable doubt as an accomplice of the crime of Murder. There being neither mitigating or aggravating circumstances and applying the indeterminate sentence law, Martiniano Saldua is sentenced to serve the penalty of eight (8) years and one (1) day, as minimum, to fourteen (14) years, four (4) months and one (1) day of reclusion temporal, as maximum.

The accused is ordered to indemnify the heirs of Jill Abella in the amount of Fifty Thousand (P50,000.00) pesos.

SO ORDERED.[5]

Dissatisfied, petitioner Saldua appealed before the CA.

Ruling of the CA

In its assailed Decision, the CA affirmed the RTC Decision, with modifications.

The CA gave weight to the testimony of the prosecution's witnesses. It was established that it was Vertudez who shot Abella, while petitioner Saldua, who was armed, was behind Vertudez during the incident. The CA, likewise, sustained the RTC as to the existence of evident premeditation to qualify the killing of the victim to murder. The CA, however, reduced the civil liability of petitioner and apportioned the same pursuant to the rule that a principal should have greater accountability than an accomplice, citing the case of *People v. Tampus*.^[6] The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, this appeal is DENIED. The Decision dated December 17, 2010 rendered by the Regional Trial Court (RTC), Branch 41, Dumaguete City in Criminal Case No. 2006- 17956 finding appellant Martiniano "Martin" Saldua a.k.a. Marlon Saldua guilty as an accomplice for the crime of Murder is AFFIRMED with the MODIFICATION that he is ordered to pay to [sic] the heirs of the victim the amount of Php25,000.00 as civil indemnity and Php16,667.00 as moral damages. Costs against accused-appellant.^[7]

Petitioner Saldua filed a Motion for Reconsideration. The CA issued a Resolution dated December 10, 2013 denying the said motion. Aggrieved, petitioner filed the instant petition.

The Issues

The issues which petitioner interposed before this Court may be summarized as follows:

1)

Whether or not the CA is correct in convicting petitioner as an accomplice to the crime of murder.

2)

Whether or not the CA is correct in affirming the RTC when it disregarded petitioner's defense of alibi.

Findings of the RTC on the credibility of the witnesses are binding on this Court.

In his appeal, petitioner Saldua questions the credibility of the witnesses by whose testimonies were relied upon by the trial court for his conviction. Credibility of witnesses is essentially a question of fact and is a matter peculiarly within the province of the trial judge. As such, the findings of the RTC that was affirmed by the CA in this case, that the witnesses of the prosecution were credible, is binding on this Court^[8] given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. Absent any showing that the trial court's calibration of the credibility was flawed, we are bound by its assessment.^[9] Thus:

It is a fundamental legal aphorism that the conclusions of the trial judge on the credibility of witnesses command great respect and consideration especially when the conclusions are supported by the evidence on record, and will not ordinarily be disturbed or interfered with. The only exception to the rule is when the trial court plainly overlooked certain facts and circumstances of weight and influence which, if considered, will materially alter the result. Such exception does not exist in the case at bench.^[10]

No cogent reason exists which would justify the reversal of the RTC's assessment on the credibility of the witnesses. It bears to stress that the conviction of petitioner Saldua does not rest solely upon the uncorroborated testimony of witness Lemecito Pecore (Pecore) who testified that he saw Vertudez shooting into the garage of Abella, hitting the latter^[11] with the armed petitioner Saldua behind him.^[12] Pecore, however, did not see petitioner Saldua fire into the garage.^[13] He also narrated how he had taken a closer look at their faces, when after the shooting incident, Vertudez and petitioner Saldua fled towards his direction.^[14] This testimony was further bolstered by witnesses Flores and Palalon who recounted that at the date of the incident, the three accused were within the vicinity of the incident. All in all, the prosecution's witnesses positively identified petitioner

Saldua, together with Vertudez and Lalamunan, to be present at the crime scene.

Prosecution's positive identification prevails over petitioner's defense of alibi.

Petitioner maintained that he was at their house in Barangay San Jose, Sta. Catalina, Negros Oriental from November 10-15 and he left on November 16, 2005 to Bacolod City. While the defense presented a certification mentioning persons who could attest that petitioner was at his house, not one of them was presented in court. As correctly ruled by the CA, said certification cannot be given probative value. Neither could we rely on the affidavits executed by a certain Rommel Awing and Henry Lalamunan which purportedly corroborate petitioner's defense. Apart from the fact that they did not appear before the court to be cross-examined, affidavits are usually not a complete reproduction of what the declarant had in mind.[15] Often times, affidavits are prepared by the administering officer and cast in the latter's language or according to the latter's understanding of what the affiant has said, while the affiant would simply sign the affidavit after it has been read to him.[16] Being ex parte, they are almost always incomplete and often inaccurate and as such, affidavits are generally considered to be inferior to a testimony given in court although these factors do not denigrate the credibility of witnesses.[17] As in this case, the said affidavits executed by the defense's witnesses cannot prevail over the positive testimonies given in open court by the prosecution's witnesses.[18]

As the identity of petitioner is now a settled issue, we now proceed to determine his criminal liability for the crime charged.

Evident premeditation was not proven, hence, the crime committed was only Homicide.

For the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.[19]

In this case, the fact of death of Abella is undisputed and the killing was not parricide or infanticide. It was, likewise, established that Vertudez killed the victim. In qualifying the crime to murder, the RTC, as sustained by the CA, appreciated the qualifying circumstance of evident premeditation. To prove evident premeditation, three requisites are needed to be proven: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[20]

Premeditation presupposes a deliberate planning of the crime before executing it.[21] The execution of the criminal act, in other words, must be preceded by cool thought and reflection.[22] As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.[23] The record is bereft of any evidence to show when Vertudez reflected on his decision to kill the victim. There was no direct evidence whatsoever of any plan or preparations to kill the victim nor of the time when the plot to kill was conceived. Settled is the rule that when it is not shown how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[24] Then again, the premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill.[25]

What was clearly shown was the presence of the three accused at the kiosk the day before and the very day of the fatal incident. The CA held that their presence at the kiosk was to study the neighborhood and the surroundings and make the kiosk a staging area for their plan to kill the victim. However, these were all inferences devoid of any basis. No clear and convincing evidence was adduced to establish that these were the purpose why the accused were at the kiosk before and on the day of the incident. As a matter of fact, the prosecution even narrated

that one of the accused, Lalamunan, even introduced himself as nephew of Palalon, and also introduced Vertudez and petitioner Saldua. On that day, the three accused stayed at the kiosk from 10:00 a.m. to 12:00 noon then came back again at 2:00 p.m. They went back the day after. Verily, it leaves us in doubt why the accused would volunteer their true identity and flaunt their faces in the neighborhood if they were indeed hatching a plan to kill someone in the vicinity. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[26]

It bears reiterating that a qualifying circumstance such as evident premeditation must be proven as clearly as the crime itself.[27] Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.[28] Based on the foregoing disquisition, it is clear that the court below erred in concluding that the crime of murder was committed. Absent the qualifying circumstances of evident premeditation, an accused could only be held liable for homicide.

Petitioner was guilty as an accomplice to homicide.

In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[29]

At the time the crime of homicide was committed, it was established that petitioner Saldua, who was armed, was present, as he was behind Vertudez when the latter fired his gun. However, mere presence does not make one a co-conspirator in the crime. The rule is that the existence of conspiracy cannot be presumed.[30] Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.[31] 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.[32] Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight.[33] Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment.[34]

Other than being present, it was not established what petitioner's purpose was when he stood behind Vertudez bearing a firearm. By merely standing behind Vertudez, it cannot be ascertained whether petitioner had prior knowledge of the criminal design of the principal perpetrator or that he was there to give moral support. What was clear is that he was armed and he did not stop Vertudez from shooting the victim. The mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed.[35] This conclusion is in keeping with the principle that when there is doubt, such doubt should be resolved in favor of the accused. Thus:

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. x x x Hence, in the case at bar, the accused x x x 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 x x x who is unequivocally the principal.[36]

Hence, in this case, lacking sufficient evidence of conspiracy, and there being doubt as to whether petitioner acted as principal or just a mere accomplice, the doubt should be resolved in his favor and, thus, he should be held liable only as an accomplice.

Variance in the participation in the offense between what was alleged in the Information and what was proven is

not a ground for acquittal.

The defense insists that there was variance between the allegations of the Amended Information and the proof adduced by the prosecution during trial which is prejudicial to petitioner and fatal to his conviction. The defense explains that the allegation in the Amended Information states that petitioner shot and killed Abella with a handgun and he is charged with murder. The same is substantially at variance with the proof adduced which was that petitioner never fired a shot but was merely behind the perpetrator.

Under Sections 4[37] and 5[38] Rule 120 of the 1997 Rules of Court, when there is variance between the offense charged in the Information and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.[39] Here, accused was charged as principal to murder because of the qualifying circumstance of evident premeditation. Since the prosecution was not able to prove the said qualifying circumstance, it is correct that the accused should only be sentenced to the lesser crime of homicide which is necessarily included in murder.[40] At any rate, this variance between the offense alleged and the offense proven did not violate petitioner's substantial rights. Petitioner's right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.[41]

The variance in the participation or complicity of the petitioner is likewise not sufficient to exonerate him. While the petitioner was being held responsible as a principal in the information, the evidence adduced, however, showed that his participation is merely that of an accomplice. Jurisprudence has taught that an accused can be validly convicted as an accomplice or accessory under an information charging him as a principal.[42] The greater responsibility necessarily includes the lesser.[43]

Proper Penalty

Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. Since petitioner is only an accomplice, the imposable penalty is one degree lower than that imposable for the principal, i.e., prision mayor. There being neither aggravating nor mitigating circumstances, the said penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, petitioner Saldua is, accordingly, sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.[44]

As to petitioner's civil liability, the ruling in the case of *People v. Tampus*[45] is instructive. In the said case, the Court ruled that the penalty and liability, including civil liability, imposed upon an accused must be commensurate with the degree of his participation in the commission of the crime. Thus, the Court held that the principal must be adjudged liable to pay two-thirds of the civil indemnity and moral damages, while the accomplice should pay one-third portion thereof.[46]

In *People v. Jugueta*,[47] the amount of damages to be paid by the principal for consummated homicide are as follows: (1) P50,000.00, as civil indemnity; (2) P50,000.00, as moral damages without exemplary damages being awarded; and (3) P50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court.

Pursuant to the ruling in the above-mentioned case of *People v. Tampus*, in relation to *People v. Jugueta*, petitioner, as accomplice in the crime of homicide is liable to pay P16,667.67 as civil indemnity, P16,667.67 as moral damages and P16,667.67 as temperate damages. The Court also clarified that the accomplice would not be

subsidiarily liable for the amount allotted to the principal if the latter dies before the finality of the Decision. The reason for this is that there would be nothing that could be passed to the accomplice as the principal's criminal liability, including the civil liability arising thereon, had been extinguished by his death.[48]

WHEREFORE, in view of the foregoing, the Decision dated April 30, 2013 and the Resolution dated December 10, 2013 of the Court of Appeals-Cebu City are AFFIRMED with MODIFICATION such that petitioner Martiniano "Martin" B. Saldua, a.k.a. Marlon Saldua is held guilty as accomplice to homicide and is accordingly sentenced to a prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and to indemnify the heirs of Jill Abella the amount of P16,667.67 as civil liability, P16,667.67 as moral damages and P16,667.67 as temperate damages.

SO ORDERED.

Peralta (Chairperson), Leonen, A. Reyes, Jr.,[*] and Gesmundo, JJ., concur.

[*] Designated as additional member per Raffle held in the morning of December 11, 2018, in lieu of then Court of Appeals Associate Justice Ramon Paul L. Hernando (now a Member of the Court), who penned the Decision.

[1] Rollo, pp. 15-43.

[2] Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla, concurring; id. at 45-58.

[3] Id. at 60-61.

[4] Rollo, pp. 46-47.

[5] Rollo, p. 19.

[6] 607 Phil. 296, 330 (2009).

[7] Rollo, pp. 57-58.

[8] Lara v. People, G.R. No. 235929 (Notice), March 14, 2018; People v. Piosang, 710 Phil. 519, 526 (2013).

[9] Id.

[10] People v. Padoa, 334 Phil. 726, 740 (1997).

[11] Rollo, pp. 49-50.

[12] Id. at 51-52.

[13] Id. at 50.

[14] Id. at 30.

[15] People v. Avergonzado, 445 Phil. 311, 320 (2003).

[16] Id.

[17] People v. Mores, 370 Phil. 368, 376 (1999).

[18] People v. Corpuz, G.R. No. 215320, February 28, 2018.

[19] People v. Cosgafa, G.R. No. 218250, July 10, 2017.

[20] *People v. Illescas*, 396 Phil. 200, 209 (2000).

[21] *People v. Sanchez*, 636 Phil. 560, 582 (2010).

[22] *Id.*

[23] *Id.*

[24] *People v. Dadivo*, 434 Phil. 684, 689 (2002).

[25] *Id.* at 688-689.

[26] *Id.* at 689.

[27] *Id.*

[28] *Id.*

[29] *Napone, Jr. v. People*, G.R. No. 193085, November 29, 2017.

[30] *Garcia, Jr. v. Court of Appeals*, 394 Phil. 890, 905 (2000).

[31] *Id.*

[32] *People v. PO1 Eusebio*, 704 Phil. 569, 575-576 (2013).

[33] *Id.* at 576.

[34] *Id.*

[35] *People v. Manuel*, 304 Phil. 698, 710 (1994), citing the case of *People v. Ubina*, 91 Phil. 515, 534 (1955).

[36] *People v. Eusebio* supra note 32, at 576, citing the case of *People v. Tamayo*, 44 Phil. 38 (1922); *People v. Bantangan*, 54 Phil. 834, 840 (1930); *People v. Lansang*, 82 Phil. 662, 667 (1949); *People v. Ubina*, 97 Phil. 515 (1955); *People v. Raganit*, 88 Phil. 467 (1951); *People v. Pastores*, 148-B Phil. 436 (1971); *People v. Tolentino*, 148-B Phil. 430 (1971).

[37] SECTION 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[38] SECTION 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[39] *People v. Cortez*, 401 Phil. 886, 901 (2000).

[40] *Id.*

[41] *People v. Noque*, 624 Phil. 187, 198 (2010).

[42] *Vino v. People*, 258-A Phil. 404, 410 (1989).

[43] *Id.* at 411.

[44] *People v. Illescas*, supra note 20, at 212.

[45] 607 Phil. 296, 330-331 (2009).

[46] Napone, Jr. v. People, supra note 29.

[47] 783 Phil. 806, 846 (2016).

[48] Napone, Jr. v. People, supra note 29.

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