

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMINIO TAACA AND REGALADO TAACA, ACCUSED-APPELLANTS.

G.R. No. 35652. September 29, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision* of the then Circuit Criminal Court, First Judicial District, Tuguegarao, Cagayan in Criminal Case No. I-100 promulgated on September 21, 1972, finding Herminio Taaca and Regalado Taaca guilty of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased, the dispositive portion (Rollo, p. 40) of which reads, as follows:

"WHEREFORE, this Court finds the accused, Herminio Taaca y Arellano and Regalado Taaca y Barcena, after trial on the merits, GUILTY beyond reasonable doubt as co-principals in the crime of Murder, qualified by treachery, and in accordance with law, sentences each of them to suffer the penalty of RECLUSION PERPETUA, or life imprisonment, with the accessories of the law, to jointly and severally indemnify the heirs of the deceased Alfredo Gabuat in the sum of TWELVE THOUSAND PESOS (P12,000.00) plus EIGHT THOUSAND PESOS (P8,000.00) as moral and exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay the costs of this action."

The facts of the case as found by the trial court, are as follows:

"At about 5:30 p.m. of June 29, 1971, the accused Herminio Taaca, and Regalado Taaca, together with Juanito Alipio and Adriano Cabael, dropped at the house of the deceased victim, Alfredo Gabuat, at Barrio Tabbac, Buguey, Cagayan. Alipio and Cabael arrived first and the two Taacas came a half-hour later. They sat on benches in front of Gabuat's ricemill (camarin) and conversed with Gabuat (Exh. 'B-5'). The visitors asked for wine and cigarettes from Gabuat but when he answered that there were none in his store which had been closed a month before, they gave money to Gabuat's son, Jun, to buy them at another neighboring store owned by Narding (Exh. 'I'). After the purchaser arrived, the visitors including the two accused drank the wine (Cruz de Oro gin and coke) and smoked the cigarettes. The conversation was normal and ranged from lumber to asbestos roofing.

"The wife of Alfredo Gabuat, Caridad Arellano, was then in the kitchen adjoining the main house preparing supper for the family. Before going there she told her 10-year-old son, Melvin, to stay and watch his father, because Gabuat had just killed one Santiago Tabisola less than a month before on June 20, 1971. Melvin sat on the stairs leading from the porch or balcony to the second storey and watched his father and the visitors.

"Around 6:00 p.m., Alipio and Cabael left and went towards the bridge along the Pattao-Bineg Road (Exh. "2"). The two Taacas, Herminio and Regalado, stayed behind and continued talking with Gabuat. Herminio was then carrying a gun, about one meter long, which he carried tucked to his right waist with the barrel protruding at the shoulder. Regalado was not carrying a firearm. Caridad Gabuat then called her husband to eat but he told her and the other children to go ahead. She then fed her other children excluding Melvin, and ate supper herself, after which she told her children to carry some plates of food to the main house for their father. She then went back to the kitchen to close the windows and doors thereat.

"Down in front of the camarin, the two Taacas bade goodbye to Gabuat and Gabuat then went up the five-rung stairs followed 1-2 meters behind by his son Melvin. When both had reached the balcony and while Gabuat was opening the door to the main house, Melvin heard a gun report and looking back, saw Herminio at a nearby post pointing a gun in his father's direction. Herminio then ran away towards the bathroom where Regalado was hiding and they ran together towards the south with Regalado in the lead.

"When she heard the gun report, Caridad Gabuat was still in the kitchen and upon peeping out of a window saw Regalado running southwards with Herminio following him with a gun in his hands. She called for her husband and not receiving any answer, called for help. Her brothers then arrived and told her that her husband was dead already, after which she did not know what happened to her. Melvin, on the other hand, after seeing his father shot, heard him say in the Ilocano dialect 'be humble, son' or 'be patient son', and after recovering from his shock jumped down from the balcony and ran to the house of his uncle. On the way, he saw the two Taacas run southward." (Decision, pp. 6-8)

On February 28, 1972, Herminio Taaca alias Terio and Regalado Taaca alias Dado, were charged with the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code in an information filed with the then Court of First Instance of Cagayan alleging:

"That on or about June 29, 1971 in the municipality of Buguey, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Herminio Taaca alias Terio and Regalado Taaca alias Dado, armed with a gun, conspiring together and helping each other, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one Alfredo Gabuat, inflicting upon him gun shot wound on his body, which wound caused his death." (Record, p. 23).

In view of the fact that the docket of the Court of First Instance of Cagayan was clogged at that time, the records of the case was transferred to the Circuit Criminal Court, First Judicial District, Tuguegarao, Cagayan together with the records of other criminal cases (Rollo, p. 24). Upon arraignment, the accused pleaded not guilty of the crime charged (Record, p. 30).

The prosecution presented four (4) witnesses: Dr. Fortunato Tacuboy, Municipal Health Officer of Buguey, Cagayan; Jovito Macabangon, Chief of Police of Buguey; Caridad Arellano Gabuat, widow of the victim; and Melvin Gabuat, son of the victim.

One of the principal witnesses of the prosecution, Caridad Arellano Gabuat, widow of the deceased, testified that at around 6:00-6:30 p.m. of June 29, 1971, Herminio Taaca and Regalado Taaca came to their house in Tabbac, Buguey, Cagayan. She pointed in court to the person seated at the right who identified himself as Terio (Herminio) Taaca and to the one seated at the left side, who gave his name as Regalado Taaca as the persons she was referring to. She was then at the kitchen when these visitors asked for wine. There being no wine in the house, her husband sent their son, Jun, to buy one bottle. She saw them drinking but not her husband. One of them also ordered for cigarettes. She went back to the kitchen and called her husband to eat but the latter told her and the children to go ahead because he was still conversing with the visitors. While they were having their meal, she instructed the children to bring the food of their father upstairs. She then closed the door and window of the house, but upon remembering that she forgot to cover the sugar, she started to open the door again. It was then that she heard a gunshot and she called for her husband. When he did not answer, she shouted for help. Her brothers came to her aid, and when she was told that her husband was already dead, she did not know anymore what happened to her.

Asked how far was she from the two accused and her late husband when she heard the gun report, the witness requested for a piece of paper and made a sketch of the premises (Exhibit "B") indicating among others, the

kitchen, the house, the doors of the house, the porch, the location of the chairs and benches. She likewise indicated the exact place where her husband was shot, the post behind which the accused were supposed to be hiding and from which witness saw them running, the place where witness was when she heard the gun report and the place where the two accused were drinking wine prior to the shooting.

Caridad admitted that her husband killed Santiago Tabisula one month prior to his death (TSN, July 6, 1972, pp. 8-37).

On cross examination, Caridad stated that aside from the two accused, they had other visitors. They were Juanita Alipio and Andring Cabel. But these two left earlier before the shooting occurred. She also stated that she saw a long gun tucked at the buttocks of Terio Taaca when the latter was talking with her husband. She admitted, however, that she did not actually see the two accused shoot her husband (TSN, July 6, 1972, pp. 38-46) and on clarificatory questions from the court, she admitted that she did not actually see her husband going upstairs to open the door of the house. It was her son who told her about it just after the incident (Ibid., pp. 53-54).

On redirect examination, witness Caridad clarified that Herminio and Terio Taaca are one and the same person and that the other accused she was referring to was Regalado. She clarified further that she saw only one gun which was carried by Terio but accused Regalado was not holding or carrying any firearm (TSN, July 17, 1972 pp. 52-53).

The testimony of the widow (Caridad) was fully corroborated on all material points by her son, the eleven-year-old Melvin Gabuat, who saw the shooting because he was following behind the victim, his father. Melvin testified that he and his father were already in the balcony and his father was opening the door of their house when Terio pointed the gun at the latter and shot him. His father was not able to do anything except advise his son "Agsingsingpet ka barok" which means be humble. On the other hand, the two accused ran southward. Melvin positively identified in court the two accused, Terio and Regalado (TSN, July 10, 1972, pp. 27-34).

On cross examination, Melvin, like his mother admitted that there were two other persons who arrived at their house besides the accused. They were Juanito Alipio and Andring Cabel but both of them left earlier than the accused, and before the incident occurred (TSN, July 10, 1972, pp. 36-37).

On questions from the court, Melvin explained that he was immediately behind his father when the latter pushed the door of the balcony and while his father was pushing the door, he looked back and saw accused Herminio alias Terio shoot his father.

From the testimony of the witness, it can be gathered that the visit of the two accused was originally a peaceful occasion, where his father and the two accused were sitting close together while the latter were drinking wine. Melvin was sitting at the stairs where he was instructed by his mother to stay and watch his father. He was listening to their conversation about the merits of asbestos roofing. Their voices were normal with no sign of quarreling. However, while the two accused were conversing with his father, he noticed that Terio had a gun, less than a meter in length, tucked at his waist with the barrel protruding (TSN, July 10, 1972, pp. 43-51).

The witness demonstrated the relative positions of his father when he was shot and of the two accused and stated that he was at a distance of two meters from his father when the latter fell (Ibid., pp. 51-52).

More importantly, the testimonies of both mother and son were fully corroborated by Dr. Tacuboy, the Municipal Health Officer of Buguey, Cagayan since 1960, who conducted in Barrio Tabbac, a post-mortem examination on the body of the deceased Alfredo Gabuat which he reduced in writing and marked Exhibit "A", (Record, p. 2). His findings as stated in his medical certificate is that the victim suffered a "gunshot wound, through and through, entrance wound 0.3 inch in diameter, with collar contusion, tissues invaginated, located at the mid portion of the

right scapular region, posterior portion of the body: exit wound 0.75 inch in diameter, tissues everted, located at mid basal portion of the neck, anterior point: trajectory of the bullet from the back (right scapular region) direct obliquely upwards, forward to the left."

He confirmed that the gunshot wound was caused by a rifle bullet and that the point of entry is at a lower place than the point of exit, which means that judging from the location of the entrance wound and the exit wound, the assailant at the time of the commission of the crime was probably below or at a lower elevation than the victim. His finding that the "trajectory of the bullet from the back (right scapular region) directed obliquely upwards, forward to the left," in relation to the body of the victim, means that the entrance of the wound was at the back scapular region lower and it is directed obliquely upwards to the left because it is deflected to the left side of the victim. It is possible, according to the witness, for the bullet prodding through the body of the victim, to hit a specific bone causing the trajectory of the bullet to run obliquely. In answer to questions of the Court, witness clarified that if there had been a deflection, there could have been a high velocity of the bullet. He probed the wound with a stick from the entrance to the exit and can say that there is but a slight deflection by hitting the small bones at the side of the vertebrae. The bullet which is a .30 caliber bullet of a rifle or carbin lodged on the beam of the house where it was extracted by the police.

According to the witness, the cause of the victim's death was shock and hemorrhage due to gunshot wound and he could not have survived despite proper medical attention because death was sudden (TSN, July 6, 1972, p. 4).

On question by the Court, the witness further testified that the body of the victim was already inside the room of the house when he first saw it; that when the victim was shot he was facing east; that he was not going upstairs, otherwise the wound would be on the left scapular; that the victim has no other injury; that the victim did not smell of any intoxicating liquor; and that the estimated time of the death of the victim based on his examination of the body was around 7:00 to 8:00 p.m. of June 29. He conducted the post mortem examination the next day at 11:45 a.m. for about forty minutes. (TSN, May 17, 1972, pp. 22-24).

Jovito Macbangan testified that he was Chief of Police of Buguey, Cagayan on June 29, 1971. On that particular day, at 8:30 p.m. the death of Alfredo Gabuat was reported to his office by Councilman Arellano of Buguey, Cagayan. He proceeded immediately with Councilman Arellano and others to the scene of the crime which is at Tabbac, Buguey, Cagayan. He reached Tabbac on the same night and proceeded immediately to the house of the victim where they found the body of Alfredo Gabuat near the gate of the house. The body was lying flat. During his investigation, he found out that the victim had only one wound at the back protruding at the side of the neck. He was informed by the Councilman that it was the accused, Herminio Taaca and Regalado Taaca who shot Alfredo Gabuat. He invited the widow and the son to go to his office for further investigation. The investigation was conducted by Policeman Emilio Tadili (TSN, July 10, 1972, pp. 2-6).

The evidence for the defense consisted of the testimonies of Emilio Tadili, Juanito Alipio, Silvestre Belen, Adriano Cabaal, Herminio Taaca and Regalado Taaca.

Emilio Tadili, the police Sergeant of Buguey, Cagayan at the time, testified that on orders of his Chief of Police, he investigated individually, Juanito Alipio, Adriano Cabaal, Herminio Taaca and Regalado Taaca who allegedly dropped at the house of the late Alfredo Gabuat before the latter was shot to death. All of them denied participation in the killing but his investigation was not reduced to writing. He likewise investigated the widow Caridad Arellano Gabuat and her son Melvin and his investigation of the two complainants were reduced to writing. He identified the sworn statement of Caridad Arellano and confirmed that he asked the question: "Do you know of any cause why they shot your husband?" and the answer of the widow was "I believe that those persons who liquidated my husband were hired by the relatives of the late Santiago Tabisola who was stabbed to death by

my late husband sir.” Afterwards he complied with the instructions of the Chief of Police to prepare the corresponding complaints against Herminio Taaca and Regalado Taaca and filed the complaint in court.

He also went to Naguillian with several policemen to apprehend Berlino Caliso, whom he investigated at the police department. His investigation was reduced to writing which he identified in court and the contents of said testimony were relayed to the widow. He and other policemen exerted efforts to ascertain the whereabouts of Orlando Tactac and Tinoy Tabisola who were mentioned by Berlino Caliso as the real perpetrators of the killing. Tinoy Tabisola was at large and was not apprehended while Orlando Tactac whom they encountered at Barrio Mala-weste, evaded arrest.

On the other hand, Juanito Alipio, Adriano Cabael, Herminio Taaca and Regalado Taaca, all denied participation in the crime and uniformly stated that on that day, they were in the house of Benito Alipio playing the game "pepito". They admitted, however, that later they all went to the house of the deceased where they drank wine, smoked cigarettes and talked but afterwards they all left and proceeded to go home. But at a distance of more or less one hundred meters away from the house of the deceased, they heard a gun report and then continuous firing. They continued walking thinking that the shots were coming from the house of Benito Alipio, forty meters away (TSN, July 17, 1982, pp. 102- 116; TSN, August 15, 1972, pp. 202-229; TSN, August 25, 1972, pp. 182-197; TSN, September 18, 1972, pp. 3-11).

Silvestre Belen, farmer and resident of Nagsabaran, Buguey, Cagayan testified that he is a native of Mabilbila, Santa, Ilocos Sur. He came to Nagsabaran because his brother Benito Belen, asked him to help in the latter's farm in Nagsabaran. He is residing with his brother in the house of Santiago Tabisola who is already dead and with whom they were working under tenancy relationship.

In the afternoon of June 29, 1971, he was at Dagupan, Lallo, Cagayan which is three (3) kilometers from Nagsabaran, to visit a good friend. He left the place the following day, that is, on June 30, 1971. On his way home to Nagsabaran from Dagupan, Lallo, he met Tinoy Tabisola, Orlando Tactac and Berlino Caliso. Berlino Caliso had a carbine. On July 1, 1971, he went back to Dagupan but returned to Nagsabaran in the evening of the same day. On his way home, he met Orlando Tactac who informed him that Terio Taaca and Dada Taaca were in jail. He had known the accused Herminio Taaca and Regalado Taaca for less than three (3) months.

He has not given any statement regarding the subject of his testimony because of fear of being liquidated (TSN, August 8, 1972, pp. 127-144).

The Circuit Criminal Court convicted the two accused Herminio Taaca and Regalado Taaca of the crime of Murder qualified by treachery, in a decision promulgated on September 21, 1972 (Rollo, p. 17). On October 9, 1972, they filed a notice of appeal from the judgment of conviction (Record, p. 110). On November 13, 1972, the Court resolved to appoint Atty. Pablo D. Bulan of Tuguegarao, Cagayan as counsel de oficio for appellants Herminio Taaca and Regalado Taaca to represent them in their appeal (Rollo, p. 51) in accordance with the request of said appellants made through the provincial warden of Cagayan (Rollo, p. 49).

The brief for the defendants-appellants was filed with the Court on April 23, 1973 after four (4) requests for extension (Rollo, p. 68); while the brief for appellee was filed on September 4, 1973 (Rollo, p. 82).

The Court resolved to consider the case submitted for decision on December 20, 1973, it appearing that appellants failed to file their reply brief within the period which expired on October 9, 1973 (Rollo, p. 88).

On March 2, 1981, accused-appellant Herminio Taaca filed a motion to withdraw appeal alleging among others, that he had entirely lost interest in pursuing his appeal on account of his personal belief: (a) that he has already undergone years of preventive imprisonment; (b) that his appeal is not meritorious; and (c) that he humbly

believes that the withdrawal of the appeal is more favorable and advantageous to himself (Rollo, p. 100). Acting on the said motion, the Court in a Resolution dated March 19, 1981 resolved to require aforesaid appellant's counsel and the Solicitor General to comment on said motion within ten (10) days from notice (Rollo, p. 10).

The comment of the de officio counsel for the accused interposing no objection to said withdrawal, was submitted on August 10, 1981 (Rollo, pp. 106-108).

The Court then resolved to require accused-appellant Herminio Taaca himself, to file a Reply to Comment of his, de officio counsel within ten (10) days from notice (Rollo, p. 110). On November 2, 1981, accused-appellant filed his Reply to Comment reiterating his manifestation to withdraw his appeal (Rollo, p. 11). On December 2, 1981, the Court resolved: (a) require the Clerk of Court to furnish the Solicitor General with copies of accused-appellant's motion to withdraw appeal, the comment of the counsel de officio and the reply of accused-appellant to the comment of his counsel de officio; and (b) the Solicitor General to file his comment on the motion to withdraw within the prescribed period (Rollo, p. 114). The Comment of the Solicitor General, also interposing no objection to the motion to withdraw appeal filed by appellant Herminio Taaca was filed on January 21, 1982 (Rollo, p. 117).

On February 1, 1982, this Court allowed accused-appellant, Herminio Taaca, to withdraw his appeal in this case (Rollo, p. 120) and the judgment became final and executory on the same date insofar as he is concerned. Entry of judgment was made on February 26, 1982 (Rollo, p. 121). The remaining appellant is Regalado Taaca.

Appellant sets forth the following assignments of errors

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNRELIABLE, INCONSISTENT AND CONTRADICTORY TESTIMONIES OF THE TWO PRINCIPAL WITNESSES FOR THE PROSECUTION NAMELY, CARIDAD GABUAT AND MELVIN GABUAT TO THE SERIOUS PREJUDICE OF THE DEFENDANTS-APPELLANTS' SUBSTANTIAL RIGHTS.

II

THE TRIAL COURT ERRED IN CONVICTING THE DEFENDANTS-APPELLANTS IN SPITE OF THE FACT THAT THEIR IDENTIFICATION WAS NOT SUFFICIENTLY ESTABLISHED BY THE PROSECUTION AND THE TOTAL ABSENCE OF MOTIVE ON THEIR PART TO COMMIT THE CRIME IN QUESTION.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING THE DEFENDANTS-APPELLANTS ON THE GROUND THAT THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The withdrawal of appeal by the co-accused shows acquiescence to the judgment of conviction and an affirmation of the fact of the crime charged (People v. Bundol, 143 SCRA 241 [1986]) or a realization that the evidence of the prosecution is overwhelming, and that of the defense, weak in the extreme (People v. Carreon y Viray, 99 SCRA 473 [1980]). As manifested by Herminio Taaca in his motion to withdraw appeal, one of the reasons for his withdrawal of the appeal is that it is not meritorious. In effect he has shown acquiescence to the correctness of his conviction and the fact of his having committed the offense of murder against the person of the deceased Alfredo Gabuat.

The evidence of the prosecution point to Herminio Taaca as the one who treacherously shot the deceased while

the latter was opening the main door of his house unaware of any intention on the part of his assailant to kill him. On the other hand, the complicity of appellant Regalado Taaca to the crime is premised on the alleged presence of conspiracy in the commission of the crime.

The sole issue therefore, in this case, is whether or not the presence of conspiracy has been adequately proven by the prosecution.

This Court has ruled that:

"A conspiracy in the statutory language exists when two or more persons come to an agree-ment concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need in the language of Justice Mapa in the early leading case of *United States v. Magcomot*, a 1909 decision, for 'concurrence of wills' or 'unity of action and purpose.' The usual phraseology employed in many of the later cases is 'common and joint purpose and design.' At times, reference is made to 'previous concert of criminal design.' Its manifestation could be shown by 'united and concerted action.' Thus a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If, to use the apt words of Chief Justice Bengzon, there is a 'chain of circumstances' to that effect, then conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others. So it has been our constant ruling from the 1905 decision of *United States v. Mazu*" (*People v. Pudpud*, 39 SCRA 618, [1971]. Quoted in *People v. Tiongson*, 47 SCRA 279 [1972]; *People v. Malilay*, 63 SCRA 420 [1975]; *People v. Ogapay*, 66 SCRA 209 [1975])."

The only eye-witness to the crime, Melvin, son of the deceased, testified on cross examination that four persons went to their house - Juanito Alipio, Anding Cabael, Herminio Taaca and Regalado Taaca. When Juanito Alipio and Anding Cabael left, Herminio Taaca and appellant stayed behind and when Herminio Taaca fired at the deceased Alfredo Gabuat, appellant hid near their bathroom (TSN, July 10, 1972, pp. 36-40).

Melvin further testified that while Herminio Taaca was shooting his father, appellant was not doing anything. When Herminio Taaca ran, he also ran:

"COURT: When you looked back and you saw Terio shooting your father, what was Regalado doing?

A - None, sir.

COURT - How far was he (this Regalado) from Terio shooting his father?

A - (Witness pointed to a distance of more or less two meters.

COURT - He was not armed.

A - None, sir.

COURT - Was he carrying anything?

A - None, sir.

COURT - When you saw Terio ran, what did Regalado do?

A - He also ran.

COURT - Did you hear Regalado say something while Terio was pointing his gun towards your father?

A - None, Sir."

(TSN, July 10, 1972, p. 47).

No evidence of conspiracy can be deduced from the above testimony of the sole eye-witness to the perpetration of the crime. There is no evidence of appellant's direct participation in the shooting of the deceased.

Although no formal agreement is necessary to establish conspiracy and said conspiracy may be inferred from the circumstances attending the commission of the crime, yet conspiracy like any other ingredient of the offense, must be established by clear and convincing evidence. There must be evidence of intentional participation in the transaction with a view to the furtherance of the common design and purpose (*People v. Agda*, 111 SCRA 330 [1982]). The same degree of proof necessary to establish the crime is required to establish a finding of criminal conspiracy, which is, proof beyond reasonable doubt (*People v. Drilon, Jr.*, 123 SCRA 72 [1983]). It cannot be established by conjectures but by positive and conclusive evidence (*People v. Martinez*, 127 SCRA 260 [1984]).

The fact that Herminio Taaca and appellant were together when the crime was committed is not proof of the existence of conspiracy to commit the crime (*Francisco v. Court of Appeals*, 122 SCRA 538 [1983]). Mere companionship does not establish conspiracy (*People v. Sosing*, 111 SCRA 368 [1982]).

No conspiracy can be deduced where the alleged co-conspirators did not perform any overt act of shooting the victim although they were with the person who fired the gun (*People v. Benavidez*, 127 SCRA 188 [1984]). In the instant case, it is undisputed that appellant did not perform any overt act.

The only incriminating evidence against appellant is that he was at the scene of the crime. The mere presence of appellant at the scene of the crime at the time of its commission is not by itself, however, sufficient to establish his criminal liability. Existence of conspiracy must be clearly and convincingly proven (*People v. Sabilano*, 132 SCRA 83 [1984]). The accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. It is not enough that there be a relation between the acts done by the principal or accomplice. It is furthermore necessary that the latter, with knowledge of the former's criminal intent should cooperate with moral or material aid in the consummation of the crime (*People v. Drilon, Jr.*, *supra*; *People v. Pimentel*, 147 SCRA 25 [1987]).

Conspiracy between two accused cannot be inferred by the mere fact that they have been drinking together prior to the shooting and run away in the same direction thereafter; more so where the other accused had no known motive to kill (*People v. Realon*, 99 SCRA 422 [1980]). The fact that the two accused left together after the shooting incident does not show conspiracy (*People v. De Jesus*, 118 SCRA 616 [1982]).

Two circumstances which are indicative of the innocence of the appellant and his earnest desire to prove his innocence are: (a) his insistence during the trial of the case in the lower court to testify and be placed on the witness stand (TSN, August 25, 1972, pp. 149-150); and (b) when his co-accused Herminio Taaca withdrew his appeal, appellant pursued this appeal to the end.

The incriminating evidence against appellant Regalado Taaca is not sufficient to establish conspiracy. Without conspiracy, he cannot be considered liable as he had no direct participation in the commission of the crime. The presumption of innocence has not been successfully overwhelmed by evidence beyond reasonable doubt (*People v. Agda*, *supra*).

WHEREFORE, the decision of the then Circuit Criminal Court, First Judicial District, Tuguegarao, Cagayan in Criminal Case No. I-100 promulgated on September 21, 1972 is hereby modified as follows: the judgment of conviction against Regalado Taaca is Reversed and another one is entered Acquitting him on the ground of reasonable doubt, with costs de oficio.

SO ORDERED.

Fernan, (C.J.), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Penned by Judge Romeo M. Escareal.

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