

DELFIN ORODIO, PETITIONER, VS. HONORABLE COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 57519. September 13, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, Delfin Orodio, together with the brothers Angel Obedoza and Manuel Obedoza, were convicted of the crime of murder by the then Court of First Instance of La Union (Branch I), based on the Information[1] quoted hereunder:

That on or about the 18th day of June, 1975, in the Municipality of Santol, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a firearm, conspiring and confederating with each other and mutually helping one another, without justifiable cause, and with deliberate intent to kill, did then and there, upon having stood in ambush, willfully, unlawfully and feloniously, by means of treachery and with evident premeditation, attack, shot and hit by means of a firearm MARCELIANO TURALBA, inflicting upon him gunshot wounds in several parts of his body, perforating several internal organs and tissues which directly caused hemorrhage, shock, secondary to wounds at the heart and lungs resulting to the death of said victim soon thereafter to the prejudice and damage of his heirs.

CONTRARY to Article 248 of the Revised Penal Code as amended.

Unsatisfied with the Judgment of the trial court,[2] all the accused elevated their case to the Court of Appeals. However, during the pendency of their appeal, Manuel and Angel Obedoza withdrew it, thereby leaving only the appeal of the petitioner to take its due course.

Except for a modification of the penalty, the respondent Court of Appeals affirmed the conviction of the Petitioner. Now before us is the appeal, by way of a petition for review on certiorari, of the assailed decision, the dispositive portion of which reads as follows:

In view of all the foregoing, we found the guilt of the appellant of the crime charged proven beyond reasonable doubt. We also agree with the Solicitor General that, there being no modifying circumstances present in the commission of the crime, the imposable penalty should be "reclusion perpetua" which is the medium period of the penalty imposed for murder (Art. 248, R.P.C.). The appellant should also be entitled to four-fifths of his preventive detention, there being no proof that he had agreed to abide by the same disciplinary rules imposed upon convicted prisoners.

WHEREFORE, with the modification above indicated, the decision appealed from is hereby affirmed. With costs against the appellant.

SO ORDERED.[3]

The pertinent facts supported by the evidence are summarized as follows:

At about six o'clock in the morning of June 18, 1975, at Coro-oy, Santol, La Union, Marceliano Turalba was on his way to the fields carrying a plow on his shoulder, followed by his daughter, Florie, and his wife, Herminigilda. (Florie would take a bath by the well. Herminigilda was under instruction of her husband to follow him always wherever he would go because someone was threatening his life.[4]) While they were walking along a trail, Herminigilda saw Angel Obedoza, about ten meters away, pointing a long firearm at her husband, which prompted her to shout "Angel is going to shoot you." [5] But it was all for naught as the shot was fired nonetheless hitting her husband who instantly slumped to the ground.[6] As Florie turned her head toward the sound of gunshot, she saw Angel Obedoza holding a long firearm in the company of older brother, Manuel, and Delfin Orodio.[7] The presence of Angel's two companions was also noticed by Herminigilda.[8] Then, the three (Manuel, Angel, and Delfin) fled in different directions.[9] Moments later, after severely wounded Marceliano was carried back to his home, he died.[10] In the autopsy examination conducted by Dr. Ubungen right inside the house of the victim, six rounded pellets were extracted from his body,[11] apparently coming from a shotgun cartridge.

The petitioner now argues that:

- The Court of Appeals erred in convicting him based solely on the alleged existence of conspiracy among the accused Obedoza brothers and him, simply because of his passive presence at or near the scene of the crime as well as the alleged moral support provided and moral ascendancy exerted by him over the gun wielder into committing the crime.
- The Court of Appeals erred in not appreciating in his favor the mitigating circumstance of voluntary surrender, assuming the correctness of its decision.[12]

The respondent Court of Appeals passed sub-silencio on the first submission of the petitioner that the conspiracy found by the trial court is not supported by proof and law, but only by presumptions or conjectures.[13] Obviously, the respondent court has adopted the theory of implied conspiracy upheld by the trial court, otherwise the decision of the respondent court would not have any factual or legal basis as to the petitioner, there being no proof of his participation in the shooting aside from his presence near the scene of the crime and running away therefrom, disputed to be sure, but findings nonetheless.

On the other hand, the trial court dealt with the issue of conspiracy head on, declaring its existence by and among the Obedoza brothers and the petitioner. Be that as it may, in convicting the three of them, the trial court correctly re-stated the prevailing doctrine that active or direct participation in the actual commission of the crime is not necessary to convict an accused as a co-conspirator, Citing *People vs. Cortez*, [14] the trial court declared, likewise accurately, that it is enough that the accused performs an overt act in furtherance of the conspiracy either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the co-conspirators as to move them to executing the conspiracy. Consequently, the trial court said that while only Angel fired at the victim with a shotgun, resulting to his death, the hard fact of the matter remains that Manuel and the petitioner were actually present and controlled the commission of the crime. Manuel and the petitioner were three (3) meters apart from each other and only about ten (10) meters away from Angel when the latter fired at Marceliano. The presence of Manuel and the petitioner at the scene of the crime with Angel, the gunman, was not explained, impugned, or disputed by the defense except by their denial of the charge together with their defense of alibi, which the trial court rejected. It held that there is no good and valid reason why Manuel and the petitioner were

present with Angel at the scene of the crime on that very early morning of June 18, 1975, except, the judge surmised, to lend moral support to their youngest co-conspirator who, we reiterate, alone did the shooting. Conspiracy is substantiated, according to the trial court, by the fact that Manuel has that commanding power of moral ascendancy over his four years his junior. On the other hand, as viewed by the trial court, Delfin appears to be not only a father to his co-accused Angel in point of age, being about 40 years old at the time of the incident, who could have easily asserted his moral ascendancy over the 22-year old Angel, but also possessed of the dominating and dangerous power over his co-conspirator for, it is claimed, the petitioner is a professional cold-blooded killer previously thrice convicted of homicide. Prescinding from these dubious findings and non-sequitur conclusions, the trial court ruled that conspiracy was proven beyond reasonable doubt and all the three accused were convicted of murder.

We disagree.

As above adverted to, in affirming the Judgment of the trial court, the respondent court did not squarely pass upon the issue of conspiracy. The only circumstances that seem to have persuaded the respondent court in affirming that a conspiracy existed are the fact of petitioner's presence at or near the scene where the late Marceliano Turalba was shot by Angel Obedoza and the fact of simultaneous flight of the petitioner and the Obedoza brothers from the scene of the crime. Nowhere in the respondent court's decision do we find mention of any other act of the petitioner that may be construed as an overt act in the furtherance of a conspiracy. Absent such an evidentiary basis, we can not accept the finding of implied conspiracy. The conclusion of the trial court is based on subjective considerations, not on positive and convincing evidence.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[15] It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective.[16]

Direct proof is not essential to establish conspiracy.[17] Since by its nature, conspiracy is planned in utmost secrecy it can rarely be proved by direct evidence.[18] Consequently, the presence of the concurrence of minds which is involved in conspiracy, may be inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved.[19] That would be termed an implied conspiracy.

Nevertheless, mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[20] Conspiracy must be established, not by conjectures, but by positive and conclusive evidence.[21] In fact, the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt.[22]

In the case at bar, even if the finding as regards the presence of the petitioner at or near the scene where the late Marceliano Turalba was shot by Angel were accurate, the petitioner contends that mere passive presence at the scene of the crime does not of itself constitute sufficient basis for concluding that he was in conspiracy with Angel Obedoza who was the actual perpetrator of the crime.

We find meritorious the submission of the petitioner. The presence of the petitioner at the scene when the crime was perpetrated is not by itself indicative of the existence of conspiracy between him and Angel or with Manuel,

or, for that matter, by and among the three of them. The petitioner must be shown to have had guilty participation in the criminal design entertained by the slayer, Angel.[23] In a long line of decisions, this Court has held that mere presence at the scene of the crime, without more, does not imply conspiracy.[24]

The evidence for the prosecution does not reveal any proof aside from his mere passive presence at the scene of the crime, upon which to base the trial court's conclusion that the petitioner provided moral support to and exerted moral ascendancy over his so-called co-conspirators as to move them to execute the putative conspiracy.

The trial court's finding, affirmed by the respondent court, that the petitioner exerted moral ascendancy over the gunwielder, Angel Obedoza, based on the fact that the former could have been a father, in point of age, of the latter, and even adding the fact that the petitioner is a convicted killer and a recidivist, is purely speculative and devoid of any legal basis. It is true that the petitioner is a recidivist. He candidly admitted, in the course of his testimony, that he had just been convicted of triple homicide and had already begun to serve his sentence.[25] It would indeed be proper for us to appreciate recidivism as a generic aggravating circumstance should there be a conviction in this case. But, from our view of the evidence, it has not been convincingly established that the petitioner cooperated in the commission of the offense, either morally, through advice, encouragement, or agreement, or materially, through external acts indicating a manifest intent of supplying aid in the perpetration of the crime in an efficacious way.[26] The petitioner did not take any active part in the perpetration of the offense nor was he heard to have uttered anything. Such being the case, his mere passive and mute presence at the scene of the crime does not make him either a co-principal or accomplice in the commission of the offense,[27] no matter how criminal his mind might be, or, no matter how many convictions of murder he might have.

Furthermore, as correctly stated by the petitioner, the trial court's declaration in its Judgment that moral ascendancy was exerted by the petitioner over the gunwielder, Angel Obedoza, is founded on a wrong premise, that is, the existence of a conspiracy where the petitioner is a co-conspirator.[28] Conspiracy presupposes the presence of a preconceived plan or agreement. In order to establish such a plan or agreement, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be established a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design.[29]

The fact that the petitioner fled from the scene after the shooting does not suffice to prove the conspiracy there being no evidence to convince us that his running away from the scene had been interwoven with a pre-conceived plan or agreement to kill the victim. Fear of implication in the crime could have been a plausible reason for the petitioner's act of fleeing.

At the risk of being repetitious, there is a total absence of evidence to show any previous plan or agreement between the Obedoza brothers and the petitioner to kill the victim. Equally wanting is proof that the acts of the petitioner stemmed from a prior plan or design to kill the victim. Criminal conspiracy must be established by positive evidence, and conviction must be founded on facts, not on mere inferences and presumptions.[30]

By and large, the evidence on record fails to satisfy the requirement of moral certainty needed to hold the petitioner guilty of the charge as a co-conspirator. For it is only by proof beyond reasonable doubt, which requires moral certainty -- a certainty that convinces and satisfies the reason and conscience of those who are to act upon it -- may the presumption of innocence be overcome.[31]

WHEREFORE, the decision appealed from is hereby REVERSED and the petitioner, Delfin Orodio y Valdez, is ACQUITTED for lack of proof beyond reasonable doubt. No costs.

SO ORDERED.

Paras and Padilla, JJ., concur.

Melencio-Herrera (Chairman), J., concurs in the absence of adequate evidence to establish moral ascendancy by petitioner over the gun-wielder.

Regalado, J., took no part; did not participate in deliberation.

[1] Original Record, 36.

[2] Rendered by Judge Angel A. Daquigan, Rollo, 41-67.

[3] Busran, Mama D., J.; Villasor, Guillermo P. and Melo, Jose A.R., JJ.

[4] T.s.n., session of May 19, 1976, 3-4; T.s.n., session of March 16, 1976, 5-7.

[5] Id., session of May 19, 1976, 5, 7.

[6] Id., 6; T.s.n., session of March 16, 1976, 8.

[7] T.s.n., session of March 16, 1976, 8.

[8] T.s.n., session of May 19, 1976, 8.

[9] Id.; T.s.n., session of March 16, 1976, 12.

[10] Id., 14; Id., 9.

[11] T.s.n., session of August 12, 1976, 5-9.

[12] Petition for Review, 5; Rollo, 23.

[13] Brief For Accused-Appellant Delfin Orodio in the Court of Appeals, CA Rollo, 58(20).

[14] L-31106, May 31, 1974.

[15] Art. 8, Revised Penal Code; People vs. Rojas, et al., Nos. L-46960-62, January 8, 1987.

[16] People vs. Bautista, et al., No. L-31900, August 6, 1979.

[17] People vs. Saavedra, No. L-48738, May 18, 1987; Vizconde vs. Intermediate Appellate Court, No. 74231, April 10, 1987; People vs. Tala, No. 69153-54, January 30, 1986; People vs. Ebor, et al., No. 31013, February 10, 1986; People vs. Villanueva, No. L-32274, April 2 1984; People vs. Pueblas, No. L-32859, February 24, 1984; People vs. Villason, No. L-38208, July 30, 1982.

[18] People vs. Peralta, et al., L-19069, October 29, 1968.

[19] People vs. Peralta, supra, citing People vs. Carbonel, 48 Phil. 868 (1926).

[20] People vs. Izon, et al. 104 Phil. 690 (1958).

[21] People vs. Palon, No. L-33271, February 20, 1984; People vs. Martinez, No. L-33907, January 31, 1984.

[22] People vs. Saavedra, supra; People vs. Viray, No. 72892, January 7, 1987; Moniza, Jr. vs. People, No. 72719, September 18, 1986; People vs. Palon, supra; People vs. Benavidez, No. L-59985, January 20, 1984; People vs. Drilon, Jr., No. L-33431, June 28, 1983; People vs. Sosing, No. L-42791, January 30, 1982; People vs. Custodio, No. L-30463, October 30, 1972.

[23] *People vs. Pimentel, et al.*, No. L-47915, January 7, 1987; *People vs. Drilon*, *supra*.

[24] *People vs. Saavedra*, *supra*; *People vs. Pimentel*, *supra*; *People vs. Sabilano*, No. L-32866-7, September 21, 1984; *People vs. Madera*, No. L-35133, May 31, 1974; *People vs. Wong*, No. L-22130-32, April 25, 1968; *People vs. Tividad*, No. L-21469, June 30, 1967; *People vs. Izon*, *supra*; *People vs. Ibañez*, 77 Phil. 664 (1946).

[25] T.s.n., session of March 10, 1977, 3-4.

[26] *People vs. Custodio*, *supra*.

[27] *Id.*

[28] *Petition for Review*, 12; *Rollo*, 30.

[29] *People vs. Custodio*, *supra*.

[30] *People vs. Marquez*, No. L-31403, December 14, 1981.

[31] *People vs. Go Bio, Jr.*, No. 68575, June 6, 1986; *People vs. Custodio*, *supra*.

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