

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE BENAVIDEZ AND ANDONG CABIGAS, ET AL., ACCUSED-APPELLANTS.

G.R. No. 59985. January 30, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Pangasinan, JOSE BENAVIDEZ and ANDONG CABIGAS, among other persons, were accused of multiple murder with multiple physical injuries Criminal Case No. L-2347 said to have been committed according to the information as follows:

"That on or about the 3rd day of January, 1981, at night, in the municipality of Mangatarem, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, armed with armalite rifle and with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and shoot towards the place where Edgar Cuaresma, Eduardo Ferrer, Carmelita Vinluan, Domingo Bagat, Marie Samson, Clarita Lucarias, Charito Lucarias and Wardy Usa were gathered, which caused the death, by gunshot wounds, of Edgar Cuaresma, Eduardo Ferrer, Carmelita Vinluan and Domingo Bagat and inflicting gunshot wounds or injuries upon Marie Samson, Clarita Lucarias, Charito Lucarias and Wardy Usa, to their damage and prejudice." (Expediente, p.1)

The evidence shows that in the evening of January 3, 1981, a party was held in the house of Edna Fernandez to celebrate her wedding to Abraham Juanata. While he party was in progress, it was sprayed with bursts of gunfire as a result of which several persons died while others sustained injuries. Four persons, including Benavidez and Cabigas, were named in the information but only those two were apprehended.

After trial, the following judgment was rendered:

"WHEREFORE, the Court finds the accused JOSE BENAVIDEZ and ANDONG CABIGAS, GUILTY beyond reasonable doubt as co-principals by indispensable cooperation of the crime of MURDER as defined in Article 248 of the Revised Penal Code on four counts and of FRUSTRATED MURDER as defined in the same article in conjunction with Articles 6 and 50 of the same Code, and sentences each of them to suffer the following penalties:

- (1) RECLUSION PERPETUA, for the death of EDGAR CUARESMA, and to pay solidarily, the parents of the deceased, namely Avelino Cuaresma and Cornelia Diaz, the amount of P12,000.00 compensatory damages of the death of Cuaresma; P2,800.00 for actual expenses;
- (2) RECLUSION PERPETUA, for the death of EDUARDO FERRER, and to pay solidarily, the parents of the deceased, namely, Norberto Ferrer and Efigenia Nery, the amount of P12,000.00 compensatory damages for the death of Ferrer, and P2,500.00 for actual ex-penses;
- (3) RECLUSION PERPETUA, for the death of CARMELITA VINLUAN and to pay solidarily, the heirs of the deceased, the amount of P12,000.00 compensatory damages; only, there being no evidence of any other damage;

(4) RECLUSION PERPETUA, for the death of DOMINGO BAGAT and to pay his heirs the amount of P12,000.00 compensatory damages only, there being no evidence of any other damage; and

FOUR (4) Indeterminate penalties of SIX (6) YEARS, ONE (1) DAY of prision mayor minimum to TWELVE (12) years and ONE (1) day of reclusion temporal, maximum for each of the crimes of Frustrated Murder committed against the victims Charito Lucarias, Mandy Usa, Clarita Lucarias, and Marie Samson." (Expediente, pp. 146-147.)

Both Benavidez and Cabigas appealed.

Counsel de oficio for the appellants has made two assignments of error the gist of which is that the evidence against them does not justify their conviction.

The Solicitor General did not file a brief for the appellee; he filed instead a Manifestation wherein he "recommended that the decision of the trial court be reversed, and, in lieu thereof, judgment be rendered acquitting them of the crime charged." (P. 8.) This was on November 15, 1983.

On November 28, 1983, We issued the following resolution:

"Instead of filing appelle's brief the Solicitor General filed a manifestation dated November 14, 1983, which contains the following recommendation: "that the decision of the trial court be reversed, and, in lieu thereof, judgment be rendered acquitting them (Jose Benavidez and Andong Cabigas) of the crime charged." Finding the recommendation of the Solicitor General to be well-taken and without prejudice to an extended decision, the Court Resolved to REVERSE the judgment of the trial court and to ACQUIT the appellants who should immediately be released from confinement unless detained for other reasons." (Rollo, p. 209.)

The trial court found that appellants Benavidez and Cabigas had conspired with Rolly Camorongan (at large) in shooting at the wedding party. It said:

"The prosecution has amply demonstrated and proved that the accused herein were together at the yard of the residence of the bride, Edna Fernandez, that fateful night of January 3, 1981; that the accused were from Caturay Sur, Mangatarem, while the other accused who fired the gun was from Malewer, Bayambang, but nevertheless they were all together that night while the dance was in progress; that when Camorongan was firing from a prone position, the two accused herein, were also lying beside him in a prone position; that when Camorongan rose and left the yard, the two accused herein also rose and left with him. The presence of the accused in the company of Camorongan before, during and after the shooting which resulted in the dastardly and wanton destruction human lives and the wounding of others cannot but fail to show that the two accused herein were united with Camorongan in the criminal resolution to kill and that their presence with him throughout was to carry out that resolution and take part in its execution by whatever means necessary should the circumstance therefor arise. That no such circumstance arose would be immaterial, since their presence throughout the different stages of the incident afforded additional insurance for the success of the execution of their criminal resolution were in themselves, acts which directly tended to effect the same, end. The acts proven show that they were cooperating with Camorongan in the killing by their presence at the scene of the crime providing him protection and lending him moral support. Hence, they are directly responsible for the consequences and incidents of the same (U. S. vs. Ancheta, 1 Phil. 165; People vs. Cortez, 57 SCRA 308)." (Expediente, p. 145)

The Solicitor General states, and We agree, that conspiracy had not been established by the evidence. We quote the Manifestation:

"Contrary to the trial court's finding, the evidence of the prosecution has not sufficiently established conspiracy between appellants and the gunman.

Although there were many persons who attended the pre-wedding celebration where the crime was committed, the prosecution presented only one eye-witness to the killings, Modesto Alipio, a businessman who was only a sojourner in the place. The other prosecution witnesses did not testify on how the killings were committed.

Among the reasons the trial court held that appellants were co-conspirators of Camorongan is the alleged fact that they were with him before the shooting. The trial court's factual assumption could only have come from the testimony of Alipio, who, as aforesaid, was the sole eyewitness of the prosecution. But Alipio never testified that he saw appellants in the company of Camorongan before the shooting. In truth, the narration of Alipio started only from the time he heard the shots. Thus, there is no evidentiary basis for the factual finding of the trial court that appellants were with Camorongan before the shooting.

The finding of conspiracy is also based on the factual premise that appellants were in the company of Camorongan during the shooting. But likewise the testimony of Alipio does not establish this fact. All that Alipio stated was that when he took cover after hearing the shots appellants also took cover and lay face down on the ground (pp. 6-7, t. s.n., December 23, 1981). Alipio did not state that he heard appellants talk with Camorongan or see them help Camorongan in any way. He did not even hint or suggest that appellants were Camorongan's companions. Moreover, Alipio himself admitted that he could not see appellants when they ducked because there was a groove of banana plants blocking his view (p. 9, id.). For the trial court to conclude, therefore, that appellants were Camorongan's companions simply because they were near or beside him at the time of the shooting is unwarranted. The occasion was a pre-wedding celebration. Hordes of people - guests, relatives, friends, neighbors and even strangers - were milling and walking about. In that setting, it does not follow that if a person was beside another, they were companions. Much more does it not follow that because appellants were near Camorongan, they were in conspiracy with him to shoot the victims.

The next ground of the trial court that "when Camorongan rose and left the yard, the two accused herein also rose and left with him" has no evidentiary basis Alipio testified that it was Benavidez who first stood up, followed by Cabigas (p. 16, t. s.n., December 23, 1981).

As already said, appellants were convicted as co-conspirators of Camorongan because they were allegedly with him before, during and after the shooting. The trial court cavalierly deduced from these alleged circumstances a common criminal resolution of Camorongan and appellants to kill. But as shown above, the testimony of Alipio does not in any way support the finding of the trial court that appellants were companions of Camorongan before, during or after the shooting.

Apart from the fact that the finding of implied conspiracy is based on non-existent factual premises, the trial court also failed to consider certain circumstances which negate the presence of conspiracy. Thus, it did not appreciate the manifest lack of overt acts on the part of appellants in helping Camorongan. They did not have any gun; they did not shield Camorongan; they did not intervene in the killing in any way. While such passive attitude betrays total disinterest for civic duty, still, it is no proof that appellants were one with the killer in his mad desire to kill. Conspiracy, while inferable from the circumstances, must still be proved clearly and convincingly, as clearly and convincingly proved according to jurisprudence as the commission of the crime itself (*People vs. Cerdania*, 51 Phil. 393; *People vs. Dorico*, 54 S C.R.A. 172).

The finding of the lower court of implied conspiracy on the basis of erroneous premises is clearly not the kind of conclusion that should send appellants to jail for the rest of their lives.

The finding of the trial court that by their presence, appellants were providing the gunman moral support and protection, citing the cases of *U. S. vs. Ancheta*, 1 Phil. 165 and *People vs. Cortez*, 57 SCRA 308, is incorrect. The factual background of these cases are clearly dissimilar with the facts of the present case where, apart from the fact that appellants made no overt criminal acts, there is also no conclusive or, convincing evidence that they were Camorongan's companions. Somehow, in its strong desire to bring justice to the dead and to those who survived the ghastly deed, the trial court accorded significance to the prosecution evidence far beyond its actual worth." (Pp. 4-8)

WHEREFORE, the Resolution of November 28, 1983, above-quoted, is hereby reiterated and confirmed. Costs de oficio.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Aquino, J., took no part.

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