

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. STALIN GUEVARRA Y PAPASIN, ACCUSED-APPELLANT.*G.R. No. 65017. November 13, 1989*

Ponente: SARMIENTO, J.

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Stalin Guevarra was convicted of murder by the Court of First Instance (now Regional Trial Court) of Oriental Mindoro.[1] On appeal, the then Intermediate Appellate Court (now Court of Appeals) rendered judgment on August 17, 1983, increasing the indeterminate penalty from "TEN (10) YEARS and ONE (1) DAY, of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, of reclusion temporal, as maximum, to indemnify the heirs of the deceased in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs," imposed by the trial court, to reclusion perpetua, and affirmed in all other respects the appealed decision.[2] However, considering that this case involves a capital offense, the appellate court could not enter judgment. Conformably, therefore, to Daniel,[3] Ramos,[4] Galang,[5] and similar cases the entire records were certified and elevated to us for review.

The facts are as follows:

On November 29, 1980, Joselito de los Reyes, twenty-three years of age, assistant chief security guard at "Baklad" Naujan, Oriental Mindoro, together with Teofilo Martinez, a thirty-two year-old fisherman of Bancurro Naujan, attended a dance sponsored by the San Agustin Barangay High School. Teofilo saw Eduardo Romero (still at large) and Stalin Guevarra together at the dance hall. The affair was interrupted abruptly when someone stoned the school. At about midnight, Joselito and Teofilo went home to Bancurro. Together with them were Rosabel Magno and Babylyn Martinez, both students, seventeen and eighteen years of age, respectively. Along the way, Teofilo held a flashlight to illuminate the rocky path whereon Joselito, Rosabel, and Babylyn walked. Suddenly, they were waylaid by Stalin and Eduardo. Stalin, 27 years old, went immediately behind Joselito, and embraced him with both hands.[6] Joselito struggled from the clutches of Stalin but in vain; the firm embrace locked the whole body and both arms of Joselito. Facing the hapless Joselito, Eduardo got his knife from his pocket, opened it,[7] and thrust the shiny and pointed end of the weapon at the right side of Joselito's body just below his navel.[8] "May tama ako," were the words uttered by Joselito just before he fell to the ground.[9] Teofilo, Babylyn, and Rosabel froze where they stood. The abruptness of the incident petrified them. But after the stabbing the assailants fled in the direction of San Agustin and disappeared in the dark. The beam of light from the flashlight Teofilo carried, however, was sufficient to enable him and his two female companions to witness clearly the stabbing of Joselito and to recognize the appellant and Eduardo Romero, both known to them (Teofilo, Babylyn, and Rosabel), as the perpetrators of the crime.

Bathed in blood, the victim was pedalled in a tricycle to the Naujan Police Station. Unfortunately, Private First Class (Pfc) Henry Aceremo, the officer-in-charge, was not able to get an ante mortem statement because the victim could hardly talk.[10] He was hovering between life and death when he was rushed to the clinic of Dr. Nicolas B. Balbin.

As a result of the mortal wound inflicted by Eduardo Romero, Joselito died.

Dr. Nicolas B. Balbin, who conducted a post mortem examination, certified that the cause of death was hemorrhage within the abdominal cavity, and that the wound might have been caused by a sharp-bladed instrument, probably a "balisong." [11]

As a consequence, Pfc. Bautista and Aceremo accompanied by Rosabel and Babylyn, went to the house of the appellant where he was found drunk. As to Eduardo, he vanished from the barrio without a trace.

Subsequently, an information was filed stating:

That on or about the 29th day of November, 1980 at around 12:00 o'clock in the evening, in Barangay San Agustin II, Municipality of Naujan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with deliberate intent to kill, by means of treachery and evident premeditation, conspiring and confabulating with Eduardo Romero, who is still at large and therefore no preliminary investigation has yet been conducted against him, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a sharp-pointed instrument one Joselito de los Reyes, who was then unaware and helpless, inflicting upon the latter a fatal stab wound, as a result of which caused his sudden and unexpected death.

That in the commission of the offense, the qualifying circumstances of treachery and evident premeditation, in addition to the aggravating circumstances of superior strength and nocturnity, were present.

Contrary to Article 248 of the Revised Penal Code. [12]

After trial, the trial court found Stalin Guevarra guilty and imposed the penalty adverted to at the outset.

The appellant vehemently denies killing Joselito de los Reyes. He argues that if indeed he had embraced the victim from behind to facilitate the commission of the crime without posing any danger to his supposed co-conspirator or without fear of reprisal from the victim, then he could have fled the scene out of a sense of guilt, out of fear, or to avoid arrest and ultimate imprisonment. He did not leave his barrio, however, instead, a few hours after the alleged commission of the crime, he was found by the policemen boiling and eating bananas with the Hernandez girls. He quotes: "It has been truly said, since long ago that the wicked fleeth, even when no man pursueth, whereas the righteous are brave as the lion." [13]

We can not accept the appellant's submission. As a review of the records shows, after the stabbing incident, both the appellant and Eduardo Romero hastily fled into the night. This flight from the stabbing scene is a strong indication of a guilty mind. [14] In small localities where people generally know one another and are inclined, nay, expected, to show great concern for neighbors and even nodding acquaintances who fall victim to cruel and inhuman acts, it would have been natural for the appellant, if indeed he was innocent of the crime charged, to have gone to the succor of the fallen Joselito; he would have taken him to the nearest hospital. Or, at the very least, he could have reported the incident to the local police authorities. But he did neither of these Good Samaritan acts. By his account, he went home, obviously confident that he was not identified as it was nighttime. While it may be true that Romero escaped and remains at large, the appellant, appearing like a brave lion, stayed home. Yet it now appears that he did so not because he was innocent but because he believed he could not be identified. But he was wrong. He was clearly and positively identified by the prosecution eyewitnesses. Teofilo Martinez recognized Stalin as the person who embraced the victim to ensure the killing [15] of Joselito. Rosabel Magno, one of the student companions of Joselito, pointed an accusing finger at Stalin as one of the culprits. [16] Babylyn Martinez, likewise, identified the appellant as the one who immobilized the hands of the victim to render him vulnerable to the assault of Eduardo. [17]

In his attempt to absolve himself of guilt, the appellant contends that there is an absolute variance between the allegations in the information and the proofs presented by the prosecution witnesses. But Rosabel Magno's testimony on cross-examination showed her unwavering identification of Stalin Guevarra as a co-perpetrator of the killing of Joselito.

x x x x x x x x

Q. Now, you stated that a stabbing incident transpired while you and your companions were walking towards the direction of your respective houses. Please tell the Court what happened?

A. We were walking side by side, sir. While we were walking side by side on our way there was a sudden appearance of two persons one of whom was Stalin Guevarra, one of those persons who appeared went immediately behind Joselito de los Reyes and embraced the latter and immediately thereafter Eduardo Romero stabbed Jose de los Reyes.[18]

Q. Please tell the court?

A. I told the police investigators that Eduardo Romero stabbed Joselito while Stalin Guevarra embraced Joselito.[19]

x x x x x x x x

The defense posits that the prosecution witnesses uttered contradictory statements, in effect trying to raise doubts as to their veracity.

First, the appellant points out that Teofilo Martinez contradicted his own testimony:

x x x x x x x x

Q. When you arrived there at the dance at ten o'clock of November 29, 1980, in the evening, did you see Eduardo Romero and Stalin Guevarra at the dance?

A. Yes, sir.

Yet, 12 pages later, he did not see them:

Q. Let us go now to the incident in the dance floor. You stated that you did not see the accused Stalin Guevarra and Romero dancing. In what part of the dance floor or in the dance hall were they before the incident in question?

A. It was already on our way home when we saw them.

Q. So, while you were witnessing the dance you did not see them in the dance hall that evening?

A. That is right, sir.[20]

x x x x x x x x

The alleged contradictions are minor inconsistencies. Whether or not Teofilo saw Stalin at the dance is immaterial. That has nothing to do with the stabbing of the victim. At any rate, Teofilo's narration of the incident was replete with details, clear and straightforward, which is a convincing indication that he had actually witnessed the killing of Joselito. Hence, the trivial and unimportant details that the appellant emphasizes do not detract from the veracity of the testimony of the prosecution witnesses.

Secondly, Stalin contends that he could not have embraced Joselito to give Eduardo Romero the chance to stab the former as he was not at the scene of the crime in the evening of November 29, 1980 at about 12:00 o'clock

midnight.

This defense of alibi was not established at all.

Alibi is one of the weakest of all defenses. It can be easily concocted. To sustain the defense of alibi, the accused must not only prove satisfactorily that he was at some other place at the time the crime happened, but more so, that it was physically impossible for him to have been at the place where the crime was committed.[21]

The very evidence for the defense convinces us that it was physically possible for the appellant to be where the prosecution witnesses testified he was, at the scene of the crime, and then rush away to his house after the fatal incident. The place where the stabbing took place is only about seventy meters from the appellant's house.

x x x x x x x x

He (Stalin Guevarra) however, admitted that he and his companions were walking towards the direction of his house on the same evening of November 29, 1980, where they were about seventy (70) meters away from the place of the incident. The testimony of the accused was corroborated by defense witnesses Myra Hernandez and Julio Guevarra when they took the witness stand.[22]

x x x x x x x x

We have stated, time and again, the almost inflexible rule that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime.[23] In the instant case, prosecution witness Teofilo Martinez, who carried a flashlight, positively and clearly pinpointed the appellant as one of the assailants. Likewise, Babylyn Martinez and Rosabel Magno, the female companions of the deceased, sufficiently corroborated Teofilo Martinez's identification of Stalin.

Thirdly, the appellant disputes the finding that he had conspired and confabulated with Eduardo to attack, assault, and stab Joselito. Thus, he denies conspiracy. We do not agree.

Conspiracy, it is true, is "always predominantly 'mental in composition' because it consists primarily of a meeting of minds and an intent." [24] Hence, direct proof is not essential to establish it. By its nature, conspiracy is planned in utmost secrecy, it can rarely be proved by direct evidence.[25]

Although here there is no well founded evidence that the appellant and Romero had conferred and agreed to kill Joselito, their complicity can be justified by circumstantial evidence, that is, their community of purpose and their unity of design in the contemporaneous or simultaneous performance of the act of assaulting the deceased.[26]

The appellant cooperated with Romero in the commission of the offense by another act without which it would not have been accomplished. Therefore, the appellant is guilty as a principal by indispensable cooperation under Article 17, paragraph 3 of the Revised Penal Code. The requisites for criminal liability under this provision are: 1) participation in the criminal resolution, i.e., there is either anterior conspiracy or unity of criminal purpose and intention immediately before or simultaneously with the commission of the crime charged; and 2) cooperation in the commission of the offense by performing another act without which it would not have been accomplished.[27]

At the locus criminis was the appellant. His presence did not merely give aid or support, but emboldened the attacker as the victim was immobilized by the appellant.

There can be no question that the appellant's act in holding the victim from behind immediately before the latter was stabbed by Eduardo constitutes a positive and an overt act towards the realization of a common criminal intent, although the intent may be classified as instantaneous.[28] The act was impulsively done on the spur of the moment. It sprang from the turn of events, thereby uniting with the criminal design of the slayer immediately

before the commission of the offense. That is termed as implied conspiracy.[29] The appellant's voluntary and indispensable cooperation was a concurrence of the criminal act to be executed. Consequently, he is a co-conspirator by indispensable cooperation, although the common desire or purpose was never bottled up by a previous undertaking.

It can be safely inferred that the appellant was animated to cooperate in the taking of the life of the deceased. Had it not been of the appellant's embrace of the victim from behind, the latter could have fought back, parried the thrust, or could have even run away.

If, indeed, the appellant intended to save the deceased from the attack, he could have wrestled for the "balisong" -from Eduardo's hands and prevented the assault. Or, he could have placed himself between the assailant and the victim, instead of grabbing him from behind and holding both his arms. The appellant's actuations thus belie his claimed innocence.

True, the appellant did not inflict any wound or injury materially contributing to the death of the victim. But, as already stated, his act of immobilizing Joselito's arms establishes the indispensable cooperation required by law to make him equally guilty with Romero who alone stabbed and wounded the former.

Curiously, appellant Stalin Guevarra filed in the Court a motion to withdraw his appeal, dated July 22, 1985. He expressed that he was no longer interested in his appeal and manifested his willingness to serve his sentence and subsequently apply for executive clemency or parole. Considering that the appellant in his motion was unassisted by counsel, the Court denied the motion.

The Court of Appeals ruled that the crime committed by the appellant is "murder as the killing is qualified by evident premeditation." We do not agree. Not one of the three basic elements of evident premeditation was proven, to wit: First, the time when the offender determined to commit the crime itself; second, an act manifestly indicating that the culprit had tenaciously clung to his obsession to commit the crime; and third, a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequence of his act. On the other hand, what the evidence on record shows is that both the appellant and Romero assaulted the victim spontaneously and cooperated fully. This circumstance, we rule, precludes evident premeditation.

Be that as it may, the crime committed is still murder, the killing being qualified by treachery. The evidence shows beyond reasonable doubt that the attack by Romero, with the indispensable cooperation of the appellant, was so sudden and unexpected as to deprive the victim of any opportunity to defend himself or to inflict retaliation.

WHEREFORE, the appealed judgment is AFFIRMED WITH MODIFICATION as to the civil indemnity which is hereby increased to P30,000.00.

Costs against the appellant.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Judge Filemon H. Mendoza, presiding.

[2] First Criminal Cases Division; Gancayco, Emilio A., J., ponente, Borromeo, Isidro C. and Lombos-dela Fuente, Lorna S., JJ, concurring.

- [3] *People v. Daniel*, G.R. No. L-40330, November 20, 1978, 86 SCRA 511;
- [4] *People v. Ramos*, G.R. No. L-49818, February 10, 1979, 88 SCRA 486;
- [5] *People vs. Galang*, G.R. No. 70713, June 29, 1989.
- [6] T.S.N., March 31, 1981, 17.
- [7] T.S.N., May 19, 1981, 34.
- [8] *Id.*, March 31, 1981, 19.
- [9] *Id.*, June 3, 1981, 12.
- [10] *Id.*, July 8, 1981, 2-6.
- [11] *Id.*, 5-7.
- [12] *Id.*, 13.
- [13] Appellant's Brief, 4-5.
- [14] *People v. Bocasas*, G.R. No. 61134, July 15, 1985, 137 SCRA 531; *People v. Hecto*, G.R. No. 52787, February 28, 1985, 135 SCRA 113.
- [15] T.S.N., March 31, 1981, 16-17.
- [16] T.S.N., May 19, 1981, 8.
- [17] T.S.N., June 3, 1981, 10.
- [18] T.S.N., May 19, 1981, 13.
- [19] T.S.N., *Id.*, 20.
- [20] Appellant's Brief, 9.
- [21] *People v. Atencio*, G.R. Nos. 67721-22, December 10, 1987, 156 SCRA 242; *People v. Oronoza*, G.R. No. 56283, June 30, 1987, 151 SCRA 495; *People v. Ramilo*, G.R. No. 69575, January 7, 1987, 147 SCRA 102; *People v. Magdueño*, G.R. No. 68699, September 22, 1986, 144 SCRA 210; *People v. Catipon*, G.R. Nos. L-49264-66, October 9, 1985, 139 SCRA 192.
- [22] Decision, 4.
- [23] *People v. Cirilio, Jr.*, G.R. No. 53542, December 14, 1987, 156 SCRA 397; *People v. Andres*, G.R. No. 75355, October 29, 1987, 155 SCRA 290; *People v. Masangkay*, G.R. No. 73461, October 27, 1987, 155 SCRA 113; *People v. Ocaya*, G.R. No. 75074, September 15, 1986, 144 SCRA 165;
- [24] *Krulewitch v. U.S.A.*, 336 U.S. 440, 93 L. Ed. 790, 796 (1949), Jackson, J., concurring.
- [25] *Orodio v. CA*, G.R. No. 57519, September 13, 1988, 165 SCRA 316.
- [26] *People v. Avelino Atencio*, *supra*, 249.
- [27] L.B. Reyes, *Criminal Law*, 1977 ed., 508.
- [28] *Dacanay vs. People*, G.R. No. L-33240, November 21-, 1979, 94 SCRA 383.
- [29] *Orodio vs. CA*, *supra*, 323.

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