

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO CRUZ, ALIAS “TIKBOY” AND RADING SASON (AT LARGE),
ACCUSED, ROLANDO CRUZ, ALIAS “TIKBOY”, ACCUSED-APPELLANT.**

G.R. No. 74048. November 14, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Accused-appellant Rolando Cruz, alias “Tikboy”, appeals from the judgment of the Regional Trial Court of Malabon, Metro Manila, Branch 169, finding him guilty of murder and sentencing him to reclusion perpetua and to indemnify the heirs of the offended party in the amount of P30,000.00.

The factual background is as follows:

In the afternoon of November 25, 1983, Jesus Baang, married, 36 years old, fisherman, succumbed to three gunshot wounds on the head, chest and back. According to several eyewitnesses who were at the scene of the crime, his alleged assailant was Rading (Radito) Sason, but Rolando Cruz was implicated as a co-conspirator and principal by inducement.

Accordingly, an information was filed by the Assistant Fiscal of Malabon on December 2, 1983, against Rolando Cruz, alias “Tikboy” and Rading Sason, who is still at large, the pertinent portion of which reads as follows:

“That on or about the 25th day of November 1983, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another while armed with a gun, with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and shot JESUS BAANG y VALDEZ, hitting the latter on the different vital parts of his body, thereby inflicting upon him gunshot wounds which directly caused his death.”[1]

No bail was recommended. Nonetheless, accused Rolando Cruz filed a motion for bail, contending that the evidence against him was not strong. A hearing was conducted on said motion, and after the presentation of six (6) prosecution witnesses, bail was granted for his provisional liberty.

Thereafter, accused Rolando Cruz was arraigned and he pleaded “not guilty” to the crime charged. Trial followed. Based on the testimony of the witnesses and the evidence adduced, the Malabon trial court, thru Judge Eufrocinio S. dela Merced, rendered a decision on January 24, 1986. The dispositive part reads as follows:

“WHEREFORE, the Court finds accused Rolando Cruz guilty beyond reasonable doubt of the crime of Murder as co-principal in the commission of the said offense and hereby sentences to suffer penalty of Reclusion Perpetua with all the accessory penalties provided for by law and to pay the costs.

“The accused is hereby ordered to indemnify the offended party in the sum of P30,000.00.”[2]

Hence the present appeal.

Accused-appellant Rolando Cruz comes before this Court on a lone assignment of error, to wit, that the trial court erred in finding him guilty as a conspirator in the crime of murder.

As earlier stated, there were several eyewitnesses to the shooting of Jesus Baang. Their testimonies invariably pointed to Rading Sason as the lone gunwielder. One witness, Danilo Soriano, 21 years old, laborer, graphically described the incident. He recounted that at around four o'clock in the afternoon of November 25, 1983, he was at the store of Lola Ida in Dampalit, Malabon, Metro Manila. He saw the victim Jesus Baang walking along M. Sioson Street, followed by Rading Sason. Suddenly, Sason shot Baang from behind. After the first gunshot, Baang turned around and faced his assailant who then shot him for the second time. Baang tried to escape but he fell on the ground. It was at this point when the gunman delivered the coup de grace and fatally shot Baang on the head. Sason then walked away from the scene.[3]

Soriano stated that he did not see the accused Rolando Cruz during the actual shooting. It was afterwards, during the ensuing commotion, that he noticed Cruz standing at the alley leading to the street, watching the crowd milling around the dead body of Baang.[4]

Another eyewitness, Renato Ramirez, 23 years old, testified that at the time of the incident, he was standing at the corner of Don Basilio Boulevard and M. Sioson St. He was on his way home. He saw Sason walking a few paces behind Baang. Then two shots rang out. He saw Baang fall to the ground. Sason approached Baang and shot him again. Then Sason left.[5]

The shooting unnerved Ramirez who was only about one and one-half electric posts away. When he met the gunman, he asked: "Pare, bakit?" To which, Sason replied: "Pare, wala kang nakita." [6]

Ramirez corroborated the testimony of Soriano to the effect that the accused Rolando Cruz was nowhere near the scene during the actual attack.[7]

The witnesses' narrations closely coincided with the findings of Dr. Ricardo Ibarrola, the NBI medico-legal officer who autopsied the victim's cadaver at nine o'clock in the evening of November 25, 1983. His report disclosed that the deceased Baang was shot at the back, chest and head with a .45 caliber pistol. He sustained three (3) wounds, two of which were fatal.[8]

The motive for the killing was apparently caused by the victim himself. It appears that one day before the wedding of Laura, a sister of Rading Sason, a former girlfriend (Tiray) of the prospective groom arrived from Palawan. Baang allowed her to sleep in his house and then brought her the following morning to the church. The woman created a scene and as a result, the wedding was celebrated at the side altar, instead of the main altar. The incident caused embarrassment and humiliation to the bride's family, particularly Rading Sason.[9]

It was through the eyewitness account of Ismael "Doro" Rivera that the prosecution sought to establish the existence of a conspiracy between Sason, the triggerman, and accused-appellant Rolando Cruz to liquidate Baang.

Rivera, a 22-year old laborer and a cousin of the two accused, testified that at around two o'clock in the afternoon of November 25, 1983, he was in the house of Aling Jusing, drinking with Rading Sason, Danilo Soriano and Renato Ramirez. After a while, Soriano left, followed by Ramirez who said that he was going to have a haircut. Then Sason followed suit and headed in the direction of the church.[10]

Rivera saw Rolando Cruz come out of his house and talked with Sason. Rivera recalled:

"Q: Under what circumstances Mr. Witness have you seen this Rolando Cruz at the house of Aling Jusing before this Rading Sason left?

"A: He just came out of his house sir.

“Q: Who came out of his house?

“A: Rolando Cruz sir.

“Q: How far is this house of Aling Jusing to the house of Rolando Cruz?

“A: A little bit far sir.

“Q: On that occasion that Rolando Cruz was seen by you before Rading Sason left, was there any conversation that had took (sic) place between Rading Sason and Rolando Cruz?

“A: There was sir.

“Q: What was that conversation, do you know?

“A: Rolando Cruz told Rading Sason “andiyan na”.

“Q: And after that utterances or remarks made by Rolando Cruz, what did Rading Sason do if he did anything?

“A: The 2 of them left sir.

“Q: After the 2 of them left, what happened?

“A: I heard shots sir.”[11]

The above declarations were relied upon by the trial court to conclude that accused-appellant Rolando Cruz was a principal party in the killing of Baang. The court said:

“The actuations of the latter (Rolando Cruz) in uttering the words ‘Andiyan na’ to Rading Sason of the presence of Jesus Baang could not be given any meaning except that he is a party in the commission of the crime in the killing of Jesus Baang. He (Rolando Cruz) certainly conspired and helped Rading Sason in the consummation of the crime charged. There is a moral certainty that conspiracy existed and therefore Rolando Cruz is as guilty as the principal by induction in the commission of the crime of murder.”[12]

Rolando Cruz, on his part, maintains his innocence. He claims that at the time Jesus Baang was gunned down by Rading Sason, he was at the back of his mother’s house near the fishpond, which is three (3) electric posts away from the scene of the crime. He was spreading and laying the fishnet. Then Ismael Rivera called out to him and told him of the violent incident at the “labasan”. He quickly went outside and saw many people looking at the sprawled body of the victim. On that same day, November 25, 1983, Cruz was arrested by the police and brought to the police headquarters for investigation.[13]

The defense has assailed the trial court for giving undue weight to the words “nandiyan na” reportedly uttered by Cruz and inferring therefrom a conspiracy to kill Baang. The defense points out that Rivera, the same eyewitness who incriminated Cruz, also testified in court that there was no proof that a plan to liquidate Baang was ever made between Sason and the appellant. His testimony reads:

“Q: Mr. Rivera, do you know that Rading Sason and Rolando Cruz were charged before this Court for Murder of Jesus Baang?

“A: Yes sir.

“Q: And what you saw and what you narrated before the Court, could you tell us if you ever heard any plan between Rolando Cruz and Rading Sason to kill Jesus Baang?

“A: I just heard Rolando Cruz told Rading Sason “andiyan na”.

“Q: So you can confirm before this Court that you did not hear Rading Sason and Rolando Cruz planning to

kill Jesus Baang?

“A: No sir.”[14]

Conspiracy, like any other ingredient of an offense, must be proved as sufficiently as the crime itself through clear and convincing evidence, not by mere conjectures. It is also a well-entrenched rule that proof beyond reasonable doubt is required to establish a finding of criminal conspiracy.[15] In the case at bar, while the prosecution’s evidence against Sason appears overwhelming, its evidence linking accused-appellant Cruz to the felonious acts of Sason is weak and inconclusive and utterly insufficient to establish Cruz’s guilt.

As observed by appellant’s counsel, the phrase “andiyan na” reportedly uttered by appellant Cruz minutes before the actual shooting may lend some semblance of conspiracy. But semblance is still a semblance and it cannot take the place of facts. “The phrase ‘andiyan na’ has equivocal meanings. When a person recognizes someone who passes by, it is not uncommon to hear from the former, ‘andiyan na si mayabang,’ ‘andiyan na yung kaibigan mo,’ or other derivative forms of the expression ‘andiyan na,’ not to mention the unadorned ‘andiyan na’ itself. These phrases have no conclusive conspiratorial meaning.”[16]

In other words, the supposedly damning utterances are susceptible of varied interpretations. In all conscience, given the particular factual milieu as gleaned from the records, we cannot abide by the trial court’s rather sweeping conclusion that “andiyan na” were intended by the appellant to goad the gunwielder into killing Baang, thereby raising appellant’s culpability to that of a principal by inducement.

Inducement exists if the command or advice is of such a nature that, without its concurrence, the crime would not have materialized.[17] It taxes the imagination how the controversial phrase imputed to the appellant could become the moving cause without which Sason would not have shot the victim in cold blood. Murder is a serious charge. The slightest doubt must be resolved in favor of innocence.

The trial court attempted to bolster its conviction appellant by citing the ill-feelings reportedly existing between the appellant and the victim as a result of a scandal during a church wedding. While it is true that the bride was appellant’s niece, it is equally true that the victim Baang was married to Leonila Gullen, a first-cousin of the appellant. To attribute anger and humiliation to appellant -- enough for him to want to kill a close relation simply because of some wedding embarrassment which did not even affect him personally -- is to indulge once again in another conjecture or supposition which cannot serve as a basis for conviction. The court a quo also took into account the various threats made on the life of Baang which appellant purportedly made. Considering that said threats were made while appellant was drunk or in a state of stupor, their gravity or seriousness has been greatly impaired.[18]

Finally, it may be asked: Could appellant be held liable as an accomplice since he cooperated in the execution of the offense by signalling the arrival of the deceased?[19]

It must be explained that the cooperation which the law punishes is the assistance which is knowingly or intentionally given and which is not possible without previous knowledge of the criminal purpose.[20] In the case at bar, there is absence of conclusive proof indicating a prior plan or agreement between appellant Cruz and Sason to kill the victim. That essential element cannot be automatically deduced from the fact that the two accused had harbored a grudge against Baang.

All told, the criminal complicity of appellant Cruz, either as a principal by inducement or as an accomplice, in the killing of Baang has not been established beyond reasonable doubt. It follows that he must be acquitted.

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. Accused-appellant Rolando Cruz alias “Tikboy” is hereby ACQUITTED on reasonable doubt.

So ordered.

Gutierrez, Jr., and Bidin, JJ., concur.

Feliciano, J., on leave.

[1] Original Record, p. 1.

[2] Original Record, p. 178.

[3] TSN, February 17, 1984, pp. 106-112.

[4] TSN, February 17, 1984, pp. 113, 116-117.

[5] TSN, February 24, 1984, pp. 40-42.

[6] TSN, February 24, 1984, pp. 42 and 45.

[7] TSN, February 24, 1984, p. 46.

[8] TSN, February 15, 1984, p. 101.

[9] TSN, February 24, 1984, pp. 26-28; March 9, 1984, p. 50.

[10] TSN, February 24, 1984, pp. 22-23.

[11] TSN, February 24, 1984, pp. 23-24.

[12] Original Record, p. 178.

[13] TSN, September 18, 1985, pp. 147-149, 151; October 30, 1985, pp. 174-175.

[14] TSN, February 24, 1984, p. 31.

[15] *Castaneda vs. Sandiganbayan*, G.R. No. 61243, March 16, 1989, 171 SCRA 263, citing *People vs. Elizaga*, G.R. No. 78794, November 21, 1988, 167 SCRA 516.

[16] Appellant's Reply Brief, pp. 2 and 3.

[17] *People v. Adil Hernandez*, 29 Phil. 109.

[18] TSN, February 17, 1984, pp. 121-122; March 9, 1984, p. 54.

[19] See Article 17, Revised Penal Code.

[20] *People vs. Bello*, 11 Phil. 526; *People vs. Ortiz and Zausa*, 55 Phil. 993.

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