

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR ROCA Y MURREY & HERMAN ROCA Y
MANGALDAN (AT LARGE), ACCUSED-APPELLANT.**

G.R. No. 77779. June 27, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

In the afternoon of April 25, 1981, a volleyball competition was held at the basketball court of Barangay Libis along E. Rodriguez Avenue Extension, Quezon City. Dominador Roca, who was the chief executive officer of the Tanod Brigade of the barangay was there at the event together with his wife.

Their daughter was a member of one of the competing teams. Suddenly, Dominador slapped the coach of the Gallant Team, and this prompted Oscar Macalino, a resident of the barangay to ask him why he did so. Dominador pushed Oscar who almost fell off the elevated portion on which he was sitting and threatened to kill him. Oscar noticed that Dominador smelled of liquor. Oscar then went to the store owned by his aunt Teresita Macalino who told him to go home immediately.

Dominador went towards the house of Oscar in front of the house of the Macalinos. A heated altercation ensued between Dominador and Oscar while the latter was inside their house. Florencio Macalino, the brother of Oscar, who was then inside the house, came out and asked Dominador the reason for the altercation. An exchange of words transpired between Florencio and Dominador. Dominador then drew out his bladed weapon. Florencio and Dominador faced each other in a fighting stance when Herman Roca, a son of Dominador, appeared with a bayonet in his hand. Herman stabbed Florencio from behind. When Florencio turned around Herman took hold of Florencio and stabbed him several times anew. Florencio suffered six (6) stab wounds and two (2) incised wounds in the arm. During the incident, Dominador stood by acting as alalay (support) in order to prevent anybody from intervening. Heli Teves, who was a witness to the incident shouted "tama na iyan" (that is enough), so they stopped. Florencio ran a short distance of about ten yards and then fell. He was taken to the Quirino Memorial Hospital. He died as a result of the wounds inflicted on him.

When Pat. Teodoro A. Ybuan went to the hospital to interrogate Florencio, he was already declared dead by the medico-legal officer of the hospital. He then proceeded to the scene of the crime where he conducted an ocular inspection and interrogated the witnesses. When he returned to police headquarters, he found that the appellant had already voluntarily surrendered.

Thus, Dominador and Herman were charged of the crime of murder in an information that was filed in the Court of First Instance (CFI) of Quezon City. Herman remained at large so it was only Dominador who was arraigned and who entered a plea of not guilty. After trial on the merits, the Regional Trial Court of Quezon City (which replaced the CFI) rendered a decision on February 17, 1987 finding him guilty of the crime of murder and imposing on him the penalty of reclusion perpetua and ordering him to pay the heirs of Florencio Macalino the sum of P30,000.00 as damages.

Not satisfied therewith, the appellant interposed this appeal alleging that the trial court committed the following errors:

"I

THE TRIAL COURT ERRED IN RULING THAT THE TESTIMONY OF HELI TEVES INCRIMINATES THE ACCUSED IN THE STABBING OF THE VICTIM FLORENCIO MACALINO. ON THE CONTRARY, THE TESTIMONY EXCULPATES THE ACCUSED.

II.

THE TRIAL COURT ERRED IN RULING THAT THE INVESTIGATION CONDUCTED BY PATROLMAN TEODORO YBUAN REVEALED THAT TT WAS DOMINADOR AND HERMAN WHO JOINED UP TO KILL FLORENCIO.'

III.

THE TRIAL COURT ERRED IN RULING THAT THE POST-INVESTIGATION CONDUCTED BY PATROLMAN TEODORO YBUAN 'WAS STILL PART OF THE RES GESTAE:

IV.

THE TRIAL COURT ERRED IN RULING THAT 'BY HIS OWN TESTIMONY, DOMINADOR APPEARS TO HAVE BEEN A VERY AGITATED AND INSULTED PERSON THAT EVENING OF APRIL 25, 1981 SO MUCH SO THAT HE FOLLOWED OSCAR MACALINO HOME AND DEMANDED THAT HE TALK TO HIM OR HIS FATHER."

V.

THE TRIAL COURT ERRED IN RULING THAT THE PRESENCE OF CONRADO ORDONO AT THE SCENE OF THE INCIDENT IS VERY DOUBTFUL.'

VI.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF LADISLAO PASCO AND IN CONCLUDING THAT ACCUSED DOMINADOR ROCA AND LADISLAO PASCO KEPT MATTERS SO SECRET AND 'SURELY MUST HAVE SOMETHING TO HIDE.'

VII.

THE TRIAL COURT ERRED IN RULING THAT 'PRIOR TO THE CONTEMPLATED OFFENSIVE, THERE WAS PRE-POSITIONING, IN THE SENSE THAT DOMINADOR INSTRUCTED HIS COHORT TO TAKE HIS PLACE AT SOME CONVENIENT, UNNOTICED POINT IN THE VICINITY AND THAT 'DOMINADOR JOCKEYED FOR POSITION IN SUCH A WAY THAT THE TARGET'S BACK WILL BE TURNED ON HIS CO-CONSPIRATOR WHO HAS A PROVEN RECORD OF KILLING'

VIII.

THE TRIAL COURT ERRED IN RULING THAT 'THE MANNER AND EXECUTION OF THE ATTACK WAS THUS SO EXPERTLY AND SUDDENLY DONE WITH ABUSE OF SUPERIOR STRENGTH AS TO RENDER THE VICTIM COMPLETELY DEFENSELESS AND SURPRISED.'

IX.

THE TRIAL COURT ERRED IN RULING THAT 'DOMINADOR IS A RETIRED SERGEANT IN THE AFP. HE IS AN INSTRUCTOR IN THE MARTIAL ARTS. THE MANNER AND EXECUTION OF THE ATTACK ON FLORENCIO DISCLOSE QUITE EXPLICITLY THE HAND OF A PERSON WELL-VERSED IN MILITARY TACTICS AND THE MARTIAL ARTS. INDEED, THIS IS WHAT LENDS FURTHER CREDENCE TO THE PROSECUTION'S EYEWITNESSES. THEY ARE ORDINARY LAYMEN AND COULD NOT HAVE CONCOCTED IN THEIR MINDS, ESPECIALLY HELI TEVES, SUCH A FINE-TUNED AND EXPERTLY EXECUTED TACTIC

X.

THE TRIAL COURT ERRED IN RULING THAT THE ACCUSED DOMINADOR ROCA AND HIS SON HERMAN ARE CO-CONSPIRATORS IN THE STABBING AND KILLING OF THE VICTIM.

XI.

THE TRIAL COURT ERRED IN NOT ADHERING TO THE TIME-HONORED PRINCIPLE AND CONSTITUTIONAL DOCTRINE THAT THE ACCUSED HAS IN HIS FAVOR THE PRESUMPTION OF INNOCENCE AND THAT IT IS THE BURDEN OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

XII.

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED OF THE CRIME CHARGED IN THE INFORMATION, THERE BEING ABSOLUTELY NO EVIDENCE PRESENTED TO LINK HIM TO THE STABBING OF FLORENCIO MACALINO."

The appeal is devoid of merit. Under the first assigned error, the appellant claims that prosecution witness Heli Teves exculpated the appellant rather than incriminated him in the commission of the offense; that the testimony of Teves that he (appellant) arrived at the scene of the crime ahead of his son Herman and that Herman stabbed Florencio Macalino while he (appellant) stood by as an alalay shows lack of complicity of the appellant. The sworn statement of Teves given during the investigation to the same effect is also cited by the appellant to support this argument.

Under the second, seventh, eighth, ninth and tenth assigned errors, appellant also contends that conspiracy had not been established.

On the contrary, the sudden appearance of Herman at the scene of the crime armed with a bayonet following the appellant who arrived earlier, and the fact that Herman stabbed Florencio from behind and continued to stab Florencio as appellant stood by as a support or alalay to see to it that no one would come to the aid of the victim are circumstances unmistakably pointing to the existence of conspiracy.

The concert of action at the moment of consummating the crime and the form and manner in which assistance was rendered to the person inflicting the fatal wound establish their common criminal design.[1] Conspiracy can be deduced from the mode and manner in which the offense was perpetrated.[2] Direct proof is not essential. It may be shown by acts and circumstances from which a logical inference of the existence of common design can be made.[3] Tacit and spontaneous coordination of the attack by two accused shows existence of [4]Inasmuch as conspiracy had been duly established, although it was only Herman who actually stabbed the victim, there is no way of exculpating the appellant because the act of one is the act of all.[5] The testimony of Teves that appellant did not actually inflict any injury on the victim is of no consequence. If he was present and gave moral support to the assailant, he is equally liable.[6]

Appellant contends that the investigation made by Patrolman Ybuan does not support the findings made by the trial court that appellant and Herman joined together to kill Florencio. Appellant alleges that he was even surprised by the sudden appearance of his son Herman who stabbed Florencio to death.

The findings of the court a quo are based not merely on the police report of Pat. Ybuan but from what he gathered in the interrogation of witnesses at the scene of the crime showing that appellant and Herman joined together to kill Florencio. What the bystanders saw was a concerted action between father and son in the commission of the offense, showing the existence of conspiracy.

Under the third assigned error, the appellant assails the observation of the trial court that the post-investigation conducted by Pat. Ybuan was still part of the *res gestae*. The Court finds merit in the contention of appellant on this aspect.

Section 36, Rule 130 of the Revised Rules of Court provides as follows:.

"Sec. 36. Part of the *res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it

a legal significance, may be received as a part of the *res gestae*."

Although the post-investigation was made within hours of the incident that same evening when the neighborhood was still in the state of excitement, the conclusion of the trial court that said investigation was still part of the *res gestae* is untenable. Under the said principle, evidence which ordinarily would be hearsay will be admissible if (a) the statement is made under the influence of a startling occurrence; (b) the statements are made before the author of the statements had time to contrive or devise, and (c) the statements concern the occurrence in question and its immediately attending circumstances.[7]

Although the statements of the witnesses were made during the investigation on the very same evening of the killing considering the lapse of time from the time of the killing to the time the police conducted an investigation it cannot be said the declarants did not have the opportunity to concoct or contrive their versions. Thus their statements are not admissible as part of the *res gestae*.[8]

The appellant then alleges under the fourth assigned error that the trial court erred in finding that he "appears to have been very agitated and insulted" that evening so that he followed Oscar Macalino and demanded that he (the appellant) talk to Oscar's father. Appellant argues that if he was agitated, he would not have gone to the house of the Macalinos as he could have confronted Oscar right in the basketball court where it would have been safer for him to accomplish his alleged plan to harm Oscar.

However, the records show that appellant actually followed Oscar Macalino to his house and challenged the latter right in front of their house. During the heated altercation between Florencio and appellant, the latter suddenly pulled out a bladed weapon.

Under the fifth assigned error, the appellant claims that the trial court erred in holding that the presence of Conrado Ordonio at the scene of the incident is doubtful. He asserts that the trial court did not give credence to the testimony of Ordonio just because he was a *tanod* of Barangay Libis, and the appellant was his chief.

The reason of the trial court in discrediting Ordonio's testimony is reproduced with approval:

"The presence of Conrado Ordonio at the scene of the incident is very doubtful. If, as he and Dominador testified, Florencio went around Dominador evidently to attack the latter, it is very strange that there is no account of whatever Conrado did to defend not only Dominador but also himself since he went to the residence of the Macalinos with his Chief and by that time Conrado was already well-known in Barangay Libis as a *tanod*. Necessarily, Conrado is expected to defend his chief and himself having gone there together, as they declared.

"Nobody appears to have seen Conrado Ordonio there at the time. Even Barangay Captain Ladislao Pasco does not appear to have talked to Ordonio who by his own testimony stayed merely at the porch of the house of Ladislao Pasco. After Dominador returned to the captain's house to report that he was being implicated, said barangay captain simply appears to have paid no attention at all to Ordonio. Indeed, while Ladislao surrendered Dominador to the police later on with the help of a police officer (Binamira), it does not appear that anyone of the three thought of the importance of the statement of Ordonio to the police which would tend to exculpate Dominador and his son.

"If Florencio really went behind Dominador, considering that the three brothers swarmed on Dominador, Ordonio could not have failed to follow the whereabouts of Florencio who would have posed the greatest danger to his Chief and possibly himself, unlike the other two (Oscar and Vito) who were facing Dominador, who, by his own narration, is an expert in judo, karate, and *amis* which skills must have been known to Conrado who has been his *tanod* since 1977. And yet Conrado, like the accused, not only did nothing to thwart that greater danger from behind but even saw nothing as to what Florencio tried to do and what happened to Florencio and who stabbed him." (Decision, p. 6, *Italics supplied*.)

In the sixth assigned error, appellant observes that the trial court should have given credence to the testimony of Ladislao Pasco, instead of concluding that Pasco and" appellant talked about the stabbing incident by themselves, leaving out Ordono.

The trial court found that the testimony of Pasco tended to discredit the version of appellant. It appears that Ordono was left out from the conversation between Pasco and appellant as Ordono was not present during the incident. Indeed it is difficult to believe the testimony of appellant and Ordono that they did not know who stabbed Florencio. The latter was no more than 2 meters away from appellant when he was attacked and there was a struggle that took some time resulting in 6 stab wounds and 2 incised wounds.

In the light of the foregoing, the eleventh and twelfth assigned errors are without merit.

The Court agrees with the findings of the lower court that the offense committed is murder as the commission of the offense was attended by the qualifying circumstance of abuse of superior strength.[9] No doubt appellant and his son, both armed, took advantage of their superior strength in the killing of the victim.[10]

However, appellant should be credited the mitigating circumstance of voluntary surrender. Applying the Indeterminate Sentence Law, the appellant should be and is hereby imposed the indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.

With the above modification as to the penalty, the judgment appealed from is **AFFIRMED** in all other respects.

SO ORDERED.

Narvasa (Chairman), Cruz, Grino-Aquino, and Medialdea, JJ., concur.

[1] People v. Yu, 80 SCRA 382.

[2] People v. Manalangit, 73 SCRA 49.

[3] People v. Tiongson, 47 SCRA 243; People v. Camiling, 74 SCRA 285; People vs. Alonzo, 73 SCRA 484; People v. Roncal, 79 SCRA 509; People v. Yu, 80 SCRA 382; People v. Page, 11 SCRA 172.

[4] People v. Aleta, 72 SCRA 542.

[5] People v. Pareja, 30 SCRA 693.

[6] People v. Zapatero, 58 SCRA 450.

[7] People v. Ricaplaza, 23 SCRA 384.

[8] People v. Bcrame, 72 SCRA 184.

[9] Article 248, par. (1). Revised Penal Code.

[10] U.S., v. Tanctoc, 40 Phil. 954; People v. Caroz, et al, 68 Phil. 521.

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