

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EDGARDO SALVADOR Y KIAMCO AND RICARDO MAÑOSCA Y TOLUWA, RESPONDENTS.

G.R. No. 77964. July 26, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

A reversal of the decision^[1] dated February 16, 1987 of the Regional Trial Court of Manila, Branch XLIII, finding the accused-appellant and his co-accused Ricardo Mañosca, guilty beyond reasonable doubt of the special complex crime of robbery with homicide and physical injuries, with its accessory penalties, is sought by the accused-appellant in this appeal before us. The decretal portion of the decision reads:

WHEREFORE, the Court finds the accused Edgardo Salvador y Kiamco and Ricardo Manosca y Toluwa, both guilty beyond reasonable doubt of the special complex crime of robbery with homicide and physical injuries, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, and considering the aggravating circumstance of nighttime which facilitated the commission of the offense, hereby sentences each of them to reclusion perpetua, in lieu of the death penalty by virtue of the 1987 Constitution, with its accessory penalties, to indemnify jointly and severally the heirs of the deceased Susan Esmao y Escuaryasa in the amount of P5,200.00 as actual damages, for funeral and burial expenses, and the further sum of P30,000.00 for death indemnity and P20,000.00 as moral damages, and to also jointly and severally indemnify the victim Alfredo C. Mabuhay, Jr. in the amount of P730.00 as actual damages for the cash money, wallet and wristwatch stolen from him, and P10,000.00 as moral damages for the physical injuries inflicted upon him, and cost of suit.

SO ORDERED.

The antecedent facts culled from the records are summarized by the Solicitor General as follows:^[2]

At about 8:30 o'clock in the evening of August 20 1985, Alfredo C. Mabuhay, 24 years of age, single, and his girlfriend, Susan Esmao, decided to go the Cultural Center Compound within the boundary of the City of Manila as Susan had something to tell Alfredo about their relationship with one another. Weary from the day's work, the couple proceeded to a grassy portion on the side of the Cultural Center building. Alfredo laid (sic) down on the grass, his head resting on the palm of his left hand and his left elbow touching the ground. Susan sat slightly above Alfredo's head. (tsn., pp. 5-10, June 6, 1986.) As they were conversing, two male persons approached them. One of them — later identified as accused-appellant Edgardo Salvador — held Susan and pushed her to the ground in a lying position, while the other — later identified as accused Ricardo Mañosca — did the same to Alfredo. Mañosca then announced that it was a hold-up as both men poked knives at their victims. Alfredo readily gave his wallet to Mañosca. Susan, who was being held by Salvador, offered some resistance out of fear. When Alfredo told her to obey him (Salvador), Mañosca stabbed Alfredo in the nose and told him in the vernacular: "You are meddling". (tsn., pp. 11-14, June 6, 1986). As Alfredo attempted to rise, Mañosca stabbed him again hitting him near the left eye. Whereupon, Mañosca told Salvador to pull Alfredo away from Susan. Salvador did as he was told and the two men exchanged positions — Salvador holding Alfredo as he pulled him away from Susan, while Mañosca held Susan. Still lying on his back, Alfredo had

difficulty in opening his eyes but heard Susan weeping aloud. So, Alfredo told Salvador, who was holding him, to mind his girlfriend (Susan) as his companion (Mañosca) appeared determined to kill her. Alfredo then gave his wristwatch to Salvador. (tsn., pp. 14-17, June 6, 1986). Whereupon, Mañosca stabbed Susan several times amidst her screams as Salvador held Alfredo to prevent the latter from lending aid to Susan. (tsn., pp. 26-27, Nov. 4, 1986). Alfredo heard Salvador shouting to Mañosca and saying, "Richard, huwag" (Richard, do not kill her). Mañosca continued stabbing Susan until she died. Mañosca then told Salvador: "Pare, tapusin mo na yan. Tapos na ako rito". (Finish him up already. I am already finished here). At this juncture, Salvador whispered to Alfredo to play dead as he (Salvador) "would pretend to stab him. Thus, Salvador, using the back handle of his knife, pretended to stab Alfredo at the back. Afterwards, the two malefactors ran away, (tsn., pp. 18-21, June 6, 1986).

Some construction workers in the vicinity rescued Alfredo who told them that he and his girlfriend were attacked and robbed. The workers summoned the police who arrived shortly and brought Alfredo to the Ospital ng Maynila for treatment of his wounds. The peace officers told Alfredo that his girlfriend was already dead. (tsn., pp. 22-24, June 6, 1986).

At about 1:00 o'clock in the morning of the following day, Alfredo was brought to the Western Police District for investigation. Alfredo issued a written statement to the police authorities. (tsn., pp. 25-27, June 6, 1986).

Meanwhile, at around past 9:00 o'clock on the evening of the fatal occurrence, Policemen Renato Bañes and Johnny Young of the Homicide Section Investigation Division, Western Police District, were sent to the crime scene for an on-the-spot investigation. They saw sprawled on the cement portion of the ground the bloody and lifeless body of Susan Esmao. While scouting the area for possible suspects, they were informed by Capt. Jose Garcia, the detachment commander of the CCP Complex, of the arrest of two men (the two accused herein) as they were in the act of robbing another couple. (tsn., pp. 3-8, Oct. 16, 1986).

On the other hand, the trial court summarized the testimony of the accused-appellant in this wise:[3]

XXX

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On the other hand, the accused Edgardo Salvador y Kiamco testified that at about 9:00 o'clock in the evening of August 20, 1985, he was with co-accused Ricardo Mañosca at the CCP Complex strolling. He has known Ricardo Mañosca since he was seven (7) years old but they became close only in 1985. While strolling at the CCP Complex, Ricardo Mañosca approached a couple and he followed Mañosca. Suddenly, Mañosca pulled a knife, went near the man and stabbed him hitting him on the right eye. He (Salvador) pulled the man away because he might be killed by accused Mañosca forgetting about the woman because he was nervous. Mañosca ordered him to kill the man but the man pleaded and he told the man that he was not a killer. The man told him to help his girlfriend because at this point Mañosca was stabbing the girlfriend and he (Salvador) shouted at Mañosca saying "Richard, huwag." Mañosca stopped stabbing the girlfriend. On the other hand, he told the man to pretend to be dead because Mañosca might turn on him and he told Mañosca that the man was already dead. Accused Mañosca left and he (Salvador) also left. They went to Legaspi Towers and stayed there for a while. While there, the police flashed their flashlights on them, they tried to run but were stopped. They were brought to the police station where he executed a written statement. He denied having touched or hurt the woman, he also denied having hurt the man but told him to pretend to be dead because accused Mañosca was already out of his mind and might kill him (the man).

In his brief, the accused-appellant submits the following assignment of errors.[4]

ASSIGNMENT OF ERRORS

I.

THE TRIAL COURT ERRED IN CONVICTING APPELLANT EDGARDO K. SALVADOR OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES, DEFINED AND PUNISHED UNDER ARTICLE 294, PARAGRAPH 1 OF THE REVISED PENAL CODE.

II.

THE TRIAL COURT ERRED IN CONSIDERING NIGHTTIME AS AN AGGRAVATING CIRCUMSTANCE WHICH FACILITATED THE COMMISSION OF THE OFFENSE, ASSUMING THAT APPELLANT EDGARDO K. SALVADOR COMMITTED THE SAME.

The bone of contention in this case centers on whether or not the trial court committed a reversible error in finding that there was conspiracy between the accused-appellant and his co-accused.

The record belies the accused-appellant's contention that there was no conspiracy, express or implied, between him and his co-accused. One is considered a party to a conspiracy when he intentionally participates in an act or deed with a view to the furtherance of common design and purpose. There must be unity of purpose and unity in the execution of the unlawful objective. Mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate is not enough.[5] Moreover, conspiracy implies concert of design but not participation in every detail of execution.[6]

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 established their common criminal design. Tacit and spontaneous coordination of the attack by the two accused shows existence of conspiracy.[7]

In the instant case the acts and circumstances from which a logical inference of the existence of a common design can be drawn are as follows: a) armed with knives the two accused while ostensibly strolling at the Cultural Center of the Philippines (CCP for short) complex simultaneously approached their victims, Susan and Alfredo, from behind;[8] b) immediately the accused-appellant took hold of Susan while the other accused held Alfredo, pushing the latter to the ground with Mañosca (the other accused) shouting "hold up". All the time the knives were poked at the bodies of their victims.[9] c) Subsequently both accused divested their victims of their belongings, Mañosca taking Alfredo's wallet while Salvador took Alfredo's wrist watch;[10] d) rendered unconscious by the stab wounds inflicted on him, Alfredo was pulled away by the accused-appellant, while the other accused took hold of Susan who was then crying.[11] e) All the time that the other accused was stabbing Susan, the accused-appellant was holding Alfredo, thrusting the latter to the ground to prevent him from giving aid to Susan;[12] f) that the accused-appellant did nothing to prevent the commission by the other accused of his dastardly act of stabbing Susan to death. Shouting (by the accused-appellant) "Richard, huwag" was of course not enough to prevent the commission of the offense, absent any overt act to show that indeed he tried to prevent the other accused from stabbing Susan;[13] g) both accused left the crime scene together; in fact, they were even talking about the incident;[14] h) both were arrested in front of the CCP complex while they were in the act of victimizing their second victim.[15]

No doubt the existence of conspiracy is established from the foregoing acts and circumstances. In Roca[16], we stated that "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." (Emphasis Supplied)

The accused-appellant in seeking the reversal of the trial court's decision stresses the admission of Ricardo Mañosca that he was "high on drugs".[17] He argues that due to Ricardo Mañosca's agitated state brought about by his being "high on drugs he was touchy and sensitive. Further he contends that it is highly improbable that he consented, much less actually cooperated in the stabbing of Alfredo Mabuhay, Jr. by Mañosca. He claims there was no cooperation in the perpetration of the offense. No common design, understanding, and agreement can be inferred from the circumstances, he submits. He asserts that Mañosca acted unilaterally and spontaneously in stabbing Mabuhay after the latter had voluntarily given up his wallet and urged Susan "to just obey". Arguing even further, he maintains that the fact that Mañosca was high on drugs at the time of the incident precludes any express conspiracy between him and Mañosca. Because of his drugged state, Mañosca was incapable of any coherent thought or reasoning. He rationalizes that under the circumstances, it would be highly improbable that there was any "agreement concerning the commission of a felony" and a decision "to commit it" within the purview of Article 8 of the Revised Penal Code.[18]

We do not agree with the accused-appellant's pretensions. For one thing, the allegation that the accused Mañosca was high on drugs at the time of the commission of the crime is self-serving. No credible evidence was ever presented that Mañosca was indeed high on drugs. Even the Booking Sheet and Arrest Report of Mañosca (Exhibit "Q") made no mention that Mañosca when arrested was high on drugs. It was only during the trial that Mañosca stated that he was high on drugs at the time of his commission of the crime. Even the accused-appellant did not say anything about Mañosca being high on drugs when he gave his Salaysay (Exhibit "2" and Exhibit "M") before the Manila Police. It was also only during the trial that he mentioned it. He must have merely heard it from his co-accused Mañosca when the latter testified earlier. In fact his testimony on cross-examination contradicts his claim that Mañosca was high on drugs.

Q And at that time, Ricardo Mañosca appeared natural. There was nothing unusual about his appearance.

A Yes, sir.[19]

The settled rule is that when the conspiracy to commit the crime of robbery was conclusively shown by the concerted acts of the accused, and homicide was committed as a consequence thereof, all those who participated as principals in the robbery would also be held as principals in the complex crime of robbery with homicide although they did not actually take part in the homicide unless it appears that they attempted to prevent the killing. The question as to who actually robbed or killed is of no moment, since all of them would be held accountable for the crime of robbery with homicide.[20] In *People v. Adriano*,[21] we reiterated this well-settled rule, thus:

It is, however, well settled in this jurisdiction that when, as in this case, there is "a direct relation, an intimate connection between the robbery and the killing -- whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time — it is unquestionable that they constitute the complex special crime defined and penalized in article 503. paragraph 1, of the Penal Code." (robbery with homicide). (*People vs. Hernandez*, 46 Phil. 48). (See also *People vs. Madrid*, 88 Phil. 1; *People vs. Cocoy, et al.*, 94 Phil. 91; *U.S. vs. Palmares*, 7 Phil. 120, 124, citing the decision dated August 21, 1872 of the Supreme Court of Spain; *U.S. vs. Ibañez, et al.*, 19 Phil. 463).

What has been said in the case above cited makes it clear that the killing, whether done before, during or after the robbery, with obvious and unmistakable connection with the robbery, raises the crime to the special complex crime of robbery with homicide, defined in Article 294, paragraph 1, of the Revised Penal Code. This

is the crime for which Apolonio Adriano, Mariano Domingo and Mario San Diego, as well as Pedro Miranda who is still at large are guilty as principals, for which death is the imposable penalty. Leonardo Bernardo, as already explained, is guilty only of simple robbery.

The act of the appellant in holding fast to Alfredo as Susan was being stabbed to death by Mañosca betrayed his (appellant's) alleged exhortation to Mañosca not to kill Susan. Indeed, if the appellant was sincere in his plea to Mañosca to spare Susan, he (appellant) should have at least released his hold on Alfredo so that the latter could have gone to the aid of Susan.[22]

The belated exculpation of the accused-appellant by the private complainant for the killing of Susan and the physical injuries inflicted upon him, would not detract from the former's liability considering that conspiracy has already been established. It is too late in the day for this pretense of truthfulness and the motivation is highly suspicious. Moreover, the record discloses that the accused in the course of the trial offered to enter a plea of guilty to the crime of simple robbery which however did not materialize due to the objection of the prosecuting fiscal. Such offer militates against the accused-appellant's submission that he is not liable for the offense charged. Confession constitutes an evidence of high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience.[23]

Anent the second assigned error, we find that nocturnity was correctly appreciated by the court below to have been especially sought to facilitate the commission of the crime. More so, if we consider the fact that when the two accused were arrested they were in the act of victimizing another couple.[24]

WHEREFORE, the judgment appealed from is AFFIRMED in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, concur.

[1] Penned by Judge Bernardo P. Pardo.

[2] Plaintiff-Appellee's Brief, 46-50.

[3] Decision, February 16, 1987, Original Record, 120.

[4] Appellant's Brief, Rollo, 30 (7-8).

[5] *People v. Mangingin Macatana*, G.R. No. 57061, May 9, 1988, citing *People v. Izon*, L-10397, October 16, 1958, 104 Phil. 690.

[6] *People v. Abraham Seranilla, et al.*, G.R. No. 54090, May 9, 1988, citing *People v. Mojica*, L-17234, March 31, 1964, 10 SCRA 515.

[7] *People vs. Dominador Roca*, G.R. No. 77779, June 27, 1988, citing *People vs. Yu*, G.R. No. L-29667, November 29, 1977, 80 SCRA 382 and *People vs. Aleta*, G.R. No. L-40694, August 31, 1976, 72 SCRA 542.

[8] T.s.n., June 6, 1986, 11.

[9] *Id.*, 12.

[10] *Id.*, 26, 37-38.

[11] *Id.*, 15.

- [12] T.s.n., November 4, 1986, 26, 27.
- [13] Id., 18.
- [14] Id., 28.
- [15] T.s.n., October 16, 1986, 20.
- [16] Supra, 5.
- [17] T.s.n., November 4, 1986, 134.
- [18] Appellant's Brief, Rollo, 30 (11).
- [19] T.s.n., November 4, 1986, 24.
- [20] People v. Gapasin, No. L-52017, October 27, 1986, 145 SCRA 178.
- [21] Nos. L-25975-77, January 22, 1980, 95 SCRA 123.
- [22] Appellee's Brief, Rollo, 41 (11).
- [23] People v. Castañeda, No. L-32625, August 31, 1979, 93 SCRA 59.
- [24] T.s.n., October 16, 1986, 5.

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