

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE ELIZAGA AND MARCOS ELIZAGA (DECEASED), ACCUSED-APPELLANTS.

G.R. No. 78794. November 21, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

A person charged with conspiracy to commit a crime is presumed to be innocent, and the prosecution has the burden to establish his guilt, his connection with, and participation in the conspiracy. This Court reiterates this principle in this Decision acquitting herein appellant Felipe Elizaga of the crime of murder and reversing the Decision of the Regional Trial Court of Aparri, Cagayan in Criminal Case No. VIII - 12 dated July 15, 1986.

The facts are as follows:

On October 8, 1967, while driving his jeep on Taquiqui Bridge in Gattaran, Cagayan, Tomas Foster saw Wilson Stacy, a policeman, lying along a canal with a gunshot wound in his stomach. With the help of one Romulo Tolentino, Stacy was carried into the jeep of Foster. They proceeded to the clinic of Dr. Pulmano in Centro, Gattaran. On the way to the clinic, another man named Pedro Tapuro stopped the jeep to ride with them. Tapuro, who was wounded in the arm, explained to Foster that he was the pilot of the canoe which Stacy rode when the latter was shot.

When they arrived at the clinic, Dr. Pulmano immediately attended to the wounded policeman. While Stacy was being treated, another policeman named Rodrigo Sales took his statement for the police report. When asked as to what happened to him, Stacy answered, "I was shot by Marcos Elizaga, Iping Elizaga, and Pabling Molina."

Inasmuch as the clinic lacked the necessary medical facilities, Stacy had to be transferred to the Calaminiugan Emergency Hospital. However, despite medical attendance, Stacy died on October 10, 1967.

On March 5, 1976, an Information was filed with the Court of First Instance of Aparri, Cagayan which reads as follows:

"The undersigned, Acting Provincial Fiscal, accuses Felipe Elizaga and Marcos Elizaga of the crime of Murder, defined and penalized under Article 248, of the Revised Penal Code, committed as follows:

"That on or about October 8, 1967, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Felipe Elizaga and Marcos Elizaga, armed with guns, conspiring together and, helping each other, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one Wilson Stacy, inflicting upon him wounds on his body, which wounds caused his death."[1]

Since Marcos Elizaga already passed away, only Felipe Elizaga, the herein appellant, appeared in court. After due trial, Felipe Elizaga was convicted of murder in the Decision of the lower court dated July 15, 1986, the dispositive portion of which reads as follows:

"WHEREFORE, PREMISES CONSIDERED, this Court finds accused Felipe Elizaga guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences said accused to suffer the penalty of reclusion perpetua. Accused Felipe Elizaga is hereby ordered to indemnify the heirs of deceased Wilson Stacy the sum of Nine Thousand (P9,000.00) Pesos as compensatory damages and the sum of Thirty Thousand (P30,000.00) Pesos as moral damages, and to pay the costs of this suit."[2]

In his appeal, appellant Felipe Elizaga assigns the following errors on the part of the trial court:

"First Error:

THAT THE LOWER COURT ERRED IN ADMITTING AND CONSIDERING EXHIBIT 'A', THE ALLEGED DYING DECLARATION OF THE DECEASED WILSON STACY.

"Second Error:

ASSUMING THAT THERE WERE THREE ASSAILANTS, THE LOWER COURT ERRED IN FINDING CONSPIRACY AMONG THEM.

"Third Error:

THE LOWER COURT ERRED IN MAKING A FINDING OF TREACHERY IN THE SHOOTING OF THE VICTIM BY WHOEVER THE ASSAILANT WAS.

"Fourth Error:

THE LOWER COURT ERRED IN NOT ACQUITTING THE APPELLANT OF THE CRIME CHARGED IN THE INFORMATION."[3]

We disagree with the appellant that the lower court erred in admitting the dying declaration of Wilson Stacy which is re-stated here as follows:

"Q. Please state your name?

"A.

Wilson Stacy.

"Q. What happened to you?

"A. I was shot by Marcos Elizaga, Iping Elizaga and Pabling Molina.

"Q. When and where were you shot?

"A. Just right now at 4:30 PM this 8th day of October 1967, at the close traffic at Takiki Creek.

"Q. How do you feel?

"A.

I think I am going to die if the Lord not help me.

"Q. In case you die do you want this statement of yours be brought to court for evidence?

"A.

Yes sir."^[4]

In order that a dying declaration may be admissible in evidence, the following requisites must concur:

- (a) That the declaration must concern the cause and surrounding circumstances of the declarant's death;
- (b) That at the time the declaration was made, the declarant was under a consciousness of an impending death;
- (c) That the declarant is competent as a witness; and
- (d) That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.^[5]

It is evident from the facts that the first, second, and fourth requisites of a valid dying declaration are present in this case. With regard to the third requisite, there is no showing that victim could not have been a competent witness and so the presumption of competency must be sustained. As it has been shown that all the above-mentioned requisites are present, the dying declaration of Stacy is clearly admissible.

Having ruled on the admissibility of the dying declaration, the question now is this - "Can appellant Elizaga be convicted of murder based on such dying declaration?" We answer in the negative. For an accused to be convicted of murder, it is necessary that it be proved that he killed the victim or acted in conspiracy with the one who killed him. This must certainly apply to appellant Elizaga.

Upon a careful examination of the records, We discovered that the conviction of appellant Elizaga was based solely on the dying declaration of the victim Stacy. No eyewitness to the crime was presented in court. Pedro Tapuro, the person who was actually with the victim when he was shot and who could have given a detailed account of the whole incident, was never presented by the prosecution. Nobody testified that he saw the appellant within the vicinity of the crime before, during, or right after the commission of the crime. Neither did anyone attest that he saw the appellant in possession of a firearm or that he was the gunman. On the contrary, two witnesses corroborated the defense of the appellant that in the morning and afternoon of the day of the incident, appellant was in the store of Eustaquio Gumabao playing pool, rendering it physically impossible for him to have killed the victim. One of these witnesses, Juanito Martin, is even a colleague of the victim in the police force.

It is true that the dying declaration of Stacy is valid and admissible. However, this does not mean that it will automatically convict the appellant of the crime of murder. Like any other dying declaration, its credibility and weight should be determined by the court, applying the same rules used in testing the weight and credibility of a testimony of a living witness.^[6] In this particular case, it must be carefully examined in order for the trial court to determine whether or not the same is sufficient to prove the guilt of the accused beyond reasonable doubt.

In his dying declaration, Stacy mentioned three people as his assailants, namely: Marcos Elizaga, Pabling Molina and Felipe Elizaga, appellant herein. Obviously, the said dying declaration does not prove that petitioner was the one who fired the shot that injured and later killed the victim. This was admitted by the lower court when it said:

"True the evidence of the prosecution is bereft that accused Felipe Elizaga was the author of the multiple gunshot wounds at the abdomen of deceased Stacy. And it is hard for the Court to believe that accused Felipe Elizaga, Marcos Elizaga and Pabling Molina trained their respective guns in unison at one part of the body, the abdomen of the late Stacy. x x x"[7]

The only reason why the lower court found the appellant culpable was its belief that he was a co-conspirator in the murder of the victim. Thus,

"x x x Whoever among them whose (Marcos, Felipe and Pabling) gun fire found its mark on the abdomen is of no moment for (the) obvious reason that a conspirator is equally responsible for the acts of his co-conspirator. The act of one is the act of all. x x x"[8]

Again, the finding of conspiracy was based by the lower court on the dying declaration of Stacy.

Therefore, the issue that has to be resolved in this case is whether or not there was conspiracy. The Solicitor General submits that the lower court erred in making a finding of conspiracy. We agree.

Time and again, We have held that conspiracy, like any other ingredient of the offense, must be established by 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.

In this case, there is no factual basis for the finding of conspiracy by the lower court. There is no showing of planning and concerted action on the part of the alleged co-conspirators. No evidence was presented of the conduct of the supposed assailants before, during, and after the crime from which it can be inferred that they were in conspiracy with each other. Indeed, there is no concrete proof that appellant acted in any manner in conspiracy with the two other assailants.

At this point, it is but proper to quote the following observations of the Solicitor General:

"Since a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (Art. 8, par. 2, RPC), the proof necessary to show conspiracy requires a showing:

- That two or more persons came to an agreement;
- That the agreement concerned the commission of a felony; and
- That the execution of the felony be decided upon (Reyes, The Revised Penal Code, 11th ed., p. 137).

The record is bereft of any showing to support any of the above. There is no showing that a meeting of the minds or agreement was arrived at by appellant and his two named companions, that there was an agreement to bring about the death of Wilson Stacy and/or the wounding of Pedro Tapuro, or that the perpetrators made up their minds or decided to commit the crime. In view of the paucity of evidence to show conspiracy, we submit that conspiracy was not sufficiently established."[9]

Since conspiracy has not been established, the individual responsibility of the appellant for the offense, if he should be held responsible at all, must be determined from the nature of his participation in the commission of the crime. As above-discussed, there is no evidence to this effect. There is no proof that all the assailants were armed and if so, the kind of firearms they carried; as to who fired the fatal shot at the victims, the role of the appellant during the incident, the motive for the killing; and such other material details as may shed light on the killing and the degree of responsibility of the appellant. The court a quo based on the aforementioned dying declaration of the victim just assumed and concluded that it was appellant who shot the victim in conspiracy with his two companions. No person can be convicted on mere assumptions and conclusions.

WHEREFORE, in view of the foregoing, the appealed decision is REVERSED and SET ASIDE and the appellant is hereby ACQUITTED, with costs de oficio.

SO ORDERED.

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

[1] Page 14, Rollo.

[2] Pages 32-33, Rollo.

[3] Page 1, Brief for the Appellant; Page 39, Rollo.

[4] Page 27, Rollo.

[5] 5 Moran, Comments on the Rules of Court, 1980 ed., page 294.

[6] 5 Moran, Comments on the Rules of Court, 1980 ed., page 304.

[7] Page 30, Rollo.

[8] Page 31, Rollo.

[9] Pages 61-62, Rollo.

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