

LITO VINO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 84163. October 19, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue posed in the motion for reconsideration filed by petitioner of the resolution of this Court dated January 18, 1989 denying the herein petition is whether or not a finding of guilt as an accessory to murder can stand in the light of the acquittal of the alleged principal in a separate proceeding.

At about 7:00 o'clock in the evening of March 21, 1985, Roberto Tejada left their house at Burgos Street, Poblacion, Balingao, Pangasinan to go to the house of Isidro Salazar to watch television. At around 11:00 P. M., while Ernesto, the father of Roberto, was resting, he heard two gunshots. Thereafter, he heard Roberto cry out in a loud voice saying that he had been shot. He saw Roberto ten (10) meters away so he switched on the lights of their house. Aside from Ernesto and his wife, his children Ermalyn and Julius were also in the house. They went down to meet Roberto who was crying and they called for help from the neighbors. The neighbors responded by turning on their lights and the street lights and coming down from their houses. After meeting Roberto, Ernesto and Julius saw Lito Vino and Jessie Salazar riding a bicycle coming from the south. Vino was the one driving the bicycle while Salazar was carrying an armalite. Upon reaching Ernesto's house, they stopped to watch Roberto. Salazar pointed his armalite at Ernesto and his companions. Thereafter, the two left.

Roberto was brought to the Sacred Heart Hospital of Urdaneta. PC/Col. Bernardo Cacananta took his ante-mortem statement. In the said statement which the victim signed with his own blood, Jessie Salazar was identified as his assailant.

The autopsy report of his body shows the following -

"Gunshot wound

POE Sub Scapular-5-6- ICA. Pal

1 & 2 cm. diameter left.

Slug found sub cutaneously,

2nd ICS Mid Clavicular line left.

CAUSE OF DEATH

Tension Hemathorax"[1]

Lito Vino and Sgt. Jesus Salazar were charged with murder in a complaint filed by PC Sgt. Ernesto N. Ordoño in the Municipal Trial Court of Balungao, Pangasinan. However, on March 22, 1985, the municipal court indorsed the case of Salazar to the Judge Advocate General's Office (JAGO) inasmuch as he was a member of the military,

while the case against Vino was given due course by the issuance of a warrant for his arrest. Ultimately, the case was indorsed to the fiscal's office who then filed an information charging Vino of the crime of murder in the Regional Trial Court of Rosales, Pangasinan.

Upon arraignment, the accused Vino entered a plea of not guilty. Trial then commenced with the presentation of evidence for the prosecution. Instead of presenting evidence in his own behalf, the accused filed a motion to dismiss for insufficiency of evidence to which the prosecutor filed an answer. On January 21, 1986,[2] a decision was rendered by the trial court finding Vino guilty as an accessory to the crime of murder and imposing on him the indeterminate penalty of imprisonment of 4 years and 2 months of prision correccional as minimum to 8 years of prision mayor as maximum. He was also ordered to indemnify the heirs of the victim in the sum of P10,000.00 being a mere accessory to the crime and to pay the costs.

The motion for reconsideration filed by the accused having been denied, he interposed an appeal to the Court of Appeals. In due course, a Decision was rendered affirming the judgment of the lower court.[3]

Hence, the herein petition for review wherein the following grounds are invoked:

1. "THAT AN ACCUSED CAN NOT BE CONVICTED AS AN ACCESSORY OF THE CRIME OF MURDER FOR HAVING AIDED IN THE ESCAPE OF THE PRINCIPAL IF SAID ACCUSED IS BEING CHARGED SOLELY IN THE INFORMATION AS PRINCIPAL FOR THE SIMPLE REASON THAT THE CRIME PROVED IS NOT INCLUDED IN THE CRIME CHARGED.
2. THAT "AIDING THE ESCAPE OF THE PRINCIPAL" TO BE CONSIDERED SUFFICIENT IN LAW TO CONVICT AN ACCUSED UNDER ARTICLE 19, PARAGRAPH OF THE REVISED PENAL CODE MUST BE DONE IN SUCH A WAY AS TO DECEIVE THE VIGILANCE OF THE LAW ENFORCEMENT AGENCIES OF THE STATE AND THAT THE "ESCAPE" MUST BE ACTUAL;
3. THE CONVICTION OF AN ACCESSORY PENDING THE TRIAL OF THE PRINCIPAL VIOLATES PROCEDURAL ORDERLINESS."[4]

During the pendency of the appeal in the Court of Appeals, the case against Salazar in the JAGO was remanded to the civil court as he was discharged from the military service. He was later charged with murder in the same Regional Trial Court of Rosales, Pangasinan in Criminal Case No. 2027-A. In a supplemental pleading dated November 14, 1988, petitioner informed this Court that Jessie Salazar was acquitted by the trial court in a decision that was rendered on August 29, 1988.

The respondents were required to comment on the petition. The comment was submitted by the Solicitor General in behalf of respondents. On January 18, 1989, the Court resolved to deny the petition for failure of petitioner to sufficiently show that respondent court had committed any reversible error in its questioned Judgment. Hence, the present motion for reconsideration to which the respondents were again required to comment. The required comment having been submitted, the motion is now due for resolution.

The first issue that arises is that inasmuch as the petitioner was charged in the information as a principal for the crime of murder, can he thereafter be convicted as an accessory? The answer is in the affirmative.

Petitioner was charged as a principal in the commission of the crime of murder. Under Article 16 of the Revised Penal Code, the two other categories of the persons responsible for the commission of the same offense are the accomplice and the accessory. There is no doubt that the crime of murder had been committed and that the evidence tended to show that Jessie Salazar was the assailant. That the petitioner was present during its commission or must have known its commission is the only logical conclusion considering that immediately thereafter, he was seen driving a bicycle with Salazar holding an armalite, and they were together when they left

shortly thereafter. At least two witnesses, Ernesto and Julius Tejada, attested to these facts. It is thus clear that petitioner actively assisted Salazar in his escape. Petitioner's liability is that of an accessory.

This is not a case of a variance between the offense charged and the offense proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, in which case the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.[5]

In the same light, this is not an instance where after trial has begun, it appears that there was a mistake in charging the proper offense, and the defendant cannot be convicted of the offense charged, or of any other offense necessarily included therein, in which case the defendant must not be discharged if there appears to be a good cause to detain him in custody, so that he can be charged and made to answer for the proper offense.[6]

In this case, the correct offense of murder was charged in the information. The commission of the said crime was established by the evidence. There is no variance as to the offense committed. The variance is in the participation or complicity of the petitioner. While the petitioner was being held responsible as a principal in the information, the evidence adduced, however, showed that his participation is merely that of an accessory. The greater responsibility, necessarily includes the lesser. An accused can be validly convicted as an accomplice or accessory under an information charging him as a principal.

At the onset, the prosecution should have charged the petitioner as an accessory right then and there. The degree of responsibility of petitioner was apparent from the evidence. At any rate, this lapse did not violate the substantial rights of petitioner.

The next issue that must be resolved is whether or not the trial of an accessory can proceed without awaiting the result of the separate charge against the principal. The answer is also in the affirmative. The corresponding responsibilities of the principal, accomplice and accessory are distinct from each other. As long as the commission of the offense can be duly established in evidence the determination of the liability of the accomplice or accessory can proceed independently of that of the principal.

The third question is this - considering that the alleged principal in this case was acquitted can the conviction of the petitioner as an accessory be maintained?

In *United States vs. Villaluz and Palermo*,^[7] a case involving the crime of theft, this Court ruled that notwithstanding the acquittal of the principal due to the exempting circumstance of minority or insanity (Article 12, Revised Penal Code), the accessory may nevertheless be convicted if the crime was in fact established.

Corollary to this is *United States vs. Mendoza*,^[8] where this Court held in an arson case that the acquittal of the principal must likewise result in the acquittal of the accessory where it was shown that no crime was committed inasmuch as the fire was the result of an accident. Hence, there was no basis for the conviction of the accessory.

In the present case, the commission of the crime of murder and the responsibility of the petitioner as an accessory was established. By the same token there is no doubt that the commission of the same offense had been proven in the separate case against Salazar who was charged as principal. However, he was acquitted on the ground of reasonable doubt by the same judge who convicted Vito as an accessory. The trial court held that the identity of the assailant was not clearly established. It observed that only Julius Tejada identified Salazar carrying a rifle while riding on the bicycle driven by Vito, which testimony is uncorroborated, and that two other witnesses, Ernesto Tejada and Renato Parvian, who were listed in the information, who can corroborate the testimony of Julius Tejada, were not presented by the prosecution.

The trial court also did not give due credit to the dying declaration of the victim pinpointing Salazar as his assailant on the ground that it was not shown the victim revealed the identity of Salazar to his father and brother who came to his aid immediately after the shooting. The court a quo also deplored the failure of the prosecution and law enforcement agencies to subject to ballistic examinations the bullet slug recovered from the body of the victim and the two empty armalite bullet empty shells recovered at the crime scene and to compare it with samples taken from the service rifle of Salazar. Thus, the trial court made the following observation:

"There appears to be a miscarriage of justice in this case due to the ineptitude of the law enforcement agencies to gather material and important evidence and the seeming lack of concern of the public prosecutor to direct the production of such evidence for the successful prosecution of the case." [9]

Hence, in said case, the acquittal of the accused Salazar is predicated on the failure of the prosecution to adduce the quantum of evidence required to generate a conviction as he was not positively identified as the person who was seen holding a rifle escaping aboard the bicycle of Vino.

A similar situation may be cited. The accessory was seen driving a bicycle with an unidentified person as passenger holding a carbine fleeing from the scene of the crime immediately after the commission of the crime of murder. The commission of the crime and the participation of the principal or assailant, although not identified, was established. In such case, the Court holds that the accessory can be prosecuted and held liable independently of the assailant.

We may visualize another situation as when the principal died or escaped before he could be tried and sentenced. Should the accessory be acquitted thereby even if the commission of the offense and the responsibility of the accused as an accessory was duly proven? The answer is no, he should be held criminally liable as an accessory.

Although in this case involving Vino the evidence tended to show that the assailant was Salazar, as two witnesses saw him with a rifle aboard the bicycle driven by Vino, in the separate trial of the case of Salazar, as above discussed, he was acquitted as the trial court was not persuaded that he was positively identified to be the man with the gun riding on the bicycle driven by Vino. In the trial of the case against Vino, wherein he did not even adduce evidence in his defense, his liability as such an accessory was established beyond reasonable doubt in that he assisted in the escape of the assailant from the scene of the crime. The identity of the assailant is of no material significance for the purpose of the prosecution the accessory. Even if the assailant can not be identified the responsibility of Vino as an accessory is indubitable.

WHEREFORE, the motion for reconsideration is denied and this denial is FINAL.

SO ORDERED.

Narvasa, (Chairman), and Medialdea, JJ., concur.

Cruz and Griño-Aquino, JJ., see dissenting opinion.

[1] Exhibits A and A-1.

[2] Page 13, Rollo.

[3] Justice Bonifacio A. Cacdac, Jr., was the ponente, concurred in by Justices Florelia Castro-Bartolome and Ricardo L. Pronove, Jr.

[4] Pages 18 to 19, Rollo.

[5] Section 4, Rule 120, Rules of Court.

[6] Section 12, Rule 119, Rules of Court.

[7] 32 Phil. 377 (1915).

[8] 23 Phil. 194 (1912).

[9] Pages 71 to 74, Rollo.

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DISSENTING OPINION

CRUZ, J.:

I agree with the proposition in the ponencia that a person may be held liable as an accessory for helping in the escape of the principal even if the latter is himself found not guilty. The examples given are quite convincing. However, I do not think they apply in the case at bar, which is sui generis and not covered by the general principle.

As Justice Aquino points out, Viño was convicted of having aided Jessie Salazar, who was named as the principal at Viño's trial. At his own trial, the same Salazar was acquitted for lack of sufficient identification. Viño was convicted of helping in the escape not of an unnamed principal but, specifically, of Jessie Salazar. As Salazar himself has been exonerated, the effect is that Viño is now being held liable for helping an innocent man, which is not a crime. Viño's conviction should therefore be reversed.

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DISSENTING OPINION

GRIÑO-AQUINO, J.:

I regret to have to disagree with the ponente's opinion.

There are three (3) kinds of accessories under Article 19 of the Revised Penal Code:

"ART. 19. Accessories. - Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manner:

"1. By profiting themselves or assisting the offenders to profit by the effects of the crime.

"2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.

"3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime."

An accessory who falls under paragraph 1 may be convicted even if the principal is acquitted, as where the principal was found to be a minor (U.S. vs. Villaluz and Palermo, 32 Phil. 377) or the son of the offended party (Cristobal vs. People, 84 Phil. 473).

An accessory under paragraph 2 who allegedly concealed or destroyed the body of the crime or the effects or instruments may be convicted if the commission of the crime has been proven, even if the principal has not been apprehended and convicted.

But an accessory under paragraph 3 who allegedly harbored, concealed the principal or assisted in his escape, may not be convicted unless the principal, whom he allegedly harbored, concealed, or assisted in escaping, has been identified and convicted.

I cannot see how the conviction of Vino as an accessory under paragraph 3 of Article 19 of the Rev. Penal Code, for allegedly having assisted in the escape of Sgt. Jessie Salazar, the alleged killer of Roberto Tejada, can stand since Salazar (who faced trial separately and subsequently) was acquitted, ironically by the same court that convicted Vino earlier. The basis for Vino's conviction as accessory in the crime of murder was his having driven the alleged killer Salazar in his tricycle after Tejada was killed. Since the trial court acquitted Salazar, holding that the prosecution failed to prove that he was the killer of Tejada, then Vino's having driven him in his tricycle did not constitute the act of assisting in the escape of a killer.

The cases of U.S. vs. Villaluz and Palermo, 32 Phil. 377 and U.S. vs. Mendoza, 23 Phil. 194 cited in the ponencia are not in point. In the Villaluz case the charge against accused as an accessory to theft was brought under paragraph 2 of Article 19 of the Revised Penal code, for having concealed the effects of the crime by receiving and concealing a stolen watch. Although the principal, a young housegirl, was acquitted on account of her tender age and lack of discernment, the accessory was nevertheless convicted.

In the Mendoza case, the accused barrio captain who was charged as an accessory under paragraph 2 for not reporting the fire to the authorities, was acquitted because the crime of arson was not proven, the fire being accidental.

The criminal liability of an accessory under paragraph 3 of Article 19 is directly linked to and inseparable from that of the principal. Even if as in this case, the crime (murder) was proven but the identity of the murderer was not (for the principal accused was acquitted by the trial court), the petitioner tricycle-driver who allegedly drove him in his tricycle to escape from the scene of the crime, may not be convicted as an accessory to the murder, for, as it turned out, the said passenger was not proven to be the murderer. The accessory may not be convicted under paragraph 3 of Article 19 of the Revised Penal Code if the alleged principal is acquitted for, in this instance, the principle that "the accessory follows the principal" appropriately applies.

I therefore vote to acquit the petitioner.

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