

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GITO MAGALANG, ANDRONICO MAGALANG, BENJAMIN ALIAS MABINI ANTONIO, JOVINO IBAÑEZ AND DOMINADOR ALIAS “EPOY” RAÑA, CELSO ALIAS “...”

G.R. No. 84274. January 27, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Ten persons were charged in the Regional Trial Court of Masbate with the murder of Jaime Ortega.[1] Five of them were at large at the time and could not be arraigned. The other five pleaded not guilty and were, after trial, all convicted.[2] All of them appealed but four later withdrew their respective appeals, thus rendering their judgments of conviction final and executory.[3] Only one has remained to protest his innocence, namely, Benjamin Antonio.

The only issues before us now are whether the accused-appellant participated in the murder of Ortega and, if so, if he should be considered a conspirator with his co-accused.

The facts of the killing are distilled from the findings of the trial court.

In the evening of March 11, 1985, at about 8 o'clock, Jaime Ortega was with Jimmy Baliola and Widden Desustrings in the camarin at the ranch of Dr. Espinosa in Masbate. His two companions left briefly to relieve themselves near a guava tree some 15 meters away ("to defacate and remove his vowels," in the quaint language of the trial judge). As they were returning to Ortega, they saw the ten accused persons, viz., Gito Magalang, Diovanni Magalang, Andronico Magalang, Dominador Raña, Ansing Ramirez, Sandy Carmen, Jovino Ibañez, Mabini Antonio, Celso Ramirez, and Esteban Capinig, arrive at the camarin. Ortega beamed a flashlight on them, whereupon Gito Magalang and Diovanni Magalang both fired at him, causing him to fall. Another man beat Ortega with a piece of wood as he lay dying. Ansing Ramirez and Ondon Ramirez then carried the victim downstairs. Benjamin Antonio suggested that they bury him and Andronico Magalang said he should be beheaded. When somebody reminded the group that Ortega had two companions, Baliola and Disustrings scampered for fear of their lives and escaped.[4]

Baliola revealed the killing two months later to Jaime's brother, Danilo. As a result, five of the accused were rounded up by the police, who had earlier obtained the appropriate warrants. Antonio tried to escape but was chased and caught.[5] The Magalangs and Antonio pointed to the place where Ortega was buried and his body was exhumed. The decomposing corpse with the head almost severed and some limbs missing was identified by Danilo Ortega.

At the trial, Antonio testified that he had not participated in the killing, being then in the middle of the sea, where he was fishing until the following morning, when he returned to shore after paddling for two hours.[6] However, the trial court disbelieved him in view of his positive identification by Baliola and his subsequent acts during and

after his arrest.

We shall sustain the court a quo on this factual issue. Judge Zosimo Z. Angeles had the opportunity to observe the witnesses directly and to assess their credibility by, among other factors, their conduct on the stand. As it has not been shown that such assessment has no basis or was reached arbitrarily or maliciously, we shall accept it as conclusive.

The second question must also be resolved against Antonio. The established facts show that he was indeed involved in the conspiracy to kill Ortega. The group of ten men arrived together at the camarin in search of Jaime Ortega. Without much ado, two of them shot and another beat him with a piece of wood until he died. Two of the men carried Ortega's body downstairs. Antonio himself was heard to suggest that they bury the victim.[7] When two months later the police came to arrest him, Antonio tried to escape and once in custody he and the Magalangs pointed to the spot where Ortega was buried.[8] The accused-appellant was in fact not a mere spectator of these grisly events but one of the active participants.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[9] A conspiracy need not be established by direct evidence but may be proven through the series of acts done by each of the accused in pursuance of their common unlawful purpose.[10] For collective responsibility among the accused to be established, it is sufficient that at that time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill the victim.[11]

Where conspiracy has been established, evidence as to who among the accused rendered the fatal blow is not necessary. All the conspirators are liable as co-principals regardless of the extent and character of their participation because the act of one is the act of all.[12] Hence, even if it be conceded that Antonio did not commit the actual killing of Ortega, he would still be equally liable therefor with the Magalangs, who shot Ortega, the man who beat the victim with a piece of wood, and whoever among them later beheaded and mutilated the corpse.

The crime committed is murder, qualified by treachery because Ortega was fired at and beaten to death without warning. It is not necessary to consider additional aggravating circumstances as the death penalty is no longer imposable and the accused-appellant has been sentenced to the maximum penalty of reclusion perpetua.

Antonio might have withdrawn his appeal and acknowledged his offense like his co-accused. But it was his right to pursue his appeal although it has proved futile in the end.

WHEREFORE, the appeal is DISMISSED. With costs against the accused-appellants. It is so ordered.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.

[1] Rollo, p. 7.

[2] Decision penned by Executive Judge Zosimo Z. Angeles, Regional Trial Court Branch XLVI, Masbate, Masbate; Rollo, p. 14.

[3] Rollo, pp. 81, 189, 190 and 196.

[4] TSN, November 21, 1985, pp. 3-7.

[5] Ibid., November 18, 1985, p. 4; November 19, 1985; p. 4.

[6] Id., November 29, 1985, pp. 2-4.

[7] *id.*, November 21, 1985, p. 7.

[8] *id.*, November 18, 1985, pp. 4, 6 and 11.

[9] *People v. Maranion*, 199 SCRA 421.

[10] *People v. Hernandez*, 182 SCRA 794.

[11] *Lozano y Dalisay v. Court of Appeals*, 193 SCRA 525.

[12] *People v. Obando*, 182 SCRA 95; *People v. Sadia, Jr.*, 203 SCRA 62.

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