

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
CONRADO GABATIN AND RICHARD GABATIN – AT LARGE,
DEFENDANTS, CONRADO GABATIN, DEFENDANTS-APPELLANT.**

G.R. No. 84730, October 28, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Conrado Gabatin appeals from a decision of the Regional Trial Court of Aparri Cagayan, Branch 10, finding him guilty of murder and sentencing him to reclusion perpetua and to pay damages to the heirs of the deceased victim, Danilo Oreña.

Appellant was charged in Criminal Case No. X-85-58 in an information, dated 19 February 1985, which reads:

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

That on or about March 17 1984, in the municipality of Sta. Teresita, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Richard Gabatin and Conrado Gabatin, together with one Pepe Sebastian who is already dead, armed with sharp pointed instruments and bottle of beer, conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully, and feloniously assault, attack, throw bottle of beer and stab on, Danilo Oreña, inflicting upon the latter wounds on his body which caused his death.

Contrary to law.[1]

Only Conrado Gabatin was arraigned as his co-accused, Richard Gabatin, was still at large at the commencement of the trial and so far as the record shows, remains at large to date.

On arraignment, appellant pleaded not guilty and after trial, the trial court found him guilty as charged in a decision, dated 24 May 1988, the dispositive portion, of which reads:

"WHEREFORE, the" Court finds Conrado Gabatin guilty beyond reasonable doubt of the crime of murder qualified by treachery as defined and penalized under Article 248 of the Revised Penal Code, and there being no aggravating or mitigating circumstances, is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided for by law; to indemnify the heirs of Danilo Oreña the sum of P30,000.00; and to pay costs.

As the accused Richard Gabatin is still at large, the case against him is ordered archived without prejudice to its reinstatement if warranted.

SO ORDERED."[2]

Appellant is now before this Court alleging that the trial court erred in finding that there was "implied conspiracy" among appellant, Richard Gabatin and Pepe Sebastian.[3]

The prosecution presented Dominador Oreña, Fernando Decilos and Ceferino Castro whose testimonies may be summarized as follows:

On the evening of 17 March 1984 Danilo Oreña attended a dance held, at Caniugan, Sta. Teresita, Cagayan,[4] where he was requested by the Kabataang Barangay to sell "social boxes".[5] While the deceased was going around the dancing floor soliciting bids for the "social boxes" Conrado Gabatin, without any warning nor known motive,[6] started throwing bottles at Danilo Oreña.[7] One of the bottles hit Danilo Oreña on the face causing him to fall on the floor[8]and even before he could stand up, Conrado Gabatin shouted to his son, Richard Gabatin, and his brother-in-law, Pepe Sebastian, "Take out his life".[9] Upon hearing those words, Richard Gabatin and Pepe Sebastian started stabbing the victim.[10] The assailants then immediately left the scene.[11]

The prosecution also presented Dr. Felipe Arellano, the Municipal Health Officer who conducted the autopsy, whose report described the injuries sustained by the deceased as follows:

"xxx xxx xxx

1. Conglumerated contuso-lacerated wounds at the right face;
2. Stab wound of the chest, penetrating located at the right anterior chest, 4.5 cms. at its entrance and directed posteriorly and a little downward and medially;
3. Stab wound at the chest, penetrating at the right anterior chest a little below and almost parallel to wound No. 2, measuring 3.5 cms. at its entrance and directed posteriorly and a little upward and medially; and
4. Stab wound of the left forearm at its distal third, through and through, measuring 4 cms. at its entrance and 2 cms. at its exit."[12]

Dr. Arellano stated in his testimony that the cause of death is "shock secondary to massive internal and external hemorrhage due to multiple stab wounds on the chest".[13]

Appellant Conrado Gabatin, for his part denied having taken part in the crime. He interposed the defense of alibi claiming that he stayed in his house the whole night of 17 March 1984.[14] He claims that only his son, Richard Gabatin attended the said dance.[15] While on the witness stand, appellant claimed that prosecution witnesses Fernando Decilos and Ceferino Castro, testified against him because they were Danilo Oreña's (the victim) relatives.[16]

The defense also presented Johnny Laguatan who testified that he went to the dance and stayed there for three hours before the incident but did not see Conrado Gabatin.[17] On cross-examination the witness stated that he was not able to see who participated in the commotion as he left immediately after it started.[18]

The pivotal question in this present case is the nature of appellant's participation in the killing of Danilo Oreña. It should be noted that appellant did not actually deliver any of the stab blows which caused Danilo's death; however, the trial court found that the assailants had acted in conspiracy with one another, and therefore appellant was held liable for the acts of his co-conspirators.

Appellant is now challenging the trial court's finding that he had acted in conspiracy with Richard Gabatin and Pepe Sebastian, to wit:

"Does positive and conclusive evidence exists to prove implied, conspiracy? The facts established convincingly show that accused Conrado Gabatin suddenly threw a beer bottle at Danilo which hit the right side of the letter's face, at the same-time uttered 'kill him.' Then without much ado, Richard Gabatin and Pepe Sebastian with their respective knives stabbed the deceased Danilo Oreña. Richard's knife thrust hit the chest and forearm of Danilo, while Pepe's knife found its mark on the chest of Danilo, according to the testimony of

prosecution witnesses Fernando (sic) Decilos, Ceferino Castro and . Dominador Oreña. The wounds inflicted upon Danilo by Richard and Pepe Sebastian jibes with and are confirmed substantially by the postmortem examination on the cadaver of Danilo by Dr; Felipe Arellano, whose findings are shown in his postmortem, examination report, Exh. 'A'. The acts of Conrado Gabatin, Richard Gabatin and Pepe Sebastian evinces certainly a concerted action, unity of purpose and intention to kill Danilo Oreña. Thus, evidence of implied conspiracy is convincingly and sufficiently established. Existence of conspiracy is inferred from concerted action. Conspiracy having been established, the act of one is the act of all. Consequently, Conrado Gabatin is liable for the murder of Danilo Oreña,"[19]

claiming that there is insufficient evidence to support the finding of conspiracy.

While the Court agrees with appellant that a finding of conspiracy must be supported by evidence constituting proof beyond reasonable doubt, it is equally true that such evidence need not be direct evidence. Thus, in *People v. Arroyo*[20] it was held that:

"A conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such misdeed. That must be their intent. There is a need for concurrence of wills or unity of action or purpose, or common and joint purpose and design. At times, reference is made to previous concert of criminal design. Its manifestation could be shown by united and concerted action. Thus, a conspiracy need not be proved by direct evidence. It may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of the common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, then, conspiracy has been established. If such be the case, then the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others." (Citing *People v. Taaca, et al.*, 178 SCRA 56 [1989]) (underscoring supplied)[21]

In the present case, the acts of the accused, starting when Conrado Gabatin threw the bottle and uttered the command or urging "Kill him" and continuing until Richard Gabatin and Pepe Sebastian delivered the fatal knife thrusts, all show a common design to snuff out the life of Dominador Oreña.

Appellant claims that there is a question as to the identity of the person, who threw the bottle at the victim[22] as there is an inconsistency between Dominador Oreña's affidavit which stated that Pepe Sebastian was the one who threw the bottle at the deceased and Dominador's oral testimony in court stated that it was Conrado Gabatin who threw the bottle. However, the discrepancy was explained and corrected by Dominador in the following manner:

Q. Who actually threw the bottle at your brother, was it Conrado Gabatin or Pepe Sebastian?

A. Conrado Gabatin, sir.

Q. Why did you state in your affidavit that it was Pepe Sebastian who threw the bottle at your brother?

A. Yes, sir, because I was not yet able to regain my shock feelings, sir.

Q. And why did you state in your affidavit that it was Pepe Sebastian who threw the bottle and now you testified that it was Conrado Gabatin who threw bottle at your brother?

A. I was not yet able to regain my shock feelings before, sir.[23]

Also, if there is an inconsistency between the affidavit and the testimony, the latter is to be given more weight since affidavits, being taken ex-parte, are almost always incomplete and inaccurate. Thus, in *People v. Loveria*,[24] the Court held:

"x x x. The appellant further claims that Richard Bales did not implicate him in his affidavit but pointed to him on the witness stand. Affidavits, taken ex-parte, are generally considered to be inferior to the testimony given in open court (People v. Pacola, G.R. No. L-26647, August 14, 1974, 58 SCRA 370). The Court has consistently held that an affidavit taken ex-parte, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject (People v. Tan, 89 Phil, 337 (1951); People v. Gonzales, G.R. No. L-40727, September 11, 1980, 99 SCRA 697; People v. Avanzado, Jr., G.R. No. 73116, February 29, 1988, 158 SCRA 427)."[25] (Underscoring supplied)

Appellant also claims that there are inconsistencies in the testimonies of prosecution witnesses. He points out that Fernando Decilos, who was nearer to the scene of the crime, never stated he had seen Conrado Gabatin throw the bottle.[26] Appellant also cites Ceferino Castro's testimony which made no mention that Conrado Gabatin was the thrower of the bottle or that Conrado had uttered any words at all.[27]

It has been held that witnesses, "possessed with different capacities for observation, cannot be expected to recall with accuracy or uniformity matters connected to the main overt act." [28] Thus, one witness may remember seeing who threw the bottle but the others cannot. What is important is that one of the prosecution witnesses, Dominador Oreña, whose credibility had not been successfully assailed by petitioner, had positively identified appellant as the person who had thrown the bottle at the deceased, starting the rapid sequence of acts which culminated in death for Danilo Oreña.

Appellant also tries to make out an inconsistency between the testimony of Fernando Decilos which stated that Conrado Gabatin had uttered the imperative "Kill him!" and that of Dominador Oreña who put appellant's words as "Take out his life." Appellant claims that these two sentences are not the same nor do they sound the same.[29] As pointed out above, because of the different capacities for observation of differing persons, it may also happen that different witnesses hear the same utterance differently. We need only note that the sentences in question carry the same import, that is, the taking of a person's life.

Appellant, moreover, contends that mere presence without knowledge that a crime was going to be committed does not make him a conspirator.[30] Appellant cannot, however, claim he was a mere bystander, since he had in fact started the whole series of overt acts resulting in the death of Oreña.

Appellant, having acted in concert with Richard Gabatin and Pepe Sebastian in the slaying of Danilo Oreña, must be held liable for the acts of his co-conspirators.

The next question the Court must address is whether or not the qualifying circumstance of treachery was present.

In People v Lasanas,[31] the Court discussed the conditions necessary to support a finding that the criminal act was qualified by treachery:

"We come to the question of treachery. It is familiar doctrine that two conditions need to be satisfied for treachery to be found properly: (a) the employment of means, method or manner of execution which would ensure the offender's safety from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (b) such means, method or manner of execution were deliberately or consciously chosen. In the instant case, the victim Benigno Ricaforte had no opportunity to defend himself from the sudden and unexpected attack by the accused. He had no reason to expect danger from the accused as his prior relationships with them had been at least civil and perhaps cordial. True, the victim had with him, or more precisely, behind him, companions who might have defended him. But those companions were themselves caught by surprise and, more importantly, were unarmed. While the suddenness of an attack might not itself be enough to constitute treachery, such suddenness is, however, enough to qualify an act as

treacherous if such suddenness were, as here, consciously adopted to ensure the commission of the planned killing without risk to the perpetrators."

In *People v Estillore*,^[32] the Court held that an attack was treacherous if the victim had no chance to raise any form of defense:

"x x x. Appellant came from behind the victim, who was reading a newspaper, looked closely at the victim's face and then suddenly stabbed the victim once at the stomach thus giving the victim no time to prepare for his defense. The victim's act of trying to shield himself with a small table came after the stabbing. It was impossible for the victim to flee or make defense before the fatal blow."^[33]

As noted above, appellant suddenly triggered the attack against the unarmed Danilo Oreña while the latter was engaged in an otherwise peaceful activity of selling "social boxes" in a dance. As soon as Danilo Oreña had fallen on the dance floor, the other assailants immediately started stabbing him. We consider that the slaying was qualified by treachery as the victim was not able to offer the least resistance to the sudden assault and the manner of attack tended to avoid every risk to the assailants arising from any defense which the deceased might have taken.

Appellant claims that the prosecution had failed to establish any motive on the part of Conrado Gabatin for committing the crime. However, it is settled that motive is immaterial where the identity of the criminal had been established^[34] such as in the instant case. The trial court found that all the malefactors had been positively identified:

"x x x It is usual in dances in rural barangays that the place is always well-lighted. There could then be no possible mistake in their identifying the accused. They reside in one barangay - Caniugan - and neighbors at that. All are well-acquainted with each other. All the three prosecution witnesses were only a few meters away at the very spot where the accused Conrado stood when he threw the beer bottle at Danilo's face which caused him to fall down, heard Conrado's words to kill Danilo and actually saw with their naked eye the brutal slaying of a defenseless and helpless victim - Danilo Oreña. x x x"^[35]

Neither does the Court find any error in the trial court's dismissal of the defense of alibi interposed by appellant. It is too well settled to require extensive documentation that alibi cannot prevail over the positive identification of the accused by the prosecution witnesses.^[36] For such defense to prosper, the appellant must show that it was physically impossible for him to have been in the scene of the crime.^[37] In the present case the trial court expressly ruled that:

"The defense of alibi set up by Conrado Gabatin must be rejected. The crime scene as estimated by Conrado when made to point an object or 400 meters away from his house as testified to by him where he claims he was at the time of the incident. His physical presence at the crime scene was not at all an impossibility."^[38]

WHEREFORE, all premises considered, the Decision of the Regional Trial Court of Cagayan Branch 10 is hereby **AFFIRMED** with the modification that the civil indemnity for the slaying is hereby **INCREASED** to P50,000.00.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Records, p. 1.

[2] Decision, p. 15.

[3] Appellant's Brief, p.4.

[4] TSN, 12 November 1987, p.2.

[5] Id., p.9.

[6] Id. pp.8-9.

[7] Id., 3 and 9.

[8] Id., p.3.

[9] Id. p.4.

[10] Id., p.3; 10 January 1987, p.8.

[11] Id., p. 5.

[12] Records, p.12.

[13] TSN, 28 November 1986, p.6.

[14] TSN, 10 March 1988, p.2.

[15] Id., p.3.

[16] Id., pp.4 and 6.

[17] TSN, 11 April 1988 p.9.

[18] Id., p.10.

[19] Decision, pp.12-13; citations omitted.

[20] G.R. No. 99258, Promulgated 13 September 1991.

[21] People vs. Arroyo, *supra* at 13.

[22] Appellant's Brief, p.6.

[23] TSN, 12 November 1987, pp.14-15.

[24] 187 SCRA 42 (1990).

[25] 187 SCRA at 58-59.

[26] Appellant's Brief, p.6.

[27] Id., p.7.

[28] People v. Balane, 123 SCRA 614 (1983).

[29] Appellant's Brief, p.6.

[30] Id., p.8.

[31] 152 SCRA 27 (1987).

[32] 141 SCRA 456 (1986).

[33] 141 SCRA at 460-461.

[34] *People v. Dino*, 160 SCRA 197 (1988).

[35] Decision, p.11.

[36] *People v. Madriaga, IV*, 171 SCRA 103 (1989).

[37] *People v. Somera*, 173 SCRA 684 (1989).

[38] Decision, p.14; Rollo, p.50.

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