

ALEXANDER LOZANO Y DALISAY, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 90870, February 05, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The Court of Appeals affirmed the conviction of the petitioner of homicide and serious physical injuries. He prays this Court to review it.

Francisco Ocampo, Jr. and his wife, Juliana del Rosario, owned a combination sari-sari store and refreshment parlor adjacent to their house. The petitioner, Alexander Lozano, a construction worker of the Jesus Is Lord (JIL) Construction, used to buy food at said store. He was one of the customers who were allowed to buy food on credit payable when they receive their weekly wages. His accounts were simply listed in a notebook kept by the spouses.

On May 9, 1986, at around 10 o'clock in the evening, while the spouses were resting with their daughter Rizza, someone knocked on their door, Juliana, opened the door. Lozano entered the house. One of his companions held the hand of Juliana. When Francisco went to the aid of Juliana, Lozano tried to stab him with an icepick but did not hit him. Francisco and Lozano grappled for possession of the icepick for about a minute. When they separated, Francisco was shot by an unidentified companion of Lozano who was outside the house.

According to Francisco, when he fell, his eyes dimmed. He did not see his wife anymore. Upon hearing the sound of a jeepney, he rushed out through a door to flag it down. He called his daughter and requested the jeepney driver to take him to a hospital. He was first taken to Dr. Hermogenes at Dulong Bayan who advised him to go to a hospital. He proceeded to the Capitol Medical Center in Quezon City where he was operated upon in the abdomen (RTC Decision, p. 180, Rollo).

Felipe del Rosario, Juliana's father, was in his house resting when he heard shouts coming from his daughter's house, followed by a gunshot. Felipe went out to investigate and saw Juliana lying on the ground face down. Placing her on his lap, Felipe saw that his daughter was covered with blood oozing from several stab wounds on the left and right sides of her body. With the help of neighbors he brought her to his house. The next morning, he heard of what happened to his son-in-law, Francisco.

Patrolman Levy Frias of the Norzagaray Integrated National Police was assigned by Mayor George Esguerra to investigate the shooting incident. With two other policemen, Patrolman Frias went to the house of Francisco Ocampo, Jr. They learned from the neighbors that Francisco and Juliana were shot by three (3) unidentified men.

On May 10, 1986, Patrolman Frias visited Francisco at the Capitol Medical Center. Although Francisco was in an oxygen tent, he was conscious and able to answer questions. He gave a statement Exh. B), identifying "Alex" as his assailant.

Francisco executed another Statement (Exh. C) on May 11, 1986.

Upon their return to Norzagaray, Patrolman Frias and a companion inquired about "Alex" who turned out to be petitioner Alexander Lozano, a worker of JIL Construction. His foreman told them that Alex had gone home to Arkong Bato, Valenzuela. The two (2) policemen proceeded to the place and invited Alex to Norzagaray for questioning. He went with them but he denied having participated in the commission of the crime charged. They arrested him and his two (2) co-workers, Edwin Smith and Roder Ilago.

The police took pictures of the three (3) suspects (Exhs. H and H-1) and showed them to Francisco in the hospital. He was able to identify the petitioner only. The police made the three (3) suspects line up with other persons in the hospital. Again, Francisco was able to identify Alex only.

Petitioner and his two John Doe companions were charged with murder and frustrated murder. During the preliminary investigation, the victim, Francisco, subscribed another statement (Exh. C) before Judge Filomeno Pascual.

The murder complaint was later amended to robbery with homicide and frustrated homicide. Upon petitioner's submission of his counter-affidavits, the Municipal Trial Court elevated the case to the provincial fiscal in Malolos for the filing of the information.

On August 13, 1986, the date set for the arraignment of the accused, Fiscal Jaime Santiago moved once more to amend the charge of frustrated homicide to serious physical injuries only. Petitioner entered a plea of not guilty to the charges.

Petitioner's defense was an alibi, the weakest of all defenses. He testified that on the night of May 9, 1986, he slept from 7:00 o'clock P.M. to 7:00 o'clock A.M. of the next day at the construction site with his three (3) co-workers, Edwin Smith, Roger Gilaro and Roger Gomez; that Edwin Smith who allegedly woke up earlier and went out to buy laundry soap, came back running to tell them about "Aling Juling (Juliana del Rosario)" (p. 21, Rollo). They allegedly agreed to visit "Ka Junior" (Francisco Ocampo, Jr.) after work. However, after receiving their wages, they went home instead because they were very tired.

On the basis of the evidence presented, the trial court found petitioner guilty of homicide and frustrated homicide. The Court of Appeals affirmed the conviction for homicide but found petitioner guilty of the lesser offense of serious physical injuries in lieu of frustrated homicide. The defendant's motion for reconsideration was denied for lack of merit.

In this petition for review, the petitioner contends that the Court of Appeals erred: (1) in convicting him of homicide and serious physical injuries, and (2) in awarding compensatory and moral damages to the heirs of the deceased, Juliana del Rosario, and actual and moral damages to Francisco Ocampo, Jr.

The petition has no merit. Petitioner's claim that he may not be convicted of homicide and serious physical injuries because the prosecution failed to prove that he participated in the killing of Juliana del Rosario and inflicted physical injuries on Francisco Ocampo, Jr., as those acts were allegedly committed by his unidentified companions, is not well taken. The Court of Appeals having found a conspiracy to have existed between the accused and his unidentified companions, it correctly ruled:

"May appellant be convicted for the killing of Juliana del Rosario and the Serious Physical Injuries suffered by Francisco Ocampo, Jr.? Stated differently, was there conspiracy between appellant and his unidentified companions? Be it remembered that when Juliana del Rosario opened the door of their house that fateful night, appellant barged in and a companion held the hand of Juliana. When Francisco Ocampo, Jr. attempted to give succor to his wife, appellant lunged at him with an icepick. A struggle ensued and when appellant and Francisco Ocampo Jr. separated, an unidentified assailant shot the latter. Then, Juliana was found dead outside their house.

"Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through the physical volition of one or all, proceeding severally or collectively. And conspiracy need not be established by direct evidence. It may and generally must be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purpose to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparent criminal unlawful purpose in common between them. (People vs. Ancheta, L-70222, Feb. 27, 1987, 148 SCRA 178, 184).

"In the case under scrutiny, conspiracy can be inferred from the following narration of Francisco Ocampo, Jr., to wit:

"Q.

While you were in the said house, do you recall of any unusual incident that happened?

'A.

Yes, sir there was.

'Q.

And what was that unusual incident all about?

'A.

Somebody knock knock (sic) at our door, sir.

'Q.

What did you do if any when you heard knocking?

'A.

My wife opened the door, sir.

'Q.

What followed next?

'A.

I saw Alexander Lozano entered (sic).

'Q.

Through what means did Alexander Lozano entered (sic) your house?

A.

'Through the door, sir.

'Q.

You are referring to the door which was opened by your wife?

'A.

Yes, sir.

'Q.

After that what followed next?

'A.

I saw that the hand of my wife was held by one of his companions, sir.

'Q.

Upon seeing that, what action did you take if any?

'A.

I tried to approach her to help her, sir.

'Q.

Were you able to give assistance to your wife?

'A.

Alex met me with a stab, sir.

'Q.

What happened to you when you were stabbed by Alex?

'A.

We grappled with one another, sir.

'Q.

Do you recall if you were hit by a stabbing motion done by Alex?

'A.

No sir. I was not.

'Q.

After you were I withdraw that question.

For how long a time did you grapple with the said Alex?

'A.

More or less for more than one (1) minute time sir.

'Q.

After that, what happened next?

'A.

We got separated and one of his companion (sic) shot me, sir.

'Q.

What were you doing when you were shot by the said companion of Alex?

'A.

I was about to follow him but I failed to follow him, sir.

'Q.

Where was then Alex going when you tried to follow him?

'A.

He was on his way out of our house, sir.

'Q.

You said you were shot by the companion of Alex, where was the companion of Alex who shot you?

'A.

On one side of our house outside, sir.

'Q.

In relation to the door, was it on the right or left side of the said door?

'A.

On the right side of the door, sir.

'COURT:

'Q.

What happened to you when you were shot?

'A.

My eyes then got dimmed (sic), (pp. 7-9. t.s.n., August 13, 1986.)

"From the foregoing revelations of the surviving victim, it can be gathered that appellant entered the house almost simultaneously, with his unidentified companion and grabbed the hand of Francisco Ocampo, Jr. When the latter tried to help his wife, appellant prevented him from so doing by trying to stab him with an icepick. From such actuations of appellant, it is decisively clear that he was acting in confederation with the unidentified gunman.

"In *People vs. Peralta*, it was held that the moment it is established that the malefactors conspired and confederated in the commission of the felony, collective liability of the conspirators attaches by reason of the conspiracy, and the court shall not speculate on, nor even investigate, the actual degree of participation of each of the perpetrators present at the scene of the crime. (*People vs. Casey*, L-30146; Feb. 24, 1981, 103 SCRA 21, 37). In the case at bar, it appearing that appellant actively participated in the commission of the crime charged, he is guilty as a co-conspirator regardless of the extent of his actual involvement and should be sentenced accordingly"

(pp. 8-11, CA Decision; pp. 25-28, Rollo.)

Based on those findings and observations of the Court of Appeals, the petitioner is liable as a co-conspirator for the crime committed by his companions regardless of the extent of his actual involvement. Malefactors who act in concert pursuant to a common objective are in conspiracy (People vs. Carpio G.R. Nos. 82815-16, October 31, 1990). To prove conspiracy, direct evidence is not necessary when the same can be inferred from the acts of the accused (Ramos vs. Sandiganbayan, G.R. No. 58876, November 27, 1990). All the participants in a conspiracy are liable as principals (People vs. Damaso, G.R. Nos. L-41490-92, October 18, 1990).

The amount of P30,000 awarded by the trial court to the heirs of Juliana del Rosario as indemnity for her felonious killing should be increased to P50,000 in accordance with the en banc resolution of August 30, 1990 of this Court which was applied in subsequent cases (People vs. Sazon, G.R. No. 75814, September 24, 1990; People vs. Yeban, G.R. Nos. 90279-81, October 11, 1990; People vs. Iligan, G.R. No. 75369, November 26, 1990; People vs. Tesarra, G.R. No. 85531, December 10, 1990).

This decision is determinative only of the criminal and civil liability of the petitioner Alexander Lozano and is not in any way a prejudgment of his two (2) unidentified companions whose liabilities shall be determined in an appropriate case or cases.

WHEREFORE, the petition for review is denied. The decision of the Court of Appeals is affirmed except the indemnity due the heirs of Juliana del Rosario for her death, which is hereby increased to P50,000. Costs against the petitioner.

SO ORDERED.

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

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