

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEVERINO CAMPOS Y DELA TORRE, ACCUSED-APPELLANT, JOSE NAPIGKET, PABLITO BAYNOSA, ACCUSED (ACQUITTED), JUAN PANTONIAL, PACIFICO...

G.R. No. 91716. October 03, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On review before us is the decision[1] promulgated by the Regional Trial Court, 7[th] Judicial Region, Branch 39, Dumaguete City, on November 20, 1989, finding Severino Campos y de la Torre guilty of multiple murder and frustrated murder and sentencing him as follows:

WHEREFORE, the Court finds accused SEVERINO CAMPOS y DE LA TORRE Guilty beyond reasonable doubt of Multiple Murder for the death of Rosendo Hilardes, Conchita M. Hilardes and Santos Hilardes and Frustrated Murder for the assault on Pablo Hilardes. Taking into consideration the attendance of the aggravating circumstances of dwelling, band and cruelty, with only one mitigating circumstance, that is, voluntary surrender, accused SEVERINO CAMPOS is hereby sentenced to suffer the following penalties:

Three (3) Reclusion Perpetua for the deaths of Rosendo Hilardes, Conchita M. Hilardes and Santos Hilardes with the accessory penalties provided by law, and an indeterminate penalty of imprisonment from Eight (8) years as minimum to Fifteen (15) years as maximum for the assault on Pablo Hilardes, to indemnify the respective heirs of Rosendo Hilardes, Conchita Hilardes and Santos Hilardes in the amount of P30,000.00 for each group of heirs, and P5,000.00 in damages to Pablo Hilardes, and to pay the costs.

For lack of evidence to prove their guilt beyond reasonable doubt, accused Jose Napigkit and accused Pablito Baynosa are hereby acquitted with [sic] the cancellation of the former's bail bond and ordering the immediate release of the latter.

So that this case may not remain pending for an indefinite period of time, let the record be sent to the archives, without prejudice to its reinstatement as soon as the rest of the accused are arrested and brought to this Court.

SO ORDERED.[2]

An information[3] was filed on September 5, 1986 by 1st. Asst. Provincial Fiscal Pacifico S. Bulado accusing JOSE NAPIGKIT, SEVERINO CAMPOS, PABLITO BAYNOSA alias "Pabling," JUAN PANTONIAL, PACIFICO OLIVEROS, ROMY OLIVEROS, PEPE OLIVEROS, JOSE OLIVEROS, JIMMY SILVANO, ISLAO ALBOROTO, JOHN DOE alias "Amay", MARVIN DOE, alias "Tonio", CRISTINO DOE, alias "Lando", EPIFANIO DOE, alias "Ronnie", AGOSTO DOE, alias "Bogdol", and SERVILLANO DOE alias "Lucio", of the crime of MULTIPLE MURDER and FRUSTRATED MURDER, committed as follows:

That sometime in the evening of May 25, 1986, at Sitio Mansangab, Barangay Nagbinlod, Municipality of Sta. Catalina, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery, and with abuse of superior

strength, conspiring and confederating together, and acting in common accord and purpose, and mutually helping each other, did then and there willfully, unlawfully and feloniously held in captivity spouses ROSENDO HILARDES, CONCHITA HILARDES and sons PABLO HILARDES and SANTOS HILARDES in their house and thereafter tied ROSENDO HILARDES' hands with a rope, then the four of them were brought down in the premises of the house and were mauled and tortured with all the accused taking turns and hacked them with the sharp bolo which all the accused were then armed and provided, inflicting thereby hack wounds in the mortal and different parts of the body (sic) of the victims causing instantaneous death to the three victims ROSENDO HILARDES, CONCHITA HILARDES and SANTOS HILARDES and thereafter the accused buried them in the surrounding area, while the victim PABLO HILARDES, suffering from a serious injury at the base of the back of his head and on the other parts of his body, thus, all the accused having performed all the acts of execution in the commission of the crime of MURDER in relation to their acts committed against Pablo Hilardes, but was not able to produce the crime of MURDER as a consequence by reason of a cause independent of the will of the perpetrators, that is, by the timely medical assistance to the victim, which saved the victim's life.[4]

However, of the several persons accused, only Jose Napigkit, Pablito Baynosa, and Severino Campos were arrested; the trial at the court a quo, therefore, pertained only to them. As far as the records show, all the other accused are still at-large.

The facts found by the the trial court are as follows:

On (sic) the evening of May 25, 1986 at Sitio Mansangab, Barangay Nagbinlod of the Municipality of Sta. Catalina, this province, members of the Hilardes family namely: Rosendo Hilardes, father, Conchita Macquel Hilardes, mother, Santos Hilardes and Pablo Hilardes, children, were attacked with bladed weapons by a group of persons resulting to (sic) the death of Rosendo and Conchita Macquel Hilardes and their son Santos Hilardes. Pablo Hilardes on the other hand was still alive though seriously wounded when found and was brought to the Bayawan District Hospital from where he later recovered from hacked (sic) wounds (Exhibits "J," "K," "L," and "Y").

Nobody identified the persons responsible in the mauling and hacking of the Hilardes family except the son, Macario Hilardes, who testified that he was present when the group tied the hands of his parents preparatory to bringing them down the house while he (Macario) was ordered to remain in the house and that he was not harmed due to the advice of one of the group to his companions that he be left unharmed so he could take care of his younger brothers (TSN: Villahermosa, January 21, 1987, p. 145).

It was Macario Hilardes who implicated accused Severino Campos as a member of the group responsible for the killing of the Hilardes couple and their son, Santos, Macario Hilardes admitted that he did not know the names of the persons in the group that went to their house and mauled his parents but he declared that on (sic) the morning of that day, after he and his friend Jostes Waskin were resting after playing basketball, they spotted a group of armed men walking beside a creek and it was Jostes Waskin who pointed out to him Severino Campos, an ICHDF member, who was part of the group (TSN: Edullantes, March 17, 1987). Thus, when he arrived home in the evening and was accosted by the armed group inside their house, he was already aware of the identity of accused Severino Campos. He further narrated that of the ten armed men who went to their residence, only six (6) came up the house to tie the hands of his mother and among them was accused Severino Campos who he observed was armed with a homemade shotgun locally known as "pugakhang" (Id. TSN: Villahermosa, p. 133). He also admitted that since he was ordered to stay inside their house he did not actually see the group of accused hack the members of his family and it was only on the morning of the incident when his younger brother Pablo Hilardes came back to the house with several hack wounds on his body that he learned of the sad fate of his parents and his brother, Santos Hilardes (Id. TSN: Edullantes, p. 91).

It is thus only the testimony of Macario Hilardes who specifically identified accused Severino Campos as one of the group responsible for the killing of Rosendo Hilardes, Conchita Hilardes and Santos Hilardes and the

wounding of Pablo Hilardes. All the other prosecution witnesses testified only to the fact of death of the aforesaid members of the Hilardes family and the cause of such death. Rebuttal witness Atty. Franklin Cobbol, the Comelec Registrar of San Carlos City, Negros Occidental was presented by the prosecution to rebut the testimony of accused Severino Campos that he is actually from San Carlos City and in fact is registered there as a voter (TSN: Villahermosa, March 13, 1989, p. 3).

Prosecution presented a Sworn Statement (Exhibit "D" to "D-6-e"), of accused Severino Campos dated August 6, 1986, executed by the accused while he was under custody at the Sta. Catalina Police Station whereby he admitted his participation in the assault in question with the information that he and his companions were acting only on the orders of Mayor Jose Napigkit, they being the political followers of said Mayor.

Prosecution further submitted a sketch allegedly made by accused Severino Campos (Exhibit "G"), showing the location of the place where victims Conchita M. Hilardes, Rosendo Hilardes and Santos Hilardes were killed and the place where Pablo Hilardes was mauled and hacked, with the relative positions of the companions of Severino Campos when they perpetrated the crime. Prosecution also presented another sketch allegedly drawn by accused Severino Campos on August 9, 1986 showing the location where the accused and co-accused Jose Napigkit met, which was within the vicinity of the Jagonipa bridge in Sta. Catalina on April 20, 1986 where co-accused Jose Napigkit allegedly informed him that on the following month, which was May, they were going to kill Rosendo Hilardes and that accused Severino Campos should coordinate and cooperate with accused Pabling Baynosa (Exhibit "H"). These declarations appear on page 4 of his sworn statement, particularly in Question and Answer No. 49 (supra).

Severino Campos, however, denied having drawn the sketches submitted by the prosecution as exhibits "G" and "H" but that it was the late Errol Electona who gave them to him (Id. p. 50).

When questioned about the whereabouts of the .38 caliber revolver reflected in his Mission Order, accused Severino Campos declared that he returned said revolver to the late PC Maj. Rodolfo Florece since he didn't know how to use it. He, however, admitted that while stationed at the Jagna PC detachment he was allowed to use a .30 caliber M-1 Carbine which is a weapon more complicated to handle than a .38 caliber revolver.

He also declared that he regretted having signed the instrument of confession, at the same time saying that if the promise of the late Errol Electona to free him after signing said instrument was realized then he would not have entertained such regrets (Id. p. 34).

The Court confronted accused Severino Campos on the identity of the signature above the name Severino Campos y dela Torre in the affidavit of confession and said accused did not admit that the signature was his, although six (6) of those signatures appear in the instrument (Exhibit "D"), he, however, admitted that he knows how to write, whereupon the Court asked him to write his name on a piece of paper as a specimen of his customary signature (TSN: Jo, April 6, 1988. p. 7).

To clearly determine if the signature appearing in the instrument of confession was really written by the accused, the Court requested the National Bureau of Investigation for their handwriting experts to compare the signature appearing on the affidavit (Exhibit "D") with that written by the accused ten (10) times in Court. However the NBI through Deputy Director Manuel C. Roura in a letter dated January 17, 1989 stated that "no definite opinion can be rendered on the matter for insufficiency of standards submitted to be used as basis for comparative analysis." Be that as it may, the Court is therefore bound to proceed through its own findings the veracity of the instrument of confession presumably authored by accused Severino Campos.

Co-accused Jose Napigkit and Pablito Baynosa were involved in this instant case thru the Sworn Statement of accused Severino Campos implicating Jose Napigkit as the mastermind and Pablito Baynosa as one of those who had a hand in the killing of the Hilardes family.[5]

Before us, the accused-appellant, upon proper motion, was granted leave to file a motion for new trial which he

did on April 11, 1990. After due consideration, the said motion was denied in a Resolution of the Court dated May 30, 1990. Thereafter, Severino Campos seasonably filed his appellant's brief, and later his Reply Brief to the Brief of the People filed by the Solicitor General.

The records of this case in the trial court were transmitted by the Court of Appeals to this Court on January 31, 1990 by a letter dated January 29, 1990. The said records were "erroneously forwarded" to the Court of Appeals "considering that the penalty imposed upon the accused appellant is RECLUSION PERPETUA." As a matter of fact, the decision of the trial court imposed on accused-appellant Severino Campos y de la Torre, among other penalties, "(T)hree (3) Reclusion Perpetua for the deaths of Rosendo Hilardes, Conchita M. Hilardes and Santos Hilardes," which places the matter within the exclusive appellate jurisdiction of this Court.

Now in his brief, Campos assigns the following errors committed by the trial court:

- IN GIVING CREDENCE TO THE TESTIMONY OF MACARIO HILARDES WHICH TESTIMONY IS BEREFT OF CREDIBILITY; AND
- IN NOT ACQUITTING THE HEREIN ACCUSED-APPELLANT;[6]

We find the assignment well-taken on both errors.

The State's case relies heavily on the supposed sworn statement of accused-appellant Campos (which the trial court admitted and construed as an extra-judicial confession) and the testimony of Macario Hilardes. Justifying the importance of the said statement of the accused-appellant to the case for the prosecution, the trial judge declared in his decision:

x x x The fact that said statement was duly subscribed and sworn [sic] in front of a Municipal Judge has given it more authentic-city, especially that Municipal Judge Serafin Gargantiel testified to its voluntariness and to the absence of any complaint from accused Severino Campos. x x x."[7]

The transcripts of the stenographic notes, however, show that several times the accused Campos categorically denied having voluntarily signed, of his own free will, the affidavit containing his so-called extra-judicial confession and that he was not aware of its contents when he was made to sign the same.

COURT TO WITNESS:

x x x x x x x x

Q:

And then what?

A:

For three (3) days, August 5, 6 and 7, Errol told me that there was an affidavit prepared for me to sign for my release and that if I refuse to sign it, I would rot in jail, but if I sign the affidavit, I would be set free.

Q:

Did you not ask him what affidavit was that and who prepared it?

A:

No, sir. I was not able to ask, he merely told me that if I would sign the affidavit, I would be free, if not, then I would rot in jail.[8]

X X X X X X X X

ATTY. LOGRONIO:

X X X X X X X X

Q:

Upon arriving (at) the store of the judge, what happened?

A:

I was made to sign the affidavit.

Q:

Who made you sign the affidavit?

A:

Gargantiel.[9] (Referring to Municipal Judge Serafin Gargantiel)

X X X X X X X X

Q:

So, Attorney Gaitera was with you?

A:

Yes, sir.

Q:

From Sta. Catalina to Bayawan?

A:

Yes, sir.

Q:

And he had in his hands the affidavit that you were supposed to sign, in his hands from Sta. Catalina to Bayawan?

A:

I do not know whether he was having that affidavit, only when I signed it did I learn that it was an affidavit.

Q:

What did Gaitera tell you, if any, before you signed the affidavit?

A:

Nothing, sir.

ATTY. LOGRONIO:

x x x x x x x x

Q:

Did the person who asked you to sign read first the affidavit to you?

A:

No, sir.

Q:

How about Attorney Gaitera who handed the affidavit, did he read to you the contents of that affidavit before you signed it?

A:

No, sir.[10]

x x x x x x x x

COURT TO WITNESS:

Q:

So, it did not take long since you arrived at that store in the market place up to the time you left that store, did it?

A:

It did not take long, sir.

Q:

So, it was a quick proceedings, you signed, that man named Gargantiel signed, then you left the store?

A:

Yes, sir.

Q:

And now here was Atty. Abundio Gaitera who congratulated you, "Severino, because you signed your affidavit, you are now a free man," did he not tell you that?

A:

Yes, sir.

ATTY. LOGRONIO:

Q:

Up to now, do you know what was inside that affidavit that you said that was not read to you and which you said you were forced to sign?

A:

I do not know the contents of that affidavit because it was not read to me.[11]

x x x x x x x x

COURT TO WITNESS:

Q:

You did not object because there was this opportunity for your freedom regained?

A:

Yes, sir, that is correct.

Q:

So, no matter what they would make you do provided that there was that promise and opportunity to be free, you would be doing it?

A:

Yes, sir. I would do anything they want me to do as long as I would be set free.

Q:

Even if you did not understand what you were made to do?

A:

I was given that assurance that I would be released so I had signed that paper, but knowing that the signing of

such documents sent me to prison, I regreted it so much to have signed it.[12]

X X X X X X X X

We pondered the foregoing testimony of the appellant and we arrived at the conclusion that this so-called extra-judicial confession was not voluntary, hence, inadmissible. As we have ruled in *People v. Eglipa*,^[13] confessions or admissions of guilt extracted on promises of release or better treatment can not be considered admissible evidence.

We also find that the extra-judicial confession of Campos was obtained in the absence of counsel.

According to the records of the case, Atty. Abundio V. Gaitera was the lawyer^[14] called by the Station Commander of the police force of Sta. Catalina (Campos was detained in the town jail of this Oriental Negros municipality) and asked to represent accused-detainee Campos during his custodial investigation inside the jail. Atty. Gaitera was not Campos' choice. Atty. Abundio Gaiters even admitted that he was not present during the entire custodial investigation of accused-appellant. Gaitera was with Campos in the beginning, then left him and returned on the third day, a Saturday, only to find out that the purported affidavit of Campos had already been completed and typed, except for the signature. On this point, Atty. Abundio Gaitera testified:

X X X X X X X X

Fiscal Elvinia (To Atty. Abundio Gaitera):

Q

Now you said there were two dates involved, August 6, 1986, and August 9, 1986. Will you please tell us up to what portion in that sworn statement did you personally take part or personally took part assisting Severino Campos?

A

It was only during the preliminary stage of the confession.

Q

Will you please tell us or will you explain to us what that preliminary stage of the extent of the confession?

A

It was only when Campos asked when (whom) to retain as his counsel and the consequences of this confession. After that I requested the police because it was already 3:00 o'clock in the afternoon, we stopped here leaving Campos also a chance to go with his confession and I will come back on a Saturday. That was August 9, 1986.

But when I came back on August 9, 1986, the whole thing was already through by the police. So, what I did was to request a copy from the police and to bring again Campos to the intelligence room and translated to him whatever were typewritten in this confession in Visayan. (*Italics supplied*)

Court:

Q

You even on August 9, 1986, you still volunteered to assist Campos?

A

Yes.

Q

And as far as English so-called confession translated to Visayan?

A

Because I told the police . . .

Q

At your behest?

A

No, not my behest, Your Honor, because I promised to the police that I will be back on a Saturday then we go on with the confession. But when I arrived on a Saturday at 9:00 o'clock in the morning the whole thing was already finished by the police.[15]

The statement was signed by Campos before municipal trial Judge Serafin G. Gargantiel, at the latter's store in the market and not in his office in the court.[16]

We can see from the records, therefore, that this extra-judicial confession is constitutionally flawed and inadmissible in evidence against Campos due to the lack of competent and independent counsel of his own choice.

SEC. 12(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x x x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.[17]

We have zealously guarded and protected this right of the accused, ruling time and again, in a long line of decisions, that uncounselled confessions are inadmissible in evidence.[18]

No custodial investigation can be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf.[19]

We also note with disapproval the unnecessarily long, and in some instances, irrelevant, cross-examination by the prosecutor of the accused-appellant, consisting of more than 150 pages of the transcript of stenographic notes, which gives the impression that the accused-appellant was harassed, bullied, and badgered. The judge should have cut down the prosecutor's repetitive questions which had already been answered and his inquiries into insignificant matters that bordered on the ridiculous.[20]

Now then, the extra-judicial confession having been disposed of, only the testimony of Macario Hilardes, a 17-year-old "Grade II drop-out," remains to be studied as to whether or not it is credible and weighty enough to implicate, beyond reasonable doubt, appellant Severino Campos in the killing of the three victims and the wounding of another.

Nothing in the lengthy testimony of the lone prosecution eye-witness, Macario Hilardes, is it disclosed that he saw the actual killing of the victims. On the participation of appellant Campos, the witness merely stated that it was only accused-appellant Campos whom he was able to recognize as one of the armed men who went to their residence on the night of said incident.

Moreover, nowhere in the sworn statement[21] of Macario purportedly executed on June 17, 1986, just twenty-three (23) days after the violent incident, did he point to Severino Campos, or identify him in any manner, as one of the armed men who either mauled or killed the members of his family on May 25, 1986. It was only in his testimony before the trial court on January 22, 1987, six months later, that he mentioned for the first time Severino Campos as one of the six armed men who went to their (Hilardes') house that fateful night. But even then he never testified that he saw any of the victims killed.

We find it strange why this witness, Macario, closely related by blood as he is to the victims, did not at the first instance[22] and opportunity name the accused-appellant as one of those who had tied up, beaten, and taken away his parents and siblings from their house. His initial silence, which continued for six months, as to the criminal participation of the accused-appellant in the killing of his three loved ones, and the wounding of another, perhaps the four nearest and dearest persons to him on earth, is unusual and goes against the grain of human nature. This makes his behavior as well as his testimony suspect and weakened the case for the prosecution.

Macario presented a vague picture, if, not conflicting statements, of what really occurred in that unfortunate incident. For instance, the trial court gives us the impression that the armed men were inside the Hilardes' house tying up his mother, when Macario arrived:

x x x x x x x x

Thus, when he (Macario Hilardes) arrived home in the evening and was accosted by the armed group inside their house, he was already aware of the identity of accused Severino Campos. He further narrated that of the ten armed men who went to their residence, only six (6) came up in the house to tie the hands of his mother and among them was accused Severino Campos who he observed was armed with a homemade shotgun locally known as "pugakhang" (Id. TSN: Villahermosa, p. 133).

X X X X X X X X

On the other hand, in Macario's affidavit, he narrated the episode in the reverse; he stated that he was already inside the house when the armed men came along with his mother.

X X X X X X X X

2. Nga sa alas siete ang takma sa gabi-i sa mao gihapong adlaw, nadungog nako ang akong inahan nga si Conchita Hilardes, 38 anyos, mitawag kanako sa pag-abli sa pultahan. Nianang buntag akong inahan kamban sa akong duha ka mangood, si Santos, 12 og Pablo, 7 niadto sa Bo. Cavitan para mapalit og pagkaon og ubang galamitan sa balay;

3. Nga sa pag-abli nako sa pultahan, gikaptan dayon ang akong kamot sa armadong tawo nga nagtaban sa ilang mga nawang ug miingan, "Walay lihok". Itug-an ang inyong armas!" Niining tungora, nakit-an nako ang akong inahan nga gigapos ang kamot ng pisi. Aduna pod Koy nakit-an nga mga armadong tawo kaubon niya. Nanulod ang mga armadong tawo ang gitan-aw ang among balay;[23]

X X X X X X X X

These statements in the Cebuano language may be translated into English as follows:

X X X X X X X X

2. At 7 o'clock in the evening of the same day (May 25, 1986), my mother, Conchita Hilardes, 38 years old called me up to open the door of our house. In that morning, my mother together with my two younger brothers, Santos 12 and Pablo, 7 were in Bo. Cawitan to buy our food and other stuff needed in the household.

3. Upon opening the door, two masked men held my hand and said: "Do not move. Where are your arms?" At this time, I saw my mother's hand being tied with a rope. I also saw the other armed companions who entered inside the house.

But above all, we find it aberrant, assuming that Macario Hilardes was present at that particular time, that the armed men left him unharmed, being a potential eye-witness to the crime. We find the argument of accused-appellant Campos on this score convincing. He submits:

X X X X X X X X

Further, the testimony of Macario Hilardes relating to the incident that transpired before the killing is at best unbelievable. Hilardes, already a virile young man at the time of the incident, testified that his life was spared by the armed men so that he can take care of his younger brothers. Yet, the next thing that happened was that the very same group mercilessly killed his younger brother Santos and which same fate would have had happened to his brother Pablo. That such group of men who could kill a boy and almost killed another boy six years of age in cold blood would spare the life of a young man who can be more dangerous when armed simply traverses reasonable explanation. Doubts therefore, arise. Was Macario Hilardes really present, as he claimed to be, at the time of the incident?

In order for said testimony to be credible, the allegations therein, when taken in the light of the circumstances obtaining at the time of the incident must run consistent with the normal and acceptable conduct of men under such circumstances thereby leaving no doubt as to its veracity or truthfulness. For evidence to be considered as credible, it must not only be credible in itself but must also come from a credible source. (Pp. vs. Sarda, G.R. No. 74479, 24 April, 1989, citing *Borguilla vs. Court of Appeals*, G.R. No. 47286, 7 January, 1987).[24]

It is in instances such as these that we perceive the possibility of fabrication in an attempt to pin the blame on some unfortunate person like the accused-appellant. The longer the delay to report to the authorities the significant events that transpired during the commission of a crime, the greater the possibility that additional

statements given about the same after a long interval of time are mere afterthoughts which must be considered with much caution. At best, Macario's testimony is nebulous; he never stated that he saw Campos take part in the killing; all he said was that Campos was part of the armed group that went up their house. But conspiracy involving Campos was not proven.

Criminal conspiracy must always be founded on facts, not on mere inferences, conjectures, and presumptions. By and large, the evidence on record fails to satisfy the requirement of moral certainty indispensable to hold the petitioner guilty of the charge as a co-conspirator.[25] For it is only by proof beyond reasonable doubt, which requires moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it — that the presumption of innocence may be overcome.

The mere presence of Campos among the armed men does not prove, in law, that he participated in the killing of the three Hilardeses and in the wounding of Pablo.

x x x In a long line of decisions, this Court has held that mere presence at the scene of the crime, without more, does not imply conspiracy. x x x[26]

x x x Nowhere in the respondent court's decision do we find mention of any other act of the petitioner that may be construed as an overt act in the furtherance of a conspiracy. Absent such an evidentiary basis, we can not accept the finding of implied conspiracy. The conclusion of the trial court is based on subjective considerations, not on positive and convincing evidence. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective.[27]

Besides, as adverted to earlier, we do not see any rhyme or reason in the trial court's acquittal of accused Pablito Baynosa, and at the same time the conviction of the accused-appellant even as the principal witness, Macario Hilardes, pointed to both Baynosa and Campos as members of the armed group that entered the Hilardes family residence.[28] Is Campos being made a scapegoat? If Baynosa was acquitted, so should Campos, since the prosecution's evidence against them is the same—i.e., insufficient.

WHEREFORE, the decision is REVERSED and the accused-appellant is ACQUITTED on reasonable doubt.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Penned by the Hon. Enrique C. Garrovillo, Acting Judge.

[2] Rollo, 57-58.

[3] Id., 24-25.

[4] Id., 24-25.

[5] Id., 52-55.

[6] Appellant's Brief, 3; rollo, 77.

[7] Rollo, 55.

[8] TSN, November 17, 1987, 17-18.

[9] TSN, id., 25.

[10] TSN, id., 26-27.

[11] TSN, id., 28-29.

[12] TSN, April 6, 1988, 12.

[13] G.R. No. 78852, promulgated on June 5, 1989, 174 SCRA 1; Second Division.

[14] Exhibit "D", Records of the Case, 24.

[15] TSN, March 17, 1987, 19-20.

[16] Id., 29.

[17] Article III, 1987 Constitution.

[18] People v. Decierdo, No. L-46956, promulgated on May 7, 1987, 149 SCRA 496; People v. Galit, No. 51770, promulgated on March 20, 1985, 139 SCRA 465.

[19] Morales, Jr. v. Enrile, No. 61016; Moncupa, Jr. v. Enrile, No. 61107; promulgated on April 26, 1983, 121 SCRA 538.

[20] TSN, November 17, 1987, 43-47; April 5, 1988, 3-59; April 6, 1988, 3-61; April 7, 1988, 2-37.

[21] Exhibit "X", Records of the Case, 19-20.

[22] Id.

[23] Id., 19.

[24] Appellant's Brief, 5-6; rollo, 77.

[25] Ibid.

[26] Id, citing People v. Saavedra, No. L-48738, promulgated on May 18, 1987, 149 SCRA 610; People v. Pimentel, No. L-47915, promulgated on January 7, 1987, 147 SCRA 25; People v. Sabilano, Nos. L-32866-7, promulgated on September 21, 1984, 132 SCRA 83; People v. Madera, No. L-35133, promulgated on May 31, 1974, 57 SCRA 349; People vs. Wong, Nos. L-22130-32, promulgated on April 25, 1968, 23 SCRA 146; People v. Tividad, No. L-21469, promulgated on June 30, 1967, 20 SCRA 549; People v. Izon, 104 Phil. 690; People v. Ibañez, 77 Phil. 664.

[27] Id.

[28] TSN, October 28, 1987, 22; Records of TSN, Vol. II, 581.

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