

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO JORGE Y RAMIREZ, ACCUSED-APPELLANT.

G.R. No. 99379. April 22, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

EDUARDO JORGE Y RAMIREZ appeals from the decision of the Court a quo finding him guilty of murder and sentencing him to reclusion perpetua.[1]

On 15 June 1989, an amended information was filed charging Eduardo Jorge, Romeo Lajera and Remedios Bernales with murder for the killing of Francisco Palma with the aggravating circumstances of treachery and evident premeditation. However, only Jorge was tried by the court a quo because Lajera and Bernales managed to remain at large, although Bernales was eventually arrested in August 1991 to face separate trial.[2]

The case of the government is woven mainly around the testimony of Patricio Ocenar, a barangay tanod of Barangay Doña Imelda, Quezon City. Ocenar narrates that on 26 June 1990, at around nine-thirty in the evening, he was at the barangay hall. Then a person informed him that Francisco Palma was being molested by three men.[3] Taking with him his "knife-stick,"[4] Ocenar proceeded to Paui Street pointed to by the informer. There, at a distance of some ten arms length,[5] Ocenar saw Eduardo Jorge and Romeo Lajera holding the hands of Palma and a woman[6] stabbing him on the left chest with a long instrument. Ocenar could not tell exactly what kind of weapon was used. He shouted at them and all three ran away leaving Palma behind to chase his aggressors but he collapsed immediately on Baloy Street.[7] According to Dr. Renato Bautista who examined the victim, the stab wound on his left chest was the cause of his death.[8]

Corazon Palma, widow of the victim, was also presented to testify for the prosecution. But the trial court correctly discounted her testimony -

x x x because as per Patricio Ocenar she came to know of the incident only from him. Besides, according to Mrs. Palma, when someone came (sic) to her house to call her attention as regards her husband, the caller said "Cory, Cory, your husband is stabbed dead and he is in Baloy." Hence, her testimony that she saw her husband being mauled and then stabbed does not appear credible. Her testimony also reads like that of Mr. Ocenar which, considering her interest in this case, renders doubtful her narration on the identity of her husband's killers.

As the court a quo observed, "her testimony that she saw her husband being mauled and then stabbed does not appear credible." It was obviously perjured. We can only commiserate with the widow and say to her, it was good effort in aid of the prosecution but it was not good enough to pervert the facts and convince the court that she was telling the truth.

On the part of appellant Jorge, he denies any participation in the crime. He claims he was sleeping in his house at the time of the killing and was only awakened when policemen, led by the widow, forced him out of his house despite his protestations and profession of innocence, and brought to the police station. But, as earlier mentioned,

the trial court convicted him of murder with abuse of superior strength.

Jorge now imputes eight errors to the trial court the salient points of which are: (a) in finding the prosecution evidence sufficient to establish his guilt; (b) in giving full faith to the testimony of Patricio Ocenar; (c) in finding him guilty of murder as principal without sufficient proof of conspiracy among him and his co-accused; and, (d) in qualifying the killing to murder with abuse of superior strength when such circumstance is not alleged in the Information.

Indeed, under the facts of the case, we cannot assert with moral certainty that the accused is guilty of the crime charged. The evidence for the prosecution does not meet the quantum of proof required to overcome the constitutional presumption of innocence of the accused. We are not saying here that appellant is innocent but that his guilt has not been proved beyond reasonable doubt; hence, he should be acquitted.

In order to convict appellant as a principal by direct participation in the case before us, it is necessary that conspiracy among him and his co-accused be proved. No conspiracy here was established. Conspiracy, like any other ingredient of the offense, must be proved as sufficient as the crime itself through clear and convincing evidence, not only by mere conjectures.[9] Proof beyond reasonable doubt is required to establish the presence of criminal conspiracy.[10] In fact, the appealed decision does not mention, much less discuss, conspiracy.

Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy.[11] In this case, no unity of purpose was shown. The only involvement of appellant was his holding of the hand of Palma when he was stabbed by Bernales on the left chest. There was no other evidence to show unity of design. The simultaneousness of the act of stabbing the victim by Bernales with the holding of the hand of the same victim by appellant does not of itself demonstrate concurrence of wills or unity of purpose and action.[12] For, it is possible that the appellant had no knowledge of the common design, if there was any, nor of the intended assault until the victim was actually stabbed. The thrust could have been made at the spur of the moment, totally unexpected by appellant. The mere holding of the victim's hand does not necessarily prove intention to kill. If the tragedy was a chance stabbing, there can be no conspiracy to speak of.[13] Perhaps it would have been different if the victim was stabbed more than once and appellant still held on to the hand of the victim. That would have indicated intent to kill and a community of purpose and design. But the evidence does not show that appellant knew that Bernales had a knife; that she intended to use it to stab the victim; and, even if she had such intention and appellant knew it, that he held the victim's hand to insure the effectiveness and fatality of Bernales' attack.

While the holding of the hand of the victim could demonstrate unity of purpose, yet, it could also mean a desire on the part of appellant to avoid a physical encounter between Palma and Bernales, a woman, who was not known to appellant to be armed with a knife. The distance of some ten arms length from the startling occurrence could have blurred the vision of Ocenar, the only eyewitness for the prosecution, who could no longer identify the weapon used except to say it was a long instrument. This also casts doubt on some of his factual accounts. The rule is well settled that if the facts apparently inculpatory may equally be explained consistent with one's innocence, the evidence does not fulfill the test of moral certainty to support a conviction.[14]

Although Ocenar appears credible in his version, his testimony unfortunately does not establish the existence of conspiracy. It is elementary that, in the absence of conspiracy, each of the accused is responsible only for the consequences of his own acts.[15] All that appellant did was to hold the hand of Palma, which is not a crime.

Neither can the appellant be considered a principal by indispensable cooperation, nor an accomplice in the crime of murder. To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another

act without which it would not have been accomplished.[16] In order that a person may be considered an accomplice, the following requisites must concur: (a) community of design, i.e., knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and, (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

The cooperation that the law punishes is the assistance knowingly or intentionally rendered, which cannot exist without previous cognizance of the criminal act intended to be executed.[17] It is therefore required in order to be liable either as a principal by indispensable cooperation, or as an accomplice, that the accused must unite with the criminal design of the principal by direct participation. There is indeed nothing on record to show that appellant knew that Bernales was going to stab Palma, thus creating a doubt as to appellant's criminal intent.

The appellant asserts that it was error for the trial court to consider "abuse of superior strength" as qualifying the killing to murder when such circumstance is not alleged in the Information. The accused is correct, although it could have been considered nonetheless as a generic aggravating circumstance even if not so alleged.[18] However, this is no longer significant considering the conclusion herein reached.

The defense of the accused is alibi, which is the weakest of defenses. But the case against him must still fail since the evidence of the prosecution is even weaker; for, as it has been repeated often enough, the conviction of the accused must not rest on the weakness of the defense but on the strength of the prosecution.[19]

WHEREFORE, the decision appealed from is REVERSED and accused-appellant EDUARDO JORGE Y RAMIREZ is ACQUITTED of the crime charged. Accordingly, it appearing that he is detained, his immediate release from custody is ordered unless he is held for another cause.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Penned by Judge Jaime N. Salazar, Regional Trial Court, Br. 103, Quezon City.

[2] Appellant's Brief, p. 2.

[3] TSN, 18 January 1989, pp. 3-4.

[4] Presumably a "night stick."

[5] TSN, 18 January 1989, p. 10.

[6] Later identified as Remedios Bernales, also known as "Ache."

[7] TSN, 18 January 1989, pp. 5, 8-10, 15.

[8] TSN, 25 August 1989, p. 4.

[9] *People v. Marquez*, No. L-31403, 14 December 1981, 110 SCRA 91.

[10] *People v. Saavedra*, No. L-48738, 18 May 1987, 149 SCRA 610.

[11] *Orodio v. Court of Appeals*, No. L-57519, 13 September 1988, 165 SCRA 316.

[12] *US v. Magcomot*, 13 Phil. 386 (1909).

[13] *People v. Agapinay*, G.R. No. 77776, 27 June 1990, 186 SCRA 812.

- [14] *People v. Pacana*, 47 Phil. 48 (1924).
- [15] *Araneta v. Court of Appeals*, G.R. No. L-43527, 3 July 1990, 187 SCRA 123.
- [16] *Padilla*, *Criminal Law Book I*, 1974 Ed., p. 517.
- [17] *Id.*, p. 527.
- [18] *People v. Garcia*, G.R. No. L-30449, 31 October 1979.
- [19] *People v. Cruz*, G.R. No. 87884, 4 November 1992, 215 SCRA 339.

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