

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO FEDERICO Y MEDIONA, ACCUSED-APPELLANT.

*G.R. No. 99840. August 14, 1995*

Ponente: DAVIDE, JR., J.

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### DAVIDE, JR., J.:

The accused-appellant was charged with murder in Criminal Case No. 90-82576-SCC of the Regional Trial Court (RTC) of Manila, Branch 49, under an information the accusatory portion of which reads as follows:

That on or about March 17, 1990, in the City of Manila, Philippines, the said accused conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously with intent to kill, and by means of treachery and evident premeditation, attack, assault and use personal violence upon one Pastor Neil Escala y de Guzman by then and there stabbing him several times on the different parts of his body with a knife, thereby inflicting upon the said Pastor Neil Escala y de Guzman mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.[1]

He was also charged with frustrated murder in Criminal Case No. 90-82577 for stabbing on the same occasion Rogelio Fernando. These two cases were not, however, consolidated despite a motion for that purpose.[2]

After trial on the merits of the first case, the trial court, in a decision promulgated on 7 December 1990,[3] found the accused-appellant guilty beyond reasonable doubt as principal of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to pay the heirs of the victim P16,980.00 as actual damages and P50,000.00 as indemnity for moral damages.

The trial court considered treachery as the qualifying circumstance in view of the "suddenness" of the attack, leaving the victim "completely unaware of the intentions and actuations of Francisco Mediona because, at the time, [the victim, Pastor Escala] was conversing with Rogelio Fernandez and was thus unable to defend himself and prevent the attack on him by Francisco Mediona." [4]

The evidence for the prosecution as developed by the testimonies of its witnesses is summarized in the Brief for the Appellee as follows:

Sometime in February 1990, Rogelio Fernando, a tricycle driver, and Francisco Mediona, a Metro Aide, had an altercation resulting in one chasing the other (tsn, May 28, 1990, pp. 15-16, 22). However, before the incident could worsen, Rogelio Fernando and Francisco Mediona settled their differences before the Barangay Chairman of their place in Tondo, Manila, in the presence of the mother of Rogelio Fernando and a Barangay Tanod and sealed it by shaking hands (Ibid., pp. 15, 22-23). Rogelio Fernando believed then that was the end of his differences with Francisco Mediona (Ibid.). He was wrong.

On March 17, 1990, between 8:00 and 8:30 p.m., Rogelio Fernando, Pastor Escala, one Artemon and a certain Jun, all of whom were tricycle drivers, were in front of the bakery owned by Benedicto Escala, the father of Pastor Escala, located at No. 212 Magsaysay Street, corner Liwayway Street, Don Bosco, Tondo, Manila, conversing about tricycle sidecars, while Marcelo Gallardo was seated as he used to in front of his house located eight (8) meters away from Escala's bakery across the street, passing the time (tsn, May 28, 1990, pp. 5-7, 21-22, 24, 26-27, 30-33, 35-36, 38-41, 44). The place was illuminated by a lighted electric post about seven (7) to eight (8) meters from the bakery (Ibid., pp. 26-27, 35-36). Although passenger jeepneys and other vehicles plied Magsaysay Street, however, there were no vehicles passing at the time (Ibid., p. 38).

At that precise moment, Marcelo Gallardo saw appellant Rodolfo Federico and the latter's cousins Francisco Mediona and Ruben Mediona emerge from an alley across the street going towards the direction of the bakery, then change their direction and go to a house nearby (Ibid., pp. 35, 40-43). Not long after, appellant and his two cousins reappeared at Magsaysay Street and proceeded towards the bakery (Ibid.). Francisco Mediona was holding with his right hand a bladed knife similar to that used by butchers (Ibid., pp. 32, 44-45). At a distance of about six (6) to seven (7) meters from the lighted electric post, the trio momentarily stopped. Then Francisco Mediona, still armed with a knife, proceeded towards the bakery where Rogelio Fernando, Pastor Escala, Artemon and Jun were still conversing; while Ruben Mediona and appellant Rodolfo Federico, who both stayed behind, pulled out from their pockets slings with darts and aimed the same towards the bakery, where Rogelio Fernando's group was (Ibid., pp. 31, 35-36, 45, 48, 50). Francisco Mediona bought bread from the bakery (Ibid., pp. 7, 17). After buying bread, Francisco Mediona suddenly and without any warning stabbed Rogelio Fernando on the left side of the body, who was caught by surprise and was hit between the armpit and left breast, and at the same time uttered "malas mo, pare" (Ibid., pp. 7-8, 16-17, 32). Rogelio Fernando felt pains in his body and instinctively fled from the scene before Francisco Mediona could finish him off (Ibid., p. 18). He ran towards Magsaysay Street, but his path was blocked by Ruben Mediona and appellant, who aimed their slings and darts at him (Ibid., pp. 8-11). So he turned towards Herbosa Street, Tondo, Manila, to avoid being hit by the darts of appellant and Ruben Mediona (Ibid., p. 11). There, he met some friends who brought him to the Tondo Medical Center for medical treatment (Ibid., pp. 11-12).

Meanwhile, immediately after he stabbed Rogelio Fernando, Francisco Mediona instantly turned to Pastor Escala, held him by the hair, and stabbed him with his bladed knife (Ibid., pp. 33-34, 51). Pastor Escala fell down on his back to the pavement and again Francisco Mediona stabbed him (Ibid.). Marcelo Gallardo saw Francisco Mediona stabbing Pastor Escala four (4) times on different parts of the body (Ibid.). After stabbing Pastor Escala, Francisco Mediona defiantly hurled a challenge on anyone in the vicinity to a fight but nobody took up his challenge (Ibid.). Thereupon, Francisco Mediona fled with the appellant and Ruben Mediona (Ibid.).

Pastor Escala was rushed to the Mary Johnston Hospital where he was pronounced dead on arrival by Dr. G. Uy, the hospital's surgeon-on-duty.[5]

The autopsy conducted on Pastor Escala's body revealed that it bore six stab wounds which caused his death.[6]

The accused-appellant denied any participation in the commission of the crime and interposed alibi to strengthen such denial. According to him, at 6:00 p.m. of 17 March 1990, he was in the house of his cousin Elsa Mediona along Magsaysay Street, Tondo, Manila, which is about twenty arms-length from the bakery. Shortly before 9:00 p.m. that evening, he noticed a commotion outside Elsa's house and heard someone shouting, "May saksakan, may saksakan." When he went out of the house, he heard people say that Francisco Mediona stabbed somebody. He then returned to the house of Elsa, but shortly thereafter, two policemen arrived, handcuffed him, and pushed him outside the house. He told them that he had not done anything wrong, and when he asked why they arrested him, they just told him to give his explanation at the police headquarters. At the police headquarters, Patrolman

Richard Lumbad tried to force him to admit that he killed Pastor Escala, but he refused to do so.

Although the accused-appellant was not the one who stabbed the victim in this case, the trial court convicted him as a principal on the basis of conspiracy established by the following facts, to wit: (a) the accused-appellant and his cousins Francisco Mediona and Ruben Mediona emerged together and at the same time from an alley nearby and went toward the bakery while the victim and his companions were conversing in front of the bakery; (b) instead of proceeding directly to the bakery, they first veered toward another direction and went to the house nearby (presumably Elsa Mediona's house); (c) they reappeared after a while near the bakery where Francisco pretended to buy bread, while the accused-appellant and Ruben, armed with slings and darts which they pointed at the bakery, positioned themselves strategically along Magsaysay Street; (d) when Francisco was receiving the bread, he suddenly stabbed Rogelio Fernando on the left side of his body, and after the latter managed to escape, Francisco turned to Pastor Escala and stabbed him several times while the accused-appellant and Ruben continued to aim their slings and darts at the bakery; (e) after stabbing Escala, Francisco challenged every one in the area to a fight and since nobody dared to accept the challenge, he left the scene together with the accused-appellant and Ruben Mediona.

The trial court concluded that by their acts, the accused-appellant and his cousins Francisco and Ruben showed a common objective, that of killing Rogelio Fernando and Pastor Escala, and each of them performed separate parts aimed at and to attain the same objective. Such acts were concerted and cooperative in point of time and sequence, indicating concurrence of sentiments, sympathy, and determination.

In this appeal, the accused-appellant wants us to acquit him because the trial court:

ERRED IN CONVICTING [HIM] BEYOND REASONABLE DOUBT ... AS PRINCIPAL OF THE CRIME OF MURDER DESPITE THE FACT THAT HE HAD NOT CONSPIRED OR COOPERATED WITH THE ASSAILANT IN STABBING THE VICTIM TO DEATH.

He does not, therefore, question the findings of the trial court that the crime committed for the killing of Escala is murder. The only issue presented to us is whether there was conspiracy between the accused-appellant and his cousin Francisco Mediona, the person who actually stabbed Escala. If there was, the accused-appellant admits that he would be equally liable with Francisco; otherwise, the latter alone should suffer the consequences for the criminal act.

Our own scrutiny of the records and evaluation of the evidence for the prosecution fail to convince us with moral certainty that the accused-appellant had conspired with his cousins Francisco Mediona and Ruben Mediona to kill Pastor Escala.

The basis for the trial court's conviction of the accused-appellant was the existence of a conspiracy between him, Ruben Mediona, and Francisco Mediona to kill both Rogelio Fernando and the victim in this case, Pastor Escala. What the trial court overlooked, though, is that the conspiracy which the records and the evidence of this case show and which the prosecution successfully established is to kill Fernando only and not Escala also.

It is very obvious that the accused-appellant and his cousins intended to harm Fernando because of the bad blood that existed between the latter and Francisco Mediona due to a misunderstanding that occurred a month before the incident which Francisco could not forget despite the amicable settlement mediated by the barangay captain. The actions of the accused-appellant in arming himself with a sling and darts which he aimed towards the bakery where Fernando and the others were and in blocking the path of Fernando when the latter tried to run away from Francisco establish his concurrence in the criminal purpose of Francisco, the actual assailant of Fernando. But with respect to the stabbing of the victim herein, Pastor Escala, we find very tenuous and insufficient the evidence

of conspiracy. Conspiracy, just like the crime itself, must be established by proof beyond reasonable doubt.[7] And the rule has always been that co-conspirators are liable only for acts done pursuant to the conspiracy; for other acts done outside the contemplation of the co-conspirators or which are not the necessary and logical consequence of the intended crime, only the actual perpetrators are liable.[8] In such a case, the dictum that the act of one is the act of all does not hold true anymore.

No reason, motive, or intent on the part of Francisco was shown or proved why he would stab Escala. And there is no convincing evidence that the killing of Escala was part of the conspiracy to kill Rogelio Fernando. Neither is there any indication that the accused-appellant was aware that Francisco would attack Escala. Francisco stabbed Escala only after he had stabbed Rogelio Fernando and the latter ran away. Why Francisco decided to also stab Escala is beyond our ken. We could only surmise that Escala made a move which Francisco perceived as an act of aggression against him because after repeatedly stabbing Escala, Francisco even challenged those around him to a fight.[9] We cannot and should not assume that the accused-appellant had any inkling of what Francisco was going to do at the time the latter turned against Escala. Because the conspiracy was to kill Fernando only and the accused-appellant did not conspire with Francisco in the killing of Escala, he cannot be held liable as a co-conspirator for the said killing.

In the absence of a conspiracy or unity of criminal purpose and intention immediately before the commission of the crime, or community of criminal design, the criminal responsibility arising from acts directed against one and the same person is individual and not collective; each of the participants is liable only for the acts committed by him.[10] The accused-appellant, by his actions while Francisco was stabbing Escala, is liable for the latter's death, not as a co-principal, however, but as an accomplice under Article 18 of the Revised Penal Code. It was established that at the time Francisco attacked and stabbed Escala, the accused-appellant and Ruben Mediona remained standing in the same place where they were when Francisco stabbed Fernando and still had their slings and darts pointed at the people near the bakery. It is obvious then that at that particular instance, the accused-appellant became aware of the intent of Francisco to kill Escala. Moreover, he cooperated in the execution of Francisco's purpose and concurred therewith by pointing his sling and darts, either to give moral support to Francisco or to deter the people from attacking him in retaliation for the stabbing of Escala. Such cooperation, however, was not indispensable to the accomplishment of the evil deed as to make him a co-principal.

Under Article 52 of the Revised Penal Code, the penalty to be imposed upon an accomplice in a consummated crime is that next lower in degree to the one prescribed by law for the consummated felony. The penalty prescribed by Article 248 at the time of the commission of the crime herein was reclusion temporal in its maximum period to death.[11] The penalty next lower in degree would be prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, the minimum penalty which may be imposed upon the accused-appellant would be within the range of the penalty next lower in degree to that of prision mayor maximum to reclusion temporal medium which is prision correccional maximum to prision mayor medium, and its maximum would be within the range of prision mayor maximum to reclusion temporal medium. In view of the absence of any mitigating or aggravating circumstances, such maximum period shall be the medium period of the prescribed penalty.[12] Accordingly, the accused-appellant shall be sentenced to suffer an indeterminate penalty ranging from eight (8) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

WHEREFORE, the appealed judgment of Branch 49 of the Regional Trial Court of Manila in Criminal Case No. 90-82576-SCC is AFFIRMED, subject to the modifications on the extent of the accused-appellant's criminal liability and the imposable penalty, and as modified, accused-appellant RODOLFO FEDERICO Y MEDIONA is

found guilty beyond reasonable doubt of the crime of murder only as accomplice and his penalty is hereby reduced from reclusion perpetua to an indeterminate penalty ranging from Eight (8) years of prision mayor as minimum, to Seventeen (17) years and Four (4) months of reclusion temporal as maximum.

Costs against the accused-appellant.

**SO ORDERED.**

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

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[1] Original Records (OR), 2; Rollo, 4.

**[2] OR, 1.**

[3] Id., 63-82; Rollo, 11-30. Per Judge Romeo J. Callejo.

[4] Id., 80-81; Id.; 28-29.

[5] Rollo, 122-127.

[6] Exhibit "J"; OR, 46.

[7] See *People vs. Garcia*, 215 SCRA 349 [1992]; *People vs. Orehuella*, 232 SCRA 82 [1994]; *People vs. Villagonzalo*, 238 SCRA 215 [1994].

[8] *People vs. De la Cerna*, 21 SCRA 569 [1967].

[9] TSN, 28 May 1990, 33.

[10] *Tapalla vs. Court of Appeals*, 222 SCRA 825 [1993].

[11] As amended by R.A. No. 7659, the penalty is now reclusion perpetua to death.

[12] Article 64(1), Revised Penal Code.

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