

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY FRONDA, DEFENDANT-APPELLANT.

G.R. Nos. 102361-62. May 14, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Appellant, Rudy Fronda, together with Reynaldo Agcaoili were charged with murder before Branch 10 of the Regional Trial Court of Cagayan in two separate informations, Criminal Cases No. 10-304 and 10-308 alleged to have been committed in conspiracy with several John Does. Appellant and his co-accused were accused of killing the brothers Esminio and Edwin Balaan of Allacapan, Cagayan in the two identically worded informations alleging the offense to have been committed as follows:

"That on or about June 11, 1986, in the municipality of Allacapan, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Reynaldo Agcaoili and Rudy Fronda, together with several John Does who were not identified, armed with guns and sharp-pointed instruments, conspiring together and helping one another, with intent to kill, with evident premeditation, with treachery, in consideration of a price or reward and with the aid of armed men, forcibly took one Edwin Balaan from his residence and brought him to the mountains of Barangay Tulong, Allacapan, Cagayan, and there and then, the accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully, and feloniously assault, attack, torture and stabbed (sic) the said Edwin Balaan/Esmenio Balaan inflicting upon him wounds on his body which caused his death." (Rollo, pp. 122-123)

On May 29, 1989, Reynaldo Agcaoili was arrested but was subsequently released on bail two days after. On June 2, 1989, appellant Rudy Fronda was arrested and detained. Upon arraignment, both appellant and accused Reynaldo Agcaoili pleaded not guilty to the charge of murder. Thereafter, trial ensued.

On August 7, 1991, the trial court promulgated its decision convicting appellant and acquitting Reynaldo Agcaoili of the crime charged, the decretal portion of which reads:

"WHEREFORE, under cool reflection and fortified by the balm of clear judicial conscience, the Court enters a verdict of acquittal in favor of the accused Reynaldo Agcaoili for the crime of murder as charged, in both Criminal Cases Nos. 10-304 and 10-308, with costs de oficio. His bailbond is cancelled and the documents submitted in support thereof may now be withdrawn from the records under proper receipt.

"As against the accused Rudy Fronda, the Court finds him guilty beyond reasonable doubt as principal by indispensable cooperation for the crime of murder as charged in both Criminal Cases Nos. 10-304 and 10-308, and sentences him to suffer in each case, the penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law and to pay the costs. He is ordered to each pay (sic) the heirs of the deceased Edwin (Eduardo) Balaan and Esmenio Balaan, the amounts of:

1. P 50,000.00 - compensatory damages
2. P 50,000.00 - death indemnity

3. P 20,000.00 - moral damages
4. P 30,000.00 - exemplary damages
5. P 15,000.00 - expenses during the wake of Esmenio Balaan
6. P 10,000.00 - expenses during the wake of Edwin Balaan

all for the grand total of Three Hundred Twenty Five Thousand (P325,000.00) Pesos, but without subsidiary imprisonment in case of insolvency.

"In the service hereof, the accused Rudy Fronda shall be entitled to the full length of time, he underwent preventive imprisonment, provided he voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited to only four fifth (4/5) thereof. (Art. 29, NCC, as amended by RA 617, June 17, 1979; US vs. Ortencio; 38 Phil. 341; People vs. Chavez, 126 SCRA 1).

"MORE, there being two (2) perpetual penalties imposed upon the accused Rudy Fronda, the maximum simultaneous service of his sentence shall in no case exceed forty (40) years. (Art. 70, RPC, amended by Com. Act No. 217, threefold rule).

x x x x

"SO ORDERED." (Rollo, pp. 76-77)

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

"At about 6:00 o'clock in the morning of June 11, 1986, the deceased Eduardo (Edwin) Balaan and Esminio Balaan who are brothers, were taken by seven (7) armed men in fatigue uniform with long firearms, suspected to be NPA members, accompanied by accused Rudy Fronda and Roderick Padua from the house of one Ferminio Balaan, at Barangay Cataratan, Allacapan, Cagayan. The said Rudy Fronda and Roderick Padua are residents of the same place. The armed men tied the hands of the deceased at their back lying down face down-ward, in front of the house of Ferminio Balaan. The armed men together with Roderick Padua and Rudy Fronda proceeded towards sitio Tulong, Cataratan, Allacapan, Cagayan passing through the ricefields (taking along with them the Balaan brothers).

x x x x

"Accused Rudy Fronda testified that on the night of June 10, 1986 he was taken by the NPA's from his house, accompanied by Robert Peralta, alias Ka Jun and Roderick Padua, to look for the Balaan brothers. They were around nine (9) NPA's with them. They found Edwin and Esmenio Balaan, at the house of Ferminio Balaan, a brother. They tied their wrists/hands and brought them to the mountain at Sitio Tulong, Cataratan, Allapacan, Cagayan. After that, the NPA's instructed them to go home, but in the afternoon of the same day June 11, 1986, Robert Peralta, alias Ka Jun, sent Elmer Martinez, Orlando Gonzales, George Perlata and Librado Duran to get him and further he was ordered to get a spade and a crowbar. They were ordered to dig a hole in the mountain, one (1) kilometer away from his house.

"On March 21, 1989, the bodies or remains of the Balaan brothers were exhumed by the 17th Infantry Battalion, under Capt. Benedicto. Afterwhich, the remains, (bones) were brought to the house of one Freddie Arevalo, a relative of the deceased, at Barangay Cataratan, where they were laid in state for the wake." (Rollo, pp. 27-29)

In its decision, the trial court made a lengthy enumeration of established facts and circumstances which was made the basis of the conviction of appellant, to wit:

- 1) Appellant and Roderick Padua, an NPA member were the ones who pointed the house where the brothers

Balaan were to be found, 2) appellant and Roderick Padua accompanied the members of the armed group to said house, and tied the victims' hands, 3) appellant was handed a hunting knife by one of the armed men when they left the house, 4) appellant joined the members of the armed group in bringing the victims to a forested area in the mountains, 5) it was appellant who provided the spade and crowbar used in digging the hole where the Balaan brothers were buried, 6) appellant was the one who pointed the location where the victims' bodies were buried, 7) appellant, for a period of more than three (3) years, failed to report the incident to the authorities, and 8) appellant did not in any way object, when he was ordered to tie the hands of the victims.

On the basis of the foregoing, the trial court declared:

"In fine, all of these circumstances constitute an unbroken chain which leads to a fair conclusion that accused Rudy Fronda is guilty as a principal by indispensable cooperation (People vs. Colinares, 163 SCRA 313), even as the same circumstances are inconsistent with each other, and at the same time inconsistent with any other hypothesis, except that of guilty (People vs. Trinidad 162 SCRA 714), all cited in the recent case of People vs. Tiongson, G.R. No. 89823, June 19, 1991).

"It is crystal clear and the conclusion is inescapable that his cooperation was indeed indispensable in the consummation of the crime charged, without which it would not have been accomplished, (Art. 17, No. 3, RPC).

"Accused Rudy Fronda shared the guilty purpose and encouraged and abetted the crime by his actuations as above illustrated, even though he may have taken no part in the execution. The chain of circumstances as narrated above will show that he has rendered the required assistance intentionally and knowingly, which led to the execution of the felony. His external acts more than explain his participation as principal by indispensable cooperation. Such external overt acts, are more than significant enough constituting convincing proof leading to the ineluctable finding that accused Rudy Fronda is guilty as such." (Rollo, pp. 74-75)

Appellant assails the decision of the trial court, setting forth the following assignment of errors:

I

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF MURDER IN TWO COUNTS AND SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA IN EACH COUNT

II

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT BY CIRCUMSTANTIAL EVIDENCE" (Appellant's Brief, p. 1)

Accused-appellant maintains that the prosecution was not able to present evidence to prove his participation in the killing of the brothers Balaan. The defense submits that appellant was merely taken by the armed men as a "pointer" and as such, he could not be considered as a principal by indispensable cooperation for the reason that the armed men could have taken other persons to perform the acts done by appellant. Furthermore, appellant interposes the exempting circumstance of uncontrollable fear (Art. 12 [6] RPC) claiming that all his acts were performed under the impulse of uncontrollable fear and to save his life.

This case hinges on the issue of whether or not accused-appellant could be convicted as a principal by indispensable cooperation through circumstantial evidence.

Paragraph 3, Article 17, of the Revised Penal Code considers as principals by indispensable cooperation "those who cooperate in the commission of the offense by another act without which it could not have been accomplished". Its requisites are (1) participation of the subject accused in the criminal resolution and (2)

performance by him of another act indispensable to the accomplishment of the crime.

Records show that appellant's participation in the commission of the crime consisted of: (1) leading the members of the armed group to the house where the victims were found (2) tying the victims' hands and (3) digging the grave where the victims were buried. However, it has been established through the testimony of Alex Utrera, a former member of the NPA, that appellant was only picked-up by the armed men for the purpose of pointing the residence of the victims. The armed men never disclosed their purpose in looking for the brothers Balaan who were former members of the Armed Forces of the Philippines nor did the armed men inform appellant of their plan to abduct and kill the two brothers.

Save for the open admission of appellant that he was an NPA "supporter", no incontrovertible proof was adduced by the prosecution supporting the conclusion that appellant agreed with the members of the armed group to kill the brothers Balaan.

Furthermore, prosecution witnesses Freddie Arevalo and Gilbert Viernes testified that the members of the armed group were accompanied by, aside from appellant, another barriomate, Roderick Padua, known to be a member of the NPA (Tsn p. 8 & 76). Undoubtedly, even without appellant's participation, the assailants could have easily located the Balaan brothers thru the assistance of Roderick Padua. Taking account of the number of the assailants alone, it is apparent that the armed men could have nevertheless committed the crime easily without the appellant abetting the commission thereof.

The acts performed by appellant are not, by themselves, indispensable to the killing of the brothers Balaan. As aforesaid to be considered as a principal by indispensable cooperation, there must be direct participation in the criminal design by another act without which the crime could not have been committed. We note that the prosecution failed to present any evidence tending to establish appellant's conspiracy with the evil designs of the members of the NPA armed group. Neither was it established that appellant's acts were of such importance that the crime would not have been committed without him or that he participated in the actual killing.

Under the circumstances, appellant cannot therefore be considered as a principal by indispensable cooperation. The trial court, therefore, erred when it found appellant guilty as a principal by indispensable cooperation.

However, appellant's act of joining the armed men in going to the mountains, and his failure to object to their unlawful orders, or show any reluctance in obeying the same, may be considered as circumstances evincing his concurrence with the objectives of the malefactors and had effectively supplied them with material and moral aid, thereby making him as an accomplice. He cannot with candor, claim that he was unaware of the evil intentions of the armed men which may have been the case had appellant merely guided the group to locate the victims' abodes. On the contrary, appellant himself tied the victims' hands and even joined the armed men in taking the victims to the hills. Appellant's complicity is made more manifest by the fact that without any justifiable reason he failed to report the incident to the authorities for a period of more than three (3) years.

Article 18 of the Revised Penal Code provides that an accomplice is one who, not being a principal, "cooperates in the execution of the offense by previous or simultaneous acts". Under this provision, a person is considered as an accomplice if his role in the perpetration of the crime is of a minor character. To be convicted as such, it is necessary that he be aware of the criminal intent of the principal and thereby cooperates knowingly or intentionally by supplying material or moral aid for the efficacious execution of the crime.

It is well settled that if there is ample evidence of criminal participation but a doubt exists as to the nature of liability, courts should resolve to favor the milder form of responsibility, that of an accomplice. (People vs. Doctolero, 193 SCRA 632, [1991] citing People vs. Torejas, 43 SCRA 158, [1972])

Appellant cannot claim the exempting circumstance of uncontrollable fear (Art. 12, par. 6, RPC). Fear in order to be valid should be based on a real, imminent or reasonable fear for one's life or limb (People vs. Abanes, 73 SCRA 44, [1976]). In the case at bar, records indicate that appellant was seen being handed by and receiving from one of the armed men a hunting knife. Also, as aforesaid, appellant was not able to explain his failure to report the incident to the authorities for more than three (3) years. These circumstances, among others, establish the fact that appellant consciously concurred with the acts of the assailants. In order that the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity to escape or self-defense in equal combat. (People vs. Lorenzo, 130 SCRA 311, [1984]) Appellant had the opportunity to escape when he was ordered by the armed men to go home after bringing the victims to the mountains. He did not. Instead he joined the armed men when required to bring a spade with which he was ordered to dig the grave. Appellant also chose to remain silent for more than three (3) years before reporting the killing to the authorities. Based on these circumstances, We hold that the contemporaneous and subsequent acts of appellant can not be regarded as having been done under the impulse of uncontrollable fear.

Appellant also argues that the trial court erred when it convicted him of the crime charged, alleging that no evidence was presented to prove any circumstance that would qualify the crime committed to murder. Appellant's argument is devoid of merit. Paragraph 1, Article 248 of the Revised Penal Code provides that any person who kills another, taking advantage of superior strength shall be guilty of murder, and shall be punished by reclusion temporal in the maximum period to death. It is manifest that the group of assailants was composed of seven (7) armed men, and two (2) civilians including appellant Fronda. It had been repeatedly held that the number of assailants, if armed, may be considered as a qualifying circumstance of abuse of superior strength. It is indubitable that assailants deliberately used superior force of such nature as to be clearly out of proportion to the means or defense available to the victims People vs. Tandoc (40 Phil. 954 [1920]) and People vs. Verzo (21 SCRA 1403 [1967]). The assailants took advantage of their numbers in order to ensure that the brothers Balaan who are said to be former members of the Armed Forces of the Philippines would not be able to put up any defense. The crime thus committed is murder.

Be that as it may, and after considering the attendant circumstances, We hold that appellant is guilty beyond reasonable doubt as accomplice to the crime charged i.e. murder. As such, the proper imposable penalty is one degree lower than that prescribed for murder (Art. 52, Revised Penal Code). The penalty for murder is reclusion temporal in its maximum period to death (Art. 248, RPC). One degree lower is prision mayor in its maximum period to reclusion temporal medium (Art. 61 (3), RPC). There being no mitigating nor aggravating circumstances which attended the commission of the crime, the penalty imposable under the law should be applied in its medium period (Art. 64 [1], RPC) and applying the Indeterminate Sentence Law, appellant is hereby sentenced in each case to suffer imprisonment ranging from eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years eight (8) months and one (1) day of reclusion temporal as maximum.

WHEREFORE, the appealed decision of the trial court is hereby MODIFIED to the extent above indicated and AFFIRMED in all other aspects. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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