

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN DEGOMA AND MARINO TABORADA, DEFENDANTS, MARINO TABORADA, DEFENDANT-APPELLANT.

G.R. Nos. 89404-05. May 22, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Efren Degoma and Marino D. Taborada were charged with the crime of robbery with homicide. They were arraigned and after trial, were found guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision of the trial court read as follows:

"WHEREFORE, premises considered, on the part of Criminal Case No. 5384, the Court hereby finds both accused EFREN DEGOMA alias BOY and MARINO TABORADA y DECENA, guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE, and accordingly sentenced them to the penalty of reclusion perpetua, and for both accused to jointly and severally indemnify the owners of Tagbilaran Friendly Bazaar the sum of P200.00 and the equivalent exchange rate prevailing for US\$300.00, indemnify the heirs of the late Alexander Parilla in the sum of P36,000.00 for his death, P200,000.00 for moral damages, P87,947.94 for actual expenses, P5,000.00 for attorney's fees for counsel of Parilla, and to pay costs, san subsidiary imprisonment in case of insolvency."[1]

Only Marino Taborada appealed from the judgment of conviction. In his brief, appellant Taborada assigned the following errors:

"The lower court erred in finding that accused-appellant Marino Taborada is a co-conspirator in the crime of robbery with homicide.

The lower court erred in convicting accused-appellant of the crime of robbery with homicide and sentencing him to the penalty of reclusion perpetua."[2]

In its decision, the trial court summarized the facts which it found to have been established in the following manner:

"x x x (O)n April 12, 1988, at about 6:30 in the evening, the peace and quiet of the City of Tagbilaran was disturbed by the reported robbery with homicide in one of the big business establishments, the Tagbilaran Friendly Bazaar. In the course of the commission of the crime, an off-duty but much dedicated policeman in the person of Pat. Verlito Magallanes was able to collar one of the suspects. Because of the energetic, publicity-shy, well-trained and equally dedicated Station Commander in the person of P/Lt. Cecilio Quevedo, the second suspect fell into the custody of the police in the matter of about two hours.

There is no question as to how accused Marino Taborada was taken into police custody. He was the first who was collared by Pat. Magallanes since Taborada was still grappling with the driver of the store, Ciriaco Baculi. When he was whisked to the police headquarters, he was immediately interrogated and without offering any hard resistance, Taborada told the police that his companion in robbing the store was a PC soldier, Efren

Degoma. This fact, therefore, answers the query as to how accused Efren Degoma was brought into police custody. With such information from Taborada himself, Station Commander Quevedo then formed a group to track down Degoma. They sealed all possible exit points and, true enough, the police was also able to bring Degoma into the hands of the law. Whatever transpired immediately before, during and after the alleged commission of the crime were well-ventilated by the contending parties as discussed above.

The following facts were conclusively established during the hearings, to wit:

1. The Tagbilaran Friendly Bazaar located along Carlos P. Garcia Avenue, City of Tagbilaran was a victim of robbery on the evening of April 2, 1988, in the sums of US\$300 and P200;
2. During such robbery, the security guard of the store, in the person of Alexander Parilla was shot and killed with the use of a firearm by one of the robbers;
3. Accused Taborada was apprehended by the police while still grappling with Ciriaco Baculi, the driver of the store;
4. The police was led to accused Efren Degoma on account of the statements made by accused Taborada."^[3]

Appellant Taborada presented a different view of the facts. He testified that he had known his co-accused Efren Degoma for about a month before the shooting of Alexander Parilla, when Degoma was still a member of the Philippine Constabulary Unit quartered in Camp Lapu-Lapu near Taborada's house in Cebu City. On 11 April 1988, Degoma invited appellant Taborada to Tagbilaran City, Bohol, at the former's expense. Taborada accepted the invitation and stayed with Degoma's family while in Tagbilaran.

On 12 April 1988, appellant Taborada, while still at Tagbilaran City, asked Degoma to help him raise money to pay for his return trip to Cebu City. In the late afternoon of that same day, Degoma and appellant Taborada had a few drinks in a place near the Tagbilaran Friendly Bazaar. Later, on the way to Degoma's home, they passed by the Friendly Bazaar. Degoma instructed appellant Taborada to wait for the former by the door of the Bazaar. While waiting for Degoma, appellant Taborada was, according to him, suddenly apprehended by the security guard of the Bazaar. Acting on instinct, Taborada continued, he tried to resist but in the ensuing commotion, a third person intervened with the result that appellant Taborada was thrown out on the road. While the security guard and the third person were trying to overpower appellant Taborada, Degoma suddenly shot the security guard, without warning. Appellant Taborada was arrested, but Degoma escaped. At the Tagbilaran Police Station, Taborada identified Degoma as his companion at the vicinity of the crime and stoutly maintained that he did not know that his companion, Degoma, would rob the Friendly Bazaar and much less that he would kill the security guard. Thus, appellant Taborada insists that there was no conspiracy between himself and Degoma and that the prosecution had not adequately proved such conspiracy.

It is, of course, true that the element of conspiracy must be proved by the same kind of proof -- proof beyond reasonable doubt -- necessary to establish the physical acts constituting the crime itself. However, the existence of conspiracy need not be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged. Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.^[4]

In the case at bar, the evidence of conspiracy between Degoma and Taborada was consistent and clear. Appellant Taborada was penniless at the time of the robbery and needed some transportation money to go back to Cebu City. Taborada personally knew his co-accused Degoma and both were seen together immediately prior to the robbery. Both appellant Taborada and co-accused Degoma entered the premises of the Tagbilaran Friendly Bazaar

at the same time, on the pretext that Degoma would purchase some item in the Bazaar. Appellant Taborada stayed at or near the door of the Bazaar while his co-accused Degoma went straight to where the cashier of the Bazaar was. Appellant Taborada grappled with the security guard to wrest possession of the service revolver of the guard and to keep him preoccupied while his co-accused Degoma divested the Bazaar's cashier of money at gun-point. We consider that these circumstances are entirely adequate to show that appellant Taborada acted in unison with Degoma in implementation of a common design to rob the Tagbilaran Friendly Bazaar.

The pretension of appellant Taborada that he had merely stood by idly at the entrance of the Bazaar, does not persuade. The prosecution presented three (3) eye-witnesses all of whom testified consistently that Taborada had grappled with the slain security guard and had tried to wrestle away the service revolver of the latter. Like the trial court, we find no reason not to accord credence to the testimonies of the prosecution eye-witnesses. The defense did not even try to show that those witnesses were moved by some evil motive falsely to testify against Degoma and Taborada.

Appellant Taborada then argues that, granting arguendo that conspiracy had been adequately shown, he should not be held accountable for the slaying of the security guard because he (Taborada) had no prior knowledge that his co-accused Degoma would shoot and kill the security guard.

The firmly established rule is that where conspiracy is shown, the act of one conspirator becomes the act of all the other conspirators and that the precise extent or modality of participation of each of the conspirators in the crime becomes secondary.

In *People v. Roel Punzalan*,^[5] the Court said:

"x x x One who joins a criminal conspiracy in effect adopts as his own the criminal designs of his co-conspirators; he merges his will into the common felonious intent. A person who embraces a criminal conspiracy is properly held to have cast his lot with his fellow conspirators and to have taken his chances that things may go awry and that the offended party may resist or third persons may get killed in the course of implementing the basic criminal design. To free himself from such criminal liability, the law requires some overt act on the part of the conspirator, to seek to prevent commission of the second or related felony or to abandon or dissociate himself from the conspiracy to commit the initial felony. (*People v. Salvador*, 163 SCRA 574, 580-582 [1988]; *People v. Bazar*, 162 SCRA 609, 617 [1988]; *People v. Escobar*, 157 SCRA 541, 567 [1988]; *People v. Pelagio*, 20 SCRA 153, 159-160 [1967])" (Underscoring supplied)

Thus, we believe and so hold that appellant Taborada cannot exculpate himself from the killing of security guard Parilla which took place by reason or on the occasion of the robbery of the Tagbilaran Friendly Bazaar by simply disclaiming any knowledge that the co-conspirator would go to the extent of shooting and killing the Bazaar's security guard. The phrases "on the occasion" and "by reason" of the robbery used by Article 294, paragraph 1, of the Revised Penal Code, refer to a homicide committed in the course of the robbery, without regard to the robbers' precise intention or alleged lack of intention to kill another, since it is the result rather than the detailed circumstances, specific causes or modes of intervention of particular persons in the commission of the crime that is taken into account in characterizing the crime as robbery with homicide.^[6]

Appellant Taborada argues next that while he may have been a co-conspirator, he should have been found guilty only as an accomplice because his participation in the crime did not directly aid in the consummation of that crime. This argument will not detain us for long. In the first place, as already noted, the precise legal effect of a finding of conspiracy is that each co-conspirator becomes liable for the acts of the other conspirator(s). Taborada did not try to prevent either the robbery or the homicide. He did not dissociate or attempt to dissociate himself from the robbery with homicide. Taborada was simply caught and collared by the police before he could escape from the scene of the crime. Accordingly, he must be held guilty of robbery with homicide although it was

Degoma who had shot security guard Alexander Parilla in the head and although it was Degoma who had physically spirited away the dollars and pesos he had extracted at gunpoint from the Bazaar's cashier. Secondly, appellant Taborada had cooperated with Degoma in the execution of the crime by a simultaneous act which was material to and indispensable for the consummation of a crime. Appellant Taborada had engaged the attention of the security guard by grappling with him and seeking to pin him down, to prevent the security guard from coming to the aid of the Bazaar's cashier as Degoma at gun-point took away the Bazaar's money. Accordingly, Taborada was not merely an accomplice; he was rather a principal by cooperation.[7] We agree with the position taken by the Solicitor General on this point:

"The act of [accused] appellant [Taborada] in holding on to the security guard of the said store [Tagbilaran Friendly Bazaar], the victim Alex Parilla, and grappling with the latter for the possession of his gun is not an isolated act but a deliberate and planned course of action designed to both accused to enable accused Efren Degoma to commit the robbery at the cash counter of the store, unhampered by the possible intervention of the security guard. In fact, [accused] appellant's aforesaid participation is an integral part of their plan without which the robbery could not have been consummated. Accused Efren Degoma's act of robbing money at the cash counter of the said store by holding the manager, Danny Merchandani, at gunpoint could not have been made possible were it not for [accused] appellant's act of neutralizing the security guard of the store, so to speak, by grappling with the latter for the possession of the gun." (Underscoring supplied)

Turning to the civil aspect of the case, the court a quo had overlooked certain evidentiary facts in its award of damages. In delict, the defendant is liable for all damages which are the natural and probable consequences of the act or omission complained of.[8] To seek recovery for actual damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss.[9] Courts cannot simply assume that damages were sustained by the injured party, nor can it rely on speculation or guesswork in determining the fact and amount of damages.

The court a quo's award of actual damages in the amount of P87,947.94 is not sustained by a review of the evidence of record. Of the expenses allegedly incurred, the Court can only give credence to those supported by a receipt and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim. Thus, the Court cannot take account of receipts showing expenses incurred before the date of the slaying of the victim; those incurred after a considerable lapse of time from the burial of the victim and which do not have any relation to the death, wake or burial of the victim; those incurred for purely aesthetic or social purposes, such as the lining with marble of the tomb of the victim; those which appear to have been modified to show an increase in the amount of expenditure, such as by adding a number to increase the purchase value from tens to hundreds; those expenditures which could not be reasonably itemized or determined to have been incurred in connection with the death, wake or burial of the victim; those which would nonetheless have been incurred despite the death, wake or burial of the victim, the death wake or burial being merely incidental; and those which were not in fact shouldered by the immediate heirs of the victim, such as plane trips by relatives or in-laws. Having these as guidelines, the Court puts the gross expenses proved by the immediate heirs of the victim at P10,175.85.[10]

The Court off-sets the amount of P6,400.00 representing the alms received by the heirs of the victim,[11] against the above amount of P10,175.85, representing the expenses proved, leaving the amount of P3,775.85 as the actual amount of loss sustained by immediate heirs of the victim.

The moral damages in the amount of P200,000.00 awarded by the court a quo are unexplained and unsupported in the court's decision. While moral damages are incapable of pecuniary estimation, the Court, under the circumstances attending the loss, considers it proper to reduce the amount of the award for moral damages to P10,000.00. The Court, however, hereby increases the amount of indemnity for the death of Alexander Parilla to P50,000.00, in line with present jurisprudence.

WHEREFORE, the Decision of the Regional Trial Court of Tagbilaran, Bohol, Branch 2 in Criminal Case No. 5384 dated 26 December 1988, is hereby MODIFIED to the extent that both accused shall be solidarily liable only for the amounts of: (a) P3,775,85 as actual damages; (b) P10,000.00 as moral damages; and (c) P50,000.00 as indemnity for the death of Alexander Parilla. In all other respects, the decision of the trial court is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, p. 39.

[2] Id., p. 48.

[3] Decision of the trial court, p. 11; Rollo, p. 66.

[4] *People v. Pinzon*, G.R. No. 94757, 7 February 1992; *People v. De la Cruz*, 190 SCRA 328, 336 (1990); *People v. Nabaluna*, 142 SCRA 446, 456 (1986).

[5] G.R. No. 78853, 8 November 1991. See also *People v. Alvarez*, 169 SCRA 730, 741 (1989); *People v. Espejo*, 36 SCRA 400, 422 (1970).

[6] *People v. Maranion*, 199 SCRA 421, 433 (1991); *People v. Mangulabnan, et al.*, 99 Phil. 992, 999 (1956).

[7] Article 17, paragraph 3, Revised Penal Code; Article 18, id.

[8] Article 2202, New Civil Code.

[9] Article 2199, New Civil Code.

[10] Includes: Miscellaneous expenditures under receipt at P2,625.85 (Exhibit "D"); Payment made to the funeral parlor at P5,800.00 (Exhibit "D-39"); Expenditures incurred for the burial, to include the transportation during the wake, at P1,750.00 (Exhibit "E").

[11] TSN, 16 September 1988, pp. 143, 144, 151.

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