

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO LINSANGAN, JR., MARIO CASTRO, GERARDO CAYANGA AND EDUARDO LINSANGAN, ACCUSED-APPELLANTS.

G.R. Nos. 95232 & 95592. January 31, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Appellants Eduardo (alias Eddie) Linsangan and Mario Castro, Jr., together with Gerardo Cayanga and Renato Linsangan, Jr., were charged before the Regional Trial Court in Palayan City, Nueva Ecija, Branch 40, in Criminal Case No. 0052-P, with Murder under the following information:

"That on or about the 15th day of November, 1987, at Barangay Santor, Bongabon, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating with one another. Renato Linsangan, Jr., armed with a bolo, while Eduardo Linsangan embracing the victim, and Mario Castro, Jr., and Gerardo Cayanga, both armed with stones, did then and there wilfully, unlawfully and feloniously attack and wound therewith FERNANDO DE GUZMAN in the different parts of the body, inflicting upon him several serious injuries, resulting to his death.

"All contrary to law, with the qualifying aggravating circumstances of treachery and the generic aggravating circumstances of evident premeditation, abuse of superior strength and employing means to weaken the defense." (p. 137, Rollo of G.R. No. 95592.)

Renato Linsangan, Jr. and Eduardo or Eddie Linsangan are brothers. Renato remains at large. Gerardo Cayanga was eventually excluded and discharged from the information and utilized as a state witness due to the failure of the prosecution witnesses, Angelita de Guzman and Daniel Fernando, to appear in court to give evidence against him (p. 121, Rollo of G.R. No. 95592).

Appellant Eddie Linsangan was arrested on September 12, 1988 and arraigned on October 18, 1988. Appellant Mario Castro, Jr. was arrested on September 12, 1989 and arraigned on September 26, 1989. Both of them entered a plea of not guilty (p. 168, Rollo of G.R. No. 95592). Appellant Eddie Linsangan's counsel de parte. Attorney Feliciano Buenaventura, asked for and was granted a separate trial for his client. He was later substituted by Attorney Crispulo Esguerra as counsel for the accused Eddie Linsangan, while Attorney Benigno Ferrer was appointed by the court as counsel de oficio for Mario Castro, Jr.

On August 30, 1990, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, finding accused Eduardo Linsangan and Mario Castro, Jr. guilty of murder beyond reasonable doubt, they are hereby both sentenced to suffer the penalty of reclusion perpetua, with proportionate costs." (p. 51, Rollo of G.R. No. 95232.)

Both accused appealed to this Court.

The facts as found by the trial court are:

“Eduardo Linsangan's case:

"The evidence in chief of the prosecution tend to show that on November 15, 1987 at more or less 7:30 in the evening, while Daniel Fernando was watching a basketball game in the plaza of Santor, Bongabon, Nueva Ecija, he personally saw Renato Linsangan and his three (3) companions, namely his brother Eddie Linsangan, Cayanga and one Castro fetched Fernando de Guzman who were at the time also watching the basketball game. Said three (3) named companions held Fernando de Guzman by the shoulder, 'akbay-akbay po nila.' They proceeded towards the road near the church where Renato Linsangan started to hack Fernando de Guzman with a bolo until he fell to the ground. When Daniel Fernando tried to get near them, he too was hacked but missed by Renato Linsangan. Then the four (4) of them began to run away.

Angelita de Guzman, wife of Fernando de Guzman, was at her house at around 7:30 in the evening of November 15, 1987. After eating their supper, she went out of the house to go to the plaza. However, she was unable to reach the plaza because while still near their house she saw her husband being ganged up by Renato Linsangan, Mario Castro, Gerardo Cayanga and Eddie Linsangan. Before losing consciousness, she saw Eddie Linsangan hitting her husband with a stone. In connection with said incident, she executed a sinumpaang salaysay on November 16, 1987 at 3:15 in the afternoon before Pat. Romeo C. Garcia of the PC/INP of Bongabon, Nueva Ecija (Exhs. A and A-1).

"Dr. Mario B. Cajucom, Rural Health Officer of Bongabon, Nueva Ecija, autopsied the body of Fernando de Guzman upon request of the police of the PC/INP of Bongabon, Nueva Ecija from 1:00 to 3:00 p.m., of November, 1987. From the medico legal report he prepared (Exhs. B and B-1), he enumerated what his examination revealed as follows:

“WOUND CONTUSED, circular 1 cms diam. middle, left forehead. No dent or injury to skull bone.

WOUND CONTUSED, 1 cms by 2 cm vertical just below the hairline, middle forehead.

- WOUND INCISED, 4 cms wide, 8 cms long vertical located just medial to left axilla, close to the and under the left shoulder bone. This wound injured and severed the vessel to the left arm.
- WOUND INCISED, 3 cms by 12 cms long, horizontal located just above the left abcostal side, flesh wd.
- WOUND INCISED, skin deep 2-1/2 cms vertical left scapula to WOUND INCISED exit, medial left scapula.
- WOUND INCISED, 6 cms long skin and flesh, across middle postero medial left forearm.
- WOUND INCISED, skin bones, tendons, muscles, vessels, nearly amputating the right wrist, only about one cm. left in the medial portion.
- Wound contused 1 cms diam. below the right knee.
- Abrasion 2 cms long 1 cm wide right knee.
- Abrasion 2 x 4 cms left knee.'

"In the certificate of death he issued (Exhs. C and C-1) he indicated the cause of death of Fernando de Guzman as 'injuries to vessels left armpit, right wrist due to BOLO WOUNDS, multiple' (Exh C-1):

“xxx xxx xxx

"2. MARIO CASTRO, JR.'s case:

“The evidence of the prosecution, consisting solely of the testimony of Gerardo Cayanga, tends to show that on November 13, 1987, at around 6:00 p.m., he was resting in his house at Barangay Santor, Bongabon, Nueva

Ecija, when Renato Linsangan, Eddie Linsangan and Mario Castro arrived. They told him that they are going to have a drink of liquor. The wine was brought by them. Renato and Eddie Linsangan are brothers while Mario Castro is a friend of the two.

"In the course of their drinking session, Gerardo Cayanga heard that they have somebody to liquidate, 'na yayariin.' That somebody referred to Fernando de Guzman, Renato and Eddie Linsangan wanted to revenge on him. By this time, they have already consumed three (3) bottles Ginebra San Miguel. After they were through with their drinking, Gerardo Cayanga was invited by the three (3) companions to the plaza to watch a basketball game.

"While they were at the plaza, Renato Linsangan invited somebody who readily went with him. Eddie Linsangan, Mario Castro and Gerardo Cayanga then left the basketball game and proceeded to a corner near the church. Eddie Linsangan suddenly hit that somebody with a stone on the head. At the same time Renato Linsangan hacked him. Mario Castro was holding a stone but Gerardo Cayanga did not see what he did with it. Gerardo Cayanga learned while he was already in his house that it was Fernando de Guzman who was hit with a stone and hacked at the same time, and that he was already dead." (pp. 55-63, Rollo of G.R. No. 95592.)

In their separate briefs, the accused-appellants allege that the trial court erred:

- in not acquitting them for insufficiency of evidence;
- in finding that there existed conspiracy among the accused; and
- in ignoring the testimonies of the accused and their witnesses and in not considering in their favor the affidavit of desistance executed by the wife of the alleged victim.

The appeals are devoid of merit.

The issue that has to be resolved is whether or not there was a conspiracy for it is not disputed that the victim, Fernando de Guzman, was hacked to death by Renato Linsangan, Jr. (p. 168, Rollo of G.R. No. 95592.).

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through physical volition of one or all proceeding severally or collectively. Although no previous agreement to commit the crime was proven, the existence of a conspiracy may be inferred from the acts of the appellants' tending to show community of criminal purpose or design. In the case of *People vs. Mada-I Santalani* (93 SCRA 315, 327) this Court said:

"The agreement of which the law speaks is not limited to one which is written or otherwise expressly or directly made prior to the commission of the crime. It is not necessary that the malefactors, for an appreciable time prior to the commission of the crime had actually come together and agreed in terms to pursue a common design. For conspiracy to exist, it is enough that the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances. To establish conspiracy, it is not necessary to prove previous agreement to commit a crime if there be proof that the malefactors have acted in concert and in pursuance of the objectives. Conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Their action must be judged not by what they say, for what men do is the best index of their intention." (citing *People vs. Lagro*, 46 SCRA 597; *People vs. Cariño*, 55 SCRA 517; emphasis supplied.)

As pointed out by the lower court, a conspiracy was sufficiently established when: (1) Renato Linsangan and his three (3) companions, namely Eduardo Linsangan, Gerardo Cayanga and Mario Castro together fetched Fernando de Guzman from the plaza of Santor, Bongabon, Nueva Ecija, where he was watching a basketball game, (2) the three (3) companions held Guzman by the shoulder "akbay-akbay" fashion, evidently to prevent his escape (p. 13, Decision); and (3) the widow saw appellant Eddie Linsangan hit Guzman with a stone after the latter was hacked

by Renato with a bolo (pp. 14-15, tsn, December 6, 1988). This was confirmed by the contused wounds on the head of the deceased which Dr. Cajucom identified. Dr. Cajucom testified that the contused wounds of the deceased were caused by blunt objects such as stones (p. 8, tsn, February 7, 1989).

The widow, Angelita de Guzman, saw her husband "being ganged up by Renato Linsangan, Mario Castro, Gerardo Cayangan and Eddie Linsangan, sir" (p. 14, tsn, December 6, 1988).

In addition, Daniel Fernando identified the same persons as the "four [who] were holding on the shoulder of Fernando de Guzman." Castro, Jr.'s claim that his conviction is based on the testimony of a lone witness is therefore incorrect (p. 168, Rollo of G.R. No. 95592).

We affirm the trial court's finding that the conspiracy among the accused to kill Guzman had been established. Consequently, "the act of one was the act of all and every one of the conspirators is guilty with the others in equal degree" (People vs. Quiñones, 183 SCRA 747). Every member of the group that perpetrated the killing of Fernando de Guzman must suffer the same penalty prescribed by law even if they had different degrees of participation in the commission of the crime (Ibid.).

With regard to the Affidavit of Desistance which the widow of the victim signed after she had testified, the lower court correctly disregarded it on the ground that:

"[It] is utterly unreliable having been executed after she has already freely and he voluntarily testified for the prosecution implicating Eduardo Linsangan to the killing of Fernando de Guzman. Whether or not her testimony along that line as well that of Daniel Fernando's are sufficient to convict Eduardo Linsangan is ultimately addressed to the Court. She cannot preempt the same." (pp. 28-29, Appellee's Brief, p. 168, Rollo of G.R. No. 95592.)

At most said affidavit of desistance constitutes a waiver by the complainant of the civil liability of the accused which the trial court properly did not award in the decision (People vs. Caruncho, Jr., 127 SCRA 16).

WHEREFORE, the appealed judgment is **AFFIRMED** in toto.

SO ORDERED.

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.

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