



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 28, 2020 which reads as follows:

“G.R. No. 242888 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MACKY SIMBULAN, MIGUEL IGNACIO PALACIOS, BANJO ESPINA, CRAIG ESPINA, DARYL ESPINA, XXX, et al., accused, JUDE DOMINIC PASCASIO, AND YYY, accused-appellants.

After a careful review of the records of the case and the issues submitted by the parties, the Court **AFFIRMS** the Decision¹ dated February 27, 2018 (Decision) of the Court of Appeals (CA), in CA-G.R. CR-HC No. 08696, finding accused-appellants Jude Dominic Pascasio (Pascasio) and YYY guilty of the crime of Murder **WITH MODIFICATIONS** as to the penalty and civil liability *ex delicto*.

The Court agrees with the CA that the crime committed in this case is Murder qualified by treachery. There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.²

Here, the evidence unequivocally shows that the attack against the victim was sudden, unexpected and deliberate as testified by the

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¹ *Rollo*, pp. 2-16. Penned by Associate Justice Jose C. Reyes, Jr. (now a member of this Court), with Associate Justices Franchito N. Diamante and Maria Elisa Sempio Dy, concurring.

² *People v. Dayaday*, G.R. No. 213224, January 16, 2017, 814 SCRA 414, 426.



eyewitnesses. While the victim was about to cross the street to check the commotion outside his house, Pascasio emerged from behind a post, fired shots at the victim, hitting him in the chest and left armpit. Also, the fact that accused-appellants were accompanied by several others when the attack happened is a clear indication that they deliberately employed means and methods which specifically ensure the successful execution of the offense.³

As Pascasio was positively identified by the eyewitnesses as the one who shot the victim, his liability for Murder as principal by direct participation must be upheld.

However, as regards the liability of YYY, the Court finds that he should only be held liable as an accomplice.

The courts *a quo* sweepingly concluded that YYY was in conspiracy with Pascasio because he was seen behind the latter holding a stone and that YYY tried to stop the tricycle carrying the victim from going to the hospital.⁴

In *Cruz v. People*,⁵ the Court explained that mere knowledge, acquiescence, or agreement to cooperate, mere presence at the scene of the crime at the time of its commission, and mere companionship, are insufficient to constitute a conspiracy. For conspiracy to exist, the prosecution must be able to show, beyond reasonable doubt, that all the accused actively participated in the commission of the crime itself as to indicate a common purpose or design to commit the felony.⁶

Thus, in *Saldua v. People*,⁷ accused bearing a firearm, who stood behind the person who shot the victim, was only held liable as an accomplice because his mere presence does not establish that he previously agreed to commit the crime or encouraged the execution thereof. The Court explained:

At the time the crime of homicide was committed, it was established that petitioner Saldua, who was armed, was present, as he was behind Vertudez when the latter fired his gun. However, mere presence does not make one a co-conspirator in the crime. The rule is that the existence of conspiracy cannot be presumed. Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Because witnesses are rarely present when several accused come to an

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³ *Rollo*, p. 5.

⁴ *Id.* at 10.

⁵ G.R. Nos. 197142 & 197153, October 9, 2019, p. 18.

⁶ *Id.* at 17-18.

⁷ G.R. No. 210920, December 10, 2018, 889 SCRA 1.

agreement to commit a crime, such agreement is usually inferred from their “concerted actions” while committing it. Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight. Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment.

Other than being present, it was not established what petitioner’s purpose was when he stood behind Vertudez bearing a firearm. By merely standing behind Vertudez, it cannot be ascertained whether petitioner had prior knowledge of the criminal design of the principal perpetrator or that he was there to give moral support. What was clear is that he was armed and he did not stop Vertudez from shooting the victim. **The mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed.** This conclusion is in keeping with the principle that when there is doubt, such doubt should be resolved in favor of the accused. x x x⁸ (Emphasis supplied)

Further, in *People v. Garcia*,⁹ the Court ruled that acts that are not indispensable for the accomplishment of the crime, such as helping other accused-appellants in facilitating the successful denouement to the crime or in repelling any attempt to rescue the victim, are only regarded as acts committed by an accomplice under Article 18 of the Revised Penal Code. The Court likewise held that “in some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice **if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character.**”¹⁰

Here, evidence is clear that YYY’s participation was not indispensable to the felony committed. His mere act of standing behind Pascasio and preventing the victim’s relatives from bringing the victim to the hospital is extraneous to the accomplishment of the crime of Murder. Therefore, YYY must be held liable only as an accomplice to the criminal acts committed by Pascasio.

Proper Penalties

The Court agrees with the courts *a quo* that Pascasio merits to suffer the penalty of *reclusion perpetua* for the murder of the victim.

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⁸ Id. at 16-17.

⁹ G.R. Nos. 133489 & 143970, January 15, 2002, 373 SCRA 134, 155.

¹⁰ Id. at 156. See *People v. Corbes*, G.R. No. 113470, March 26, 1997, 270 SCRA 465, 472-473.

As an accomplice, YYY is liable to a penalty of *reclusion temporal* or one degree lower than the prescribed penalty for murder. Considering that accused-appellant is entitled to the privileged mitigating circumstance of minority, his penalty should further be lowered by one degree, *i.e.*, *prision mayor*. Applying the Indeterminate Sentence Law and there being no mitigating and aggravating circumstances, the proper penalty imposable is *prision correccional*, as minimum and *prision mayor* in its medium period, as maximum.

Award of Damages

Finally, as to civil liability, the Court's ruling in *People v. Montesclaros*,¹¹ is instructive. In that case the Court held that the entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Each principal should shoulder a greater share in the total amount of indemnity and damages than the adjudged accomplice.¹² In this regard, the Court rules that the ratio between the principal and accomplice as to their share in the total indemnity and damages is 2:1.¹³ Since there are two principals and one accomplice in this case, then the applicable ratio is 2:2:1 or two-fifths and one-fifth respectively for each principal and the accomplice.

In *People v. Jugueta*,¹⁴ the amount of damages to be paid by the principal in consummated Murder when the penalty imposed is *reclusion perpetua* are as follows: (1) ₱75,000.00 as civil indemnity, (2) ₱75,000.00 as moral damages, (3) ₱75,000.00 as exemplary damages and (4) ₱50,000.00 as temperate damages.

Thus, pursuant to the foregoing, all accused adjudged as principal in this case, which includes Pascasio, are solidarily liable to pay the heirs of the victim the following: (1) ₱60,000.00 as civil indemnity; (2) ₱60,000.00 as moral damages, (3) ₱60,000.00 as exemplary damages, and (4) ₱40,000.00 as temperate damages; while YYY, as an accomplice, shall be liable for the following: (1) ₱15,000.00 as civil indemnity, (2) ₱15,000.00 as moral damages, (3) ₱15,000.00 as exemplary damages, and (4) ₱10,000.00 as temperate damages.

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¹¹ G.R. No. 181084, June 16, 2009, 589 SCRA 320.

¹² See *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 534; See also *People v. Yau*, G.R. No. 208170, August 20, 2014, 733 SCRA 608, 634-635; *Gurro v. People*, G.R. Nos. 224562 & 237216, September 18, 2019, p. 13.

¹³ The ratio for cases with an accessory to the crime is 3:2:1.

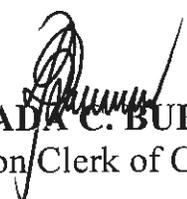
¹⁴ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

WHEREFORE, the assailed Decision is **AFFIRMED with MODIFICATIONS**. Accused-appellant **Jude Dominic Pascasio** is found **GUILTY** beyond reasonable doubt as principal for the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant **YYY** is found **GUILTY** beyond reasonable doubt as accomplice in the crime of Murder and sentenced to suffer the penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Accused-appellants are ordered to indemnify the heirs of the victim in the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, apportioned in the following manner: the principals in to the crime shall jointly and severally pay the heirs of the victim the total amount of ₱220,000.00 while the accomplice shall pay the heirs of the victim ₱55,000.00.

All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.” *Reyes, Jr., J., J., no part; Inting, J., designated additional member per Raffle dated September 2, 2019.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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