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Third Division
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

ROBERTO ESPERANZA JESALVA *alias* "ROBERT SANTOS,"
Accused-Appellant.

G.R. No. 227306

Present:

VELASCO, JR., *J.*, *Chairperson,*
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

June 19, 2017

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D E C I S I O N

JARDELEZA, *J.*:

This appeal seeks to reverse and set aside the Court of Appeals (CA) Decision[1] dated September 28, 2015 in CA-G.R. CR-HC-06823. The CA upheld the Decision[2] dated April 14, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 80, in Criminal Case No. Q-08-152149, which found accused-appellant Roberto Esperanza Jesalva alias "Robert Santos" (accused-appellant) guilty beyond reasonable doubt of the crime of murder.

An Information dated March 31, 2008 was filed charging accused-appellant, Ryan Menieva y Labina[3] (Menieva) and Junie Ilaw (Ilaw) for the murder of Arnel Ortigosa y Cervana[4] (Ortigosa), committed as follows:

> That on or about the 16th day of September 2007, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another did then and there, wilfully, unlawfully and feloniously with intent to kill with evident premeditation, treachery and taking advantage of superior strength, attack, assault and employ personal violence upon the person of Arnel [O]rtigosa y Cervana, by then and there

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[1] *Rollo*, pp. 2-13. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Stephen C. Cruz and Pedro B. Corales, concurring.

[2] CA *rollo*, pp. 12-17. Penned by Presiding Judge Charito B. Gonzales.

[3] Also referred to as "Menieba" in some parts of the records.

[4] Also referred to as "Artigosa" in some parts of the records.

> stabbing him with a sharp bladed instrument hitting him on the chest, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Arnel [O]rtigosa y Cervana.
>
> That the crime was committed with qualifying aggravating circumstance of treachery when the offended party was not given opportunity to make a defense as the attack was sudden, unexpected and without warning.
>
> That the crime was committed with abuse of superior strength for whereas the accused were armed with a knife and firearm of unknown caliber, the victim was unarmed.
>
> Contrary to law.[5]

A warrant of arrest was issued against accused-appellant, Menieva and Ilaw.[6] However, only accused-appellant was arrested. Upon arraignment, accused-appellant pleaded not guilty to the offense charged.[7] Trial ensued.

The facts of the case are as follows:

On September 16, 2007, at around 1:00 a.m., Ortigosa, his cousin Renato B. Flores (Flores) and Manny Boy Ditche were drinking in Dupax Street, Old Balara, Quezon City. Later, they decided to go to a store to buy cigarettes.[8] On their way to the store, Flores noticed accused-appellant standing in a corner near the store and staring at them. Then, accused-appellant walked away and disappeared. Later, accused-appellant re-appeared, accompanied by Menieva and Ilaw, and followed Ortigosa and his group to the store.[9] When accused-appellant and his companions were already in front of Ortigosa, Menieva uttered, "*Nel, ano ba yan?*" and proceeded to stab Ortigosa twice with an icepick. Menieva stabbed Ortigosa first on the right portion of his chest, then on his left armpit. As Menieva stabbed Ortigosa, Ilaw pointed a *sumpak* at Ortigosa while accused-appellant pointed at Ortigosa's group and left.[10]

After the stabbing, Ortigosa and his group tried to run back to where they were drinking. Before they reached the place, Ortigosa fell on the ground. His companions rushed him to East Avenue Medical Center where he died.[11]

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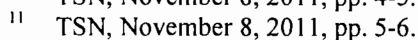
5 CA *rollo*, pp. 10-11.
6 RTC records, p. 17.
7 *Id.* at 24.
8 TSN, November 8, 2011, pp. 3-5.
9 RTC records, pp. 9-10.
10 TSN, November 8, 2011, pp. 4-5.
11 TSN, November 8, 2011, pp. 5-6.



The prosecution and defense stipulated on the testimony of Dr. Filemon C. Porciuncula, Jr. (Dr. Porciuncula), the medico-legal assigned with the Central Police District Crime Laboratory on September 16, 2007. Dr. Porciuncula conducted a post-mortem examination on Ortigosa's cadaver, determined the cause of death as stab wounds on Ortigosa's trunk and prepared Medico-Legal Report No. 599-07 and Ortigosa's death certificate.[12]

For its part, the defense presented accused-appellant. Accused-appellant denied any participation in Ortigosa's stabbing. He claimed that on the night of the incident, he was waiting for his sister on the corner of Dupax Street. While waiting, he saw and heard people running and shouting which caused him to leave the place.[13]

On April 14, 2014, the RTC of Quezon City, Branch 80 rendered a Decision holding that accused-appellant conspired with Menieva and Ilaw to kill Ortigosa.[14] The RTC held that Flores positively identified accused-appellant in open court as the person who stabbed Ortigosa twice with an icepick.[15] As treachery attended the killing, the crime is murder. The RTC convicted accused-appellant, the dispositive portion of which reads:

> WHEREFORE, premises considered, the court finds accused ROBERTO ESPERANZA JESALVA alias ROBERT SANTOS guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code as amended and is hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of Arnel Ortigosa the amounts of P75,000.00 as civil indemnity, P24,000.00 as actual damages, P50,000.00 as moral damages and P30,000.00 as exemplary damages.
>
> Let an alias warrant of arrest be issued against accused RYAN MENIEBA y LABINA and JUNIE ILAW, the same to remain standing until their apprehension.
>
> SO ORDERED.[16]

On September 28, 2015, the CA affirmed with modification the trial court's Decision and held that conspiracy was evident from the coordinated movements of the three accused.[17] The CA, however, differed with the RTC's findings regarding accused-appellant's participation in the crime. It determined that it was Menieva who stabbed Ortigosa and that accused-appellant's participation before, during and after the incident was confined to the following: (1) accompanying Menieva and Ilaw to the store where

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12 RTC records, pp. 111-114.
13 TSN, December 3, 2013, pp. 3-5.
14 CA *rollo*, p. 17.
15 *Id.* at 15.
16 *Id.* at 17.
17 *Rollo*, pp. 7-8.

Ortigosa and his group were; and (2) pointing at the group while Ortigosa was stabbed.[18] The CA also held that the damages awarded shall earn interest at 6% *per annum* from finality of judgment until fully satisfied.[19]

Hence, this appeal.

On February 9, 2017, accused-appellant filed a Manifestation In Lieu of Supplemental Brief[20] requesting that his appellant's brief be adopted as his supplemental brief. On February 13, 2017, the Office of the Solicitor General (OSG) also filed its Manifestation and Motion In Lieu of Supplemental Brief[21] stating that it would no longer file a supplemental brief as it has already substantially and exhaustively responded to and refuted accused-appellant's arguments in its appellee's brief.

The appeal is meritorious.

As a general rule, we accord respect to the factual findings of the trial court as it is in a better position to evaluate the testimonial evidence.[22] The rule finds an even more stringent application where the said findings are sustained by the CA.[23] This rule, however, admits of exceptions, to wit:

> But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. x x x[24]

In this case, we find that the prosecution failed to prove that accused-appellant conspired with Menieva and Ilaw in committing the crime of murder.

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.[25] We explained the reason for the rule, thus:

> As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle of criminal law

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18 *Id.*
19 *Rollo*, p. 12.
20 *Id.* at 23-27.
21 *Id.* at 28-29.
22 *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 11.
23 *People v. Cial*, G.R. No. 191362, October 9, 2013, 707 SCRA 285, 292, citing *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 387-388.
24 *Quidet v. People*, *supra*.
25 *Id.* at 10.

> requiring proof beyond reasonable doubt before conviction. x x x[26]

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.[27] It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose.[28] We held:

> "To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act xxx. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals."[29]

Both the RTC and the CA ruled that conspiracy was duly established. In particular, the CA concluded:

> In the present case, conspiracy was evident from the coordinated movements of the three (3) accused. From the prosecution's evidence, [Flores] saw accused-appellant at the corner of the street, who initially disappeared and re-appeared with co-accused [Menieva and Ilaw]. While [Menieva] was stabbing the victim, [Ilaw] was pointing a "sumpak" at the latter, with the accused-appellant pointing his finger at them before leaving.
>
> [Flores] positively identified the accused-appellant as the person who accompanied his co-accused [Menieva and Ilaw]. He described accused-appellant's participation before the incident, during the incident, *i.e.,* while the victim was being stabbed by his co-accused [Menieva], and after the incident. Evidently, the accused-appellant and company all acted in confabulation in furtherance of their common design and purpose, *i.e.* to kill the victim. Thus, the court *a quo* correctly held that conspiracy is present.[30] (Citation omitted.)

We disagree.

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26 *People v. Tividad*, G.R. No. L-21469, June 30, 1967, 20 SCRA 549, 554.

27 *People v. Campos*, G.R. No. 176061, July 4, 2011, 653 SCRA 99, 113.

28 *People v. Vistido*, G.R. No. L-31582, October 26, 1977, 79 SCRA 616, 621-622.

29 *People v. Medice*, G.R. No. 181701, January 18, 2012, 663 SCRA 334, 345-346, citing *People v. de Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384, 404.

30 *Rollo*, pp. 7-8.

To determine if accused-appellant conspired with Menieva and Ilaw, the focus of the inquiry should necessarily be the overt acts of accused-appellant before, during and after the stabbing incident.[31]

On accused-appellant's acts before the stabbing incident, the OSG argues that conspiracy to kill Ortigosa is evident considering the proximity in time between accused-appellant's walking away and re-appearing accompanied by Menieva and Ilaw. To the OSG, it can be reasonably inferred that when accused-appellant disappeared, he sought the help of Menieva and Ilaw to carry out the evil plan against Ortigosa or that accused-appellant signaled the arrival of the victim for his group to execute their criminal design.[32]

This argument is speculative and remains unsubstantiated. More, it falters as there is no evidence that accused-appellant and his co-accused had any enmity or grudge against the deceased. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime.[33] Likewise, there is no evidence showing that accused-appellant was purposely waiting for Ortigosa at the time and place of the incident and that Menieva and Ilaw were on standby, awaiting for accused-appellant's signal. Surely, accused-appellant could not have anticipated that on September 16, 2007, at around 1:00 a.m., Ortigosa and his group would pass by and go to the store to buy cigarettes.

During and after the stabbing incident, Flores testified that what accused-appellant did during the stabbing was to point at them before walking away. On cross, Flores admitted that accused-apellant did not inflict any injury on Ortigosa:

> **CROSS EXAMINATION OF ATTY. BANDAO**
>
> Atty. Bandao to Witness
> Q A while ago, Mr. Witness, you testified that in the early morning of September 16, 2007, you were in the company of one Arnel Ortigosa, is that correct?
>
> **CROSS EXAMINATION OF ATTY. BANDAO**
>
> Witness
> A Yes, sir.
>
> Atty. Bandao
> Q Now, you claimed that while you were in the company of Arnel Ortigosa, it was then that Ryan Menieba stabbed him, is that correct?
>
> A Yes, sir.

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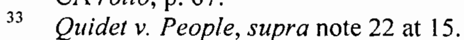
[31] *Quidet v. People*, *supra* note 22 at 12.
[32] CA *rollo*, p. 67.
[33] *Quidet v. People*, *supra* note 22 at 15.



> Q Now, as far as the accused Robert Santos is concerned, you would agree with me that he never inflicted any physical injuries or whatever kind of injury to Arnel Ortigosa?
>
> A Yes, sir.[34] (Emphasis in the original.)

Accused-appellant's act of pointing to the victim and his group is not an overt act which shows that accused-appellant acted in concert with his co-accused to cause the death of Ortigosa. We stress that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, their mere presence does not make them parties to it, absent any active participation in the furtherance of the common design or purpose.[35] Likewise, where the only act attributable to the other accused is an apparent readiness to provide assistance, but with no certainty as to its ripening into an overt act, there is no conspiracy.[36] In this case, while accused-appellant's presence and act of pointing at the victim and his group may mean he approved of the crime or that he was ready to assist his co-accused, absent any other overt act on his part, there is no conspiracy.

We emphasize that the prosecution must establish conspiracy beyond reasonable doubt. A conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumption.[37] We repeat:

> Conspiracy is not a harmless innuendo to be taken lightly or accepted at every turn. It is a legal concept that imputes culpability under specific circumstances. As such, it must be established as clearly as any element of the crime. The quantum of evidence to be satisfied is, we repeat, beyond reasonable doubt.[38] (Citation omitted.)

In the absence of conspiracy, accused-appellant is responsible only for the consequences of his own acts.[39] In this case, all that accused-appellant did was to stare and point at the victim and his companions. These, however, are not crimes.

Neither can accused-appellant be considered a principal by indispensable cooperation nor an accomplice in the crime of murder. The cooperation that the law punishes is the assistance knowingly or intentionally rendered which cannot exist without previous cognizance of the criminal act intended to be executed. Thus, to be liable either as a principal by indispensable cooperation or as an accomplice, the accused must unite

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34 TSN, November 8, 2011, pp. 7-8.
35 *People v. Mandao*, G.R. No. 135048, December 3, 2002, 393 SCRA 292, 299.
36 *Id.* at 304.
37 *Li v. People*, G.R. No. 127962, April 14, 2004, 427 SCRA 217, 232-233.
38 *People v. Cupino*, G.R. No. 125688, April 3, 2000, 329 SCRA 581, 595.
39 *Araneta, Jr. v. Court of Appeals*, G.R. Nos. 43527 & 43745, July 3, 1990, 187 SCRA 123, 133.

with the criminal design of the principal by direct participation.[40] In this case, nothing in the records shows that accused-appellant knew Menieva was going to stab Ortigosa, thus creating a doubt as to accused-appellant's criminal intent.

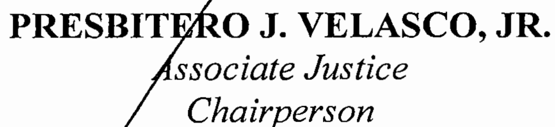
Indeed, absent any evidence to create the moral certainty required to convict accused-appellant, we cannot uphold the trial court's finding of guilt. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty, or even property. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.[41] Moral certainty, not mere possibility, determines the guilt or innocence of the accused.[42]

WHEREFORE, the Decision appealed from is **REVERSED** and **SET ASIDE**. Accused-appellant ROBERTO ESPERANZA JESALVA alias "Robert Santos" is **ACQUITTED** on reasonable doubt of the crime charged. Accordingly, he is ordered immediately released from custody unless he is lawfully held for another cause.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

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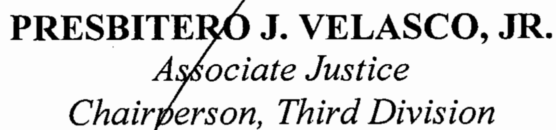
40 *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 197.

41 *People v. Roche*, G.R. No. 115182, April 6, 2000, 330 SCRA 91, 114, citing *Pepito v. Court of Appeals*, G.R. No. 119942, July 8, 1999, 310 SCRA 128, 143.

42 *People v. Mandao, supra* note 35 at 305, citing *People v. Albacin*, G.R. No. 133918, September 13, 2000, 340 SCRA 249, 261-262.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice