

EN BANC

[G.R. No. 126531, April 21, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT ELIJORDE Y DE LA CRUZ AND REYNALDO PUNZALAN Y
ZACARIAS ALIAS "KIRAT," ACCUSED-APPELLANTS.**

D E C I S I O N

BELLOSILLO, J.:

GILBERT ELIJORDE Y DE LA CRUZ and REYNALDO PUNZALAN Y ZACARIAS alias *Kirat* were convicted of murder by the Regional Trial Court of Bulacan for the killing of Eric Hierro. Both accused were sentenced to death and ordered jointly and severally to indemnify the heirs of Eric Hierro P50,000.00 plus P35,000.00 for actual damages, P100,000.00 for moral damages and P25,000.00 for exemplary damages. The case is now with us on automatic review.

The records show that at around 6:00 o'clock in the evening of 21 May 1995 Eric Hierro, Benjamin Visbal and Rodel Contemplado were drinking in the house of the latter. Sometime later, Hierro and Visbal went out to buy mango at a nearby sari-sari store. Accused Gilbert Elijorde, Reynaldo Punzalan and a certain Edwin Menes were at the time in front of the store. As Menes approached Hierro the latter warned Menes, "Don't touch me, my clothes will get dirty." Suddenly Menes punched Hierro on the face, followed by Elijorde who also boxed Hierro on the face, and Punzalan who kicked Hierro at the back. Hierro and Visbal ran for their lives. They sought shelter at Contemplado's house. After some three (3) minutes, Hierro went out of the house to go home together with Visbal and the latter's wife.

As they walked home, Visbal noticed the accused Elijorde, Punzalan and Menes waiting for them. As Hierro and company drew near, Punzalan kicked Hierro at the back for the second time. Visbal tried to retaliate by punching Punzalan on the face but was held back by his wife. Hierro ran away pursued by Elijorde. They were followed by Visbal. Elijorde stabbed Hierro at the back. When Hierro fell down, Elijorde placed himself on top of Hierro who was now raising his arms defensively and pleading, "*Maawa na kayo, huwag ninyo akong patayin, wala akong kasalanan sa inyo.*" Despite the pleas of Hierro for mercy, Elijorde stabbed him with a knife on the chest and then fled. Visbal and his wife brought Hierro to the hospital where he died soon after.

Dr. Benito Caballero, Medico-Legal Officer of Bocaue, Bulacan, conducted a post-mortem examination of Eric Hierro, and reported that the cause of his death was shock resulting from multiple stab wounds in the thorax penetrating the aorta and vena cava.^[1]

Gilbert Elijorde, Reynaldo Punzalan and Edwin Menes alias *Nonong*^[2] were accordingly charged in an Information for murder of Eric Hierro qualified by

treachery, evident premeditation and abuse of superior strength. But only Elijorde and Punzalan were arrested and tried. Menes has since remained at large.

Both accused contend that the court *a quo* erred in finding that treachery qualified the killing of Hierro to murder, and in finding Punzalan guilty of murder by reason of conspiracy with Elijorde. The defense argues that Punzalan did not conspire with Elijorde because the only participation of Punzalan in the commission of the offense was his kicking of Hierro twice: first, after Hierro was boxed by Elijorde and Menes in front of the nearby sari sari store, and the second time, when Hierro was on his way home; that Punzalan remained in the place where he kicked Hierro and did nothing more"; that he did not join or cooperate with Elijorde in pursuing and stabbing the deceased; and, that the acts of kicking Hierro were neither in pursuance of the same criminal design of Elijorde nor done in concert aimed at the attainment of the same objective of killing Hierro.

Indeed, with respect to accused Reynaldo Punzalan, the Court cannot assert with moral certainty that he is guilty of murder. To convict him as a principal by direct participation in the instant case, it is necessary that conspiracy between him and his co-accused Elijorde be proved. That, precisely, is wanting in the present case. Conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence, not merely by conjecture.^[3] To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.^[4] Hence, conspiracy exists in a situation where at the time the malefactors were committing the crime, their actions impliedly showed unity of purpose among them, a concerted effort to bring about the death of the victim.^[5] In a great majority of cases, complicity was established by proof of acts done in concert, i.e., acts which yield the reasonable inference that the doers thereof were acting with a common intent or design. Therefore, the task in every case is determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference.^[6]

Clearly, the testimony of eyewitness Benjamin Visbal narrated the circumstances surrounding the killing of Hierro, to wit:

Q: Now, you said that Eric Hierro went to the store to buy mango, do you know the reason why there was a boxing incident?

A: Yes, Your Honor.

Q: What was the reason?

A: When Nongnong approached Eric, Eric stated, "Don't touch me, my clothes will become dirty."

Q: Who is this Nongnong?

A: Edwin Meneses,^[7] Your Honor.

Q: When Eric Hierro said that what did Edwin Menes(es) do?

A: He suddenly punched Eric Hierro.

Q: When Eric Hierro (was) punched what did this Gilbert Elijorde do?

A: Gilbert Elijorde also punched Eric Hierro.

Q: How about Reynaldo Punzalan?

A: Reynaldo Punzalan kicked Hierro at the back, Your Honor.

Q: That was during the first incident?

A: Yes, Your Honor.

Q: You mean to say they were three at that time?

A: Yes, Your Honor.

Q: Now, after that Eric Hierro went home?

A: Yes, Your Honor.

Q: How long did Eric Hierro stayed (sic) at that place?

A: For about three (3) minutes, Your Honor.

Q: When Eric Hierro went out you went with him together with Eric Hierro?

A: Yes, Your Honor.

Q: Together with your wife?

A: Yes, Your Honor.

Q: When the three of you went out what happened?

A: While we were walking home this "Kirat" (Reynaldo Punzalan) suddenly kicked Eric Hierro at the back.

Q: Do you mean to say aside from the first incident Kirat kicked Eric Hierro, (during) the second incident Kirat kicked Eric Hierro?

A: Yes, Your Honor.

Q: When you were approaching, how many of them were there waiting for Eric Hierro?

A: The three of them were waiting for Eric Hierro but during the chasing it was only Gilbert Elijorde who chased us.

Q; What did Edwin do during the second incident?

A: He did nothing.

Q: How about Kirat?

A: He kicked Eric Hierro at the back.

Q: After that what did you do?

A: I can't (sic) do anything, Your Honor, because I was being held by my wife.

Q: How about Eric Hierro what did he do?

A: He ran away x x x x

Q: While Eric Hierro was running did you see that Gilbert stab Eric at the back?

A: Yes, Your Honor.

Q: That was the first stab that was made by Gilbert is that correct?

A: Yes, Your Honor.

Q: What happened to Eric when he was stabbed at the back?

A: He continued running, Your Honor.

Q: And how about Gilbert what did Gilbert do?

A: He continued chasing, Your Honor.

Q: How about your wife where was your wife?

A: At my back, Your Honor.

Q: When you met Eric Hierro at a certain point what did you actually see?

A: That was when I saw Gilbert stab Eric Hierro right on the chest.

Q: And when Eric Hierro was already lying (facing?) up?

A: Yes, Your Honor.

Q: And Gilbert was on top of Eric Hierro?

A: Yes, Your Honor.

Q: And you saw Gilbert stab Eric Hierro?

A: Yes, Your Honor.

Q: How many times?