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FIRST DIVISION

[G.R. No. L-33240. November 21, 1979]

RODRIGO DACANAY, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES**, *respondents*.

SYLLABUS

1. **CRIMINAL LAW; CRIMINAL LIABILITY; ACCUSED SHOULD BE CONVICTED AS A CO-PRINCIPAL WHEN HE PERFORMS ACTS TOWARDS THE REALIZATION OF A COMMON CRIMINAL INTENT; CASE AT BAR.**— [A]ppellant should be convicted as a co-principal and not as a mere accomplice. There can be no question that appellant's act in holding the victim from behind when the latter was stabbed by his cousin, Victor Buduan, was a positive act towards the realization of a common criminal intent, although the intent can be classified as instantaneous. It can be safely assumed that had not appellant held both arms of the victim from behind, the latter could have parried the thrust or even run away from his assailant. By immobilizing the two hands of the victim from behind, and although there was no anterior conspiracy, the two cousins showed unity of criminal purpose and intent immediately before the actual stabbing.

2. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; CANNOT BE APPRECIATED WHEN ATTACK IS PRECEDED BY A QUARREL; CASE AT BAR.**— We rule out, however, the generic aggravating circumstance of treachery appreciated by the Court of Appeals. The attack was preceded by a quarrel and a heated discussion and must have placed the victim on his guard. Appellant's act in holding the deceased was impulsively done on the spur of the moment and was not consciously and deliberately adopted. It merely sprang from the turn of events.

DE CASTRO, *J.*, *dissenting opinion*:

1. **CRIMINAL LAW; CRIMINAL LIABILITY; DOES NOT APPLY WHEN A PERSON DID NOT COOPERATE OR JOIN IN THE**

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HOMICIDAL INTENT OF THE ACCUSED.— The evidence fails to show clearly as to engender no reasonable doubt on the matter, how sudden was the stabbing — as suddenness was manifestly suggested by the evidence — so as to be able to determine whether appellant had the time to release his hold before the act of stabbing was done, as not to be held that he cooperated with Buduan or joined him in his homicidal intent. Neither is the evidence clear as to suggest that appellant held the victim as if to give Victor Buduan the chance to stab the victim, because appellant knew beforehand that Buduan wanted to, as he did, stab the victim, or actually saw Buduan stab the victim, which knowing and seeing would mark the existence of an intent on the part of petitioner to join or participate in the criminal design of Buduan. Appellant's holding the hands of the victim could have been to take him away from the reach of the knife-wielder. From the question of the Court, it would seem that what was shown in the demonstration as observed by the trial court is that in holding the victim's hands, appellant pulled him away from Victor Buduan, rather than pushed him nearer to the former. At least there is created here an ambiguity as to this fact that should be resolved in favor of the appellant's claim of having tried to separate the protagonists.

2. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; MUST FULFILL THE TEST OF MORAL CERTAINTY.**— The simultaneousness of the act of stabbing with that of holding the hands of the victim by appellant does not of itself demonstrate concurrence of wills or unity of purpose and action (*U.S. vs. Magcomot*, 13 Phil. 386, 389). Verily, it could demonstrate either the presence of a unity of purpose or concurrence of wills, on the one hand, or a desire on the part of appellant to prevent a physical and violent encounter, on the other, as is just natural of him as the owner of the house to prevent any crime, specially one of violence, being committed in his dwelling. The rule is well-settled that if the facts or circumstances, apparently inculpatory, may equally be explained showing innocence, the evidence does not fulfill the test of moral certainty to support conviction.[6] In my humble opinion, the inculpatory facts as proven by the evidence are equally consistent with the innocence of the appellant, particularly upon the lack of motive for him to have joined the homicidal intent of the knife-wielder who has remained at large up to the present.

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3. ID.; CRIMINAL PROCEDURE; CONVICTION; MUST BE BASED ON THE STRENGTH OF PROSECUTION'S EVIDENCE.— What suggests itself for proper application in this case is the principle that conviction must be based on the strength of the prosecution's evidence, not on the weakness of that of the defense.[7] Say that by the abandonment in open court, when appellant had already had the benefit of counsel, of his original version as set forth in his affidavit (Exhibit B), the evidence of the defense has been weakened, yet the prosecution's evidence, by itself, is not strong enough to support conviction. As shown earlier, it also suffers from weakness on vital points, such as (1) the absence of opportunity for appellant to have nurtured the intent to join in the criminal design to kill on the part of Buduan, the knife-wielder; and (2) lack of motive on his part sufficient to induce him to join in the homicidal intent of the actual killer, for his motive to pacify as he claimed in his affidavit (Exhibit B), is made persuasive by his being the owner of the house where card games are played, and is, therefore, desirous to preserve the peaceful atmosphere under which to continue the playing of the game therein. It is also significant that the actual killer had gone into hiding, betraying his sense of being the one solely and exclusively responsible for the killing, possibly fearing appellant's rage for taking a man's life right in his house.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

Upon an Information for Homicide filed before the Court of First Instance of Isabela, Branch IV, Roxas, for the death of Abraham Cortez *alias* Luis Cortez, Jr. (deceased), and after due trial, petitioner-appellant was sentenced to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months of *reclusion temporal* as maximum, to indemnify the heirs of the deceased in the amount of ₱6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

On appeal to the Court of Appeals, the judgment of conviction was affirmed but the penalty was amended as follows:

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"WHEREFORE, the judgment of conviction is hereby affirmed with modification of the penalty from ten (10) years and one (1) day of *prision mayor*, as the minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as the maximum, and to pay an indemnity of ₱12,000.00 to the heirs of the deceased, without subsidiary imprisonment in case of insolvency, and to pay the costs."

It appears from the evidence that the deceased was killed in the night of June 3, 1967 and that shortly before his death, the deceased was playing cards in the house of appellant in the municipality of San Manuel, Isabela, together with appellant, the latter's cousin Victor Buduan, Cresencio Doctor, Fermin Esteban, and Esmeraldo Pagatpatan.

The original criminal complaint in regard to the death of the deceased was filed against Victor Buduan and appellant before the Municipal Court of San Manuel, Isabela, on June 7, 1967. But because Victor Buduan could not be arrested and had remained at large, only appellant was tried under the Information filed before the Court of First Instance of Isabela, as follows:

"That on or about the 3rd day of June, 1967, in the municipality of San Manuel, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused Rodrigo Dacanay, together with Victor Buduan, who is still at large, conspiring and confederating together and helping one another, did then and there willfully, unlawfully, and feloniously, with intent to kill and without any just motive, the said Victor Buduan, assault, attack and stab with a scythe (*lilit*) one Abraham Cortez *alias* Luis Cortez, Jr., while being held on his right shoulder by the herein accused Rodrigo Dacanay, thereby inflicting the following wounds upon the said Abraham Cortez *alias* Luis Cortez, Jr., to wit: a stab wound, abdomen, penetrating and perforating small intestines and lumbar area, right, three perforations in small intestines, which directly caused the death of said Abraham Cortez *alias* Luis Cortez, Jr., due to external and internal hemorrhage secondary to the stab wound."

The theory of the prosecution is that the deceased was stabbed by Buduan with a scythe ("*lilit*") while he was being held by appellant from behind.

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On June 6, 1967, or the day before appellant was charged with Homicide before the Municipal Court of San Manuel, he gave a statement before the Chief of Police of San Manuel wherein he stated that during the card game Buduan accused the deceased, who was acting as banker, of cheating; that because of that charge, a fight ensued between the deceased and Buduan; that in order to separate the two, appellant held the shoulders of the deceased with his two hands and while so doing Buduan stabbed the deceased with a scythe ("*lilit*").[1] On June 7, 1967, after he was charged with the crime before the Municipal Court, appellant also gave a statement before the Municipal Judge reiterating what he had told the Chief of Police the day previous.[2]

During the trial before the Court of First Instance, appellant changed his story and claimed that, during the card game, Buduan and the deceased left appellant's house together to get chicken for "*arroz caldo*"; that at about 8:00 o'clock that night, appellant was informed by a neighbor that Buduan had stabbed the deceased while they were between the houses of Daniel Peralta and Esmeraldo Pagatpatan; that appellant was not present during the stabbing; that he did not bother to go outside to see the deceased and that Buduan did not come back to his (appellant's) house after the stabbing.

There is no doubt in our minds that the deceased was stabbed in the house of appellant in the course of the card game, as confirmed by appellant's statements,[3] and that the deceased was not killed outside of appellant's house as claimed by him at the trial. It is also clear to us that the deceased was stabbed by Buduan while appellant was holding the arms of the deceased from behind, thus making possible Buduan's fatal stabbing of the deceased. That was sufficiently established by the testimonies of Cresencio Doctor and Fermin Esteban who were participants in the card game and who declared as follows:

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[1] Exhibit "B".

[2] Exhibit "C".

[3] Exhibits "B" and "C".

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"Q. What part of the body of the deceased Luis Cortez was held by Rodrigo Dacanay?

A. His hands, sir.

Q. Will you demonstrate before this Honorable Court the way Rodrigo Dacanay held Luis Cortez while being stabbed by Victor Buduan?

A. Yes, sir. (Witness demonstrating how Luis Cortez Jr. was being held by Rodrigo Dacanay with up (sic) both arms from behind).

COURT:

Put on record that the witness Cresencio Doctor is demonstrating that Rodrigo Dacanay held up both arms of Cortez Jr. about the elbows from behind.

ATTY. ABROGENA: (CONT'D)

Q. How far was Victor Buduan when he hit Luis Cortez while being held by Dacanay; when he stabbed Luis Cortez Jr.?

A. I could not estimate how far, sir.

COURT:

Q. But Buduan was able to reach when he stabbed the latter?

A. Yes, sir."[4]

"FISCAL DURIAN: (CONT'D)

Q. Now, when Victor Buduan stabbed Luis Cortez Jr. what did Rodrigo Dacanay do, if he did anything?

A. Rodrigo Dacanay held Cortez Jr., sir.

Q. What part of the body of Luis Cortez Jr. was held by Rodrigo Dacanay when Luis Cortez was stabbed by Victor Buduan?

A. (Witness showing his left and right upper arms).

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[4] Testimony of C. Doctor. t.s.n., p. 8.

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Q. In relation to Luis Cortez Jr. where was Rodrigo Dacanay when he held the upper arms of Luis Cortez Jr. Was he in front or at his back?

A. From behind, sir."[5]

The substantial question that we have to resolve is whether appellant should be convicted as an accomplice, as suggested by the Solicitor General, or as a co-principal as held both by the trial Court and the Court of Appeals. On that question we are also finding that appellant should be convicted as a co-principal and not as a mere accomplice.

There can be no question that appellant's act in holding the victim from behind when the latter was stabbed by his cousin, Victor Buduan, was a positive act towards the realization of a common criminal intent, although the intent can be classified as instantaneous. It can be safely assumed that had not appellant held both arms of the victim from behind, the latter could have parried the thrust or even run away from his assailant. By immobilizing the two hands of the victim from behind, and although there was no anterior conspiracy, the two cousins showed unity of criminal purpose and intent immediately before the actual stabbing. It should be stressed that appellant and his cousin Victor Buduan were playing a card game with the victim. It is apparent that appellant shared the same feeling of anger which Buduan had towards the victim who cheated them. If, indeed, the appellant intended to save the victim from being assaulted with a "*lilit*" by his cousin Victor, he could have grabbed his cousin and held him back, particularly the arm holding the "*lilit*," to prevent him from attacking the victim. Or, he could have placed himself between the assailant and the victim, instead of grabbing the victim from behind and holding both arms by the elbows rendering the victim defenseless against the assault of his cousin. The method by which appellant seized the deceased by his elbows from behind clearly prevented the latter from moving and defending himself, and without said act of holding

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[5] Testimony of F. Esteban, t.s.n., p. 14.

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the crime would not have been accomplished. This makes him a principal by indispensable cooperation,[6] and not merely an accomplice.

We rule out, however, the generic aggravating circumstance of treachery appreciated by the Court of Appeals. The attack was preceded by a quarrel and a heated discussion and must have placed the victim on his guard.[7] Appellant's act in holding the deceased was impulsively done on the spur of the moment and was not consciously and deliberately adopted.[8] It merely sprang from the turn of events.

In the absence of modifying circumstances, the penalty for the crime of Homicide, therefore, or *reclusion temporal*, is to be imposed in its medium period.

WHEREFORE, the judgment of conviction is hereby affirmed, with the penalty modified to an indeterminate sentence of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal*, as maximum; to pay an indemnity of ₱12,000.00 to the heirs of Luis Cortez Jr., *alias* Abraham Cortez; and to pay the costs.

SO ORDERED.

Teehankee, Makasiar, Fernandez, and *Guerrero, JJ.*, concur.

De Castro, J., dissents in a separate opinion.

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[6] See *People vs. Labis*, 21 SCRA 875, 885 (1967).

[7] *People vs. Gonzales*, 76 Phil. 473 (1946); *People vs. Lara*, 54 Phil. 96 (1929); *People vs. Concha*, 49 Phil. 212 (1926); and *People vs. Templonuevo*, 106 Phil. 1003 (1960).

[8] *People vs. Calinawan*, 83 Phil. 647 (1949).

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DISSENTING OPINION

DE CASTRO, *J.*:

I regret to have to dissent.

The only issue which petitioner submits as a legal question for which this petition was given due course (*Rollo*, p. 35), is whether under the facts as found by the Court of Appeals, he was properly convicted, it being his contention that, in the light of applicable jurisprudence, he has not had any previous agreement with one Victor Buduan, who actually stabbed and killed the deceased who admittedly died because of the fatal wound inflicted upon him by said Victor Buduan (still at large), nor joined the latter in his criminal design, the act imputed to him being innocent or guiltless. The facts as found by the Court of Appeals to have been duly established by the evidence may thus be quoted from the latter's decision, upon which to base, primarily, the determination of the plausibility of petitioner's submission. Thus:

"* * * There is no dispute on the fact that at about 8:00 in the evening of June 3, 1967, in the house of herein appellant Rodrigo Dacanay at barrio Caraniogan, San Miguel, Isabela, a card game was being played by (1) Rodrigo (the appellant): (2) his cousin, Victor Buduan; (3) Fermin Esteban; (4) Esmeraldo Pagatpatan; (5) Cresencio Doctor; and (6) the deceased Luis Cortez, Jr. *alias* Abraham Cortez. The prosecution maintains that during the card game a quarrel ensued between Victor Buduan, appellant's cousin, on one hand, and Luis Cortez, Jr., on the other, resulting into the stabbing of said Luis Cortez, Jr. by Victor Buduan with a scythe, with the herein appellant allegedly directly participating by holding the hands of the victim when the latter (victim) was assaulted. The information alleges that appellant Rodrigo Dacanay, together with Victor Buduan who is still at large, conspired and confederated together and helped one another in the commission of the act complained of. On the witness stand, appellant denied participation and alleged that it was Victor Buduan alone who stabbed Luis Cortez, Jr. causing the latter's death (tsn 117). (pp. 1-2, Decision)"

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Citing various cases,[1] petitioner develops his theory that he never joined the principal accused, Victor Buduan, in the latter's intention to kill the deceased, or any criminal design, and so, he is not liable either as a co-principal, or even as mere accomplice, as the Solicitor General believes to be his correct liability. As a general proposition, insofar as the community of criminal purpose is concerned, what is necessary to be shown with respect thereto as regards an accomplice, is the same as what would be required to convict one as principal;[2] although it has been held that, "an accomplice does not enter into a conspiracy with the principal by direct participation. He does not have previous agreement and understanding with the principal to commit a crime. But he participates to a certain point in the common criminal design."[3]

I have adverted to the ruling which provides the test for the determination of when an accused is guilty as a mere accomplice and not as a principal by direct participation, as appellant was found to be guilty of, because of the Solicitor General's submission that appellant's liability is that of a mere accomplice. I agree with the Solicitor General as convincingly demonstrated by him, that appellant's liability is not that of a principal by direct participation because of the absence of proof of a previous agreement or conspiracy between appellant and the knife-wielder (Appellee's Brief, pp. 5-7). A careful analysis of the evidence to determine whether appellant is liable as an accomplice as contended by the Solicitor General, or is entitled to an acquittal, as is sought by appellant is, therefore, in order.

Upon the doctrine aforecited (see footnotes 2 and 3), an examination of the duly established facts will show neither with facility nor clarity, that petitioner had to a "certain point" participated in the common criminal design. The Solicitor General

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[1] *People vs. Tamayo*, 44 Phil. 38; *People vs. Caballero*, 53 Phil. 585; *People vs. Cara*, 48 Phil. 216; *People vs. Martinez*, 62 Phil. 85.

[2] *People vs. Tamayo*, 44 Phil. 38.

[3] *People vs. Aplegido, et al.*, 76 Phil. 571.

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states in his brief that "appellant did not release his hold on the hands of the victim even as he saw that Victor Buduan was stabbing the latter. At that precise moment, appellant became aware of the criminal intent of Victor Buduan and concurred with it."[4] On this premise, the Solicitor General believes appellant's liability is that of an accomplice.

I do not read the evidence in the same way as the Solicitor General, nor, with all due respect, the majority of my brethren does. The evidence fails to show clearly as to engender no reasonable doubt on the matter, how sudden was the stabbing — as suddenness was manifestly suggested by the evidence — so as to be able to determine whether appellant had the time to release his hold before the act of stabbing was done, as not to be held that he cooperated with Buduan or joined him in his homicidal intent. Neither is the evidence clear as to suggest that appellant held the victim as if to give Victor Buduan the chance to stab the victim, because appellant knew beforehand that Buduan wanted to, as he did, stab the victim, or actually saw Buduan stab the victim, which knowing and seeing would mark the existence of an intent on the part of petitioner to join or participate in the criminal design of Buduan. Appellant's holding the hands of the victim could have been to take him away from the reach of the knife-wielder. The following question asked by the Court after a demonstration of how appellant held the hands of the victim is believed to be significant:

"Court:

"Q: But Victor Buduan was able to reach when he stabbed the latter (Cortez)?

"A: Yes, sir."

From the question of the Court, it would seem that what was shown in the demonstration as observed by the trial court is that in holding the victim's hands, appellant pulled him away from Victor Buduan, rather than pushed him nearer to the former.

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[4] Respondent's Brief, p. 7.

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At least there is created here an ambiguity as to this fact that should be resolved in favor of the appellant's claim of having tried to separate the protagonists.

In the cases where the accused was held guilty as co-principal or as a mere accomplice, the evidence offered sufficient basis for a finding that said accused had a common design, or concurred therein, to harm the victim. Thus, in the case of *U.S. vs. Valdez, et al.*, 40 Phil. 876, the victim Allarde was followed by Valdez when he left the house where there was a gathering, upon being upbraided by Valdez for having been a witness against the latter in a land case brought by Valdez against the victim's brother. Gamit and others joined Valdez in following the victim. Then Gamit held Allarde fast from behind without saying a word. and while in this position, Allarde was stabbed by Valdez. The Solicitor General himself vividly demonstrated the difference between the present case and the *Valdez* case. Thus —

"In that case, there was a standing grudge entertained by the principal accused Paulino Valdez against the victim, such that the former told the latter that "he was a fool because he (victim) had been a witness for his brother, Evaristo Allarde, when the latter had a suit against Paulino concerning a piece of land" (p. 877, *supra*). Here, there was no such standing grudge between appellant Dacanay and the knife wielder Victor Buduan, on the one hand, and the deceased Luis Cortez, on the other hand. In the Valdez case, both accused followed the victim when he went down the house to return to the town and on arriving at a certain place, the two accused assaulted the latter; whereas in the present case, the fight that resulted in the fatal stabbing developed suddenly. It is apparent that in the Valdez case, sometime elapsed from the time Valdez made the allusion that the victim was a fool up to the time when the assault actually took place, during which intervening period the concert of purpose and criminal intention between the accused Valdez and Gamit could have been forged — a fraternal conspiracy made evident when said two accused followed the victim down the house and up to a certain place. On the other hand, there was. in the present case, no such antecedent, incident and no intervening period during which a conspiracy between appellant Dacanay and Buduan could have been spawned and nurtured. We respectfully submit that in this present

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case, we cannot in conscience support and sustain the existence of conspiracy, much as we are by the nature of our office ordinarily bound to advocate the affirmation of the judgment of the Court of Appeals." (pp. 7-8, Respondent's Brief; p. 85, *Rollo*).

The Solicitor General apparently failed to note the fact that Gamit held the victim fast from behind, not while the latter and Valdez were in the stance of facing each other in a heated quarrel, which was how Buduan and the victim in this case were poised against each other, calling for someone to intervene to avert an imminent attack coming from Buduan who was the armed protagist. Who but the petitioner-appellant, as the owner of the house, would take on the role of the pacifier, as indeed, there is not the slightest hint of any motive on his part to join Buduan in the latter's intent to kill the victim.

In his affidavit (Exhibit B), petitioner-appellant stated that Victor Buduan boxed Luis Cortez, Jr., the victim, because the latter was allegedly cheating in the card game. If petitioner held the hands of Cortez, Jr., it could be to prevent him from retaliating and thus prevent a violent clash or encounter occurring in his own house. This is his claim, and the Solicitor General had nothing to offer to show the improbability thereof. The Solicitor General said that "appellant Dacanay was not entirely unaware of the criminal intent of Buduan (the knife-wielder) — knowledge acquired at the precise time Buduan was in the act of stabbing the deceased, which act appellant evidently saw as he held the hands of the victim." (p. 9, Respondent's Brief) This, to me, is not supported by any hard evidence.

It is precisely in the lack of clear and positive evidence that appellant saw Buduan in the act of stabbing the victim and then appellant held the victim's hand as an act indicative of his joining Buduan's criminal design, that I find no reliable basis for the State's submission that appellant is at least guilty as an accomplice, much less as a principal. Appellant's act of holding the victim's hand could, with equal credibility, have been motivated by a desire to prevent the victim from returning the fist-blow he received from Buduan, but not to prevent the victim from

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evading the stab, or parrying it with his hands because it was appellant's wish to have the thrust hit its mark with deadly effect. The evidence does not show clearly that appellant knew of Buduan's intent to use his scythe to stab the victim, and knowing such intent, appellant joined the same by holding the victim's hand to make the assault fatally effective. In the absence of such convincing proof, the mind cannot set at ease on the certainty that appellant had any criminal design in common with Buduan as to make him guilty at all, as this fact has to be established beyond reasonable doubt to warrant conviction.[5]

The simultaneousness of the act of stabbing with that of holding the hands of the victim by appellant does not of itself demonstrate concurrence of wills or unity of purpose and action (*U.S. vs. Magcomot*, 13 Phil. 386, 389). Verily, it could demonstrate either the presence of a unity of purpose or concurrence of wills, on the one hand, or a desire on the part of appellant to prevent a physical and violent encounter, on the other, as is just natural of him as the owner of the house to prevent any crime, specially one of violence, being committed in his dwelling. The rule is well-settled that if the facts or circumstances, apparently inculpatory, may equally be explained showing innocence, the evidence does not fulfill the test of moral certainty to support conviction.[6] In my humble opinion, the inculpatory facts as proven by the evidence are equally consistent with the innocence of the appellant, particularly upon the lack of motive for him to have joined the homicidal intent of the knife-wielder who has remained at large up to the present.

Appellant's interposing subsequently the defense of alibi in open court which is entirely unsustainable in the face of his own sworn statement (Exhibit B) that he held the hands of the deceased, and the testimony of state witnesses affirming this very act of appellant, admittedly weakened his defense

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[5] *People vs. Cajandab*, 52 SCRA 161; *People vs. Custodio*, 47 SCRA 289; *People vs. Tamayo*, 44 Phil. 38; *Cariño vs. People*, 7 SCRA 900.

[6] *People vs. Pacana*, 47 Phil. 48; *People vs. Abana*, 76 Phil. 405.

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of having held the hands for no other purpose than to pacify the protagonists. The fact, however, remains that appellant's affidavit (Exhibit B) is his spontaneous statement given just after the incident, and should be assessed for veracity and truth without injecting the alibi he interposed much later, evidently after a misguided counselling. The Solicitor General must have, likewise, felt that appellant's defense of alibi was due to injudicious coaching possibly from appellant's counsel, from which appellant should not be made to suffer, that he (Solicitor General) made no reference at all to said defense in the People's Brief, entirely ignoring it, in making his recommendation for a lesser liability in favor of appellant.

What suggests itself for proper application in this case is the principle that conviction must be based on the strength of the prosecution's evidence, not on the weakness of that of the defense.[7] Say that by the abandonment in open court, when appellant had already had the benefit of counsel, of his original version as set forth in his affidavit (Exhibit B), the evidence of the defense has been weakened, yet the prosecution's evidence, by itself, is not strong enough to support conviction. As shown earlier, it also suffers from weakness on vital points, such as (1) the absence of opportunity for appellant to have nurtured the intent to join in the criminal design to kill on the part of Buduan, the knife-wielder; and (2) lack of motive on his part sufficient to induce him to join in the homicidal intent of the actual killer, for his motive to pacify as he claimed in his affidavit (Exhibit B), is made persuasive by his being the owner of the house where card games are played, and is, therefore, desirous to preserve the peaceful atmosphere under which to continue the playing of the game therein. It is also significant that the actual killer had gone into hiding, betraying his sense of being the one solely and exclusively responsible for the killing, possibly fearing appellant's rage for taking a man's life right in his house.

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[7] *People vs. Barrera*, 82 Phil. 391; *Alfredo Duran vs. The Hon. Court of Appeals and The People of the Philippines*, 71 SCRA 68.

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I am, therefore, constrained to disagree with the Solicitor General as well as the majority, in refusing to accept appellant's bid for acquittal under the authority of *People vs. Ibañez*, 77 Phil. 664, where this Court held that Sixto Ibañez had no knowledge of the criminal design or intention of his brother Irineo of stabbing the deceased Cosme Magalang, under the following facts:

"Sixto's act of holding Cosme's neck from behind is no proof of intention to kill. At that time he did not yet know what his brother's intention was. It is not shown that Sixto knew that his brother was armed. Irineo stabbed Cosme in such a sudden and unexpected manner that one of the eye-witnesses, Antonio Calagdan, did not even notice that Irineo's blow carried a dagger with it. And Sixto showed surprise when later he saw the bloodstained dagger of his brother Irineo, and asked him what did you do?'"

In like manner, when appellant held the hands of the deceased, there is no positive showing that the former knew of Buduan's intention to kill the latter, the stabbing being equally so sudden and unexpected as in the case above cited. The Solicitor General's observation that "appellant Dacanay was not entirely unaware of the criminal intent of Buduan (the knife-wielder) — knowledge acquired at the precise time Buduan was in the act of stabbing the deceased which act appellant evidently saw as he held the hands of the victim, has absolutely no support in the evidence. It is hard to concede that "at the precise time Buduan was in the act of stabbing the deceased which it takes only a split second to accomplish, appellant could have joined in the homicidal design of Buduan. Neither is there positive evidence that appellant saw the very act of stabbing, the Solicitor General himself merely saying that appellant *evidently* saw the act, just because prosecution witnesses Cresencio Doctor and Fermin Esteban testified that they saw the act of stabbing, and on this mere assumption and conjecture, he concludes that appellant cannot successfully pretend that he never knew, at any stage of the assault, of the criminal design of Buduan, or that he did not cooperate with moral or material aid in the consummation of the crime. In the first place, I cannot see that the swift and

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fast act of stabbing may be divisible into stages. Secondly, even assuming that if the act of appellant aided in the consummation of the crime, the aid was not knowingly nor wilfully given with criminal design or intent, as had already been demonstrated.

Accordingly, I vote to acquit the petitioner of the crime charged, or at most, to join the Solicitor General in his recommendation that petitioner be found guilty only as an accomplice, not as a co-principal.

FIRST DIVISION

[G.R. No. L-34097. November 21, 1979]

ROYAL MANUFACTURING COMPANY, *petitioner*, *vs.* **ROSARIO GONZALES and the WORKMEN'S COMPENSATION COMMISSION**, *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION ACT; NOTICE OF INJURY AND CLAIM FOR COMPENSATION; WHEN NOT REQUIRED.**— The purpose of giving notice of injury and claim for compensation is to apprise said employer of the injury or disease. Where the employer is already aware of such occurrence or where circumstances are shown from which such awareness or knowledge may be reasonably inferred, the purpose of the notice has already been served and want of a notice or a delay in giving it, is deemed excusable, as what happened in the case