

NOTES *and* COMMENT

The Liability of a Stranger Who Participates in the Crime of Parricide

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ARTICLE 246 of the Revised Penal Code provides: "Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death." Is a stranger who cooperates and takes part in the perpetration of the crime of parricide, lending his cooperation with the full knowledge of the relationship between the victim and the offender whom he helped out liable for parricide or only for murder or homicide as the case may be?

In the case of *People vs. Bucsit* (43 Phil. 189), Cepriana Bucsit and Placido Licudine were charged in an information with the crime of parricide, the husband of Bucsit having died because the defendant wife and her paramour poisoned him. The Supreme Court held that the widow of the deceased is guilty of parricide, and her paramour, of murder. In the case of *People vs. Patricio* (46 Phil. 875) our Supreme Court once more held that a person who cooperates with a wife in the killing of her husband cannot be declared guilty of the crime of parricide, not being an ascendant or descendant of the person slain, but only of the crime of murder, if one or more of the necessary qual-

ifying circumstances of this crime are present, or of homicide in the absence of such circumstance. Knowledge of the relationship between one of the guilty parties and the person slain does not make the stranger to that relation guilty of parricide.

Viada in his commentary on Art. 417 of the Spanish Penal Code of 1870 which corresponds to Art. 246 of our Revised Penal Code, expresses the opinion that if an outsider, with knowledge of the kinship between the slayer and the victim, aids and abets the former to commit the crime of parricide, he is liable for this crime as co-principal or accessory. French jurisprudence has resolved this question in the same way in the decisions of its Court of Cassation of June 9, 1848 and March 24, 1853, published in the Criminal Bulletins of said years. (3 Viada, *Codigo Penal*, 387). For this opinion, Viada gives the same reasons he gave for his view with regards Art. 314 of the Spanish Penal Code, equivalent to Art. 171 of our Revised Penal Code, dealing with the crime of falsification committed by public officer, employee, or notary or ecclesiastic minister concerning the liability of a private individual who cooperates with a public official in this crime. * * * He says that a private individual who cooper-

ates with a public official in this crime is guilty of and incurs the same liability as the public official and is punishable under Art. 314 of the Spanish Penal Code, corresponding to Art. 171 of our Revised Penal Code, and not under Art. 315 of the Spanish Penal Code, which is equivalent to Art. 172 of our Revised Penal Code, dealing with the crime of falsification committed by private individuals and the use of falsified documents. The reason for this equal liability, in spite of the different relation of the participants to the victim is easily understandable. When the relative and the stranger agree to commit parricide, they become so identified that if they were separated and they did not act together, no crime of parricide would result, and if they do, the result is the crime. The stranger knows, or at least ought to know, fully well the responsibility which is incurred by the relative in committing the crime of parricide and in joining the latter in such a horrible plan, he aims to bring about the result, and he must fully answer for it. (2 Viada, *Codigo Penal*, 387).

Groizard another famous commentator on the Spanish Penal Code of 1870, in his comments on Art. 314 of the said Code says that few questions have been more debated, and in few questions can we encounter greater differences of opinions among the commentators of criminal law than the question whether the stranger who aids the son in killing his father should be held guilty of parricide or only of murder, or homicide. (4 Groizard, *Codigo Penal*, 349).

In the case of *U. S. vs. Ponte et al*, 20 Phil. 379, the Supreme Court held that those who take a direct part in the commission of the crime of malversation of public funds by public officials as de-

finied in Act No. 1740 and those who cooperate in the commission of that crime by acts without which it could not have been accomplished, are guilty as principals in the crime of malversation of public funds although they themselves may not be public officials. The court cites the commentaries of Groizard on Art. 405 of the Spanish Penal Code which is substantially identical with Art. 217 of our Revised Penal Code dealing with the crime of malversation of public funds or property. Doubt, weighty doubt may arise, nevertheless regarding the definition of the crime and the penalty to be imposed upon the private party who abstracts public funds with the consent of the officer charged with their custody. Shall the person so doing be guilty of crime of malversation here provided for, and shall he suffer the same as the unfaithful officer, or shall he be guilty only of the crime of theft and undergo the punishment he deserves therefore?

We are inclined to take the first point of view. We are led thereto by the consideration that in contending for the imposition of the same penalty upon the private party who abstracts public funds as upon the employee who consents thereto, we recognize the differentiation with which crimes are always described and penalized in the code. In the action which the text describes as a crime, there is a perfect unity the private party does not act independently from the public officers; rather, he knows that the funds of which he wishes to get possession are in the latter's charge; and instead of trying to abstract them by circumventing the other's vigilance he resorts to corruption, and in the officers' unfaithfulness seeks and finds the most reprehensible means for accomplishing a deed

which by having a public officer as its moral instrument assumes the character of a social crime. If the article were not so interpreted, it would be necessary to agree that the act in spite of its independent unity, would constitute not one but two distinct crimes, and the person participating therein, although they acted together throughout, would be guilty of two different kinds of wrongdoing. One who helps a son kill his father is an accomplice of parricide; one who plans with a servant to commit a *hurto* and does commit it is guilty of *hurto domestico*. When the law clearly defines, as it has here defined the crime of malversation, those who in any way participate therein must be principals, accomplices, or abettors thereof. (4 Groizard, *Codigo Penal*, 275).

Viada in his commentaries upon the same article says: Shall the person who participates or intervenes as coperpetrator, accomplice, or abettor in the crime of malversation of public funds, committed by a public officer, incur the same penalties imposed in this article? In opposition to the opinion maintained by some jurists and commentators (among others the learned Pacheco), we can only answer affirmatively for the same reasons we have already advanced

in Question I of the commentary on Art. 314. (These reasons are quoted above). French jurisprudence has also settled the question in the same way on the ground that the person guilty of the crime necessarily aids the other culprit in the acts which constitute the crime. (2 Viada, *Codigo Penal*, 387).

It would seem therefore that under the doctrine laid down by our Supreme Court in the case of *United States vs. Ponte* (20 Phil. 379) and according to the reasoning by which Viada and Groizard support their views as to the correct interpretation of the provisions of the Penal Code regarding malversation of public funds by a public official (2 Viada, *Codigo Penal*, 387 and 4 Groizard, *Codigo Penal*, 275) and of the provision of the same Code on parricide (3 Viada, *Codigo Penal*, 8 and 4 Groizard, *Codigo Penal*, 349) the stranger who cooperates with another in the killing of the latter's father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, with full knowledge of the relationship between the victim and the offender whom he helped out, should also be held liable for parricide.