PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICASIO ENOJA @ “NICK”, JOSE ENOJA @ “MOROS”, ANTONIO GALUPAR @ “TONY”, RONNIE ENOJA @ “BUD-OY”, AND YOLLY ARMADA, ACCUSED-APP...

G.R. No. 102596. December 17, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the decision dated October 31, 1990, of the Regional Trial Court, Iloilo City, Branch 26, in Criminal Case No. 31550, convicting accused-appellants Nicasio Enoja @ "Nick", Jose Enoja @ "Moros", Antonio Galupar @ "Tony", Ronnie Enoja @ Bud-oy", and Yolly Armada of the crime of murder, and sentencing them as follows:

> "...Nicasio Enoja @ Nick, Jose Enoja @ "Moros", and Antonio Galupar alias "Tony", each to suffer the penalty of reclusion perpetua; Yolly Armada to suffer an indeterminate prison sentence ranging from ten (10) years and one (1) day of prision mayor as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum, and Ronnie Enoja alias "Bud-oy" to suffer indeterminate prison sentence ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum and all the said accused, to pay, jointly and severally, the heirs of the deceased Siegfred Insular the sum of P30,000.00 for his death and P19,200.00 as actual damages representing expenses, without subsidiary imprisonment in case of insolvency together with all the accessory penalties provided for by law and to pay the costs."[1]

The five appellants, all farmers and residents of Barangay Caraudan, Janiuay, Iloilo, are related to each other. Jose Enoja @ "Moros", Ronnie Enoja @ "Bud-oy", and Yolly Armada, are the brother, son and first cousin, respectively, of appellant Nicasio Enoja, while Antonio Galupar is a "kumpadre." Three other accused, Joel Enoja @ "Mike", Melvin Castor, and Antonio Enoja, remain at-large.

The victim, Siegfred G. Insular, was a suspected commander of the "New People's Army" (NPA). A day before the incident, the house of Romulo Enoja, brother of the Enojas, was allegedly sprayed with bullets by the NPA, killing Romulo's daughter and son. Before that, the house of Catelina Enoja, mother of the Enojas, at Barangay Caraudan, was allegedly burned by the NPA.

The facts are not in dispute. In their consolidated brief, appellants adopted the factual findings of the trial court, as follows:[2]

> "x x x [I]n the afternoon of July 2, 1987, at around 4:30 o'clock, while Siegfred Insular and his wife, Paterna, were on their way home from the market walking along the ricefield at Barangay Caraudan, Janiuay, Iloilo, they saw Yolly Armada with a long firearm in hand, walking on the other side of the field towards the same direction where the couple were going.
>
> Paterna did not at first recognize Yolly Armada as the man on the other side of the ricefield, and so, she called

the attention of her husband saying that the man was carrying a firearm. Recognizing the man, however, Siegfred told his wife: "never mind, he is Yolly Armada". The spouses Insular and Yolly Armada continued walking until they met ways in front of the ricemill of Teodoro Salamanca near the chapel. Siegfred greeted Armada by nodding his head to which Armada responded by also nodding his head. Siegfred then said "We will leave" but as he and his wife were about to proceed on their way, Armada blocked the couple and pointed his firearm to Siegfred with the barrel of the gun touching the left side of the body of the latter. Suddenly, Armada fired his gun and as Siegfred turned his back to run, Armada fired successive shots at him causing him to fall to the ground, wounded.

Almost simultaneously, several armed men appeared and took turns in firing at Siegfred. Among these armed men were Nicasio Enoja alias "Nick," Jose Enoja alias "Moros", Antonio Galupar alias "Tony," and Ronnie Enoja alias "Bud-oy." The body of the victim jerked as the accused took turns in shooting him.

After shooting Siegfred Insular, the accused turned to his wife, Paterna, and attempted to shoot her but Paterna Insular hugged Teodoro Salamanca who was then and there present, thus prompting the latter to shout to the accused: "do not include the girl." The accused heeded the plea of Teodoro Salamanca and refrained from shooting Paterna Insular.

Jose Enoja then turned to his brother Antonio Enoja and fired at the latter hitting him on the thigh. Thereafter, Jose Enoja approached Siegfred Insular who was then lying on the ground and placed the gun he used in shooting his brother, Antonio, near the hand of Siegfred Insular. Then Jose Enoja placed some live bullets into the pocket of Siegfred Insular. Jose Enoja called for a hammock and, in no time at all, there was a hammock brought to the place where Antonio Enoja was loaded and, thereafter, brought to the hospital. The body of Siegfred Insular was, however, left lying on the ground at the scene of the incident.

Nicasio Enoja announced that they would bring Paterna Insular and Teodoro Salamanca to the ricefield where they would be made to spend the night but Paterna pleaded to Nicasio Enoja to just bring them to the house of Patria Alcantara about five meters away from the scene of the incident. The accused granted the request of Paterna and brought her and Teodoro Salamanca to the house of Patria Alcantara where they were told to stay with the warning not to get out or they would be shot. It was only the following morning, after policemen and PC soldiers had arrived that Paterna and Salamanca were able to go out of the house of Alcantara.

The shooting incident reached the police station of Janiuay, Iloilo upon the report of one Alfredo Galupar, and so, a joint PC-INP team under P.C. Lt. Pangina and police station commander, Sgt. Reynaldo Soroñgon went to Barangay Caraudan and conducted investigation of the incident. That was already around 8:00 o'clock in the morning of July 3, 1987. The policemen were able to recovery several empty shells of different caliber of firearms from the crime scene. One short homemade firearm caliber .30, with one empty shell inside the chamber was likewise found and recovered from the ground near the left arm of the victim."

On March 11, 1988, Provincial Fiscal Vicente E. Aragona filed an Information[3] for murder against appellants and their three companions who were still at-large. The Information alleged:

"The undersigned Provincial Fiscal accuses NICASIO ENOJA alias "Nick", JOSE ENOJA alias "Moros", ANTONIO GALUPAR alias "Tony", RONNIE ENOJA alias "Bud-oy" and YOLLY ARMADA of the crime of Murder committed as follows:

That on or about July 2, 1987, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with JOEL ENOJA alias "Mike", MELVIN CASTOR and ANTONIO ENOJA, who are still at large, armed with firearms and taking advantage of superior strength to better realize their purpose, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one SIEGFRED INSULAR with said weapon with which they were then provided, thereby inflicting upon the latter gunshot wounds on the vital parts of his body which caused his

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death thereafter.

CONTRARY TO LAW."

On August 5, 1988, appellants were arraigned and entered their respective pleas of not guilty.

During trial, the prosecution presented the following witnesses: Teodoro Salamanca, an eyewitness to the shooting; Paterna Insular, widow of Siegred; Dr. Tito D. Doromal, medico-legal officer who did the autopsy; Pfc. Juan O. Gañon, and Pfc. Moises C. Reiteracion, Integrated National Police officers who responded to the shooting incident.

Dr. Doromal testified that the victim suffered five (5) gunshot wounds in the head and neck area, six (6) gunshot wounds in the thoraco-abdominal regions, and two (2) gunshot wounds in the extremities. The cause of death was maceration of the brain, secondary to gunshot wounds.[4]

Pfc. Juan O. Gañon stated that he entered the incident in the police blotter.[5] Pfc. Moises C. Reiteracion said he was part of the team which responded to the report of the shooting incident. The team found the body of the victim still lying on the same spot the following morning. They recovered empty shells of different calibers and a homemade short firearm near the left arm of the victim.[6] Pfc. Reiteracion and two companions brought the body of the victim to the funeral home.[7]

For the defense, appellants presented Atty. David Tubongbanua, 4th Assistant Provincial Prosecutor of Iloilo, who recommended the dismissal of the case but was overturned by the Provincial Fiscal. Appellants themselves testified and, except for Armada, interposed the defense of denial and alibi.

Appellant Armada pleaded self-defense in shooting Siegfred. He claimed that while he was on his way from Barangay Quipot to Caraudan, to attend the wake of his niece and nephew, he heard gunshots near the chapel. When he went to the place, he saw Galupar lying wounded on the ground, shot by Siegfred. Siegfred then attempted to shoot Armada, but the latter beat him to the draw. Armada fired successive shots at Insular with his M-2 automatic carbine. He did not see Paterna in the vicinity. After the shooting, Salamanca, Nicasio and Arnold came out of the rice mill. Salamanca asked what happened and Armada answered that Siegfred shot Antonio and so, he shot Siegfred. Armada then left and surrendered to the PC station at Jibolo, Janiuay, Iloilo City.[8]

The other appellants admitted being in the vicinity of the crime, but categorically denied any participation in the shooting.

Nicasio claimed that he was with his son, Arnold, and Salamanca inside the latter's ricemill, milling palay when the shooting occurred.[9] However, Salamanca testified that at the time of the incident, there was no palay milling going on.[10]

Ronnie testified that he was doing household chores in their house at Barangay Caraudan, where his brother Rowel and sister Annelyn were lying in state, when he heard explosions coming from the direction of the ricemill.[11] Shortly thereafter, Arnold arrived and told them that Antonio was shot by Siegfred and requested that a hammock be brought to the scene so that Antonio could be brought to the hospital. Ronnie, Jose, and Jonathan Lazo, Ronnie's first cousin, immediately brought the hammock to the scene of the incident.[12] Ronnie thereafter saw Paterna arrive and cry upon seeing her slain husband. Ronnie and his companions placed Antonio in the hammock, boarded him in a tricycle, and rushed him to the hospital.[13] On the way, Ronnie heard explosions and when he looked back, he saw his uncle Joel Enoja alias "Mike" and his friend, Melvin, shooting the prostrate body of Siegfred.[14]

Jose testified that he was at his house, about 300 meters from the scene of the crime. He was weeding in his yard

when he heard gunfire. After a short while, Arnold arrived and asked him to bring a hammock to the scene of the incident.[15]

Galupar related that he had just finished plowing his farm and was resting in his house in Barangay Caraudan when he heard explosions. He remained at home the whole night and only learned of the death of Siegfred the following morning. He claimed that he was implicated in the case because he refused to act as witness for the prosecution.[16]

On October 31, 1990, the trial court rendered a decision[17] finding appellants guilty as charged. The trial court did not give credence to Armada's claim of self-defense inasmuch as policemen recovered several empty bullet shells from firearms of different calibers at the scene of the crime. The short homemade firearm found near the left arm of the victim could not have been used by the victim since it only had one empty shell in its chamber, not to mention that the victim was right-handed. Lastly, the trial court found it highly suspicious that Antonio, who was allegedly shot by the victim and who could have corroborated Armada's story of self-defense, went into hiding and had not surfaced up to the present.

In this appeal, in their joint brief,[18] appellants raise the following errors:

> I. THE LOWER COURT ERRED IN FINDING CONSPIRACY;
>
> II. THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY;
>
> III. ASSUMING THEM GUILTY, THE LOWER COURT ERRED, EXCEPT FOR APPELLANT YOLLY ARMADA, IN NOT FINDING THAT THE OFFENSE COMMITTED WAS ONLY AN IMPOSSIBLE CRIME.

The records show that appellant Antonio Galupar died pending appeal. Pursuant to our ruling in People v. Bayotas, 236 SCRA 239, the death of appellant Galupar pending appeal extinguished his criminal liability as well as his civil liability ex delicto in senso strictiore.

Appellant Yolly Armada escaped from the New Bilibid Prison on September 25, 1996.[19] As a result, his appeal was dismissed and the judgment against him became final and executory. Entry of judgment was made on January 9, 1997.[20]

In the meantime, appellant Jose Enoja jumped bail, which also resulted in the dismissal of his appeal. Judgment against him became final and executory, and entry of judgment was made on March 21, 1997.[21] An appellant who escapes or refuses to surrender to the proper authorities is deemed to have abandoned his appeal,[22] hence, the judgment against him becomes a final and executory. Nonetheless, the appeal proceeds as to the remaining appellants, Nicasio Enoja and Ronnie Enoja, who are now detained at the New Bilibid Prison, Muntinlupa City. Our present review, therefore, concerns only these two appellants.

Appellants assail the trial court's finding of conspiracy by pointing out alleged inconsistencies in the testimonies of the prosecution witnesses Salamanca and Paterna. Appellants contend that while Salamanca testified that it was only after Armada shot the victim that the other appellants came "one after the other" and fired at the victim, Paterna testified that appellants fired successive shots at the victim, implying that all appellants were already in the crime scene when Armada fired at Siegfred. However, close perusal of the pertinent transcript of stenographic notes (TSN) shows no inconsistencies in the two testimonies. Paterna actually testified that after Armada fired at her husband, the other appellants arrived one after the other ("nag-arabot abot"),[23] and continued to fire at the prostrate body of her husband. The two testimonies constitute cumulative evidence on who participated in the shooting of Siegfred. Both witnesses pointed to all five accused-appellants.

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On the matter of conspiracy, we have consistently held that conspiracy need not be shown by direct proof of an agreement by the parties to commit the crime. The conduct of the malefactors before, during or after the commission of the crime is sufficient to prove their conspiracy. Once proved, the act of one becomes the act of all. All shall be answerable as co-principals regardless of the extent or degree of their participation.[24] In this case, circumstances indubitably show that appellants acted concertedly to kill Siegfred. First, after appellant Armada fired at the victim incapacitating the latter, the other accused arrived "almost simultaneously" and took turns in shooting the victim. The successive shots riddled the victim's body with bullets. Several empty cartridges from guns of different calibers found in the scene and the numerous wounds of the victim indicate plurality of assailants.[25] Second, appellant Jose Enoja thereafter fired a shot at the thigh of his brother Antonio to make it appear that the shooting was in self-defense. Third, Jose planted a short firearm near the body of the victim and placed bullets in the pocket of the victim. Fourth, strangely after Antonio was brought to the hospital, he conveniently disappeared and could no longer be located by the authorities. The aforementioned acts of the appellants clearly point to their common purpose, concert of action, and community of interest.[26]

Appellants suggest that since Paterna was crying at the time of the shooting, she could not have clearly witnessed the commission of the crime. This contention is disingenuous, to say the least. Paterna's crying does not impair her credibility. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. [27] Her powers of observation could even be heightened by the startling event to imprint the details in her memory. We have gone over the records and find her testimony clear, credible and consistent with the testimony of Salamanca.

Appellants further insist that the trial court erred in finding that treachery accompanied the killing, considering that the victim was already forewarned of the impending danger when he saw appellant Armada carrying a firearm. Appellants contend that for treachery to exist, the offended party is completely denied of the opportunity to defend himself, but it is not so in this case.

As the Solicitor General correctly pointed out, there was nothing in the behavior of Armada that could have forewarned the victim of an impending danger. Both the victim and Armada knew each other. Armada even acknowledged the greeting of the victim. The latter was walking along the ricefield with his wife[28] when he was suddenly gunned down by the appellants. The victim gave no provocation for the attack. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[29] Clearly, the qualifying circumstance of treachery is present in this case.

Considering the number of the armed assailants against the lone unarmed victim, there was also abuse of superior strength. Since treachery absorbs the aggravating circumstance of abuse of superior strength this aggravating circumstance need not be appreciated separately.[30]

As an alternative defense, appellants present the theory that even assuming they participated in the killing of Siegfred, they should only be held liable for the commission of an impossible crime under Article 4, Par. 2 of the Revised Penal Code, penalized under Article 59 thereof.[31] Appellants theorize that the shots fired by Armada already resulted in the death of the victim, and hence, their subsequent shooting of the victim merely constitutes the impossible crime of killing an already dead person. The proposition not only completely contradicts their defense of alibi and denial, it is also speculative as to cause of death. The defense of impossible crime is irreconcilable with alibi.

Appellants Nicasio and Ronnie Enoja claim that they were elsewhere during the offense. For alibi to prosper as a defense, the accused must show that he was so far away that he could not have been physically present at the

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place of the crime, or its immediate vicinity at the time of its commission[32] and that his presence elsewhere renders it impossible for him to be the guilty party.[33] In this case, Nicasio admitted he was within the vicinity of the crime but presented the lame excuse that he was inside Salamanca's rice mill at the time of the shooting. His son, Arnold, corroborated this testimony. But it was put in doubt by the testimony of Salamanca, who stated that no milling of palay in his ricemill was going on at the time of the shooting. Alibi, especially when it is corroborated mainly by relatives and friends of the accused, is held by this Court with extreme suspicion for alibi is easy to fabricate and concoct. [34]

Both Paterna and Salamanca positively identified Nicasio Enoja as one of those who took part in the shooting incident. Paterna categorically pointed to Ronnie Enoja as the person who shot her husband in the right eye.[35] Appellants could not attribute any motive against these witnesses to falsely testify against them. In the light of positive identification by witnesses who have no motive to falsely testify, the feeble defense of alibi cannot prevail over the clear and positive identification of the accused as the perpetrators of the crime.[36]

At the time of the commission of the crime, on July 2, 1987, the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death.[37]

There being no mitigating nor aggravating circumstance, with respect to Nicasio Enoja's culpability, the trial court correctly imposed the penalty for murder in its medium period,[38] which is reclusion perpetua.

With respect to appellant Ronnie Enoja, who was born on February 21, 1970, and was below 18 at the time of the commission of the crime, the trial court correctly appreciated the privileged mitigating circumstance of minority. Thus, the penalty next lower in degree was imposed on him in its proper period pursuant to Article 68, second paragraph of the Revised Penal Code, which is prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed upon appellant Ronnie Enoja shall be taken from the medium period of the imposable penalty, which is reclusion temporal minimum or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, while the minimum shall be taken from the penalty next lower in degree, which is prision correccional maximum to prision mayor medium or four (4) years and two (2) months to ten (10) years. Consequently, the trial court correctly imposed upon Ronnie Enoja the indeterminate sentence of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum.

Pursuant to prevailing jurisprudence, the award of P30,000.00 as indemnity should be increased to P50,000.00. However, the award of actual damages in the amount of P19,000.00 should be deleted. Credence can only be given to claims, which are duly supported by receipts.[39] The testimony alone of the widow, that her sister-in-law incurred about P20,000.00 expenses in connection with the death of the victim, is insufficient basis to award actual damages.

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 26, in Criminal Case No. 31550, convicting accused-appellants Nicasio Enoja @ " Nick" and Ronnie Enoja @ "Bud-oy" of the crime of Murder is hereby AFFIRMED, with the MODIFICATION that accused-appellants are ordered to pay the heirs of the victim, jointly and severally, the amount of P50,000.00 as indemnity. The award of P19,200.00 as actual damages is deleted. Costs against appellants.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, p. 81.

[2] Id. at 48-49.

[3] Records, p. 1.

[4] TSN, January 9, 1989, p. 3.

[5] TSN, July 3, 1989, pp. 3-4.5

[6] Id. at 5-8.

[7] Id. at 11.

[8] TSN, July 18, 1990, pp. 4-10.

[9] TSN, November 22, 1989, pp. 3-7; TSN, December 15, 1989, pp. 5-6.

[10] TSN, October 19, 1988, pp. 24-25.

[11] TSN, November 22, 1989, pp. 27-28.

[12] Id. at 29-30.

[13] Id. at 31.

[14] Id. at 33.

[15] TSN, February 9, 1990, pp. 3-5.

[16] TSN, June 20, 1990, pp. 10-12.

[17] Records, pp. 225-237.

[18] Rollo, p. 47.

[19] Letter dated October 17, 1996 from Action Officer Homobono Lachica, Jr., of the Bureau of Corrections, Muntinlupa City, Rollo, p. 167.

[20] Id. at 198.

[21] Id. at 192.

[22] People v. Quiritan, 197 SCRA 32, 35 (1991); People v. Codilla, 224 SCRA 104 (1993).

[23] TSN, November 23, 1988, p. 14.

[24] People v. Cantere, G.R. No. 127575, March 3, 1999, p. 12, citing People v. Hayahay, 279 SCRA 567 (1997).

[25] People v. Caritativo, 256 SCRA 1 (1996).

[26] People v. Andres, G.R. No. 122735, September 25, 1998, p. 23.

[27] [People v. Matubis, G.R. No. 109774, March 27, 1998, p. 9, citing People v. Paynor, 261 SCRA 615 (1996).]

[28] TSN, November 23, 1988, p. 7.

[29] People v. Noay, G.R. No. 122102, September 25, 1998, p.14; People v. Cogonon, 262 SCRA 693 (1996).

[30] People v. Gutierrez, Jr., G.R. No. 116281, February 8, 1999, p. 23.

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[31] Art. 4, No. 2 of the Revised Penal Code:

> "Art. 4. Criminal liability. - Criminal liability shall be incurred: x x x
>
> 2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means."

Art. 59. Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible. - When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of arresto mayor or a fine from 200 to 500 pesos."

[32] People v. Cañete, G.R. No. 120495, March 12, 1998, pp. 10-11.

[33] Id. at 10; People v. Villaruel, 261 SCRA 386, 396 (1996); People v. Acob, 246 SCRA 715, 723 (1995).

[34] [People v. Cantere, G.R. No. 127575, March 3, 1999, p. 10.]

[35] TSN, November 23, 1988, p. 16.

[36] Id. at 11.

[37] As amended by R.A. No. 7659, which took effect on December 31, 1993, murder is now punishable with reclusion perpetua to death.

[38] Article 64, Revised Penal Code.

[39] People v. Guillermo, G.R. No. 113787, January 28, 1999, p. 17.

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