

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NOMER DELOS SANTOS, RICO RAMOS, LEOPOLDO ABARIENTOS AND SANTIAGO DE LUNA, ACCUSED

G.R. No. 132123. November 23, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. Such agreement may be inferred from the manner in which the offense was perpetrated, or from the concerted acts of the accused themselves in the pursuit of their common unlawful design.

The Case

Before the Court is an appeal by Nomer delos Santos, Rico Ramos and Leopoldo Abarientos, assailing the November 25, 1997 Decision[1] of the Regional Trial Court (RTC) of Naga City (Branch 28) in Criminal Case No. RTC 97-6644. The decretal portion of said Decision, which found them guilty of murder, reads as follows:

"WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove beyond reasonable doubt the guilt of accused Nomer delos Santos, Rico Ramos and Leopoldo Abarientos of the crime of murder of which they are presently charged, judgment is hereby rendered whereby in the absence of any of the aggravating or mitigating circumstances, said three (3) accused are hereby sentenced to suffer the penalty of reclusion perpetua; to pay jointly and severally the surviving heirs of Jose Estrada, particularly his widow Florenia Estrada the sum of TWENTY-THREE THOUSAND EIGHT HUNDRED NINETY-TWO (P23,892.00) PESOS, representing actual damages; FIFTY THOUSAND (P50,000.00) PESOS, as indemnity for the death of Jose Estrada and moral damages in the amount of SEVENTY THOUSAND (P70,000.00) PESOS; and to pay the costs." [2] (Emphasis in original.)

The Information,[3] dated March 19, 1997, charged appellants[4] as follows:

"That on or about the 15th day of December, 1996 in Tinalmud, Pasacao, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to kill and by means of treachery and taking advantage of their mutual strength, did then and there willfully, unlawfully and feloniously assault, attack and shoot with a hand gun Jose Estrada, thereby inflicting upon the latter the mortal wound on his head which resulted in his instantaneous death, to the damage and prejudice of his heirs in the amount that may be proven in court." [5]

When arraigned on May 9, 1997, appellants pleaded[6] not guilty.[7] After due trial, the trial court promulgated its assailed Decision.

Hence, this appeal.[8]

The Facts

Prosecution's Version

In its Brief,[9] the Office of the Solicitor General presents the prosecution's version of the facts as follows:

"At around 2:00 o'clock [o]n the afternoon of December 15, 1996, victim Jose Estrada was with his wife and son at the town proper of Pasacao, Camarines Sur. They proce[e]ded to Nacoco, where they boarded a motorboat to go home to Tinalmud, Pasacao, Camarines Sur. Victim Jose Estrada sat at the rear portion of the motor boat while his wife and son sat about two arms length in front of him.

"Thereafter, appellants Nomer de los Santos, Rico Ramos, Leopoldo Abarientos and co-accused Santiago de Luna (still-at-large) boarded the motor boat and sat at the front portion of the vessel. The group drank liquor while on board the motor boat. When the boat started to move, appellant Nomer de los Santos moved to the rear portion of the boat and sat at about one (1) meter from the victim.

"Suddenly Florentina[10] Estrada heard a gun shot. She turned and saw her husband Jose Estrada with blood oozing from his nose and mouth. She then saw appellant Nomer de los Santos standing next to her husband holding a gun. Florentina Estrada pleaded for appellant de los Santos to take her husband to the hospital but the latter refused.

"At this time, the other appellants (Rico Ramos and Leopoldo Abarientos), stood up while holding hand grenades, and ordered the people at the motor boat to keep quiet. When the boat reached Calibaya, Dalupaon, appellants and co-accused Santiago de Luna disembarked. Appellant Nomer de los Santos pushed the boat out to sea again. Nobody helped Jose Estrada and his family.

"When they reached the shore of Barangay Dalupaon, Florentina Estrada went to the barangay captain and asked for help. When they arrived at the boat, Jose Estrada was already dead.

"Dr. Melchor Baesa, the Municipal Health Officer of Pasacao, conducted a post-mortem examination on the body of the victim Jose Estrada. Victim Jose Estrada sustained a fatal gun shot wound on his left temple. The cause of his death was intracranial hemorr[h]age secondary to gunshot wound."[11][11] (citations omitted)

Defense's Version

On the other hand, the trial court[12] summarized appellants' version of the facts in this wise:

"[Appellant] Nomer delos Santos x x x knows Rico Ramos because the latter is from his place also in San Francisco, Quezon. Leopoldo Abarientos is his half-brother and he used to go to the place of his sisters in Caranan, Pasacao, Camarines Sur. He declared that he also kn[e]w Santiago de Luna. Prior to December 15, 1996, delos Santos was residing in the house of Leopoldo Abarientos in Bahay, Pasacao, Camarines Sur. He was a rebel, a member of the New People's Army (NPA) and he surrendered to the army battalion at Tambo, Pamplona, Camarines Sur[. D]elos Santos present[ed] in court a xerox copy of a news item written by Editor Rey Salao purporting to have been published on May 2, 1996 [in] a newspaper "Remate" showing that he was a member of the NPA and he was caught during a raid by the military. (Exh. 1 and 1-A-delos Santos).

"Nomer delos Santos declared that before the month of April, 1996 he wrote CAFGU Abarientos that he was surrendering already. Because of this Abarientos was given an order by the Philippine Army to talk to him in Quezon province. When Abarientos came back to Camarines Sur, it was decided to get him from Quezon and so he was taken from Quezon and was brought to Tambo, Pamplona, Camarines Sur and placed in the custody of the army from April 29, 1996 to October 13, 1996. Thereafter, he applied for an amnesty. Nomer delos Santos admitted that [o]n the afternoon of December 15, 1996, he boarded a motorboat at Nacoco, Pasacao, Camarines Sur together with his co-accused Rico Ramos, Santiago de Luna and CAFGU Leopoldo Abarientos. The latter was the one who brought him to the motorboat as they were then going to Bahao, Libmanan, Camarines Sur before [proceeding] to the Civilian Relation Services (CRS).

"Before they left Nacoco, Abarientos and de Luna had an argument with Jose Estrada whom delos Santos heard saying to Abarientos and de Luna 'Magsilayog na lang sila' (They should just fly). Upon boarding the

boat delos Santos went to the rear portion while Ramos, de Luna and Abarientos stayed at the front portion of the boat. There were about four (4) persons who were at the rear portion of the motorboat. He was sitting together with another person while the other two (2) were standing. Jose Estrada was sitting on top of the cover of the engine facing the right side of the boat attending to a nylon rope. Estrada's left side was facing the front portion of the boat and the right side was facing his direction. Estrada was about two (2) meters from him. [W]hile they were at said places and position[s] he heard a gunshot and then he saw Estrada f[a]ll down. He did not know where the gunshot came from and at that time his co-accused were at the front portion of the boat. After the shot was fired, Abarientos pulled out his .38 caliber revolver and told the pilot of the boat to bring the boat to the shore. The pilot followed what Abarientos told him, but he was not familiar with the place where he and his co-accused disembarked. Delos Santos declared that he was not armed at that time and he had no handgun. It was Abarientos whom he [knew] x x x was then armed with a .38 caliber revolver.

"Nomer delos Santos denied the truth of the testimony of Florenia Estrada and Vivencio Granadel that after Jose Estrada was shot[,] Florenia Estrada requested him to bring back the boat to Pasacao, but that he allegedly shook his head and waived his hand indicating 'no.' It is not true either that it was he who shot Jose Estrada while on the motorboat [o]n the afternoon of December 15, 1996. He was there as detainee and he was not supposed to carry a firearm. Delos Santos declared that the motive of the widow of Jose Estrada and the prosecution witnesses in pointing [to] him as the one who allegedly shot Jose Estrada is because the wife of Abarientos was often in the company of the widow of Jose Estrada.

"Rico Ramos testified that he [was] a native of Barangay Pangsangahan, San Francisco, Quezon but in December 1996 he was actually residing in the house of Leopoldo Abarientos, his second cousin, at Barangay Bahay, Pasacao, Camarines Sur. On December 15, 1996[,] he and Abarientos left the house of the latter. They were going to Pasacao, but his final destination was Bahao in order to get the goat that was given by the sister of Leopoldo Abarientos which the latter would butcher during the birthday of his wife the following day.

"From the house of Leopoldo Abarientos[,] he was invited by the latter to go with him to Caranan, Pasacao, Camarines Sur to attend x x x the birthday party of Santiago de Luna who is a cousin of Leopoldo Abarientos. After attending the birthday party of de Luna[,] he and Abarientos went to the Pasacao town proper together with Nomer delos Santos and Santiago de Luna. At Pasacao town proper at about 2:00 o'clock in the afternoon[,] the four (4) of them including Rico Ramos boarded a motorboat at Nacoco, Pasacao, Camarines Sur. One of the passengers he recognized on that motorboat was Granadel who testified for the prosecution in this case. When they boarded the motorboat, he, Abarientos and de Luna stayed in the front portion of the boat while delos Santos went to the rear portion of the boat.

"After the motorboat departed from Nacoco and was already traveling[,] he heard a shot, but he did not know where the sound came from. In his attempt to verify where the shot came from[,] he looked to the direction of the rear portion of the boat and there he saw a male person with blood on his head. The person whom he later on came to know as Jose Estrada slumped on the place where the engine was. After the shot was fired[,] the boat proceeded to the direction of Calibayan, Pasacao, Camarines Sur and there he and his three (3) co-accused alighted from the boat. From Calibayan[,] the four (4) of them walked to Caranan. From Caranan he, Abarientos and delos Santos proceeded to Pasacao proper while de Luna was left behind at his place in Caranan. From Pasacao[,] he and Abarientos went home to Barangay Bahay while delos Santos separated from them when they reached Pasacao.

"Rico Ramos also testified that after Jose Estrada was shot[,] he and Florenia Estrada looked at each other, but he did not understand anything about her alleged signal with her eyes requesting him to have the boat turned back to Pasacao. He denied having a hand grenade at that time when the incident complained of happened and it is not true that after the shot was fired he allegedly stood up and walked back and forth on the boat saying: 'You saw nothing, you heard nothing.' Rico Ramos was taken into [the] custody of the law on December 24, 1996 at the house of Cesar Remollena at Barangay Salvacion, Pamplona, Camarines Sur without a warrant of arrest and he was brought to Pasacao, Camarines Sur, and since then[,] he has been under detention up to the

present.

"SPO1 Constantino Espiritu, a member of the PNP, Pasacao, Camarines Sur, testified at the instance of accused Nomer delos Santos with respect to the Entry No. 829 on the Pasacao PNP Police Blotter relative to the report of Florenia Estrada at 6:30 o'clock in the evening of December 15, 1996 (Exh. 2) and Entry No. 853 dated December 23, 1996 wherein it was placed in the Police Blotter of the PNP of Pasacao, Camarines Sur that Florenia Estrada positively identified Francisco Nanalo [sic] y Baraga as one of the suspects in the killing of her husband (Exh. 3)."[13]

Trial Court's Ruling

In convicting appellants, the trial court gave more credence to the testimonies of the prosecution witnesses than to those of the defense. Moreover, it ruled that treachery, which qualified the killing to murder, was shown by the sudden and unexpected attack on the victim, who was unarmed at the time. It also found that conspiracy was evinced by appellants' simultaneous arrival on the motor boat, their particular acts before and after the shooting, and their simultaneous flight.

The Assigned Errors

Appellant delos Santos submits a single error for our consideration:

"That the trial court erred in holding that the prosecution, was able to prove beyond reasonable doubt the guilt of the accused Nomer de los Santos."[14]

Appellant Ramos, on the other hand, imputes this sole error:

"The court a quo erred in finding that the fatal shooting of the deceased Jose Estrada was attended by a conspiracy in which appellant Rico Ramos had a part, and in convicting said accused-appellant."[15]

Lastly, Appellant Abarientos avers as follows:

"The trial court gravely erred in finding accused-appellant Leopoldo Abarientos as co-conspirator in the commission of the crime charged."[16]

Distilling the aforesaid assigned errors, the Court will resolve two issues: (1) sufficiency of the prosecution evidence and (2) conspiracy.

The Court's Ruling

The appeal has no merit.

First Issue: Sufficiency of Prosecution Evidence

We agree with the trial court that the prosecution established the guilt of appellants beyond reasonable doubt.

Jose Estrada (the victim), his wife Florenia, their sons Honesto and Romeo, Vivencio Granadel and appellants were, along with other passengers, aboard the motorboat Princess Ivy on the afternoon of December 15, 1996. According to delos Santos, prior to boarding, an argument ensued between, on the one hand, Abarientos and de Luna and, on the other, the victim who said, "Magsilayog na lang sila" ("They should just fly").[17] Jose's wife, Florenia, corroborated this assertion. She explained, though, that such statement was made while they were waiting for appellants, without whom the boat would not depart for Tinalmud, Pasacao, Camarines Sur. At the time, the latter were not yet in the vicinity.[18]

When appellants finally arrived and boarded the motorboat, Abarientos, Ramos and de Luna sat in front where they drank gin, while delos Santos sat near the victim. When the boat was at sea, Honesto, a prosecution witness

and the victim's son, saw delos Santos stand up, pull out his gun, and shoot his father.[19] Corroborating this testimony was another prosecution witness, Granadel, who saw delos Santos point his gun and fire at the victim.[20]

Soon after hearing the gunshot, Florenia looked at the back of the boat where her husband and their son, Honesto, were seated. To her horror, she saw Jose's nose and mouth bleeding. She immediately ran towards him, embraced him and glanced around. She then saw delos Santos standing, the gun still clutched in his hand.[21]

Despite delos Santos' self-serving denial, the Court is convinced that the trial court did not err in ruling that it was he who had shot the victim.

Contending that he could not have shot the victim, delos Santos says that he was not carrying any gun on the afternoon of December 16, 1996. He insists that, being an NPA detainee, he was on the boat because Abarientos, his half-brother who was a CAFGU member, decided to pass by Bahao, Libmanan, Camarines Sur, enroute to the Philippine Army's Civilian Relations Services (CRS) office, their real destination.[22]

However, why did Abarientos allow delos Santos, who was allegedly an NPA detainee, to go his separate way at Pasacao proper? Why did the former, as he had supposedly planned, not bring the latter along to Bahao, Libmanan? And what was delos Santos doing at Barangay Salvacion, Pamplona, Camarines Sur on December 24, 1996, when he was arrested together with Ramos? These niggling questions do not jibe well with the former's claim of innocence.

In an attempt to discredit Florenia's positive identification pointing to him as the assailant, delos Santos presented excerpts from the Pasacao PNP police blotter[23] to show that the former had mistakenly identified a certain Francisco Nonado as one of the suspects in the crime.[24]

We are unmoved. Entries in police blotters are not evidence of the truth of their contents but merely of the fact that they were recorded.[25] A closer scrutiny thereof shows that they refer to "suspects" in the slaying of Jose Estrada. Verily, such entries cannot prevail over the positive identification pointing to delos Santos as the trigger man.

Well-entrenched is the principle that a trial court's assessment of the credibility of a witness is entitled to great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[26] Appellants have not given us any good reason to exempt this case from this rule.

Treachery

We agree with the trial court's finding that treachery attended the slaying. This qualifying circumstance is present when the following conditions concur: (1) the employment of means, method or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of such means, method or manner of execution.[27]

The deliberate, sudden and unexpected shooting of Jose Estrada while he was busy fixing a fishing line afforded delos Santos the opportunity to kill him without the risk arising from the defense that the former might have made.[28] There is no doubt that the victim was slain treacherously.

Second Issue: Conspiracy

Appellants Abarientos and Ramos both contend that the trial court erred in finding them to be co-conspirators of delos Santos. We are not convinced.

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. It may be deduced

from the mode or manner in which the offense was perpetrated; or inferred from the acts of the accused, who were acting in concert in the pursuit of their unlawful design.[29] The simultaneous arrival of appellants, their specific acts before and after the shooting, and their simultaneous flight pointed to a conspiracy among them.

Prior to the motorboat's departure from Nacoco, Pasacao, Camarines Sur, Jose Estrada was heard uttering a remark that irked appellants. Aboard the boat, delos Santos deliberately sat behind the victim, while the other appellants chose to sit near the front section. When the former shot the victim, all the other passengers ducked, except Abarientos, Ramos and de Luna.

Immediately thereafter, the three accused who were seated near the front stood up, clutching hand grenades. Ramos, holding a grenade in both hands, walked back and forth telling the passengers: "Mayo kamong nahiling, mayo kamong sasabihon" ("You saw nothing, you heard nothing"). When they reached Calibaya, Dalupaon, the four of them -- delos Santos, Abarientos, Ramos and de Luna -- alighted. When Florenia tried to disembark, she was prevented by delos Santos, who even pushed the boat back to the sea.[30]

Awards of Damages

The actual and moral damages awarded by the trial court are supported by the evidence,[31] while the civil indemnity ex delicto of P50,000 is in line with current jurisprudence.[32]

WHEREFORE, the appeal is DENIED and the assailed Decision AFFIRMED. Costs against appellants.

SO ORDERED.

Melo (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Antonio N. Gerona, it is entitled "Judgment."

[2] RTC Decision, p. 9; rollo, p. 116; records, p. 148.

[3] Signed by 2[nd] Asst. Prov. Pros. Ernesto O. Vargas.

[4] Their co-accused, Santiago de Luna, was and is still at large.

[5] Information, dated March 19, 1997; rollo, p. 9; records, p. 1.

[6] Assisted by Atty. Ramon Arejola.

[7] See the RTC's Order dated May 9, 1997; records, p. 47.

[8] This case was deemed submitted for resolution on September 1, 2000, when the Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[9] Signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Fernanda L. Peralta, and Sol. Ma. Carla D. Ofilada.

[10] Spelled "Floriña" in the criminal complaint, the preliminary inquiry and the subpoena; and "Florenia" in the RTC Decision.

[11] Appellee's Brief, pp. 5-7; rollo, pp. 205-207.

[12] In their respective Briefs, Appellant Abarientos (through the Public Attorney's Office) stated that "no evidence was adduced by him;" Appellant Rico Ramos (through counsel Romeo A. Tablizo) reproduced the trial court's narration of facts; and Appellant Nomer delos Santos (through Counsel Romeo S. Tayo), a one-page unsatisfactory statement of facts " culled from the records."

- [13] RTC Decision, pp. 4-6; rollo, pp. 111-113.
- [14] Appellant delos Santos' Brief, p. 1; rollo, p. 143.
- [15] Appellant Ramos' Brief, p. 1; rollo, p. 88.
- [16] Appellant Abarientos' Brief, p. 1; rollo, p. 55.
- [17] TSN, October 15, 1997, p. 18.
- [18] TSN, September 17, 1997, p. 11.
- [19] TSN, September 23, 1997, p. 5.
- [20] TSN, October 2, 1997, pp. 24-25.
- [21] TSN, September 8, 1997, p. 10.
- [22] TSN, October 15, 1997, p. 17.
- [23] Exhibits 1 & 2.
- [24] TSN, October 22, 1997, pp. 5-7.
- [25] *People v. Ledesma*, 250 SCRA 166, 170-71, November 20, 1995.
- [26] *People v. Llanes et al.*, GR No. 140268, September 18, 2000; *People v. Continente et al.*, GR Nos. 100801-02, August 25, 2000; *People v. Reduca*, 301 SCRA 516, 528, January 21, 1999.
- [27] *People v. Dagami*, GR No. 123111, September 13, 2000; *People v. Arellano*, GR No. 122477, June 30, 2000; *People v. Lazarte et al.*, GR No. 130711, June 29, 2000; *People v. Lozada*, GR No. 130589, June 29, 2000.
- [28] *People v. Bergonio Jr.*, GR No. 133981, September 13, 2000; *People v. Palencia*, 71 SCRA 679, 689, April 30, 1976.
- [29] *People v. De la Rosa Jr.*, GR No. 133443, September 29, 2000; *People v. Llanes*, *supra*.
- [30] TSN, September 8, 1997, p. 16.
- [31] RTC Decision, p. 3; rollo, p. 65.
- [32] See *People v. Nilo Bautista et al.*, GR No. 131840, April 27, 2000; *People v. Albao*, 287 SCRA 129, March 6, 1998.

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