

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO NOROÑA (DECEASED) AND FREDDIE NOROÑA, ACCUSED.*G.R. No. 132192. March 31, 2000*

Ponente: BELLOSILLO, J.

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RUDICO MENGOTE died as a result of multiple gunshot wounds for which the brothers Rogelio Noroña and Freddie Noroña were haled to court for murder.[1]

The records disclose that at around 4:00 o'clock in the afternoon of 17 November 1988 Rudico Mengote together with one Alvaro Orosco was driving home in his owner-type jeepney after a visit to his father in the Poblacion of Oras, Eastern Samar. On the way they happened to pass by Rogelio Noroña and Freddie Noroña who were on board a motorized tricycle driven by the latter. When Rudico and Alvaro arrived at the house of Rudico, Alvaro went upstairs to cook dilis for pulutan since they planned to drink. Meanwhile, without Alvaro's knowledge, Rudico left the house and went to the nearby bridge some five (5) meters to the east. Shortly after, the tricycle with the two (2) accused on board arrived and as it approached the bridge a gunshot was heard. Alvaro rushed outside and saw Rudico fall to the ground. Rogelio alighted at the top of the bridge and pumped several more bullets to the head of the victim who was now lying prostrate on the ground. The Noroña brothers then proceeded to the wharf passing by the municipal building with Alvaro following them. He was on his way to inform the father of Rudico on what happened to his son.[2]

The startling spectacle was also witnessed by Lope Lumantad who recounted that in the afternoon of 17 November 1988 he was at the front yard of the house of his Mano Tatong Tomenio when a tricycle passed by. It was driven by Freddie Noroña with his brother Rogelio Noroña seated at the passenger's sidecar cradling an M-16 armalite rifle. As the tricycle reached the Camanga bridge about fifty (50) meters away from where he (Lumantad) was standing a shot was heard. When he looked at the direction where the shot came from, he saw a person fall to the ground. Moments later he saw the accused get off the tricycle, fire more shots at the fallen victim, board the tricycle again and drive away. Lope then inched his way towards the sprawled victim. He recognized him at once as Rudico Mengote.

At about 4:45 in the afternoon of the same day, the cadaver of Rudico was autopsied by Dr. Marilou Agnes Tejero who testified during the trial on her findings: (a) the cause of death of the victim was brain injury due to multiple gunshot wounds; (b) wound No. 1, a gunshot wound at the left tempora-parietal area with multiple fracture of the skull, and wound No. 2, a gunshot wound at the right paravertebral area at the level of the T-2 directed superiorly and anteriorly, were ante-mortem wounds; and, (c) all the wounds could not have caused death except wounds No. 1 and No. 2 which were fatal.[3]

Testifying in his defense Freddie Noroña narrated that he was sleeping in his house in the afternoon of 17 November 1988. He had just attended the wake for his younger brother Rufo Noroña who was killed the night before by still unidentified assailants. According to Freddie, he was awakened by his wife because his older

brother Rogelio wanted to borrow his motorized tricycle. Since Rogelio could not start the engine he requested Freddie to take him to the Oras District Hospital to get the autopsy report re their late brother. While on board the tricycle, Freddie asked Rogelio why he was carrying a gun and the latter answered nonchalantly, "It is for my protection because I might also get killed." [4]

At the Oras District Hospital Rogelio approached Gloria Mengote, a first-degree cousin of Rogelio and Freddie Noroña. Gloria was a ward nurse of the hospital and wife of Rudico Mengote. Rogelio went there to ask for a copy of the autopsy report on Rufo Noroña who was killed the day before. He failed however to get a copy because the person in charge was not around. On their way out of the hospital, the Noroña brothers met Benedicto Mecono who asked if he could hitch a ride with them. The Noroñas agreed and all three (3) left the hospital together.

As the tricycle bearing Rogelio, Freddie and Benedicto approached the Camanga bridge, Rudico who was then sitting on its railing fired at them. Completely surprised by the sudden and unexpected attack, Freddie turned the handlebars of the tricycle to the left causing it to swerve and graze the railings of the bridge. Then he saw Rogelio shoot Rudico on the other side of the bridge. At this juncture, Freddie immediately alighted from the tricycle to align the handlebars with its front wheel and frantically started the engine to take off. As he looked back he saw Rogelio running after him and trying to board the tricycle. Benedicto however was nowhere to be found.

On cross examination, Freddie stated that: (a) although his brother Rufo was killed on 16 November 1988, the day before the shooting incident at the bridge, he had no definite idea who was responsible for it; (b) he was aware that previously Rudico had stabbed Rogelio at the cockpit during a town fiesta in Barangay San Eduardo; and, (c) although there were four (4) thoroughfares going to the Oras District Hospital, he especially took the Camanga road since it was the shortest route.

The defense also presented Benedicto Mecono who claimed that in the afternoon of 17 November 1988 he was at the Oras District Hospital to buy medicine for his epileptic child. The medicine however was unavailable so he decided to go home. Fortunately for him, while waiting for a ride, he chanced upon Freddie and Rogelio. He asked them where they were going afterwards and whether they could give him a ride in their tricycle. When they said they were headed for the bus station, Benedicto decided to wait for the two (2) brothers to finish their business in the hospital so he could join them. In no time, the three (3) left in their tricycle. As they neared the Camanga bridge, Rudico Mengote who was perched on its railing fired at them. Fortunately Rudico missed and hit instead the front part of the tricycle. Instinctively, Benedicto and Rogelio crouched inside the sidecar while Freddie who was driving caused the tricycle to swerve to the left. The vehicle first hit the side of the bridge then stopped. Benedicto jumped off and took cover behind the tricycle. Benedicto testified further that as Rudico approached the tricycle with a firearm in hand more shots reverberated from all over. He further said that he did not notice what Rogelio was doing although he was still inside the tricycle at that time. On his part, according to Benedicto, in the midst of the shooting he fled and sought refuge in a safer place until everything appeared to have subsided.

On 25 January 1989 an Information for murder with the aggravating circumstances of evident premeditation, treachery, use of motorized tricycle, abuse of superior strength, and on the part of Rogelio Noroña, taking advantage of his public position as a policeman, was filed against the brothers Rogelio Noroña and Freddie Noroña. [5]

On 20 June 1994 or while the case was pending trial, accused Rogelio Noroña was shot to death allegedly by the brothers of Rudico Mengote; hence, the case as against him was dismissed. However, as regards his brother Freddie Noroña, the trial court found him guilty of murder as co-principal and sentenced him to suffer the penalty

of reclusion perpetua and to pay the heirs of the deceased the sum of P50,000.00 as indemnity.

In view of the importance of the issue on whether there was conspiracy between the Noroña brothers, we are constrained to quote hereunder pertinent portions of the factual findings and observations of the trial court - [6]

The evidence adduced by the prosecution against Freddie Noroña shows that Freddie did not actually shoot at Rudico Mengote. The liability of Freddie Noroña would entirely depend on the existence of conspiracy between him and Rogelio Noroña x x x x Eyewitness for the prosecution Alvaro Orosco, in his direct testimony, testified that he saw the Noroña brothers on board the tricycle in the afternoon of November 17, 1988. In this case, accused who are brothers had strong reason to hate the herein victim whom they suspected as the person responsible for the death of Rufo Noroña, accused's younger brother x x x x Although in the case at bar, there is no direct proof adduced by the prosecution that Freddie expressly agreed to the murderous design of his brother, it can be inferred from the acts of both accused before, during and after they committed the crime which are clearly indicative of a joint purpose, concerted action, and concurrence of sentiments. They fled together from the crime scene. All these acts indicate community of criminal intent which is the essence of conspiracy. Conspiracy having been established it matters not who among the accused shot at and killed Rudico Mengote, because in conspiracy, the fault of one is the fault of all or the criminal act of one is attributable to all.

The prosecution alleged evident premeditation to have attended the commission of the crime. It is the contention of the prosecution that the crime was perpetrated as an act of revenge and personal vendetta of the two accused harbored against Rudico Mengote by reason of the death of Rufo Noroña, respondent's brother. Rogelio Noroña had a standing personal grudge against the victim because Rudico stabbed Rogelio sometime on May 3, 1988 during a Barangay fiesta at San Eduardo, Oras, Eastern Samar. The fact that accused Freddie Noroña conspired with his brother Rogelio to kill Rudico, the evidence adduced by the prosecution established a proof beyond reasonable doubt that the plan to kill Rudico was hatched by the two respondents x x x x The generic aggravating circumstance of abuse of superior strength was also present in the commission of the offense. Rogelio Noroña enjoyed superiority, considering the use of an armalite rifle against a defenseless victim. However, because of the presence of the qualifying circumstance of treachery the same cannot be considered for x x x abuse of superior strength, like nocturnity, is absorbed in treachery.

The aggravating circumstance of abuse or taking advantage of a public position could not be appreciated because the accused did not abuse his office as a policeman in order to commit the offense x x x x

In this appeal, accused-appellant wants us to set aside the assailed decision and acquit him on the ground that the trial court erred in concluding that he conspired with Rogelio Noroña in murdering Rudico Mengote. He also insists that his guilt, whether as co-principal or not, was not proved beyond any cavil of doubt.

Accused-appellant contends that not one of the prosecution witnesses actually saw the inception of the incident. Both Alvaro Orosco and Lope Lumantad testified that what attracted their attention to the incident was when each of them first "heard gun report" from "somewhere in the bridge." It was only after the initial "gun report" that both prosecution witnesses noticed what was happening at the bridge. If at all, the so-called "joint purpose, concerted action, and concurrence of sentiments" revealed by the records is that appertaining to their desire to obtain a copy of the autopsy report of their dead brother. And, of course, such was the reason for " the use of a motorized tricycle." Finally, he argues that he did not commit any positive act to show unity of purpose with his brother Rogelio. For even the trial court in its decision found that "the evidence adduced by the prosecution against Freddie Noroña show(ed) that Freddie did not actually shoot at Rudico Mengote." [7]

The appeal is meritorious. After judiciously scrutinizing the evidence adduced by the prosecution, we find a dearth of proof sufficient to warrant the conviction of accused-appellant as co-principal.

First. The court a quo erred when it ruled that there was conspiracy between the Noroña brothers on the basis of

the following circumstantial evidence: (a) that Freddie was seen together with his brother Rogelio in the afternoon of 17 November 1988; (b) that accused-appellant had a strong motive to kill Rudico Mengote whom they suspected as the person responsible for their brother Rufo's death; and, (c) that he and Rogelio fled together from the scene of the crime.

It is a hornbook doctrine that conspiracy must be proved by positive and convincing evidence. The prosecution miserably fell short of this requirement. Mere suspicion, speculation, relationship, association and companionship do not prove conspiracy.[8] Although the prosecution witnesses positively identified accused Rogelio Noroña as the killer of Rudico, nowhere can we find in their testimonies any clear proof that accused-appellant Freddie performed overt acts to demonstrate unity of purpose and community of design with Rogelio to snuff out the life of Rudico. To prove the conspiracy, accused-appellant must be shown to have actively participated in the homicidal plot conceived by Rogelio which presupposes that he had prior knowledge on his part of such unlawful objective. No proof indicative of such prior knowledge exists in the records of the instant case. His being the driver of the tricycle or the fact that he fled with Rogelio after the shooting creates no reasonable nexus between his guilt as a co-conspirator and the fatal shooting of the victim. The submission that since accused-appellant fled from the locus criminis, ergo, he conspired with Rogelio, is non-sequitur. Flight during and after a violent encounter is an overpowering impulse triggered by no other force than the instinct of self-preservation. This fact assumes greater relevance when accused-appellant, as in this case, voluntarily surrendered to the authorities because of his unwavering belief that he was innocent.[9] Mere presence at the scene of the crime is not tantamount to guilt.

For another reason, we find it difficult to agree that accused-appellant connived with his brother Rogelio in killing Rudico Mengote for the reason that at the time of the armed encounter between Rudico and Rogelio, accused-appellant was absolutely unarmed. If indeed he conspired with his brother Rogelio, and considering that the victim was in his lifetime known to accused-appellant to have a propensity for violence,[10] the latter, by the sheer instinct of self-preservation, would not have gone to battle unprepared. He was unarmed while the victim was carrying a loaded cal. 38 S & W paltik revolver.[11]

Again, while it is true that Freddie had a very strong motive to kill Rudico out of revenge on account of the stabbing incident between the latter and Freddie's older brother Rogelio, as well as the subsequent killing of Rufo, another brother of the Noroñas, such fact alone is not sufficient to support a conviction in the absence of adequate and competent proof that Freddie was either the gunwielder or a co-conspirator. Motive, no matter how strong, is not an element of a crime and is generally irrelevant unless it is utilized in establishing the identity of the perpetrator.[12]

Second. Prosecution witnesses Lope Lumantad and Alvaro Orosco did not witness the commission of the crime at its inception. They merely testified to hearing gun reports when the tricycle driven by accused-appellant reached the bridge. In this regard, Lope testified - [13]

Q:

And when the tricycle reached the bridge, was there anything unusual that happened?

Lumantad:

I heard gun report, sir.

Fiscal Mengote:

And where was (sic) the gun report came (sic) from?

A:

Somewhere in the bridge.

Alvaro Orosco likewise testified -

Fiscal:

So that while Rudico Mengote was at the bridge the two accused who were then riding on a tricycle arrived at the bridge, my question is: Was there unusual incident that occurred?

A:

There was sir.

Q:

Will you please tell that to the Hon. Court what was the unusual incident that occurred?

A:

Before they arrived at the bridge, I heard gun report, and then I verified what was that and went out from the house of Rudico Mengote, and I saw Rudico Mengote fell down to the ground, as he was already shot at.

In contrast, defense witness Benedicto Mecono and accused-appellant himself stated that Rogelio shot Rudico after the latter initiated the attack when he first fired at them, hitting the tricycle in front. This testimony finds support in the certification presented by the defense attesting that the trial court was in possession of a police blotter showing that "CONFISCATED FROM THE VICTIM IS A CAL. 38 S & W PALTIK w/o SN & TWO (2) LIVE AMMOS & THREE (3) EMPTY SHELLS.[14] (underscoring supplied). Here, the big difference lies. The trial court failed "to cut the Gordian knot," so to speak, and proceeded in fact to the extent of picturing Rudico as a "defenseless victim." [15] This particular piece of evidence, which can change the complexion of the instant case, was obviously overlooked. And so, it is highly probable - and this we are inclined to believe - that the meeting between Rudico Mengote and the Noroña brothers was casual, incidental, and not purposely sought, at least insofar as the two (2) accused were concerned. Although the Noroñas had met the victim earlier, they had no way of knowing that the latter would be at the bridge at the precise moment that they would pass by. If any, it was the victim who, without being noticed by his companion Alvaro, went out of his house armed and proceeded to the bridge. This fact, together with the firearm and the live and empty shells found in his possession after the shooting, strongly suggests a plan by the victim to lie in ambush at the bridge and exact requital for an injury done to him.

The panorama that unfolds before us reveals a scenario different from what the prosecution would want the court to see and believe. On the contrary, all indicia point to the innocence of accused-appellant Freddie Noroña who might have only been, in all likelihood, unwittingly enmeshed in the violent and fatal confrontation between his brother Rogelio Noroña and Rudico Mengote. For Freddie Noroña, it was more a case of being at the wrong place at the wrong time; hence, his acquittal on reasonable doubt is imperative.

WHEREFORE, the Decision of the court a quo finding accused-appellant FREDDIE NOROÑA guilty of murder is REVERSED and SET ASIDE for insufficiency of evidence and, at the very least, on reasonable doubt. Consequently, he is ACQUITTED and ORDERED RELEASED FROM CUSTODY unless lawfully detained for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon immediately but not later than five (5) days from receipt hereof.

SO ORDERED. BELLOSILLOJ

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Decision penned by Judge Celso F. Lorenzo, Sr., RTC-Br. 4, Dolores, Eastern Samar.

[2] TSN, 17 November 1992, pp. 22-36.

[3] Id., pp. 47-48; see Exh. "A."

[4] TSN, 22 January 1997, pp. 4-5.

[5] Id., p. 1.

[6] Id., pp. 37-38.

[7] Brief for Accused-Appellant; Rollo, pp. 73-74.

[8] People v. Sosing, No. L-42791, 30 January 1982, 111 SCRA 368.

[9] Accused-appellant Freddie Narona voluntarily surrendered to policeman Moises Montances which fact was appreciated by the trial court as a mitigating circumstance; Records, pp. 451 and 465.

[10] See Exh. "3."

[11] See Exh. "4."

[12] People v. Manambit, G.R. Nos. 72744-45, 18 April 1997, 271 SCRA 344.

[13] TSN, 24 March 1992, pp. 5-6.

[14] Exh. "4."

[15] See Note 6.

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