

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LOMER MANDAO AND JOHN DOE, ACCUSED, LOMER MANDAO, APPELLANT.

G.R. No. 135048. December 03, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Proof of conspiracy must pass the test of moral certainty. This is especially true in the present case, in which the evidence points merely to appellant's passive presence at and flight from the locus criminis. Absent proof beyond reasonable doubt of any overt act on his part showing concurrence or joint purpose with the fugitive principal by direct participation, we cannot affirm the lower court's judgment of conviction.

The Case

Lomer Mandao appeals the June 5, 1998 Decision[1] of the Regional Trial Court (RTC) of Ozamiz City (Branch 15) in Criminal Case No. 1727, finding him guilty of double murder as follows:

“WHEREFORE, finding the accused Lomer Mandao guilty beyond reasonable doubt of the crime of Murder punished under Article 248 of the Revised Penal Code, judgment is rendered sentencing him to a penalty of two reclusion perpetua for killing Severino Bodiongan and Francisco Villam[i]no; and further ordering him to pay P50,000.00 each for the lives of the two victims; and to pay the costs.

“The accused shall be credited in the service of his sentence full time of his preventive imprisonment.”[2]

Appellant was accused of killing Francisco Villamino and Severino Bodiongan in an Information dated August 5, 1995, which was worded thus:

“That on or about the 6th day of January, 1986, at about 4:00 o'clock in the afternoon, in [B]arangay Colambutan Settlement, [M]unicipality of Tudela, [P]rovince of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, conspiring, confederating and mutually helping one another, with intent to kill, with evident premeditation, armed with a pistol, did then and there willfully, unlawfully, feloniously and treacherously attack, assault and shot FRANCISCO VILLAMINO, hitting him on his abdomen, which caused his death in the hospital the next day, and also shot SEVERINO BODIONGAN pumping bullets into his body, hitting him on his head and on the different parts of his body, which caused his instantaneous death.”[3]

Appellant, with the assistance of his counsel de oficio,[4] pleaded not guilty to the charges during his arraignment on March 7, 1996.[5]

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of the factual antecedents of the case as follows:

“On two benches, one facing the other, were seated Lolito Bodiongan, Francisco Villamino, Severino Bodiongan and Roque Maquiling. This was at the frontyard of the house of Severino Bodiongan, about 4:00 in the afternoon of January 6, 1986. They were conversing when they saw appellant buying cigarettes at a nearby store. Appellant left the store without any significant event happening and went to the place where Jorgia Bodiongan, the wife of Severino Bodiongan, was gathering jackfruits. Moments later, appellant returned to where the four were seated. He was with an unidentified companion.

“Just as he and his companion arrived, the latter suddenly pulled a gun tucked under his shirt and began shooting Severino Bodiongan and Francisco Villamino. While this was happening, appellant was holding a hand grenade and watching the carnage. He threatened anyone who showed willingness to help the victims, motioning agitatingly to hurl the hand grenade he was holding.

“Severino Bodiongan was first hit at the back. He tried running away and taking cover. Francisco Villamino was shot at the stomach. He fell to the ground motionless. The unidentified companion of appellant ran after Severino Bodiongan. He caught up with Severino Bodiongan at the side of the latter’s house. He finished the victim off, pumping several more bullets into his head and body.

“Appellant scampered right after the shooting of Severino Bodiongan. He ran nimbly in a direction opposite that of his unidentified companion. The carnage, meanwhile, left two of the four persons, who moments before were conversing, dead. The two others – Roque Maquiling and Lolito Bodiongan – were unharmed. From the first burst of gunfire, and for the duration of the carnage as they each sought cover by running far from its scene, the two managed to get a good and accurate look at appellant and his unidentified companion.”[6] (Citations omitted)

Version of the Defense

On the other hand, appellant narrates his version of the facts thus:

“Accused worked as a laborer in the hollow blocks factory of Mr. Artemio Hedocil at Molave, Zamboanga del Sur from 1984 until December 1987. He stayed at the house of his employer during that time. His period of employment at the said hollow blocks factory was unbroken.

“The distance between Molave and the Poblacion of Tudela, Misamis Occidental is more than 70 kilometers. The roads were very rough in 1986, and so, it took one about three (3) hours to travel the distance by bus. Kolambutan, the barangay of Tudela whereat the alleged incident took place[,] is about 15 kilometers from the Poblacion. Again, due to the bad condition of the road, transportation facilities for the said barangay from the Poblacion was very scarce. It was very hard to contact a passenger motorcycle locally known as ‘Habal-habal’ for the said barangay. The practice of commuters for the said barangay was to contact a ‘habal-habal’ days before the actual travel date. Kolambutan is accessible only through the roads from Poblacion of Tudela. The travel time from the Poblacion to Kolambutan is about two (2) hours.

“Since birth, accused had not gone to Tudela. It was only when he was arrested and detained at Oroquieta City in connection with this case, that he was able to pass by Tudela. And this happened every time his case was heard in Ozamis City.

“Accused was implicated in this case because of loose remarks made by him at the public market in Molave which must have reached the ears of the family of the Bodiongans of Tudela, to wit:

‘Q

Could you inform this Honorable [Court] what was that conversation all about?

A

At first my friends were drinking, then I joined them, then they have a conversation with the low wages paid to

the tenants of Bodiongan, then I butted in by saying, the rebels are against these people who gave low wages.

Q

Could you remember if there was a particular name of Bodiongan being mentioned?

A

They did not mention.

Q

And what was the reaction of that group, when you told them paying low wages to tenant is against the rebels or NPA?

A

No reaction from them.”[7]

The Trial Court’s Ruling

The RTC gave full faith and credence to the testimonies of the prosecution witnesses. It ruled that their positive testimonies should prevail over the alibi of appellant -- that he was working in Molave, Zamboanga del Sur when the shooting incident took place. It likewise found that treachery had attended the killing. It ratiocinated as follows:

“The record shows that Roque Maquiling and Lolito Bodiongan testifying for the prosecution gave a clear, spontaneous and straightforward testimony as to their account of the incident. Even in the cross examination they never falter[ed]. Their testimonies in the cross examination are clear and straightforward without flaws. This assures the objectivity of their testimonies thereby bolstering its truth. In the absence of evidence showing that Lolito Bodiongan would falsely testify and impute a grave offense against a relative strongly sustain the view that his only purpose is to bring the perpetrators of the crime to the bar of justice and to answer for the crime they have committed. Settled is the rule that in the absence of evidence as to improper motive actuating the principal witness of the prosecution strongly tends to sustain that no improper motive existed and, thus, their testimony is worthy of full faith and credit.”[8]

Hence, this appeal.[9]

The Issues

In his Brief, appellant raises the following issues for our consideration:

“I

The guilt of the accused was not proven beyond reasonable doubt[; and]

“II

The testimonial evidence of the prosecution is incredible[.]”[10]

In short, there is really only one issue: the sufficiency of the prosecution evidence.

The Court’s Ruling

The appeal is meritorious.

Sole Issue:

Sufficiency of Prosecution Evidence

To be sure, appellant is not being indicted as a direct participant in the double murder. Instead, the prosecution is anchoring its case on the theory that he was a co-conspirator.

To establish conspiracy, it is not essential that there be actual proof that all the conspirators directly participated in every act constituting the offense. It is sufficient that they acted in concert pursuant to the same objective.[11] It is not necessary to show that all of them actually hit and killed the victim. What is important is that they all performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim.[12]

While conspiracy may be deduced from the mode and the manner in which the offense was perpetrated, it must, like the crime itself, be proven beyond reasonable doubt.[13] Thus, mere knowledge, acquiescence or approval of the act -- without the cooperation and the agreement to cooperate -- is not enough to establish conspiracy.[14] Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, their mere presence does not make them parties to it, absent any active participation in the furtherance of the common design or purpose.[15]

After carefully examining the records of the case, we find that the evidence for the prosecution failed to establish conspiracy beyond reasonable doubt. The testimonies of its witnesses are flawed with inconsistencies and improbabilities that cast suspicion on their veracity. Moreover, it appears that these testimonies were contrived and customized to ensure a finding of culpability on the part of appellant on the sole basis of conspiracy.

Clearly, the evidence for the prosecution shows that it was not appellant -- but an unidentified assailant -- who fatally shot the two victims. According to the prosecution witnesses, appellant arrived with an armed companion. During the shooting spree, they allegedly saw the former holding a grenade and threatening anyone who would attempt to stop the two of them. They further testified that appellant, together with the assailant, fled from the scene of the crime after the shooting incident.

Verily, the prosecution's theory of conspiracy hinges primarily on appellant's alleged act of holding a hand grenade and using it to threaten the eyewitnesses while the shooting was going on. Prosecution Witness Roque Maquiling testified as follows:

“Q:

Now, when Lomer Mandao and his companion arrived at the place where the four of you were sitting, what happened next?

A:

He shot Severino Bodiongan and Francisco Villam[i]no.

Q:

Who was carrying the firearm?

A:

Lomer Mandao was carrying a grenade and his companion was bringing that firearm.

Q:

You mean to say that it was the companion of Lomer Mandao who was carrying the firearm?

A:

Yes, sir.

Q:

And he was the one who shot the victims?

A:

Yes, sir.

Q:

What did Lomer Mandao do then?

A: Lomer Mandao was just standing there, sir, carrying that grenade, who was trying to threat[en] anybody if anybody would come against them.

ATTY. PACTOLIN:

I would like to request this Honorable Court for the striking out from the record regarding the answer or the statement of the witness if anybody would come or fight back against them, because this witness is incompetent in behalf of what is in the mind of the accused.

PROV'L PROS. MEDINA:

This witness is only setting facts of his own observation, Your Honor.

COURT:

Lomer Mandao was holding the grenade and watching these people.”[16]

The foregoing testimony shows that Maquiling’s account of appellant’s threatening actuations, while enthusiastic, was merely speculative and unsubstantiated. In fact, the trial judge took notice of this fact and subsequently negated the testimony, insofar as appellant’s alleged threatening stance was concerned. Moreover, the hand-grenade portion of the story is highly dubious, considering that the witness made no mention of this important fact in his Sworn Statement before the police authorities immediately after the incident. Thus, when queried on the matter in open court, he gave an evasive and unresponsive answer in this wise:

“Q:

When you were asked by the investigating officer in the visayan dialect, stating that, and I quote:

Q

‘NAGDALA BA USAB UG ARMAS SI LOMER MANDAO ADTONG TONGORA?’

which is in English translation, it stated that:

‘DID YOU NOTICE LOMER MANDAO BRINGING A FIREARM?’

and your answer, also stated in a visayan dialect, which I would like to quote:

A ‘WALA NAKO MACLARO GUMIKAN SA KAKALIT HITABO.’

which is in English translation, it stated that:

‘IT WAS NOT CLEAR, BECAUSE OF THE SUDDENNESS OF THE INCIDENT.’

Now, my question is, when you were asked if this Lomer Mandao was bringing a firearm, what did you have in your mind?

A:

What I meant is that, that is a hand grenade, sir.”[17] (Emphasis supplied)

The insistence by Maquiling that appellant held a hand grenade during the shooting incident gives the impression that the former’s testimony was rehearsed, if not fabricated as a mere afterthought. Moreover, Maquiling did not give a reasonable explanation for the glaring discrepancy between his Sworn Statement and his testimony.

Indeed, we are puzzled by his failure to mention in his Affidavit anything about a hand grenade when he was questioned by the investigators just a few days after the killing. Yet, ten years later, he was able to give a vivid and graphic depiction of how appellant allegedly threatened everyone else with a hand grenade. We find it contrary to the natural course of things how an uncertain matter of material significance could evolve into a definite description several years after the fact.

As a rule, testimonial evidence or oral testimony commands greater weight than a mere affidavit.[18] Hence, discrepancies between the two do not necessarily discredit a witness.[19] However, this principle finds no application in a case in which the latter directly and significantly contradicts material matters made in the former. Accordingly, when there is an omission in an affidavit concerning a very important detail that may well determine the culpability of the accused, that omission can affect the affiant’s credibility.[20]

In *People v. Hernani*,[21] the Court ruled in this wise:

“We are also unconvinced by the OSG’s argument that oral testimony should be given more weight than affidavits since the latter are almost always incomplete. In our view, this is not a case of an incomplete

affidavit but an affidavit directly and significantly contradicting an oral testimony. The statements contradict each other not only in minor details.”[22]

Since the prosecution was not able to sufficiently show possession of a hand grenade by appellant, the only remaining circumstances that support the theory of conspiracy are the following: (1) that he was present at the crime scene prior to the killing, and (2) that he fled from the scene of the crime right after the incident.

Notwithstanding the foregoing circumstances, we still believe that conspiracy has not been sufficiently established. The mere fact that appellant arrived with the unidentified gunman does not necessarily establish conspiracy.[23] Likewise, the immediate flight of the former from the scene of the crime might have been for self-preservation.[24] In fact, he was seen running in a direction opposite that taken by the unidentified assailant.[25]

In *Salvatierra v. Court of Appeals*,[26] this Court acquitted the alleged co-conspirators despite (1) their knowledge of the plan to kill the victim; (2) their presence before, during and after the fatal stabbing; and (3) their act of leaving the crime scene together with the principal accused. We ruled as follows:

“In the same vein the mere presence of Ramirez and Asuncion prior to the stabbing and that of Salvatierra and Ignacio during and after the incident at the scene of the crime by themselves cannot be taken as evidence of conspiracy absent any concrete evidence that they were intentionally present to insure the success of a common criminal design. It would appear that Alina needed no assistance from any of the other defendants as he was armed with a ten-inch hunting knife. Miguel Samonte’s testimony that he saw defendants Salvatierra and Ignacio leave the scene of the crime together with Alina in the latter’s jeep does not supply the missing link to show conspiracy as leaving the crime scene together with the accused who rendered the fatal blow on the victim is not evidence of conspiracy. It only supports the prosecution’s contention that Salvatierra and Ignacio knew of Alina’s plan but it does not supply the requisite link of actual participation in furtherance of a common criminal design. Accordingly, We find that the trial and the appellate courts seriously erred in finding conspiracy among the defendants. Alina acted on his own and he alone should be held liable for the death of Rolando Samonte. The other four defendants must perforce be acquitted of the crime charged.”[27]

To be held guilty by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity.[28] Conspiracy is present when one concurs with the criminal design of another by performing an overt act leading to the crime.[29]

In this case, the prosecution failed to show that appellant had joined the assailant in pursuing the victims who were scampering away. As testified to by its witnesses, appellant just stood there about one “armslength” away from the other eyewitnesses without following the assailant in chasing the victims.[30] Apparently, the only semblance of overt act that may be attributed to appellant is that he seemed ready to assist the assailant. However, this inference is not clearly supported by the evidence.

Be that as it may, this Court has ruled that conspiracy is not sufficiently proved where the only act attributable to the other accused is an apparent readiness to provide assistance, but with no certainty as to its ripening into an overt act.[31]

To be sure, conspiracy is not a harmless innuendo to be taken lightly or accepted at every turn. It is a legal concept that imputes culpability under specific circumstances; as such, it must be established as clearly as any element of the crime.[32] Evidence to prove it must be positive and convincing, considering that it is a convenient and simplistic device by which the accused may be ensnared and kept within the penal fold.[33]

Criminal liability cannot be based on a general allegation of conspiracy, and a judgment of conviction must always be founded on the strength of the prosecution’s evidence. The Court ruled thus in *People v. Legaspi*,[34]

from which we quote:

“At most, the prosecution, realizing the weakness of its evidence against accused-appellant Franco, merely relied and pegged the latter’s criminal liability on its sweeping theory of conspiracy, which to us, was not attendant in the commission of the crime.

“The rule is firmly entrenched that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defense could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.

“Verily, it is the role of the prosecution to prove the guilt of the appellant beyond reasonable doubt in order to overcome the constitutional presumption of innocence.”[35]

In sum, conviction must rest on hard evidence showing that the accused is guilty beyond reasonable doubt of the crime charged.[36] In criminal cases, moral certainty -- not mere possibility -- determines the guilt or the innocence of the accused.[37] Even when the evidence for the defense is weak, the accused must be acquitted when the prosecution has not proven guilt with the requisite quantum of proof required in all criminal cases.

WHEREFORE, the challenged Decision is hereby SET ASIDE. Consequently, Lomer Mandao is ACQUITTED on reasonable doubt and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The director of the Bureau of Corrections is ORDERED to implement this Decision immediately and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs de oficio.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.
Puno, (Chairman), J., abroad on official business.

[1] Rollo, pp. 14-18; records, pp. 182-186. Penned by Judge Pedro L. Suan.

[2] Id., p. 18; records, p. 186.

[3] Rollo, p. 7; records, p. 1. The Information was signed by First Assistant Provincial Prosecutor Liben Go Medina.

[4] Atty. Graciano T. Bañosia.

[5] See Order dated March 7, 1996; records, p. 41.

[6] Appellee’s Brief, pp. 4-6; rollo, pp. 73-75. This was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Cleto R. Villacorta.

[7] Appellant’s Brief, pp. 1-2; rollo, pp. 43-44. This was signed by accused’s counsel de parte, Atty. Rodolfo D. Pactolin.

[8] RTC Decision, pp. 4-5; rollo, pp. 17-18; records, pp. 185-186.

- [9] This case was deemed submitted for decision on February 28, 2000, when the period given to appellant to file his reply brief expired, per Resolution dated January 29, 2001.
- [10] Appellant's Brief, p. 2; rollo, pp. 44. Original in upper case and underscored.
- [11] *Fortuna v. People*, 348 SCRA 360, December 15, 2000.
- [12] *People v. Alib*, 322 SCRA 93, January 18, 2000.
- [13] *Grefalde v. Sandiganbayan*, 348 SCRA 367, December 15, 2000.
- [14] *Salvatierra v. Court of Appeals*, 333 SCRA 524, June 16, 2000; *People v. Del Rosario*, 305 SCRA 740, April 14, 1999.
- [15] *People v. Rafael*, 343 SCRA 97, October 13, 2000.
- [16] TSN, April 15, 1996, pp. 33-35.
- [17] *Id.*, p. 55.
- [18] *People v. Milliam*, 324 SCRA 155, January 31, 2000.
- [19] *People v. Birgonio Jr.*, 340 SCRA 269, September 13, 2000.
- [20] *People v. Doinog*, 332 SCRA 336, May 31, 2000.
- [21] 346 SCRA 73, November 27, 2000.
- [22] *Id.*, p. 82, per Quisumbing, J.
- [23] *People v. Castillo*, 333 SCRA 506, June 16, 2000.
- [24] *People v. Marquita*, 327 SCRA 41, March 1, 2000.
- [25] TSN, April 15, 1996, p. 37.
- [26] *Supra*.
- [27] *Id.*, pp. 541-542, per Gonzaga-Reyes, J.
- [28] *People v. Calabroso*, 340 SCRA 332, September 14, 2000; *People v. Eljorde*, 306 SCRA 188, April 21, 1999.
- [29] *People v. Bato*, 348 SCRA 253, December 15, 2000.
- [30] TSN, April 16, 1996, p. 8.
- [31] *People v. Taraya*, 344 SCRA 401, October 27, 2000.
- [32] *People v. Cupino*, 329 SCRA 581, April 3, 2000.
- [33] *People v. Magno*, 322 SCRA 494, January 19, 2000.
- [34] 331 SCRA 95, April 27, 2000.
- [35] *Id.*, pp. 27-128, per Buena, J.
- [36] *Evangelista v. People*, 337 SCRA 671, August 14, 2000.
- [37] *People v. Albacin*, 340 SCRA 249, September 13, 2000.

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