

THIRD DIVISION

[G.R. No. 204894, March 10, 2014]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NOEL ENOJAS Y HINGPIT, ARNOLD GOMEZ Y FABREGAS, FERNANDO SANTOS Y DELANTAR, AND ROGER JALANDONI Y ARI, APPELLANTS.

D E C I S I O N

ABAD, J.:

On September 4, 2006 the City Prosecutor of Las Piñas charged appellants Noel Enojas y Hingpit (Enojas), Arnold Gomez y Fabregas (Gomez), Fernando Santos y Delantar (Santos), and Roger Jalandoni y Ari (Jalandoni) with murder before the Las Piñas Regional Trial Court (RTC) in Criminal Case 06-0854.^[1]

PO2 Eduardo Gregorio, Jr. (PO2 Gregorio) testified that at around 10:30 in the evening of August 29, 2006, he and PO2 Francisco Pangilinan (PO2 Pangilinan) were patrolling the vicinity of Toyota Alabang and SM Southmall when they spotted a taxi that was suspiciously parked in front of the Aguila Auto Glass shop near the intersection of BF Almanza and Alabang-Zapote Roads. The officers approached the taxi and asked the driver, later identified as accused Enojas, for his documents. The latter complied but, having entertained doubts regarding the veracity of documents shown them, they asked him to come with them to the police station in their mobile car for further questioning.^[2]

Accused Enojas voluntarily went with the police officers and left his taxi behind. On reaching the 7-11 convenience store on the Zapote-Alabang Road, however, they stopped and PO2 Pangilinan went down to relieve himself there. As he approached the store's door, however, he came upon two suspected robbers and shot it out with them. PO2 Pangilinan shot one suspect dead and hit the other who still managed to escape. But someone fired at PO2 Pangilinan causing his death.

On hearing the shots, PO2 Gregorio came around and fired at an armed man whom he saw running towards Pilar Village. He saw another man, who came from the Jollibee outlet, run towards Alabang-Zapote Road while firing his gun at PO2 Gregorio. The latter returned fire but the men were able to take a taxi and escape. PO2 Gregorio radioed for help and for an ambulance. On returning to his mobile car, he realized that accused Enojas, the taxi driver they had with them had fled.

P/Insp. Ferjen Torred (Torred), the Chief of Investigation Division of the Las Piñas Police, testified that he and PO2 Teoson Rosarito (PO2 Rosarito) immediately responded to PO2 Gregorio's urgent call. Suspecting that accused Enojas, the taxi driver who fled, was involved in the attempted robbery, they searched the abandoned taxi and found a mobile phone that Enojas apparently left behind. P/Ins. Torred instructed PO3 Joel Cambi (PO3 Cambi) to monitor its incoming messages.^[3]

The police later ascertained that the suspect whom PO2 Pangilinan had killed was someone named Reynaldo Mendoza who was armed with a .38 caliber revolver. The police found spent 9 mm and M-16 rifle shells at the crime scene. Follow-up operations at nearby provinces resulted in finding the dead body of one of the suspects, Alex Angeles, at the Metro South Medical Center along Molino, Bacoor, Cavite.^[4]

PO3 Cambi and PO2 Rosarito testified that they monitored the messages in accused Enojas' mobile phone and, posing as Enojas, communicated with the other accused. The police then conducted an entrapment operation that resulted in the arrest of accused Santos and Jalandoni. Subsequently, the police were also able to capture accused Enojas and Gomez. The prosecution presented the transcripts of the mobile phone text messages between Enojas and some of his co-accused.^[5]

The victim's father, Ricardo Pangilinan, testified that his son was at the time of his death 28 years old, unmarried, and was receiving police pay of P8,000.00 to P10,000.00 per month. Ricardo spent P99,999 for burial expense, P16,000.00 for the interment services, and P50,000.00 for purchase of the cemetery lot.^[6]

Manifesting in open court that they did not want to adduce any evidence or testify in the case,^[7] the accused opted to instead file a trial memorandum on March 10, 2008 for their defense. They pointed out that they were entitled to an acquittal since they were all illegally arrested and since the evidence of the text messages were inadmissible, not having been properly identified.

On June 2, 2008 the RTC rendered judgment,^[8] finding all the accused guilty of murder qualified by evident premeditation and use of armed men with the special aggravating circumstance of use of unlicensed firearms. It thus sentenced them to suffer the penalty of *reclusion perpetua*, without the possibility of parole and to indemnify the heirs of PO2 Pangilinan with P165,999.00 as actual damages, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P2,080,000.00 as compensation for loss of earning capacity.

Upon review in CA-G.R. CR-H.C. 03377, on June 14, 2012 the Court of Appeals (CA) dismissed the appeal and affirmed *in toto* the conviction of the accused.^[9] The CA, however, found the absence of evident premeditation since the prosecution failed to prove that the several accused planned the crime before committing it. The accused appealed from the CA to this Court.^[10]

The defense points out that the prosecution failed to present direct evidence that the accused Enojas, Gomez, Santos, or Jalandoni took part in shooting PO2 Pangilinan dead.^[11] This may be true but the prosecution could prove their liability by circumstantial evidence that meets the evidentiary standard of proof beyond reasonable doubt. It has been held that circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. ^[12]

Here the totality of the circumstantial evidence the prosecution presented

sufficiently provides basis for the conviction of all the accused. Thus:

1. PO2 Gregorio positively identified accused Enojas as the driver of the taxicab suspiciously parked in front of the Aguila Auto Glass shop. The officers were bringing him with them to the police station because of the questionable documents he showed upon query. Subsequent inspection of the taxicab yielded Enojas' mobile phone that contained messages which led to the entrapment and capture of the other accused who were also taxicab drivers.
2. Enojas fled during the commotion rather than remain in the cab to go to the police station where he was about to be taken for questioning, tending to show that he had something to hide. He certainly did not go to the police afterwards to clear up the matter and claim his taxi.
3. PO2 Gregorio positively identified accused Gomez as one of the men he saw running away from the scene of the shooting.
4. The text messages identified "Kua Justin" as one of those who engaged PO2 Pangilinan in the shootout; the messages also referred to "Kua Justin" as the one who was hit in such shootout and later died in a hospital in Bacoar, Cavite. These messages linked the other accused.
5. During the follow-up operations, the police investigators succeeded in entrapping accused Santos, Jalandoni, Enojas, and Gomez, who were all named in the text messages.
6. The text messages sent to the phone recovered from the taxi driven by Enojas clearly made references to the 7-11 shootout and to the wounding of "Kua Justin," one of the gunmen, and his subsequent death.
7. The context of the messages showed that the accused were members of an organized group of taxicab drivers engaged in illegal activities.
8. Upon the arrest of the accused, they were found in possession of mobile phones with call numbers that corresponded to the senders of the messages received on the mobile phone that accused Enojas left in his taxicab.^[13]

The Court must, however, disagree with the CA's ruling that the aggravating circumstances of a) aid of armed men and b) use of unlicensed firearms qualified the killing of PO2 Pangilinan to murder. In "aid of armed men," the men act as accomplices only. They must not be acting in the commission of the crime under the same purpose as the principal accused, otherwise they are to be regarded as co-principals or co-conspirators. The use of unlicensed firearm, on the other hand, is a special aggravating circumstance that is not among the circumstances mentioned in Article 248 of the Revised Penal Code as qualifying a homicide to murder.^[14] Consequently, the accused in this case may be held liable only for homicide, aggravated by the use of unlicensed firearms, a circumstance alleged in the information.