

## THIRD DIVISION

[ G.R. No. 167710, June 05, 2009 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JOVEN DE GRANO, ARMANDO DE GRANO, DOMINGO LANDICHO AND ESTANISLAO LACABA, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Resolutions<sup>[1]</sup> dated January 25, 2005 and April 5, 2005, issued by the Court of Appeals (CA) in CA-G.R. SP No. 88160.

The antecedents are as follows:

On November 28, 1991, an Information for murder committed against Emmanuel Mendoza was filed with the Regional Trial Court (RTC), Branch 6, Tanauan, Batangas, against Joven de Grano (Joven), Armando de Grano (Armando), and Estanislao Lacaba (Estanislao), together with their co-accused Leonides Landicho (Leonides), Domingo Landicho (Domingo), and Leonardo Genil (Leonardo), who were at-large.<sup>[2]</sup> It was docketed as Criminal Case No. 2730, the pertinent portion of which reads:

That on April 21, 1991, between 9:00 o'clock and 10:00 o'clock in the evening, in Barangay Balakilong, [M]unicipality of Laurel, [P]rovince of Batangas, and within the jurisdiction of the Honorable Court, all the above named accused, conspiring, confederating, and helping one another, motivated by common design and intent to kill, did then and there, willfully, unlawfully, and feloniously, and by means of treachery and with evident premeditation, shoot EMMANUEL MENDOZA with firearms, inflicting upon him eight gunshot wounds and causing his death thereby, thus committing the crime of MURDER to the damage and prejudice of his heirs in the amount as the Honorable Court shall determine.<sup>[3]</sup>

Duly arraigned, Joven, Armando, and Estanislao pleaded "not guilty" to the crime as charged; while their co-accused Leonides, Leonardo, and Domingo remained at-large. Thereafter, respondents filed a motion for bail contending that the prosecution's evidence was not strong.<sup>[4]</sup>

Meanwhile, considering that one of the accused was the incumbent Mayor of Laurel, Batangas at the time when the crime was committed, Senior State Prosecutor Hernani T. Barrios moved that the venue be transferred from the RTC, Branch 6,

Tanauan, Batangas to any RTC in Manila. Consequently, the case was transferred to the RTC Manila for re-raffling amongst its Branches. The case was re-docketed as Criminal Case No. 93-129988 and was initially re-raffled to Branches 6, 9, and 11 before being finally raffled to Branch 27, RTC, Manila.<sup>[5]</sup>

Before transferring the case to the RTC, Branch 27, Manila, the trial court deferred the resolution of respondents' motion for bail and allowed the prosecution to present evidence. Thereafter, the hearing of the application for bail ensued, wherein the prosecution presented Teresita and Dr. Leonardo Salvador. After finding that the prosecution's evidence to prove treachery and evident premeditation was not strong, the RTC, Branch 11, Manila, granted respondents' motion for bail. A motion for reconsideration was filed, but it was denied.<sup>[6]</sup>

The prosecution then filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 41110, which was denied. Aggrieved, they sought recourse before this Court in G.R. No. 129604. In a Resolution dated July 12, 1999, this Court granted the petition and set aside the decision of the CA together with the Order of the RTC granting bail to the respondents. The RTC was also ordered to immediately issue a warrant of arrest against the accused. The resolution was also qualified to be immediately executory.<sup>[7]</sup> As a result, Estanislao was re-arrested, but Joven and Armando were not.<sup>[8]</sup>

However, upon respondents' motion for reconsideration, this Court, in a Resolution dated September 4, 2001, resolved to remand the case to the RTC. We noted that, in view of the transmittal of the records of the case to this Court in connection with the petition, the trial court deferred the rendition of its decision. Consequently, the case was remanded to the RTC for further proceedings, including the rendition of its decision on the merits.

After the presentation of the parties' respective sets of evidence, the RTC rendered a Decision<sup>[9]</sup> dated April 25, 2002, finding several accused guilty of the offense as charged, the dispositive portion of which reads:

WHEREFORE, CONSIDERING ALL THE FOREGOING, this Court finds the accused JOVEN DE GRANO, ARMANDO DE GRANO, DOMINGO LANDICHO and ESTANISLAO LACABA, guilty beyond reasonable doubt of the crime of MURDER, qualified by treachery, and there being no modifying circumstance attendant, hereby sentences them to suffer the penalty of Reclusion Perpetua, and to indemnify the heirs of Emmanuel Mendoza the sum of P50,000.00 and to pay the costs.

The case as against accused Leonides Landicho and Leonardo Genil is hereby sent to the files or archived cases to be revived as soon as said accused are apprehended.

Let alias warrants of arrest be issued against accused Leonardo Genil and Leonides Landicho.

Only Estanislao was present at the promulgation despite due notice to the other

respondents.

Respondents, thru counsel, then filed a Joint Motion for Reconsideration dated May 8, 2002, praying that the Decision dated April 25, 2002 be reconsidered and set aside and a new one be entered acquitting them based on the following grounds, to wit:

1. The Honorable Court erred in basing the decision of conviction of all accused solely on the biased, uncorroborated and baseless testimony of Teresita Duran, the common-law wife of the victim;
2. The Honorable Court erred in not giving exculpatory weight to the evidence adduced by the defense, which was amply corroborated on material points;
3. The Honorable Court erred in not finding that the failure of the prosecution to present rebuttal evidence renders the position of the defense unrebutted;
4. The Honorable Court erred in adopting conditional or preliminary finding of treachery of the Supreme Court in its Resolution dated July 12, 1999; and
5. The Honorable Court erred in rendering a verdict [sic] of conviction despite the fact that the guilt of all the accused were not proven beyond reasonable doubt.<sup>[10]</sup>

In its Opposition, the prosecution pointed out that while the accused jointly moved for the reconsideration of the decision, all of them, except Estanislao, were at-large. Having opted to become fugitives and be beyond the judicial ambit, they lost their right to file such motion for reconsideration and to ask for whatever relief from the court.<sup>[11]</sup>

Acting on respondents' motion for reconsideration, the RTC issued an Order<sup>[12]</sup> dated April 15, 2004 modifying its earlier decision by acquitting Joven and Armando, and downgrading the conviction of Domingo and Estanislao from murder to homicide. The decretal portion of the Order reads:

**WHEREFORE, IN VIEW OF ALL THE FOREGOING,** the Court modifies its decision and finds accused **DOMINGO LANDICHO and ESTANISLAO LACABA, "GUILTY"** beyond reasonable doubt, as principal of the crime of **Homicide**, and in default of any modifying circumstance, sentences them to an indeterminate prison term of SIX (6) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to TWELVE YEARS [and] ONE DAY of Reclusion Temporal, as maximum. Said accused shall be credited with the full period of their preventive imprisonment pursuant to B.P. Blg. 85.

Accused **ARMANDO DE GRANO** and **JOVEN DE GRANO** are hereby

**ACQUITTED** on the basis of reasonable doubt. They are likewise declared free of any civil liability.

To the extent herein altered or modified, the Decision dated April 25, 2002 stands.

**SO ORDERED.**<sup>[13]</sup>

Estanislao filed a Notice of Appeal, while the prosecution sought reconsideration of the Order arguing that:

1. There was absolutely no basis for this Court to have taken cognizance of the "Joint Motion for Reconsideration" dated May 8, 2002, citing Sec. 6, Rule 120 of the Rules of Court.
2. The testimony of Teresita Duran deserves credence. The delay in the taking of Ms. Duran's written statement of the events she witnessed is understandable considering that Joven de Grano was the mayor of the municipality where the crime was committed and that another accused, Estanislao Lacaba, was a policeman in the same municipality.
3. The crime committed is murder.
4. Accused Armando de Grano and Joven de Grano participated in the conspiracy.

On September 28, 2004, the RTC issued an Order<sup>[14]</sup> denying the motion and giving due course to Estanislao's notice of appeal.

Petitioner, thru Assistant City Prosecutor Cesar Glorioso of the Office of the Manila City Prosecutor, with the assistance of private prosecutor Atty. Michael E. David, filed a Petition<sup>[15]</sup> for *certiorari* under Rule 65 of the Rules of Court before the CA arguing that:

- (a) the private respondents, having deliberately evaded arrest after being denied bail and deliberately failing to attend the promulgation of the Decision despite due notice, lost the right to move for reconsideration of their conviction; and
- (b) the grounds relied upon by respondent RTC in modifying its Decision are utterly erroneous.<sup>[16]</sup>

Petitioner alleged that it had no other plain, adequate, and speedy remedy, considering that the State could not appeal a judgment of acquittal. However, by way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court upon a showing by the petitioner that the lower court, in acquitting the accused, committed not only reversible errors of judgment, but also grave abuse of discretion amounting to lack

or excess of jurisdiction, or a denial of due process, thus rendering the assailed judgment void. Consequently, the accused cannot be considered at risk of double jeopardy.<sup>[17]</sup>

Respondent De Grano filed a Motion to Dismiss,<sup>[18]</sup> arguing that the verification and certification portion of the petition was flawed, since it was signed only by counsel and not by the aggrieved party. Also, the petition did not contain the conformity of the Solicitor General.<sup>[19]</sup>

On January 31, 2005, petitioner, through the private prosecutor, filed an Opposition to Motion to Dismiss.<sup>[20]</sup> Petitioner explained that, for lack of material time, it failed to secure the conformity of the Office of the Solicitor General (OSG) when it filed the petition, but it would nevertheless obtain it. A day after filing the petition, the private prosecutor sought the OSG's conformity in a letter<sup>[21]</sup> dated January 12, 2005. The OSG, in turn, informed the private prosecutor that rather than affixing its belated conformity, it would rather await the initial resolution of the CA.<sup>[22]</sup> Also, so as not to preempt the action of the Department of Justice (DOJ) on the case, the OSG instructed the private prosecutor to secure the necessary endorsement from the DOJ for it to pursue the case. Anent the verification and certification of the petition having been signed by the private prosecutor, petitioner explained that private complainant Teresita was in fear for her life as a result of the acquittal of former Mayor Joven de Grano, but she was willing to certify the petition should she be given ample time to travel to Manila.<sup>[23]</sup>

However, in a Resolution<sup>[24]</sup> dated January 25, 2005, which was received by the petitioner on the same day it filed its Opposition or on January 31, 2005, the petition was dismissed outright by the CA on the grounds that it was not filed by the OSG and that the assailed Orders were only photocopies and not certified true copies. The dispositive portion of the Resolution reads:

**WHEREFORE,** premises considered, this petition is hereby  
**OUTRIGHTLY DISMISSED.**

Petitioner timely filed a Motion for Reconsideration.<sup>[25]</sup> In addition to the justifications it raised in its earlier Opposition to the Motion to Dismiss, petitioner argued that the petition was not only signed by the private prosecutor, it was also signed by the prosecutor who represented the petitioner in the criminal proceedings before the trial court. Petitioner also maintains that the certified true copies of the assailed Orders were accidentally attached to its file copy instead of the one it submitted. To rectify the mistake, it attached the certified true copies of the assailed Orders.<sup>[26]</sup> This was opposed by the respondents in their Comment/Opposition to Petitioner's Motion for Reconsideration.<sup>[27]</sup>

Meanwhile, in its 1<sup>st</sup> Indorsement<sup>[28]</sup> dated March 15, 2005, DOJ Secretary Raul M. Gonzalez, endorsed the petition filed by the Assistant City Prosecutor, with the assistance of the private prosecutor, to the Solicitor General for his conformity.