

THIRD DIVISION

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

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

D E C I S I O N

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 Bodiongangs 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: