

## THIRD DIVISION

[ G.R. No. 129691, June 29, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE LOMBOY @ "JOSE", ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

Acquittal is inevitable if inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt. Conviction must rest on the moral certainty of appellant's guilt brought about by the totality of the prosecution's evidence.

#### The Case

Jose Lomboy appeals the February 14, 1997 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of San Carlos City, Pangasinan (Branch 57), finding him guilty of (A) frustrated murder, sentencing him to seven (7) years of *prision mayor* to thirteen (13) years and four (4) months of *reclusion temporal* in Criminal Case No. SCC-2014; and (B) illegal possession of explosive (hand grenade), imposing upon him "eighteen (18) years and eight (8) months of *reclusion temporal* to *reclusion perpetua*."

Two separate Informations both dated March 26, 1993, were filed against appellant by the Office of the Provincial Prosecutor. The first,<sup>[2]</sup> for frustrated murder, reads:

"That on or about December 25, 1992, at Barangay Angatel, [M]unicipality of Urbiztondo, [P]rovince of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did, then and there, wi[l]fully, unlawfully and feloniously throw a [hand grenade] thereby hitting Barangay Captain Benjamin Pidlaoan, inflicting upon him the following injuries:

- Acute subaural hematoma, brain laceration shrapnel injury

the accused having thus performed all the acts of execution which would have produced the crime of [m]urder as a consequence but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and is due to the timely and able medical assistance afforded to Barangay Captain Benjamin Pidlaoan which prevented his death, to his damage and prejudice.

Contrary to Article 248 in relation to Art. 6 of the Revised Penal Code."<sup>[3]</sup>

The second Information<sup>[4]</sup> charged appellant with illegal possession of explosive (hand grenade), allegedly committed as follows:

"That on or about December 25, 1992, at Barangay Angatel, [M]unicipality of Urbiztondo, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, wi[l]fully, unlawfully and feloniously have in his possession, custody and control[,] [a hand grenade], without first securing the necessary permit and license to possess the same[,] which he used in the commission of the crime of [f]rustrated [m]urder.

Contrary to P.D. 1866."<sup>[5]</sup>

The appellant was arraigned on May 26, 1993,<sup>[6]</sup> and he pleaded<sup>[7]</sup> not guilty to both charges. Thereafter, the two cases were heard jointly.<sup>[8]</sup> After trial, the lower court promulgated the assailed Decision,<sup>[9]</sup> the dispositive portion of which states:

"WHEREFORE, the accused, JOSE LOMBOY, alias `Jose,' is hereby found:

Under Criminal Case No. SCC-2014: GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER herein charged, defined and penalized under Article 248 in relation to Art. 6 of the Revised Penal Code, and he is hereby sentenced, under the Indeterminate Sentence Law, to suffer the penalty of imprisonment of from [s]even (7) [y]ears of prison mayor to [t]hirteen (13) [y]ears and [f]our (4) [m]onths of reclusion temporal, and to indemnify Brgy. Cap't. Benjamin Pidlaoan in the amount of P300,000.00.

Under Criminal Case No. SCC-2015: GUILTY beyond reasonable doubt of the crime of [i]llegal [p]ossession of [e]xplosive ([h]andgrenade) defined and penalized under Presidential Decree No. 1866, as herein charged, and he is hereby sentenced to suffer the penalty of imprisonment, under the Indeterminate Sentence Law, of [e]ighteen (18) [y]ears and [e]ight (8) [m]onths of reclusion temporal to reclusion perpetua."<sup>[10]</sup> (Emphasis in the original)

In view of the penalty imposed, the appeal was filed directly with this Court.<sup>[11]</sup>

## **The Facts**

### **Version of the Prosecution**

In its Brief,<sup>[12]</sup> the Office of the Solicitor General presents the facts in this wise:

"On December 25, 1992, about 1:00 o'clock a.m., private complainant Barangay Captain Benjamin Pidlaoan, together with Barangay Kagawad Marcelino C. Tapiador and Mardonio Tampico, were on their way home from a Christmas dance party of Barangay Angatel, Ubiztondo, Pangasinan. While walking along the barangay road and about 8 meters from the house of Rodolfo Marcelo, they saw a man lying face down by the roadside. When they were about 5 or 6 meters away, the man by the roadside directed a flashlight at them. Pidlaoan, in turn, flashed his

flashlight at the man who was wearing a maong jacket. They recognized the man to be appellant, a 27-year-old barangay mate of theirs.

"Pidlaoan approached appellant and held the latter's left hand to help him get up. Appellant's right hand was noticeably on his stomach as if holding something. After helping him up, Pidlaoan asked him why he was lying down by the road to which he did not answer. When asked as to who his companion was, appellant replied that he was with Rodolfo Marcelo. Since the latter's house was just nearby, or only about 5 to 6 meters away, Pidlaoan stood by the left side of appellant and held him by the back collar of his jacket with his (Pidlaoan's) right hand, and pulled him towards the direction of Marcelo's house. While near the front gate of Marcelo's house and while calling for Marcelo to come out, Marcelo's young son who stood about 10 meters away from them, uttered 'take care Barangay Captain because he has [a] grenade with him'.

"Suddenly, appellant managed to free himself from Pidlaoan's hold and moved about 3 meters backwards. He then got a grenade from inside his jacket and held it in one hand, with the other hand removing the pin thereof with a pulling movement. While shouting 'vulva of your mother, we will all die', appellant threw the grenade in the direction of Pidlaoan and the same landed near him. Thereafter, there was an explosion and thick smoke.

"When Kagawad Tapiador, who was only about 5 meters from appellant, recognized that what appellant was holding was a hand grenade, he ducked with his face down.

"When Tapiador and Tampico saw that Pidlaoan was seriously wounded as he could not even stand, they brought him to the clinic of Dr. Serafino Padlan at Urbiztondo, Pangasinan. He was later transferred to the Villaflor Doctors Hospital in Dagupan City.

"Upon receipt of a radio message about the explosion incident from Col. Ernesto Palisoc, SPO1 Tandoc and SPO2 Renato Solomon were dispatched at about 7:00 A.M. to investigate. Upon learning that Pidlaoan was brought to the Padlan clinic, they rushed thereto. They, however, were unable to speak with him as he was in critical condition having sustained a wound on his head. Thus, they instead proceeded to the scene of the incident at Barangay Angatel where they were able to recover five (5) empty bullet shells of M-14 and M-16 armalite rifles; one (1) hand grenade handle."<sup>[13]</sup>

### ***Version of the Defense***

For his part, appellant submits the following as the facts of the case:<sup>[14]</sup>

"LAMBERTO<sup>[15]</sup> LOMBOY, brother-in-law<sup>[16]</sup> of accused-appellant testified that on December 25, 1992 at around 8:00 o'clock in the evening while inside his house at Barangay Angatel, Urbiztondo, his brother Jose Lomboy and Boy Ferrera dropped at his house and invited him to attend a Christmas dance ball. He told them to go ahead and he will just follow

them soon. He and Dominador Lomboy, another brother[, ] left the house at past 8:00 o'clock in the evening and proceeded to the Christmas party. While he was watching the party, he saw Brgy. Capt. Pidlaoan [arrive] carrying a hand grenade hanging [from] the left pocket of his camouflage jacket[, ] together with Mardonio Tampico[, ] who was carrying an M-16 rifle[, ] and Marcelino Tapiador carrying an M-14 rifle. (emphasis in the original, citations omitted)

"JOSE LOMBOY, accused-appellant testified that on December 25, 1992, at around 1:00 o'clock early dawn, he was [in front] of the house of his barkada, Rodolfo Marcelo conversing with him when he noticed some people walking along the road so he focused his flashlight at them. He saw Brgy Capt. Pidlaoan together with his aide, Mardonio Tampico and Barangay Kagawad Marcelino Tapiador. They were carrying two (2) long firearms and a [hand grenade] hanging [from] the pocket of Brgy. Capt. Pidlaoan who approached him, held his collar and struck him in the face, hitting his left cheekbone and on the head with the [use] of [the] hand grenade which was removed from his pocket. The trio mauled and gang[ed]-up on him, and when the Barangay Captain loosened his hold on him he was able to run [towards] the back of Rodolfo Marcelo's house planted with banana and coconut trees. They ran after him and kept on shooting but he was not hit because he ran in a zigzag manner. Brgy. Capt. Pidlaoan threw the [hand grenade] at him but when it exploded, the former was hit instead and got seriously injured. He went to his aunt's house for fear that Brgy. Capt. Pidlaoan will kill him and he stayed there for one (1) week until he was arrested by SPO1 Tandoc and SPO2 Solomon accompanied by Cesar Pidlaoan, son of the victim who squeezed his neck. He was incarcerated at Urbiztondo Municipal jail and on January 4, 1993, he was brought to Bolingit Hospital for medical treatment."<sup>[17]</sup> (emphasis in the original, citations omitted)

### **Ruling of the Trial Court**

The trial court accepted the version of the prosecution as credible and rejected that of the defense, ruling thus:

"First, in view of the completely opposite claims of the prosecution and the defense as to who pulled the pin of, and threw, the [hand grenade], the matter of motive has assumed a special importance in [unraveling] the mystery; and, on this issue, the accused claimed that, just before the explosion of the [hand grenade], when he asked Brgy. Cap't. Pidlaoan why the latter was hitting him on the face and head with a [hand grenade], said barangay captain purportedly replied, 'Vulva of your mother, I'll surely kill you now because you are a family of thieves. xxx We were not able to kill you on the 3rd of January, I'll surely kill you now, you can't escape.'<sup>[, ]</sup> said accused explaining that the barangay captain was referring to an alleged incident in the early dawn of January 3, 1992, when the house he, his mother and sister are living in was shot at, although he did not know then who did the [alleged] shooting. The Court finds this story of the accused, besides being uncorroborated, not to be worthy of belief for the following reasons:

- (a) It is merely based on the accused's conjecture that Brgy. Cap't. Pidlaoan had anything to do with the alleged shooting up of accused's house on January 3, 1992, assuming this without any basis, to have actually happened;
- (b) The presumption that Brgy. Cap't. Pidlaoan is a reasonable and responsible public official of his barangay is not rebutted by the uncorroborated claim of the accused that by merely suspecting him and his family as 'a family of thieves', he would shoot up their house and would kill the accused right on the road in front of the house of the accused's barkada, Rodolfo Marcelo;
- (c) It is unnatural and contrary to logic that the barangay captain would confess to the crime of shooting up the house of the accused months prior the present incident before carrying out his alleged intention to kill the accused;
- (d) In view of all the foregoing, the Court traces the ill-motive to kill the barangay captain to the accused who was harboring the belief that it was the barangay captain who shot up the house where he (The accused) and his mother and sister were then sleeping and who was purportedly accusing them of being 'a family of thieves.'

"Second, it is established that two kinds of armalite rifles were fired [at] the scene of the crime, and it is claimed by the accused that he saw the barangay captain's two companions to be carrying these firearms as they approached him, if it is really true that it was the intention of said barangay captain to kill him, because he belonged to a family of thieves and he could not escape, the barangay captain and/or his companions should have shot him with the armalite rifles, not the [hand grenade] just to kill one person putting to risk not only the target but the persons nearby, including the thrower himself if thrown not far enough.

"Third, well-established is the rule on evidence that flight is an evidence of guilt; and in the instant case, as the [hand grenade] exploded, the accused ran away from the scene and proceeded to Malasiqui where he stayed in the house of his aunt, Leoning Gonzales, at Brgy. Lokeb Norte, for about one (1) week until he was arrested thereat by Urbiztondo policemen accompanied by Brgy. Cap't. Pidlaoan's son, Cesar. xxx.

"Fourth, the claim of the accused that he was being mauled by Brgy. Cap't. Pidlaoan and his companions when he was able to free himself from the hold of the barangay captain, is belied by the very Medico-Legal Certificate and the testimony of Dr. Conrado H. Cuison, M.D. who examined and treated him and who prepared said document, which the defense presented as evidence of his alleged injuries xxx"<sup>[18]</sup> (emphasis in the original)

### **The Issues**

Appellant submits that the court *a quo* committed the following errors:

"I