

## SECOND DIVISION

[ G.R. No. 102596, December 17, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NICASIO ENOJA @ "NICK", JOSE ENOJA @ "MOROS", ANTONIO  
GALUPAR @ "TONY", RONNIE ENOJA @ "BUD-OY", AND YOLLY  
ARMADA, ACCUSED-APPELLANTS.**

### DECISION

#### QUISUMBING, J.:

This is an appeal from the decision dated October 31, 1990, of the Regional Trial Court, Iloilo City, Branch 26, in Criminal Case No. 31550, convicting accused-appellants Nicasio Enoja @ "Nick", Jose Enoja @ "Moros", Antonio Galupar @ "Tony", Ronnie Enoja @ "Bud-oy", and Yolly Armada of the crime of murder, and sentencing them as follows:

"...Nicasio Enoja @ Nick, Jose Enoja @ "Moros", and Antonio Galupar alias "Tony", each to suffer the penalty of reclusion perpetua; Yolly Armada to suffer an indeterminate prison sentence ranging from ten (10) years and one (1) day of prison mayor as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum, and Ronnie Enoja alias "Bud-oy" to suffer indeterminate prison sentence ranging from six (6) years and one (1) day of prison mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum and all the said accused, to pay, jointly and severally, the heirs of the deceased Siegfred Insular the sum of P30,000.00 for his death and P19,200.00 as actual damages representing expenses, without subsidiary imprisonment in case of insolvency together with all the accessory penalties provided for by law and to pay the costs."

[1]

The five appellants, all farmers and residents of Barangay Caraudan, Janiuay, Iloilo, are related to each other. Jose Enoja @ "Moros", Ronnie Enoja @ "Bud-oy", and Yolly Armada, are the brother, son and first cousin, respectively, of appellant Nicasio Enoja, while Antonio Galupar is a "kumpadre." Three other accused, Joel Enoja @ "Mike", Melvin Castor, and Antonio Enoja, remain at-large.

The victim, Siegfred G. Insular, was a suspected commander of the "New People's Army" (NPA). A day before the incident, the house of Romulo Enoja, brother of the Enojias, was allegedly sprayed with bullets by the NPA, killing Romulo's daughter and son. Before that, the house of Catelina Enoja, mother of the Enojias, at Barangay Caraudan, was allegedly burned by the NPA.

The facts are not in dispute. In their consolidated brief, appellants adopted the factual findings of the trial court, as follows:[2]

"x x x [I]n the afternoon of July 2, 1987, at around 4:30 o'clock, while Siegfred Insular and his wife, Paterna, were on their way home from the market walking along the ricefield at Barangay Caraudan, Janiuay, Iloilo, they saw Yolly Armada with a long firearm in hand, walking on the other side of the field towards the same direction where the couple were going.

Paterna did not at first recognize Yolly Armada as the man on the other side of the ricefield, and so, she called the attention of her husband saying that the man was carrying a firearm. Recognizing the man, however, Siegfred told his wife: "never mind, he is Yolly Armada". The spouses Insular and Yolly Armada continued walking until they met ways in front of the ricemill of Teodoro Salamanca near the chapel. Siegfred greeted Armada by nodding his head to which Armada responded by also nodding his head. Siegfred then said "We will leave" but as he and his wife were about to proceed on their way, Armada blocked the couple and pointed his firearm to Siegfred with the barrel of the gun touching the left side of the body of the latter. Suddenly, Armada fired his gun and as Siegfred turned his back to run, Armada fired successive shots at him causing him to fall to the ground, wounded.

Almost simultaneously, several armed men appeared and took turns in firing at Siegfred. Among these armed men were Nicasio Enoja alias "Nick," Jose Enoja alias "Moros", Antonio Galupar alias "Tony," and Ronnie Enoja alias "Bud-oy." The body of the victim jerked as the accused took turns in shooting him.

After shooting Siegfred Insular, the accused turned to his wife, Paterna, and attempted to shoot her but Paterna Insular hugged Teodoro Salamanca who was then and there present, thus prompting the latter to shout to the accused: "do not include the girl." The accused heeded the plea of Teodoro Salamanca and refrained from shooting Paterna Insular.

Jose Enoja then turned to his brother Antonio Enoja and fired at the latter hitting him on the thigh. Thereafter, Jose Enoja approached Siegfred Insular who was then lying on the ground and placed the gun he used in shooting his brother, Antonio, near the hand of Siegfred Insular. Then Jose Enoja placed some live bullets into the pocket of Siegfred Insular. Jose Enoja called for a hammock and, in no time at all, there was a hammock brought to the place where Antonio Enoja was loaded and, thereafter, brought to the hospital. The body of Siegfred Insular was, however, left lying on the ground at the scene of the incident.

Nicasio Enoja announced that they would bring Paterna Insular and Teodoro Salamanca to the ricefield where they would be made to spend the night but Paterna pleaded to Nicasio Enoja to just bring them to the house of Patria Alcantara about five meters away from the scene of the incident. The accused granted the request of Paterna and brought her and Teodoro Salamanca to the house of Patria Alcantara where they were told to stay with the warning not to get out or they would be shot. It was only the following morning, after policemen and PC soldiers had arrived that Paterna and Salamanca were able to go out of the house of Alcantara.

The shooting incident reached the police station of Janiuay, Iloilo upon the report of one Alfredo Galupar, and so, a joint PC-INP team under P.C. Lt. Pangina and police station commander, Sgt. Reynaldo Soroñgon went to Barangay Caraudan and conducted investigation of the incident. That was already around 8:00 o'clock in the morning of July 3, 1987. The policemen were able to recovery several empty shells of different caliber of firearms from the crime scene. One short homemade firearm caliber .30, with one empty shell inside the chamber was likewise found and recovered from the ground near the left arm of the victim."

On March 11, 1988, Provincial Fiscal Vicente E. Aragona filed an Information<sup>[3]</sup> for murder against appellants and their three companions who were still at-large. The Information alleged:

"The undersigned Provincial Fiscal accuses NICASIO ENOJA alias "Nick", JOSE ENOJA alias "Moros", ANTONIO GALUPAR alias "Tony", RONNIE ENOJA alias "Bud-oy" and YOLLY ARMADA of the crime of Murder committed as follows:

That on or about July 2, 1987, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with JOEL ENOJA alias "Mike", MELVIN CASTOR and ANTONIO ENOJA, who are still at large, armed with firearms and taking advantage of superior strength to better realize their purpose, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one SIEGFRED INSULAR with said weapon with which they were then provided, thereby inflicting upon the latter gunshot wounds on the vital parts of his body which caused his death thereafter.

CONTRARY TO LAW."

On August 5, 1988, appellants were arraigned and entered their respective pleas of not guilty.

During trial, the prosecution presented the following witnesses: Teodoro Salamanca, an eyewitness to the shooting; Paterna Insular, widow of Siegred; Dr. Tito D. Doromal, medico-legal officer who did the autopsy; Pfc. Juan O. Gañon, and Pfc. Moises C. Reiteracion, Integrated National Police officers who responded to the shooting incident.

Dr. Doromal testified that the victim suffered five (5) gunshot wounds in the head and neck area, six (6) gunshot wounds in the thoraco-abdominal regions, and two (2) gunshot wounds in the extremities. The cause of death was maceration of the brain, secondary to gunshot wounds.<sup>[4]</sup>

Pfc. Juan O. Gañon stated that he entered the incident in the police blotter.<sup>[5]</sup> Pfc. Moises C. Reiteracion said he was part of the team which responded to the report of the shooting incident. The team found the body of the victim still lying on the same spot the following morning. They recovered empty shells of different calibers and a

homemade short firearm near the left arm of the victim.<sup>[6]</sup> Pfc. Reiteracion and two companions brought the body of the victim to the funeral home.<sup>[7]</sup>

For the defense, appellants presented Atty. David Tubongbanua, 4th Assistant Provincial Prosecutor of Iloilo, who recommended the dismissal of the case but was overturned by the Provincial Fiscal. Appellants themselves testified and, except for Armada, interposed the defense of denial and alibi.

Appellant Armada pleaded self-defense in shooting Siegfred. He claimed that while he was on his way from Barangay Quipot to Caraudan, to attend the wake of his niece and nephew, he heard gunshots near the chapel. When he went to the place, he saw Galupar lying wounded on the ground, shot by Siegfred. Siegfred then attempted to shoot Armada, but the latter beat him to the draw. Armada fired successive shots at Insular with his M-2 automatic carbine. He did not see Paterna in the vicinity. After the shooting, Salamanca, Nicasio and Arnold came out of the rice mill. Salamanca asked what happened and Armada answered that Siegfred shot Antonio and so, he shot Siegfred. Armada then left and surrendered to the PC station at Jibolo, Janiuay, Iloilo City.<sup>[8]</sup>

The other appellants admitted being in the vicinity of the crime, but categorically denied any participation in the shooting.

Nicasio claimed that he was with his son, Arnold, and Salamanca inside the latter's ricemill, milling palay when the shooting occurred.<sup>[9]</sup> However, Salamanca testified that at the time of the incident, there was no palay milling going on.<sup>[10]</sup>

Ronnie testified that he was doing household chores in their house at Barangay Caraudan, where his brother Rowel and sister Annelyn were lying in state, when he heard explosions coming from the direction of the ricemill.<sup>[11]</sup> Shortly thereafter, Arnold arrived and told them that Antonio was shot by Siegfred and requested that a hammock be brought to the scene so that Antonio could be brought to the hospital. Ronnie, Jose, and Jonathan Lazo, Ronnie's first cousin, immediately brought the hammock to the scene of the incident.<sup>[12]</sup> Ronnie thereafter saw Paterna arrive and cry upon seeing her slain husband. Ronnie and his companions placed Antonio in the hammock, boarded him in a tricycle, and rushed him to the hospital.<sup>[13]</sup> On the way, Ronnie heard explosions and when he looked back, he saw his uncle Joel Enoja alias "Mike" and his friend, Melvin, shooting the prostrate body of Siegfred.<sup>[14]</sup>

Jose testified that he was at his house, about 300 meters from the scene of the crime. He was weeding in his yard when he heard gunfire. After a short while, Arnold arrived and asked him to bring a hammock to the scene of the incident.<sup>[15]</sup>

Galupar related that he had just finished plowing his farm and was resting in his house in Barangay Caraudan when he heard explosions. He remained at home the whole night and only learned of the death of Siegfred the following morning. He claimed that he was implicated in the case because he refused to act as witness for the prosecution.<sup>[16]</sup>

On October 31, 1990, the trial court rendered a decision<sup>[17]</sup> finding appellants guilty as charged. The trial court did not give credence to Armada's claim of self-defense inasmuch as policemen recovered several empty bullet shells from firearms of different calibers at the scene of the crime. The short homemade firearm found near the left arm of the victim could not have been used by the victim since it only had one empty shell in its chamber, not to mention that the victim was right-handed. Lastly, the trial court found it highly suspicious that Antonio, who was allegedly shot by the victim and who could have corroborated Armada's story of self-defense, went into hiding and had not surfaced up to the present.

In this appeal, in their joint brief,<sup>[18]</sup> appellants raise the following errors:

I. THE LOWER COURT ERRED IN FINDING CONSPIRACY;

II. THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY;

III. ASSUMING THEM GUILTY, THE LOWER COURT ERRED, EXCEPT FOR APPELLANT YOLLY ARMADA, IN NOT FINDING THAT THE OFFENSE COMMITTED WAS ONLY AN IMPOSSIBLE CRIME.

The records show that appellant Antonio Galupar died pending appeal. Pursuant to our ruling in *People v. Bayotas*, 236 SCRA 239, the death of appellant Galupar pending appeal extinguished his criminal liability as well as his civil liability *ex delicto in senso strictiore*.

Appellant Yolly Armada escaped from the New Bilibid Prison on September 25, 1996.<sup>[19]</sup> As a result, his appeal was dismissed and the judgment against him became final and executory. Entry of judgment was made on January 9, 1997.<sup>[20]</sup>

In the meantime, appellant Jose Enoja jumped bail, which also resulted in the dismissal of his appeal. Judgment against him became final and executory, and entry of judgment was made on March 21, 1997.<sup>[21]</sup> An appellant who escapes or refuses to surrender to the proper authorities is deemed to have abandoned his appeal,<sup>[22]</sup> hence, the judgment against him becomes a final and executory. Nonetheless, the appeal proceeds as to the remaining appellants, Nicasio Enoja and Ronnie Enoja, who are now detained at the New Bilibid Prison, Muntinlupa City. Our present review, therefore, concerns only these two appellants.

Appellants assail the trial court's finding of conspiracy by pointing out alleged inconsistencies in the testimonies of the prosecution witnesses Salamanca and Paterna. Appellants contend that while Salamanca testified that it was only **after** Armada shot the victim that the other appellants came "one after the other" and fired at the victim, Paterna testified that appellants fired **successive** shots at the victim, implying that all appellants were already in the crime scene when Armada fired at Siegfred. However, close perusal of the pertinent transcript of stenographic notes (TSN) shows no inconsistencies in the two testimonies. Paterna actually testified that after Armada fired at her husband, the other appellants arrived one after the other ("nag-arabot abot"),<sup>[23]</sup> and continued to fire at the prostrate body of her husband. The two testimonies constitute cumulative evidence on who participated in the shooting of Siegfred. Both witnesses pointed to all five accused-