

CONSUELO LAZARO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. ALFREDO C. REYES AND FISCAL MANUEL R. MAZA, RESPONDENTS.

G.R. No. L-37603. March 15, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

In this petition for certiorari and prohibition, the petitioner, Consuelo Lazaro, seeks to annul two Orders of the Circuit Criminal Court stationed at Cabanatuan City, namely: 1) the Order dated February 23, 1973 (Annex "D", Petition) denying the petitioner's motion to quash and 2) the Order dated September 11, 1973 (Annex "N", Petition) denying the petitioner's motion to dismiss.

The essential facts are not disputed. On February 8, 1973, the respondent fiscal filed an information (Annex "A", Petition) with the Circuit Criminal Court stationed at Cabanatuan City and presided over by the respondent judge charging the petitioner with parricide and docketed there-in as Criminal Case No. CCC-IV-5(73)-N.E. The information reads as follows:

That on or about the 20th day of January 1973, at Sto. Domingo St., San Jose City, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused, CONSUELO LAZARO O Connie, O Consuelo Lazaro Pascual, being then the lawfully wedded wife of Arturo D. Pascual, Jr., their marriage having been celebrated and performed on January 20, 1963, at the St. Joseph's Holy Roman Catholic Church of San Jose City, and while said marriage was still valid and subsist-ing, with the use of a firearm and with intent to kill, did then and there wilfully, unlaw-fully and feloniously shoot her husband, Arturo D. Pascual, Jr., also known as Junior, inside the bedroom where the spouses aforementioned were then dwelling, thereby hitting and inflicting upon him a gunshot wound at his neck which pierced the neck of the victim thru and thru with entrance located at the back portion of the neck and with the exit located on the front portion of the neck thereby showing that the victim was shot by the accused while said victim's back was towards the accused, result-ing in the victim's instantaneous death due to shock as a result of profuse hemorrhage.

That the commission of the offense by the accused was attended by the following aggravat-ing circumstances: (1) treachery; (2) evident premeditation; and, (3) taking advantage of nighttime.

On February 13, 1973, the petitioner, as defendant in said criminal case, filed a motion to quash (Annex "B", Petition) the information on the ground of lack of juris-diction.

On February 23, 1973, the respondent judge issued an Order (Annex "D", Petition) denying the petitioner's motion to quash and set the arraignment of the defendant, (petitioner herein) for March 1, 1973. This is the first Order of the respondent judge that the petitioner seeks to annul in this petition.

As scheduled on March 1, 1973, the respondent was arraigned and pleaded not guilty.

On March 5, 1973, the prosecution staff of the Military Tribunals at Camp Emilio Aguinaldo, Quezon City,

advised the respondent judge "that the Military Tribunals have exclusive jurisdiction over the case for violation of General Orders Nos. 6 and 7 in relation to Presidential Decree No. 9 (Illegal Possession of Firearm) and parricide" and reiterated a prior request for "the transfer of the case of Consuelo Lazaro for illegal possession of firearm and parricide" to the Military Tribunals. On the same day, the respondent judge turned over to the Prosecution Staff of the Military Tribunals the records of Criminal Case No. CCC-IV-5 (73)-N.E. which is the parricide case against the petitioner.

On June 14, 1973, the Chief of the Prosecution Staff of the Military Tribunals filed with the Military Tribunals an Amended Charge Sheet charging the petitioner with "Illegal Possession of Firearm used in Parricide" allegedly in violation of Presidential Decree No. 9, par. 1(a). The Charge Sheet reads as follows:

In that said accused CONSUELO LAZARO, O CONSUELO LAZARO PASCUAL & CONNIE, a person subject to trial by the Military Tribunals in accordance with General Orders Nos. 8 and 12, dated September 27 and 30, 1972, respectively, of the President of the Philippines, on or about 20 January 1973 at San Jose City, Philippines, and not being allowed or authorized by law to keep, possess and carry firearms, did then and there wilfully, unlawfully and feloniously have in her possession, control and custody a firearm, to wit:

Caliber .357, Magnum, CTG, Python 356, Revolver, SN-91276

without first obtaining the necessary license and/or permit to carry and possess the same, and in connection and by reason of such possession, did, then and there, wilfully, unlawfully and feloniously fire and shoot Arturo D. Pascual, Jr., her lawfully wedded husband, thus inflicting upon the latter wound and injury which caused the death of the latter as a consequence.[1]

The Charge Sheet was docketed as Criminal Case No. MC-1-16.

Upon the amended Charge, the petitioner, as defendant, was arraigned and tried by the Military Tribunal. After trial, the Military Commission No. 1 found the petitioner guilty of "Illegal Possession of Firearm used in the commission of Parricide" and sentenced her to the mandatory penalty of death. The decision of the Military Tribunals was sent for review to the Military Board of Review.[2]

The records of the parricide case or Criminal Case No. CCC-IV-5 (73)-N.E. were returned to the Circuit Criminal Court, from where they were borrowed after the termination of Criminal Case No. MC-1-16 of the Military Tribunals. Thereupon, on August 1, 1973, the respondent judge set the trial of the Criminal Case No-CCC-IV-5 (73)-N.E. for September 3, 4, 5, and 6, 1973.[3] On August 27, 1973, the petitioner filed with the Circuit Criminal Court a motion to dismiss (Annex "K", Petition) Criminal Case No. CCC-IV-5 (73)-N.E. on the ground of double jeopardy. On September 11, the respondent judge issued an Order (Annex "N") denying the petitioner's motion to dismiss and setting the case for trial for October 15, 16, 17, 18 and 19, 1973. This is the second Order of the respondent judge that the petitioner seeks to annul.

Hence, the instant petition was filed. This Court issued a temporary restraining Order on October 12, 1973 restraining the respondent judge from acting on the case until further Orders of the Court.

The issues are:

1. Did the Military Tribunals have jurisdiction to try the petitioner for the offense of "Illegal Possession of Firearm used in Parricide" punishable under Section 1(a) of Presidential Decree No. 9?
2. Would the trial of the petitioner in the Circuit Criminal Court under the information for parricide subject her to double jeopardy?

Under General Order No. 12 issued on September 30, 1972, the Military Tribunals have exclusive jurisdiction

over the following cases:

x x x x x x x x

8) Those involving crimes constituting violations of the Law on Firearms and Explosives found in the Revised Penal Code and existing laws x x x x x x x x.

x x x x x x x x

13) Violations of all decrees, orders, and regulations promulgated by me (Ferdinand E. Marcos) personally or upon my direction pursuant to Proclamation No. 1081 dated September 21, 1972.

The petitioner was accused and tried and convicted under Presidential Decree No. 9 which is a law "declaring violations of General Orders Nos. 6 and 7 x x x x x x to be unlawful and providing penalty therefore." General Order No. 6 prohibits the "possessing, keeping or carrying outside of his residence any firearms" unless such person is duly authorized to do so. General Order No. 7 provides that only officers and men of the Armed Forces of the Philippines and police officers in actual mission or duty shall be allowed to carry firearms outside their residence and that guards of private security agencies can carry their licensed firearms only from the premises of the offices of such agencies to their places of work and return.

Section 1, pars. (a) and (b) of Presidential Decree No. 9, provides:

1. Any violation of the aforesaid General Orders Nos. 6 and 7 is unlawful and the violator shall, upon conviction suffer:

(a) The mandatory penalty of death by a firing squad or electrocution as a Military Court/Tribunal/Commission may direct, if the firearm involved in the violation is unlicensed and is attended by assault upon, or resistance to persons in authority or their agents in the performance of their official functions resulting in death to said persons in authority or their agents; or if such unlicensed firearm is used in the commission of crimes against persons, property or chastity causing the death of the victim, or used in violation of any other General Orders and/or Letters of Instructions promulgated under said Proclamation No. 1081;

(b) The penalty of imprisonment ranging from twenty years to life imprisonment as a Military Court/Tribunal/Commission may direct, when the violation is not attended by any of the circumstances enumerated under the preceding paragraph.

x x x x x x x x

From the foregoing provisions, it is clear that the crime of illegal keeping, possessing or carrying outside of one's residence of any firearm, whether licensed or unlicensed, prohibited by General Orders Nos. 6 and 7 and penalized by Presidential Decree No. 9 is of two categories, namely: (1) qualified illegal keeping, possessing or carrying of firearms defined under paragraph 1(a); and (2) ordinary or simple keeping, possessing, or carrying of firearm penalized under paragraph 1(b).

The offense of keeping, possessing or carrying of firearm is qualified if attended by the following circumstances: (1) when the firearm is unlicensed; and (2) when the firearm is used either (a) to commit assault upon or resistance to persons in authority or their agents in the performance of their official functions resulting in death to said persons in authority or their agents or (b) to commit any crime against persons, property or chastity causing the death of the victim or (c) to commit any violation of any other General Orders and/or Letters of Instructions promulgated under Proclamation No. 1081.

The offense is simple or ordinary if the keeping, possessing or carrying of the firearm is "not attended by the circumstances enumerated under the preceding paragraph", meaning paragraph 1(a) of Presidential Decree No. 9.

Whether the offense is qualified illegal keeping, possessing or carrying of firearm or simple or ordinary keeping, possessing or carrying of firearm, the Military Court has exclusive original jurisdiction to try the case pursuant to paragraphs 8 and 13 of General Order No. 12 already quoted above.

In the instant case, the respondent was charged in the Military Court of "Illegal Possession of Firearm used in Parricide" punishable under paragraph 1(a) of Presidential Decree No. 9. In other words, she was charged with qualified illegal possession of firearm for having used said firearm in killing her lawfully wedded husband, Arturo D. Pascual. Hence, the Military Tribunals have jurisdiction of the case pursuant to Sections 8 and 13 of General Order No. 12.

The contention of the respondents that the illegal possession of firearm should be filed with the Military Tribunals while the information for ordinary parricide should be filed with the ordinary civil courts is without merit. This view should be rejected on the following grounds: first, it overlooks the view that parricide is only an essential ingredient or a qualifying circumstance of the offense of qualified illegal possession of unlicensed firearm. In the instant case, the use of the unlicensed firearm in committing parricide is an essential ingredient of qualified illegal possession of firearm which is punishable by the mandatory penalty of death. Second, the filing of one separate action for illegal possession of firearm in the Military Courts and another information for parricide in civil courts would result to split jurisdiction and unnecessary duplication of prosecution work.

This is precisely what the Secretary of National Defense and the Secretary of Justice sought to avoid when in a joint circular addressed to all state prosecutors, fiscals and military lawyers dated June, 1973, they issued the following guidelines:

If a prima facie case is found for crimes within the scope of PD No. 9, (say, possession of unlicensed firearm attended by killing through the use thereof), the findings and recommendations thereon should be submitted through the Judge Advocate General, Armed Forces of the Philippines, through the Secretary of National Defense in accordance with the Circular of the Department of Justice dated November 27, 1972 prescribing guidelines for the implementation of General Order No. 12-A and related general orders. In such case, in order to avoid multiplicity of prosecution, no information should be filed with the civil courts for the attendant crime (like killing) committed through the use of unlicensed firearm which will be utilized as an aggravating circumstance in the proceedings before the Military Tribunals.[4]

In connection with the foregoing joint circular, We make the observation that using an unlicensed firearm for killing is not an aggravating circumstance as stated in the joint circular but more correctly a qualifying circumstance or an essential ingredient of the offense of qualified illegal possession of firearm, the presence of which requires the imposition of the mandatory death penalty.

Having resolved the question of jurisdiction in favor of the Military Court, We hold that the Circuit Criminal Court presided over by the respondent judge can no longer proceed to try the parricide case on the merit. The petitioner was already convicted and the penalty of death was already imposed upon her by the Military Tribunals. The case is now set for review by the Military Board of Review. The defendant was accused in the Military Court of "Illegal Possession of Unlicensed Firearm used in committing Parricide". To convict the defendant of said offense, it was necessary to prove that the gun was unlicensed and that the petitioner used the gun in committing parricide. Stated otherwise, parricide had to be proven, as in fact it was proven, to justify the imposition of the death penalty.

The offense of "Illegal Possession of Unlicensed Fire-arm used in Parricide" includes the lesser offense of Parricide. To subject the petitioner Consuelo Lazaro to another prosecution and possible conviction of parricide is to subject her to double jeopardy.

In passing, it may be stated that General Order No. 69 issued after the lifting of Martial Law, and which transfer-red to civil courts all cases filed with the Military Tribu-nals does not include: (1) cases undergoing trial in the Military Tribunals and (2) cases pending review. The case of the peti-tioner is now pending review by the Military Board of Review.

WHEREFORE, the Order of the lower court dated February 23, 1973 (Annex "D", Petition) denying the motion to quash and the Order dated September 11, 1973 (Annex "N", Petition) denying the motion to dismiss are hereby nullified and Criminal Case No. CCC-IV-5 (73)-N.E. is ordered dismissed. With costs de oficio.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] Annex I, Petition. v [2] Pars. VIII & IX, Petition; pars. VIII & X, Respondent's Answer.

[3] Annex "J", Petition.

[4] Annex "M", p. 43, Rollo

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