

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSEFINA N. SAMSON, DEFENDANT AND, APPELLANT.

G.R. No. L-14110. March 29, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

Charged with parricide (case No. 1616) for the death of Jose V. Samson, who was shot in the morning of 18 October 1954, and illegal possession of a firearm (case No. 1617), after trial Josefina N. Samson was acquitted of the last charge but found guilty of parricide and sentenced by the Court of First Instance of Albay to suffer the penalty of reclusiSn perpetwa, to indemnify the heirs of the deceased in the sum of F6,000 and to pay the costs.

The defendant has appealed.

The evidence for the prosecution shows that at about 7:00 o'clock in the morning of 13 October 1954, while standing on the stairway of his house and facing the street in the municipality of Libon, province of Albay, Jose V. Samson was shot twice by Josefina N. Samson, who was behind him holding a carbine (Exhibit A). , After the shooting she went to the municipal building and reported to the Chief of Police Julian Cerdefia that she had shot her husband and, requested him (Cerdefia) to go to her house and see the body. The Chief of Police told the guard to lock her up inside the jail and he (the Chief of Police) and patrolman Francisco Fernandez repaired to the house of Jose V. Samson and there found his body lying on his back at the door of the house. The Chief 'of Police found a carbine (Exhibit A) on a table in the dining room and two empty shells (Exhibit A-3), one behind the body of the deceased and the other on a table. Dr. Zacarias Edades, the Municipal Health Officer,: made a post-mortem examination of the deceased and issued a medical certificate dated 13 October 1954 (Exhibit B), reading as follows:

To Whom it May Concern :

This is to certify that I made a physical examination and inves-1 gation on this date at Velasco St., Libon, Albay, at the residence of Engineer Jose V. .Samson and have the following" noted:

- The body of Engineer Jose V. Samson, 42 yrs., .married, engineer by profession, resident of this municipality, dumped-at the doorsteps of his residence, (recumbent position):
 - No sign of life is evident on him;
 - Hemorrhage. profuse and apparently beginning to clot;
 - Presence of a bullet entrance wound at the postero-lateral aspect of the nape of the neck near the beginning, of the right shoulder measuring around 4 milimcters in diameter projecting downwards and inwards passing the clavicle left and. coming out about 5 centimeters above and lateral to the left nipple. Point of exit "wound measuring aYonnd 15 mm. by 20 mm.
- Another wound measuring 22,1 mm-, by 15 mm. at anterior asneefc of the left forearm about 8' centimeters crav-'

ersihg through' the radial and ulnar bones (in-between) and coming out the dorsal aspect of same forearm about 9 cm. above the wrist, wound- measuring 25 mm. by 27 mm.

- Presence of a bullet wound entrance at the right inter-scapular region about 10 cm. below the above stated wound measuring about 4 millimeters in diameter projecting upwards and coming out at the lateral aspect of the lower jaw shattering the lateral portion of the lower mandible. Wound measuring 5 cm. by 3 1/2 cm.

In (the) evaluation to (of) the above findings the cause of death is due to the gunshots inflicted with profuse hemorrhage resulting thereat (therefrom). It also appears that in the morning of 13 October 1954 while Meliton Sial, a gardener, was cutting grass on the lawn of the house of the Samsons at Libori, Albay, he heard two shots so he went up the house and there saw Mrs. Samson near the door of the kitchen carrying a firearm (Exhibit A) from whom he inquired what was the shot about and Mrs. Samson replied: "I shot him."

The evidence for the defense shows that the deceased Josfi V. Samson was cruel and of, violent character and for many years had been maltreating his wife at the slightest provocation and on several occasions inflicting upon her physical injuries (Exhibits 12, 12-A, 20 and 21); that the day before 13 October 1954 Jose V. Samson, who was then the District Engineer of the province of Masbate, arrived in Legaspi, Albay, and asked his wife and children to join him for lunch at the Eden Hotel to which he was invited by a friend named Jose Lim; that she could not join him because on that "very day she had stood as sponsor at a wedding the luncheon of which was to be held in the same hotel; that the children joined their father for lunch and after lunch she and her children went shopping; that she bought underwears (Exhibits 15, 15-A, 15-B, 15-C) for her husband and Nescafe; that after shopping she and her children went to the store of Jose Lim where her husband was and together they went home leaving on their way their daughter Glenda at the St. Agnes Academy; that after staying a short while at their house she and her husband left, the latter going to Bato to call on his brother Jesus V. Samson and she to the ricefields to look after her share in the palay that was being gathered or reaped; that both returned home that same evening and ate their supper together; that while they were taking their supper she told her husband that she had sold 80 cavarnes of palay; that after supper they retired and slept on the same bed; that the next morning she prepared breakfast for her husband who was to go hunting; that later he woke up and began to take his breakfast; that upon tasting the coffee he suddenly pulled his wife by the hair and complained of the kind of coffee she had bought for him; that after a short while her husband resumed taking his breakfast while she prepared sandwiches for him to bring along on his hunting trip; that when her husband was about to leave he asked her some money and she gave him P50; that the deceased asked for more and she gave him another 1*50 consisting of two twenty-peso bills and one ten-peso bill; that her husband asked for more money and she gave him P2.00; that this made him angry and he grabbed her by the arm and twisted it and also by the neck until she could no longer speak and was thrown against the table; that her husband in a loud voice told her that "if you don't, give me money I will kill you" and that "if you don't have any money any more you better work as a maid servant, if not, be a prostitute;" that her husband took the carbine from the table and holding it by the muzzle raised it above his right shoulder in an attempt to strike her; that she side-stepped and grappled with him for the possession of the gun and in the scuffle the gun went off, the bullet hitting her husband in the neck; that when she saw the neck of her husband bleeding, she rushed to the municipal building where she asked Dr. Edades, the municipal health officer, to attend to her husband and at the same time informed the Chief of Police of what had happened; that she was placed under arrest and locked up in the municipal jail; that during her confinement in the municipal jail she was examined by the Municipal Health Officer, Dr. Zacarias E. Edades, who found the following:

- A. linear skin abrasion about 8 mm. near the base of the index finger dorsal aspect;
- Slight contusion wrist left forearm; no abrasion nor swelling noted;
- Subjective complaint of pain around the neck but no visible physical findings noted; no abrasion, no skin

discoloration nor swelling noted on examination.

The above findings with no further complication and good treatment be rendered "will be all right within 3-5 days, - - - (Exhibit 6). -

The re-enactment during the trial of the way the deceased had been shot made, under the direction of the appellant, appearing in Exhibits 16, 18, 18-a and 18-b clearly appears not to be normal. It was difficult, if not downright impossible, for her, who was frail and shorter in height than her husband, who was robust and taller (Exhibit 23), to have succeeded in taking hold of the carbine, her right hand gripping the lower part of the barrel of the gun and the left hand, the part of the gun near the trigger, for if her husband was to strike her with the butt of the carbine and she side-stepped, he would not have continued to hold the carbine in a raised position when the person to be assaulted already had sidestepped and avoided the attempted or intended blow upon her. If, as claimed by the appellant, the gun went off during the scuffle injuring her husband on the nape "projecting downwards and inwards passing the clavicle left and coming out about 5 centimeters above and. lateral to the left nipple," a bullet wound which was fatal, how could the appellant explain the presence or causing of the wound on the left forearm and. the bullet wound "at the right interscapular region about 10 cm. below the above stated wound * * * projecting upwards and coming out at the lateral aspect of the lower jaw shattering the lateral portion of the lower mandible?" Through actual test during the trial it was found that the carbine (Exhibit A) was not defective and could not fire without pressing the trigger. The absence of any powder burns at the entrance of the wounds found in the body of the deceased is convincing proof that the victim was shot from a distance- and not with the muzzle of the gun almost resting on his shoulder or the back of the neck.

The appellant claims that there is no competent evidence that the victim and the appellant were husband and wife. The claim is without merit. The testimony of the appellant on direct examination disclosed several times that she was married to the deceased in both "Church and civil marriages." On cross examination, she testified on the exact date of her marriage to the deceased (4 July 1934) and the place (Pili, Camarines Sur) where they were married. She did not only admit, that the deceased was her husband but also brought out the fact that out of the marriage they had five children and that only three are living, namely: Glenda, Manuel and Felix. Indeed, there could be no better proof of marriage in a parricide case than the admission by the accused of the existence of such marriage. More, Ramon M. Velasco, mayor of Libon, Albay, and uncle of the deceased, testified that when he saw the appellant in the afternoon of 13 October 1954 at the municipal jail, she immediately begged for his forgiveness and told him that she had shot her-husband Pepe (referring to the: deceased) because the latter had a mistress and she could not bear or suffer it any longer.

The appellant contends that the action to enforce civil liability has been reserved and, therefore, the trial court erred in awarding civil damages amounting to P6,000 to the heirs of the deceased. In support of this contention she quotes what the trial court stated during the hearing of the case, to wit:

COURT: The court reserves the right of the heirs to prosecute the civil action independently, as soon as a guardian is appointed in that special proceeding; "We will hold this in abeyance until a guardian is appointed by the court who can represent the heirs in this case (p. 19, ts.tf., 19 May 1955).

According to section 1 (a) of Rule 107, the offended party must reserve his right to institute separately the civil action to enforce the civil responsibility arising from the offense charged. No one is authorized to make the reservation except the offended party. These are the minor children of the deceased. No such reservation having been made by them or by their duly appointed guardian, the trial court did well in condemning the appellant to pay her civil liability to the heirs of the deceased.,

The finding of the trial court that there had been no evident premeditation and treachery when the appellant shot

her husband should be sustained. As the uncontradicted evidence shows that despite several quarrels and maltreatments she had had with, and received from her husband, both made up very easily after each and every quarrel. The day prior to the shooting incident the appellant bought some underwears for her husband and in the evening of the same day both the appellant and the deceased had supper together and slept on the same bed. All these circumstances taken together would inevitably lead to the conclusion reached by the trial court that the appellant had not planned beforehand the killing of her husband. If the fact that a few moments immediately preceding the shooting of the deceased by the appellant, in that early morning of 13 October 1954, the latter and the deceased had an altercation regarding the genuineness of the coffee (Nescafe) that culminated into a hair pulling, but which as usual was made up as easily as it flared up; and that immediately thereafter the deceased resumed eating his breakfast while the appellant prepared sandwiches for him to take along in his hunting trip., as if nothing had happened at all,—the conclusion is inescapable that the appellant could have had neither the resolution to kill her husband on that fateful morning nor the time to meditate or reflect on the criminal act she would commit. It is, therefore, very clear that the shooting of the deceased husband by the appellant came about spontaneously from the unexpected turn of events. It is also very clear that it happened in the spur of the moment and without any intervening period during which the appellant could have meditated, reflected and resolved upon the act she was about to commit, or sufficient time to allow her conscience to overcome the resolution (if she did ever resolve) to carry out what she had proposed or decided to do. The averted circumstances, of course, preclude the attendance of treachery in the commission of the crime at bar.

As there are two mitigating circumstances, that of voluntary surrender and of having acted upon an impulse so powerful as naturally to have produced passion Or obfuscation, and there is no aggravating circumstance, the minimum penalty of reclusion perpetua for the crime committed by the appellant, as provided for in articles 246 and 68 of the Revised Penal Code imposed by the trial court, is correct.

The judgment appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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