

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO ARROYO Y DIGOMA, DEFENDANT-APPELLANT.

G.R. Nos. L-35584-85. February 13, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

For the death of Milagros Mayuyu caused by a gunshot wound, the appellant Alfredo Arroyo y Digoma was accused in the Court of First Instance of Quezon City of two separate offenses of Parricide and Illegal Possession of Firearms.

Both cases were heard jointly, and, after trial, the accused was found guilty beyond reasonable doubt of the crimes charged in both informations, and was sentenced as follows:

"In Criminal Case No. Q-1549, to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the deceased Milagros Mayuyu the sum of P12,000.00 without subsidiary imprisonment in case of insolvency in view of the nature of penalty herein imposed; and to pay the costs."

"In Criminal Case No. Q-1550, to suffer an imprisonment of One (1) year and to pay a fine of ONE THOUSAND PESOS (P1,000.00). Let the firearm, Cal. 22, Smith and Wesson with serial No. 757976 with five (5) live ammunitions be immediately turned over to the Chief, Philippine Constabulary for proper disposition." [1]

The defendant now appeals to this Court.

The following facts are not disputed.

At about 2:00 o'clock in the afternoon of October 7, 1971, Corazon Mayuyu heard a shout, and subsequently a gunshot coming from the room of her sister Milagros Mayuyu Arroyo, and her husband, the herein accused Alfredo Arroyo, at 21-C Gen. Lim, Quezon City. When Corazon heard the gunshot, she immediately went to the room of her sister Milagros and there she saw her sister dripping in blood, and being carried by her husband Alfredo Arroyo. When Corazon saw her sister in this condition, she shouted "Ate was shot by Cuya Fred.", and called his brother. When Corazon's brother came, they brought their sister Milagros to the National Orthopedic Hospital. As a result of the gunshot inflicted on her, Milagros died.[2]

The cadaver of Milagros Mayuyu Arroyo was autopsied by Dr. Mariano Cueva, Jr., Medico-legal officer of the NBI, who rendered a necropsy report.[3]

The necropsy report reveals that Milagros Mayuyu Arroyo sustained a gunshot wound in the head, point of entrance measuring 0.7 cm. x 0.6 oval in shape located at the superior parietal region. Brain laceration and severe intracranial hemorrhage caused by the gunshot wound were the immediate and actual cause of death.[4]

Alfredo Arroyo, husband of Milagros, was investigated in connection with the death of his wife by Detective Marcos Viñas of the Quezon City Police Department. In a statement (Exh. "H") freely and voluntarily given by

Arroyo to investigator Viñas, the former admitted owner-ship of the fatal gun Cal. 22, Smith & Wesson revolver with serial number S-757976, with an empty shell and several live cartridges.[5] Arroyo also admitted before Detective Viñas that he shot his wife in anger.[6]

In a certification by the officer-in-charge of the issuance of firearms license of the PC Firearms and Explosives Section of the Philippine Constabulary, it is attested that no license to possess firearm and ammunition for a Smith & Wesson Cal. 22 with SN-757976 was ever issued to the accused Alfredo Arroyo. The particular firearm is neither licensed nor registered with the firearms section of the PC.[7]

For his defense, the appellant claims that the shooting was accidental. He testified that in the afternoon of October 7, 1971, he was going home to get money from his wife to buy tires for his jeepney that he was then driving. When he arrived home his wife was not in, and surmising that she might be at a gambling house proceeded to look for her there. On his way, however, he met his wife who was going home and she rode back home in the jeep with her husband. The appellant asked for the money with which to buy tires but the wife told him that she had spent it. She also told her husband that there was a gun which was pawned to her and which she expected to earn a profit of P50.00 after a week upon redemption. She showed the husband the gun and the appellant got the gun telling his wife that he would sell the gun because he needed money for his tires. The wife objected to the sale of the gun. At the same time she grabbed the gun and the gun suddenly went off hitting her.[8]

The evidence indubitably establishes the guilt of the appellant who supplied the evidence of his own guilt for both offenses when on October 7, 1971 he voluntarily signed and swore to his confession (Exh. "H").

That he shot his wife is admitted by him as follows:

03 T: Alam mo ba kung bakit ka narito ngayon?

S: Opo, dahil po sa nangyari sa pagkabaril ko sa misis ko.

xxx xxx xxx

12 T: Ilang beses mong binaril ang iyong asawa?

S: Isa lang po.[9]

In his answer to question No. 7 of his confession (Exh. "H"), the appellant narrates the reason why he shot his wife, substantially as follows: that his wife gambled at Gana Restaurant at Roosevelt Avenue; that he warned her not to gamble because she was losing in the gambling game his earnings as a jeepney driver; that she promised not to gamble anymore but in spite of her promises, she continued gambling; that when he caught her gambling again at the Gana Restaurant and scolded her, she threatened him with a separation but that he refused to be separated from her because they had four children; that she promised again not to gamble but in the afternoon of October 7, 1971 at about 2:00 o'clock, he saw her gambling again at a restaurant in Gen. Lim Street; and that upon seeing her gambling, he brought her with him to their house in his jeepney; that once they arrived home, he asked her why she was gambling again; that she got mad and even suggested again that they separate; and that because of her demand for separation, he saw red (nagdilim po ang aking paningin), got his gun from the radio cabinet, poked the gun at her, the gun went off and she was hit (Exh. "H").

The police investigator Marcos Viñas of the Quezon City Police Department testified that the appellant admitted that he shot his wife in a fit of anger. Detective Viñas testified as follows:

Q In the course of your investigation, did you inquire as to the motive?

A Yes sir.

Q What was the motive according to your investigation?

A According to Alfredo Arroyo (appellant) himself, he shot his wife in a fit of anger.[10]

That the appellant owns the gun is also admitted by him as follows:

10 T: Sino ba ang may-ari ng baril na ito? (Referring to revolver in No. 8 answer)

S: Sa akin po iyan. Nabili ko po ng isang daang piso.

11 T: May lisensiya ba ang iyong baril?

S: Wala po.

(Exhibit "H")

According to Detective Viñas, the appellant also admitted ownership of the gun in the course of the investigation. Thus, Viñas testified:

Q After you recovered the firearm inside the cabinet did you confront the accused already?

A Yes sir.

Q And what did he tell you?

A He admitted that he owns the same firearm.[11]

On the witness stand, the appellant readily admitted his confession. Thus, he testified:

Q Did you sign any statement there? (Police Department)

A Yes sir.

Q Is this the statement they made you sign (EXH. "H")?

A Yes sir.[12]

The defendant did not deny his confession. He did not claim on the witness stand that he did not understand his confession; or that he was maltreated or forced into signing the same.

As against his clear and categorical admission that he shot his wife in a moment of anger, both in his written confession (Exh. "H") and in his oral admission before Det. Viñas of the Quezon City Police Department, his subsequent claim on the witness stand that the shooting of his wife was only accidental is devoid of credence.

After admitting that he shot his wife, the appellant has the burden of proof to show that the shooting was only accidental and he must prove his defense by clear and convincing evidence. The appellant has miserably failed to do so.

Both hands of the deceased were negative of gun powder (Exh. "N"). This belies the claim of the appellant on the witness stand that the gun went off accidentally when he and his wife were grappling for the possession of the gun.

In the imposition of the penalty for illegal possession of firearms, the lower court sentenced the defendant to one year of imprisonment and a fine of P1,000.00, which is erroneous. Under Republic Act No. 4, the penalty of illegal possession of a .22 caliber pistol or revolver is imprisonment of "not less than one year and one day nor more than 5 years, or both such imprisonment and a fine of not less than P1,000.00 nor more than P5,000.00." [13] The penalty of imprisonment should be modified by adding one day to one year, making the imprisonment one

year and one day.

WHEREFORE, with the foregoing slight modification, the joint decision of the lower court for both cases is hereby affirmed with costs.

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

[1] p. 10, Decision.

[2] pp. 2, 3, 4, and 5, tsn, October 25, 1971.

[3] Exhibit "I"; p. 1, tsn, Feb. 7, 1972.

[4] Exh. "I"; pp. 1, 2, & 3, tsn, id.

[5] pp. 7, 8, & 9, tsn, January 5, 1972.

[6] p. 10, tsn, id.

[7] pp. 1 & 2, tsn, Dec. 13, 1971.

[8] pp. 3-5, tsn, March 10, 1972.

[9] Questions and Answers Nos. 3 & 12, Exh. "H".

[10] p. 10, tsn, January 5, 1972.

[11] p. 9, tsn, id.

[12] p. 6, tsn, March 10, 1972.

[13] See *People vs. Nang Kay*, 88 Phil. 515.

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