

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OCTAVIO MENDOZA Y LANDICHO, ACCUSED-APPELLANT.

G.R. Nos. 109279-80. January 18, 1999

Ponente: MELO, J.

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MELO, J.:

On the night of November 11, 1988, one Cecilia Eusebio Mendoza was shot to death. The trial court found her husband, Octavio Mendoza, responsible for her death. However, the real victim of this unfortunate occurrence is the spouses' only minor child, Charmaine Mendoza, who is now left to the care of her maternal grandparents.

For the death of his wife Cecilia Mendoza, accused-appellant Octavio Mendoza was separately charge with parricide and illegal possession of firearm and ammunition under two Informations, to wit:

Criminal Case No. 636

That on or about the 11th day of November, 1988, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable motive, did, then and there wilfully, unlawfully and feloniously attack, assault and shot with a .38 caliber revolver one Cecilia Eusebio Mendoza, his wife, thereby inflicting upon her serious and mortal gunshot wounds which directly caused her death.

CONTRARY TO LAW.

Criminal Case No. 637

That on or about the 11th day of November, 1988, in the municipality of Las Piñas, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously have in his possession, control and direct custody a firearm one .38 caliber revolver, Colt with Serial No. 41001 and Four (4) live ammunitions use in the crime of parricide, without first securing the necessary license or permit therefor.

CONTRARY TO LAW.

(pp. 38-39, Rollo.)

Accused-appellant pleaded not guilty to both charges, whereupon a joint trial on the merits commenced, following which, a judgment of conviction was rendered, disposing:

WHEREFORE, premises considered:

1. In Criminal Case No. 636, and finding accused Octavio Mendoza y Landicho guilty beyond reasonable doubt of the crime of PARRICIDE, defined and penalized under Article 246 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessory penalties attendant thereto.

He is further ordered to pay to Alipio Eusebio the amount of P66,000.00 for the funeral, wake, burial and incidental expenses that said Alipio Eusebio spent by reason of the death of his daughter Cecilia Eusebio Mendoza.

And to Charmaine Mendoza the accused is hereby ordered to pay her the following

1. P50,000.00 for causing the death of her mother Cecilia Eusebio Mendoza;
2. P100,000.00 for and as moral damages;
3. P25,000.00 for and as attorney's fees.

Plus costs of the proceedings.

Accused Octavio Mendoza y Landicho is further deprived of his civil and parental rights over his child Charmaine Mendoza and he cannot inherit from her.

2. In Criminal Case No. 637, and finding the accused Octavio Mendoza y Landicho guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions, used in the Commission of Parricide, defined and penalized under Section 1 of Presidential Decree No. 1866 as amended by Presidential decree No. 1878-A said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessories of the law.

The firearms and ammunitions used, a Colt Revolver Cal. 38, with a Serial Number 41001 is hereby forfeited in favor of the government together with all the ammunitions.

With costs against the accused.

Conformably with the Circular of the Honorable Supreme Court, the accused is hereby ordered committed to the Bureau of Corrections.

The accused, if he appeals the decision is not entitled to Bail.

SO ORDERED.

(pp. 76-77, Rollo.)

Dissatisfied, accused-appellant has interposed the instant appeal, arguing that the trial court erred in –

I

. . . substantially and almost totally relying on illegally procured and/or inadmissible, unauthenticated, questionable documents, in grave violation of accused's constitutional right to privacy of communication and papers, and/or his right against unreasonable search and seizure.

II

. . . almost substantially and wholly relying in the incredible coached and unreliable direct testimony of the minor daughter of accused and victim, Charmaine Mendoza, despite the evident grave conflicts or contradictions thereof to the facts clearly and decisively testified by and/or findings of the police investigators.

III

. . . not believing the decisively clear and straight forward testimony of the accused as corroborated by his witness.

IV

. . . ultimately convicting accused for the separate offenses of parricide and Illegal Possession of Firearms despite the police investigator's undisturbed findings of a shooting and stabbing incident, a situation consistent with the decisively clear postulate of the defense.

V

. . . not considering, even assuming merely for the sake of argument, but without conceding, that the crime of

parricide was committed, the law and doctrine that if a firearm is used in the commission of a killing (Homicide, parricide, etc.) the same, as now mandated by Republic Act No. 8294 (known as Revilla Law) must only be considered an aggravating circumstance. This is consistent to the rule that Penal laws favorable to the accused shall have retroactive effects.

The facts as established by the evidence for the prosecution are as follows:

On November 11, 1988, accused-appellant, his wife Cecilia Mendoza, and their then 10-year-old daughter attended the birthday party of a relative of accused-appellant held at McDonald's in Harrison Plaza. While the party was going on, accused-appellant left and proceeded to Kentucky Fried Chicken Restaurant where he had some beer. When it was time for Cecilia and Charmaine to go home, they could not find accused-appellant, hence, they decided to just leave, proceeding directly to their residence at No. 2 Tramo Street, Camella Homes, Phase III, Pamplona, Las Piñas (p. 4, Appellee's Brief.).

Cecilia and Charmaine arrived home at around 7 o'clock in the evening but accused-appellant was not yet there. After a while, mother and daughter left for the house of Cecilia's parents in Bacoar, Cavite to bring some perfume for Cecilia's brother, Francisco (p. 5, Ibid.).

At about 9 o'clock in the evening, Cecilia and Charmaine left Bacoar. They rode a jeepney and at the gate of the subdivision where they live, they saw the car of Rowena Hernandez, Cecilia's god-daughter, and they hitched a ride home. Finally home, they saw their car already parked in the garage of their neighbor. All the lights in their house were on but the screen door was locked. They knocked at the window but accused-appellant did not respond. A moment later, however, accused-appellant opened the back door and mother and daughter went straight to the master's bedroom (Ibid.).

While inside the master's bedroom, accused-appellant who was drunk instructed Charmaine to get cold water and to douse him. She willingly obliged, after which she was told to go to her room. She change her clothes and readied herself for bed. While in her room, Charmaine heard her parents quarrelling over the issue of Cecilia and Charmaine having left accused-appellant at the party. Thereafter, Charmaine suddenly heard three gunshots. Running out of her room, Charmaine saw her mother Cecilia down on the floor of their living room, bleeding profusely. Charmaine saw accused-appellant hiding a gun under the bed in her parents' room (pp. 5-6, Ibid.).

Charmaine ran towards her gasping and bleeding mother and held her. Then, accused-appellant asked Charmaine to call her Aunt Dolores Mendoza to inform her of the death of Cecilia. Dolores could not believe Charmaine and talked to accused-appellant instead (Ibid.).

Meanwhile, the victim bled to death on the floor.

Accused-appellant subsequently called his brother-in-law, Sgt. Antonio Gabac, and told him that Cecilia had been shot and is already dead. Gabac, on the other line, told accused-appellant not to touch anything and that he would be arriving shortly. When Gabac finally arrived, he and accused-appellant carried the lifeless body of Cecilia into accused-appellant's car and brought her to the Perpetual Help Hospital.

Cecilia Mendoza was pronounced dead on arrival. The autopsy report indicated the cause of death as follows:

Hemorrhage, severe, secondary to gunshot wounds of the back and left shoulder

Upon receiving information about the shooting incident, Chief Investigator Cpl. Leopoldo Africa, together with investigators Cpl. Prudencio Parejas, Cpl. Gorgonio Nortes and Pfc. Rolando Almario, proceeded to the hospital to investigate the incident, but accused-appellant refused to give any statement or comment. Thereafter, the policemen invited Antonio Gabac to accompany them to the crime scene at No. 2 Tramo Street, Camella Homes,

Phase III, Pamplona, Las Piñas. While they were inspecting the premises, Cpl. Africa noticed something tucked inside Gabac's waist. He promptly told Gabac "Pare pakisurrender mo nga iyong baril." Gabac immediately handed Cpl. Africa a .38 caliber revolver with Serial No. 41001 and with two empty shells and two live rounds. Gabac informed Africa that the gun was handed to him by accused-appellant when Gabac arrived at the crime scene to respond to the call of accused-appellant for assistance (p. 7, Ibid.)

Cecilia's father, Alipio Eusebio, having been informed of his daughter's death, and that valuables were being taken out of his daughter's house, decided to remove, together with his sons, the remaining pieces of property therein, including accused-appellant's personal effects (p. 8, Ibid.)

From the aforestated personal effects of accused-appellant, Alipio found Mission Order No. 86-580-893 dated November 7, 1986 issued to accused-appellant by Col. Eladio Gonzales, PAF (GSC), Acting Wing Commander, 580th Aircraft Central Warning Wing, Villamor Airbase, Pasay City, which authorized accused-appellant to carry a Colt Revolver, .38 Caliber with Serial No. 41001 from November 15, 1986 to December 15, 1986. There was also a Memorandum Receipt for Equipment, dated November 10, 1986, approved by Captain Luis L. Salanguit of the Philippine Air Force and Lt. Col. Ramon Bandong and issued to one Octavio L. Mendoza, Captain, PAF, Assistant Director for Personnel which described the firearm as "One Colt Revolver SN 41001" (p. 52, Rollo).

Accused-appellant tested positive for the presence of nitrates (p. 50, Ibid.).

Accused-appellant's own account of the incident is to the effect that before the shooting incident on the night of November 11, 1988, he and his wife Cecilia were arguing about the latter carrying an unlicensed .38 caliber revolver, and that a few weeks earlier they likewise argued because he found out that his wife was still supporting her parents as well as her brothers and sisters.

Further, accused-appellant claimed that he saw men roaming near their house and that he had received death threats over the telephone because Cecilia owed \$35,000.00 to some people, in relation to her jewelry and perfumes business. She also allegedly owed people some cash which was coursed through her by workers from Saudi Arabia to be sent to their relatives in the Philippines (tsn, November 16, 1992, pp. 14-19).

Accused-appellant claimed that he went home at around 7 o'clock on the night of November 11, 1988, after his wife, Cecilia, and daughter, Charmaine, had left him at the party. When his wife and Charmaine arrived, they proceeded to the master's bedroom, after which, her daughter kissed him goodnight. He and his wife were then left alone in their room and at that moment, his wife showed him some money and uttered "Dad, okey na". She also brought out the .38 caliber revolver from her bag then changed her clothes, and went to the bathroom, and he fell asleep (tsn, November 16, 1992, pp. 21-28).

Thereafter, accused-appellant declared, he was suddenly awakened by an unusual sound or shot outside their room. When he went out, he saw his wife wounded and bleeding, and he felt and heard somebody run from the backdoor of their house which banged. Consequently, he ran outside and pursue the intruder who ran from the backdoor, but accused-appellant claimed that he only went up to their gate because of his concern over his wife's condition.

When he went back, he woke up Charmaine, and seeing the condition of Cecilia, both of them cried. After a while, he called up his brother-in-law, policeman Antonio Gabac (tsn, November 16, 1992, p. 32, p. 34, p. 37) and the two of them then brought Cecilia to the hospital.

In the hospital, some police investigators from the Las Piñas Police Station asked accused-appellant about the incident, but he refused to comment. He was later invited to the police station for investigation, but due to the advice of his relative, Fiscal Castillo, he never gave any statement to the police about the incident.

Accused-appellant denied the charges against him. While he admitted having been married to Cecilia on February 28, 1976, he claimed that his wife was killed by somebody else. Further, even as he denied possession of a .38 caliber revolver, he admitted to have been authorized to carry a .45 caliber between the years 1968 and 1969 (tsn, November 16, 1992, pp. 7 and 68).

Accused-appellant swore that he had no reason to kill his wife because he loved her. However, he admitted to have sired children by another woman (tsn, November 16, 1992, p. 51).

The trial court did not give credence and weight to the defense's theory that the victim was engaged in illegal activities which supposedly led to her death. Rather, the trial court found that accused-appellant had the opportunity and the propensity to commit the crime (pp. 66-67, Rollo).

Accordingly, although the evidence was partly circumstantial, the trial court made a pronouncement that all elements which were needed to arrive at a conclusion that accused-appellant killed his wife were present and that no proof had been established by him to overturn its findings (p. 67, Ibid.).

After going through the evidentiary record, we find no reasons to disagree with the trial court and are convinced that the guilt of accused-appellant Octavio Mendoza has been duly established.

Although the judgment of conviction is based on circumstantial evidence, conviction is proper if the circumstances proven constitute an unbroken chain which lead to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person (*Pecho vs. People*, 262 SCRA 518 [1996]). Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt (*People vs. Damao*, 253 SCRA 146 [1996]).

During the trial of the case, it was duly established that the only persons residing at No. 2 Tramo Street, Camella Homes, Phase III, Pamplona, Las Piñas, were the Mendozas, namely, accused-appellant Octavio, his daughter Charmaine, and his now deceased wife Cecilia. On the night Cecilia was shot to death, no one was there except these three persons. Accused-appellant struggled to persuade the trial court of his innocence by denying that he killed his wife, insinuating that another person is the killer. This stance of denial is negative self-serving evidence which deserves no evidentiary weight (*People vs. Gondora*, 265 SCRA 408 [1996]). The insinuation of accused-appellant that some convenient intruder perpetrated the killing is absolutely without basis and unsubstantiated. It is plainly an afterthought, a devised plot to escape just punishment. In fact, accused-appellant even refused to give any statement or comment to the police investigators to enlighten them about the shooting incident. If indeed, Cecilia was shot and killed by somebody else as claimed by accused-appellant, it would surely have been but natural for him, as a husband to cooperate with police authorities for the speedy apprehension of the gunman, by informing them immediately of the alleged intruder-killer. But he did not and instead, he took the advice of his relative, Fiscal Castillo, to keep silent about the incident when the police conducted the investigation, which is rather odd if he really were innocent. Verily it was only on November 16, 1992, or 2 years after the incident that he came out with the story about the handy intruder. He kept silent for two long years.

Accused-appellant strives to persuade us that the trial court erred in giving full credence to the testimony of his father-in-law, Alipio Eusebio, and his own daughter, Charmaine Mendoza. But having been in a better position to observe the witnesses, the trial court's appreciation of their testimony, truthfulness, honesty, and candor, deserves the highest respect (*People vs. Del Prado*, 253 SCRA 731 [1996]).

As established by the prosecution, and this is admitted by accused-appellant, even before he and his family went to the birthday party of his relative, he and the victim had already several occasions of altercation. Such fact was shown when accused-appellant left his wife and daughter at the party without informing them where he would be.

The victim's father, Alipio Eusebio, attested to the fact that accused-appellant and his daughter, Cecilia, had been quarrelling. Accused-appellant suspected that Cecilia was having an illicit relationship with another man. He contends that Alipio is not a credible witness for the prosecution in view of his relationship with the victim and that Alipio resents him on account of his having children with another woman.

It is basic precept that relationship per se of a witness with the victim does not necessarily mean he is biased. The Court finds improbable and contrary to human experience accused-appellant's claim that Alipio testified for no other purpose but revenge. It was not shown that Alipio was actuated by improper motive, thus, his testimony is entitled to full faith and credit.

The testimony of Charmaine that she saw accused-appellant, her father, hide a gun under his bed, leads us to believe that accused-appellant killed his own wife. Accused-appellant cannot escape criminal liability on his theory that when Charmaine testified for the prosecution, her testimony did not appear to be a naturally spontaneous narration, but rather evidently a coached one. According to to him, this theory was bolstered when she cried and suddenly, embraced accused-appellant in public view.

On the contrary, the fact that Charmaine cried during her testimony is mute evidence of her credibility, this, being in accord with human behavior and nature. It must have been a most traumatic and painful experience for her, at a very tender age, to testify in court against her own father whom she loves and respects as shown by the act of embracing him.

Accused-appellant virtually banks, for acquittal, on Charmaine's retraction. But the trial court correctly disregarded the same. The first time Charmaine took the witness stand was in December, 1988, barely a month after her mother's death. Her recantation was made two years later when she was already in the custody of accused-appellant who was allowed to go out on bail. Charmaine's first testimony was to the effect that she saw her father, accused-appellant, hiding a gun under the bed, and her subsequent testimony was that she saw no such act. Such contradictory statements should not discredit Charmaine as a witness. The present rule is that testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and probabilities and improbabilities of the case (*People vs. Cura*, 240 SCRA 234 [1995]). Moreover, mere retraction by a prosecution witness does not necessarily vitiate the original testimony. Testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made carefully and keenly scrutinized, and the reasons or motives for the change discriminately analyzed (*Molina vs. People*, 259 SCRA 138 [1996]).

The trial court believed that the testimony given by Charmaine for the defense did not alter her former testimony for the prosecution. The second declaration was received with caution, and it did not impressed the trial court. Neither are we persuaded to hold otherwise for it must be borne in mind that Charmaine was living with and dependent upon her father, accused-appellant, at the time she gave her second declaration.

Another fact which militates against accused-appellant's denial that he killed his wife is that the paraffin test conducted on him yielded positive results. Notably, this test was conducted a day after the shooting incident.

Accused-appellant also denied having and possessed the .38 colt revolver with Serial Number 41001, the fatal weapon, and even implied that the gun belongs to the victim. According to accused-appellant, there had been a dispute between him and his wife over the unlicensed .38 caliber gun which his wife carried wherever she went, and not about the fact that his wife was having an illicit relationship with another man.

But this claim is belied by the overwhelming evidence pointing to accused-appellant as the possessor of the fatal

weapon. Charmaine testified that the fatal gun, when exhibited in court, was the gun she saw on the night her mother was shot. And weeks earlier, she said, it was the same gun which she saw with his father. Defense witness, Antonio Gabac, when asked by the Las Piñas police investigators to surrender the gun, claimed that the same was surrendered to him by accused-appellant shortly after the shooting incident. The possession of the fatal gun by accused-appellant is further established by the memorandum receipt signed by accused-appellant himself and a mission order authorizing him to carry the said weapon (p. 66, Rollo). But accused-appellant claims that these documents were illegally procured in grave violation of his constitutional right to privacy of communication and papers, and/or his right against unreasonable search and seizure (p. 154, *ibid.*).

The Solicitor General is correct in explaining that such right applies as a restraint directed only against the government and its agencies. The case in point is *People vs. Marti* (193 SCRA 57 [1991]) where this Court had the occasion to rule that the constitutional protection against unreasonable searches and seizures refers to the immunity of one's person from interference by government and it cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion.

In the instant case, the memorandum receipt and mission order were discovered by accused-appellant's father-in-law Alipio Eusebio, a private citizen. Certainly, a search warrant is dispensable.

Finally, contrary to accused-appellant's claim that he was licensed and authorized to carry a .45 caliber pistol, the certification of Captain Abraham Garcillano, Chief, Records, Legal and Research Branch of the Firearm and Explosive Unit, dated December 29, 1989, shows that accused-appellant is not a licensed firearm holder of any kind (p. 69, Rollo).

While admittedly there is no direct evidence presented by the prosecution on the killing of Cecilia by accused-appellant, the established circumstances abovestated, however, constitute an unbroken chain, consistent with each other and with the hypothesis that accused-appellant is guilty, to the exclusion of all other hypotheses that he is not. And when circumstantial evidence constitutes an unbroken chain of natural and rational circumstances corroborating each other, it cannot be overcome by inconcrete and doubtful evidence submitted by the accused (*People vs. Verano*, 264 SCRA 546 [1996]). The unbelievable story of accused-appellant that the killing was perpetrated by the "smuggling syndicate's man" is all too plainly a mere concoction of accused-appellant designed to exculpate himself from criminal liability.

Although the prosecution duly established that the crime of illegal possession of firearm under Presidential Decree No. 1866 was committed, fortunately for accused-appellant, Republic Act No. 8294 which took effect on July 7, 1997 amended the said decree and the law now merely considers the use of an unlicensed firearm as an aggravating circumstance in murder or homicide, and not as a separate offense (*People vs. Molina*, G.R. No. 115835-36, July 22, 1998).

Withal, accused-appellant may be held liable only for parricide with the special aggravating circumstance of use of an unlicensed firearm. This notwithstanding, that is, despite the presence of such aggravating circumstance, the penalty imposed for the crime of parricide which is reclusion perpetua, may no longer be increased. The death penalty cannot be imposed upon accused-appellant since the killing occurred in November, 1988, when the imposition of the capital penalty was still proscribed.

WHEREFORE, except as above modified, the appealed decision is hereby **AFFIRMED**, without special pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Martinez, and Pardo, JJ., concur.

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