

## FIRST DIVISION

[ G.R. No. 109279-80, January 18, 1999 ]

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

### D E C I S I O N

**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.

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 Nortales 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 aforesaid 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, okay 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,