

SECOND DIVISION

[G.R. No. 112092, March 01, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERT NUÑEZ Y LAGASCA, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated May 26, 1993, of the Regional Trial Court of Urdaneta, Pangasinan, Branch 48, convicting appellant of the crime of qualified illegal possession of firearms, sentencing him to life imprisonment, and ordering him to pay the costs.

The facts are as follows:

On March 6, 1992, at around 2:00 to 3:00 P.M., in Palina Sur, Urdaneta, Pangasinan, four (4) persons, namely Teofilo Pacquing, Calixto Pacorza,^[2] Marlito Pariñas and Roy Tolentino were riding a tricycle driven by Jerry Almendrez.^[3] When they passed by the gate of appellant's family compound, appellant fired at them from a distance of about twenty (20) meters, hitting Pacquing on the right toe, Almendrez on the left breast, and Pacorza resulting to his death. The records do not indicate the injuries sustained by Pacorza, but merely state that he died as a result of the shooting incident.^[4]

The victims were brought to the Urdaneta Sacred Heart Hospital for treatment. Teofilo Pacquing^[5] reported the incident to the police. SPO1 Ernesto C. Ganceña, a member of the Investigation and Intelligence Operations of the Philippine National Police (PNP) investigated the incident. Teofilo Pacquing informed him that it was appellant who fired at them. Thereafter, SPO1 Ganceña, accompanied by PO3 Asterio Dismaya, and SPO1 Henry R. Kang proceeded to the scene of the incident. When they arrived at appellant's house, SPO1 Ganceña talked to appellant who readily admitted that he was the one who shot Pacorza. SPO1 Kang recovered a caliber .22, long rifle, "Squibman," model 116 MK with serial no. A-320554 with telescope from appellant. When asked for the permit for the firearm, appellant could not produce any. Appellant was thereafter brought to the Urdaneta Police Station for investigation. He refused to give any statement to the police. The incident was entered in the police blotter by desk officer Romulo Dutong.^[6]

For the shooting of Almendrez and Pacquing and the death of Pacorza, appellant was charged under four (4) separate Informations for (1) homicide, (2) frustrated homicide, (3) frustrated homicide and (4) illegal possession of firearms docketed as Criminal Case No. U-6449. The cases were raffled to the different branches. Only the Illegal Possession of Firearms case is before us.

The Information for Illegal Possession of Firearms reads:^[7]

That on or about the 6th day of March, 1992, at barangay Palina Sur, municipality of Urdaneta, province of Pangasinan, 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 custody one (1) Caliber .22 Rifle 116MK, bearing Serial No. A320554, with trademark "Kassnar Squibman" and with magazine and nine (9) live ammunitions, without first securing the necessary permit or license from lawful authorities, which said firearm was used by the accused in the commission of the crime of homicide and double frustrated homicide against the persons of Calixto Pacursa (sic), Jerry Armendez (sic) and Teofilo Pacquing.

CONTRARY to Presidential Decree No. 1866.

Urdaneta, Pangasinan, June 16, 1992.

On September 10, 1992, upon arraignment, appellant, duly assisted by counsel *de parte*, pleaded not guilty.^[8] Pre-trial conference was waived. Trial then commenced.

The prosecution presented the four (4) members of the PNP, Urdaneta, Pangasinan, who were involved in the investigation, and one of the victims, Teofilo Pacquing.

SPO1 Ernesto C. Ganceña testified that he conducted the investigation and that appellant admitted to him that he shot the victim, Pacorza.^[9] PO2 Asterio Dismaya, corroborated the testimony of SPO1 Ganceña.^[10] SPO1 Henry R. Kang, testified that he was the one who recovered the firearm from appellant.^[11] SPO1 Nestor G. Manongsong, responding to a subpoena *duces tecum*, testified that he could not bring the police blotter, but presented the complaint/assignment sheet,^[12] and the spot report^[13] pertaining to the incident.^[14] Teofilo Pacquing testified on the circumstances surrounding the attack, and identified appellant as the assailant.^[15]

On the other hand, the defense presented five (5) witnesses, namely: (1) appellant, (2) Salvador Paz, a carpenter working in the house of Alvaro Nuñez; (3) Eugene Nuñez, a neighbor of the aunt of appellant who allegedly witnessed the shooting incident; (4) Cesar Nuñez Celeste, a cousin of appellant and the owner of the subject firearm and (5) SPO4 Benito Opguar, of the Provincial Headquarters, PNP Command, Lingayen, Pangasinan, who testified that Cesar Celeste had a temporary license to possess the subject firearm, but at the time of the shooting incident, the temporary license had already lapsed.^[16]

The defense claims that the shooting incident did not happen on the road, but inside the living room of the house of appellant's aunt, Magdalena Celeste. Appellant claims that he shot at the victims in self-defense. He narrates his version of the incident as follows:^[17]

That on March 6, 1992, the accused-appellant was busy sticking tobacco leaves when six (6) armed men namely: Calixto Pacursa, Gerry

Almendrez, Teofilo Tolentino, Teofilo Pacquing, Nick Gascon and Carlito Parnas, arrived in their compound and went inside their compound and stoned the houses of his grandmother, Maxima Nuñez, his uncle Mariano Nuñez and his aunt Magdalena Celeste. When the six (6) men noticed him, they shouted at him so the accused-appellant ran towards the north and since they ran after him, the accused-appellant hid behind the santol tree, then the six men left the place boarding on the same tricycle and proceeded towards the west. In the afternoon between 3:00 and 4:00 o'clock of the same date, while he is unloading tobacco leaves, Gerry Almendrez and his companions came back and they shouted at him and he heard one gunshot so he ran inside the compound where his grandfather's house were being constructed and that was then the time that Cesar Celeste and Juanito Nuñez went to town to report the said incident.

Calixto Pacursa armed with a .38 caliber met the accused-appellant so he ran towards the house of his aunt Magdalena Celeste and hide (sic) inside the bathroom since Calixto Pacursa continued chasing him. When Calixto Pacursa was about to go the second floor, he saw the .22 caliber that was placed on top of the bed of Cesar Celeste and he got the said firearm and when he went out he was still holding the .38 caliber and at the same time holding the .22 caliber firearm. When the accused-appellant saw Calixto Pacurza tucked his .38 caliber firearm in his waist and loaded the .22 caliber rifle that was the time accused-appellant went out from the bathroom and grappled with Calixto Pacurza and the accused-appellant was able to retrieve the subject firearm from Calixto Pacurza. The accused-appellant move two steps backward but Calixto Pacurza drew his .38 caliber firearm from his waist and that was the time that accused-appellant fired the .22 caliber rifle at Calixto Pacurza. The accused-appellant and Gerry Almendrez had a misunderstanding because the former noticed that some parts of the motorcycle driven by the latter had been replaced.

The testimony of herein accused-appellant were corroborated by Salvador Paz, a laborer in the on-going construction of the house of Alvaro Nuñez, and Eugene Nuñez, who at that time were inside the kitchen of Magdalena Celeste, the former was pouring hot water in a thermos while the latter went inside the kitchen to light his cigarette.

Cesar Celeste declared that he is the owner of the subject firearm and he brought outside the said firearm when Teofilo Pacquing and his companions arrived and stoned the houses in their compound. And before he and Juanito Nuñez went to town to report to the police authorities, he left the licensed firearm on top of his bed. He applied a license to possess the firearm through First Continental Co., Inc., and had paid the firearm bond.

After presentation of prosecution evidence in the illegal possession case, appellant filed a motion for consolidation of the four cases. Upon the opposition of the public prosecutor, the trial court denied the motion.^[18] Subsequently, on May 26, 1993, the trial court rendered a decision^[19] convicting appellant, the dispositive portion of which provides:

WHEREFORE, this court finds the accused guilty of Illegal possession of firearm resulting to the death of the victim and pursuant to P.D. 1866 in relation to the 1987 Constitution the court sentences the said accused Robert Nuñez to suffer the penalty of life imprisonment and with costs.

SO ORDERED.^[20]

Appellant now assigns the following errors:^[21]

- I. THE LOWER COURT GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL POSSESSION OF FIREARM DESPITE THE FACT THAT THE SAME WAS NOT RECOVERED FROM HIS POSSESSION AS TESTIFIED TO ON REBUTTAL BY PROSECUTION WITNESS PO3 HENRY KANG.
- II. THE LOWER COURT GRAVELY ERRED IN GIVING GREAT WEIGHT TO THE INCONSISTENT AND UNCORROBORATED TESTIMONIES OF THE PROSECUTION WITNESSES AND IN NOT GIVING CREDENCE TO THE CORROBORATED AND CREDIBLE TESTIMONIES OF THE DEFENSE WITNESSES.
- III. THE LOWER COURT GRAVELY ERRED IN SHIFTING THE BURDEN OF PROOF TO THE ACCUSED APPELLANT.
- IV. THE LOWER COURT GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGED EXTRAJUDICIAL CONFESSION OF THE ACCUSED-APPELLANT WITHOUT THE ASSISTANCE OF A COUNSEL AND IN ADMITTING THE FIREARM IN ISSUE WHICH WAS SEARCHED AND SEIZED WITHOUT A VALID WARRANT.

In support of his first and second assignment of errors, appellant points out major inconsistencies in the testimonies of the prosecution witnesses. SPO1 Ganceña testified that appellant was inside his house when the police arrived at the crime scene and the rifle was located "beside" appellant, and it was SPO1 Kang who got the rifle from appellant. SPO3 Dismaya, however, testified that appellant was actually in the yard when they arrived and that appellant was the one who got the rifle from the house and handed it to SPO2 Kang. SPO2 Kang testified during direct examination that it was appellant who gave him the gun, but during rebuttal, he said that it was one of appellant's cousins who handed to him the gun.

In support of his third assignment of error, appellant claims that it was error for the trial court to shift the burden of proof to the defense when he invoked self-defense.

In support of his fourth assignment of error, appellant contends that his alleged "extra-judicial confession" to SPO1 Ganceña is inadmissible since he was not assisted by counsel at the time it was made. Further, the rifle was seized without a search warrant and therefore, inadmissible in evidence.

The Office of the Solicitor General, on the other hand, points out that it is of no moment who among the responding policemen received the fatal weapon. What is important is that he admitted possession of the firearm at the time the victim was