

FIRST DIVISION

[G.R. No. 129304, September 27, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVA
MA. VICTORIA CARIQUEZ Y CRUZ, AND LEEZEL FRANCO Y
SAMSON, ACCUSED-APPELLANTS.**

D E C I S I O N

DAVIDE, JR., C.J.:

This is an appeal from the decision^[1] of 19 March 1997, of the Regional Trial Court of Pasig City, Branch 163, in Criminal Case No. 110410 convicting accused-appellants Ava Ma. Victoria Cariquez y Cruz (hereafter AVA) and Leezel Franco y Samson (hereafter LEEZEL) of the crime of parricide and homicide, respectively.

In an Information^[2] dated 30 May 1996, AVA and LEEZEL were initially charged with serious physical injuries under Section 10, Article VI of R.A. No. 7610.^[3] However, on 31 May 1996 the victim, Mariel Cariquez y Cruz (hereafter ETHEL) died. On 30 August 1996 the information was amended to charge AVA and LEEZEL with the crime of parricide. The Amended Information^[4] reads:

The undersigned State Prosecutor of the Department of Justice, accuses AVA MA. VICTORIA CARIQUEZ Y CRUZ and LEEZEL FRANCO Y SAMSON of the crime of Parricide defined and penalized under Article 246 of the Revised Penal Code, as amended by Sec. 5 of R.A. 7659 committed in the manner herein narrated as follows:

“That on or about the 27th day of May 1996, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, accused AVA MA. VICTORIA Y CARIQUEZ, being then the mother of a 2 1/2 years old child, MARIEL CARIQUEZ Y CRUZ, conspiring and confederating together with Leezel Franco Y Samson, and mutually helping and aiding one another, with intent to kill, evident premeditation, taking advantage of superior strength and treachery, did then and there, willfully, unlawfully and feloniously, beat and maul said MARIEL CARIQUEZ Y CRUZ in the different parts of her body, thereby inflicting upon her mortal wounds which directly caused her death.”

CONTRARY TO LAW.

The witnesses presented by the prosecution were Lilia Gojul, Michelle Torrente, Theresa Castillo, Dr. Antonio Vertido, Dr. Jose Joey Bienvenida, SPO3 Adonis Bacarra, Dr. Arsenio Pascual, and Benilda Almario. Lilia Gojul is AVA's sister. The

relevant and material facts established by their testimonies are faithfully summarized in the Appellee's Brief, as follows:

Mariel Cariquez y Cruz, fondly called Ethel, was two and a-half years old when she and her mother, Ava Cariquez, moved in sometime in January 1996 to No. 116 Royal Townhomes, San Rafael Mandaluyong City. Ava's sister, Lilia C. Gojul moved in with them (TSN, October 16, 1996, pp. 5-6, 32). She slept with the little girl in one of the two bedrooms on the house (TSN, *Ibid.*, p. 12). Ava had a housemaid named Elizabeth Patao, who also watched over Mariel or Ethel (TSN, October 16, 1996, pp. 6,8). At the time, Ava had a live-in partner, Leezel Franco (TSN, October 16, 1996, pp. 5-6, 49). He was not the father of Ethel, however (TSN, *ibid.*, p. 51).

Ava's household was not at all peaceful because almost everyday, Ava and Leezel quarreled, "*nagbubugbugan*" (TSN, October 16, 1996, pp. 9, 11; October 29, 1996, pp. 29, 40-41). Ava and Leezel were then taking or using drugs (TSN, October 16, 1996, p. 39).

In the middle of March 1996, Lilia Gojul left Ava's household and went to live in her home at Urduja Village, Novaliches, Quezon City (TSN, October 16, 1996, p. 6).

In the meantime, the little girl caught the attention of their neighbors as she was cute and friendly. While the neighbors became fond of "Ethel," they however found Ava and Leezel aloof snobbish (October 29, 1996, pp. 9, 30, 21).

On April 14, 1996, Lilia visited Ava and her niece at the Royal townhomes but she was shocked to see Ethel's appearance; her hair was shaven, her face was full of contusions, her neck had faded cigarette burns while her arms and legs had traces of pinching and maltreatment. She also had marks of "black-eye" on both eyes. Lilia also noticed Ethel's knees with contusions due to prolonged kneeling. (TSN, October 16, 1996, pp. 12, 13). When Lilia asked the little girl to identify who inflicted the injuries on her body, Ethel tearfully pointed to Ava and Leezel (TSN, October 16, 1996, p. 14). Lilia confronted Ava about her and Leezel's treatment of Ethel (*Ibid.*, p. 13).

Neighbors were hearing the little girl crying everyday, morning, noon, evening, and even at 1:00 o'clock or 2:00 o'clock in the morning (TSN, October 29, 1996, p. 8, 29-30). Sometime in April, Michelle Torrente, an occupant of Unit 114, was aghast to see her shaven, with bruises all over her body and wounds in her arms and legs (TSN, *ibid.*, pp. 10,130. Ethel also had cigarette burns, and when Michelle asked what happened, Ethel replied: "*pinaso po ako.*" When Michelle further asked who burned her and caused her bruises, Ethel said, "*Papa ko po,*" referring to Leezel Franco (TSN, *ibid.*, pp. 11-13).

The little girl's shaven head and bruises were also noticed by Theresa Castill, an occupant of unit 115, adjacent to Ava's residence. When she asked Ethel's "yaya" why this was done to the little girl, the "yaya"

answered, "*parusa*" (TSN, October 16, 1996, p. 150).

The next time that Lilia visited Ava and her daughter was on May 12, 1996. At the time, Ava's housemaid has already left the household. On that occasion, Lilia observed that Ethel was sickly and had even more contusions than the last time she saw her in April. Out of pity for the little girl, Lilia tried to persuade Ava that she take custody of Ethel (TSN, October 16, 1996, p. 15). Ava agreed to her suggestion and wrote a note where she passed on to Lilia Gojul the guardianship of Ethel Cariquez (TSN, *ibid.*, pp. 16, 19; Exhibit A). However, on May 14, 1996, Lilia had to leave Ava's household without bringing Ethel with her (TSN, October 16, 1996, p. 21). Ethel cried silently when Lilia left (TSN, *ibid.*, pp. 22, 36). Lilia heard nothing from them after that.

On May 27, 1996, around 3:00 or 4:00 o'clock in the afternoon, Ethel was brought in an ambulance from the Mandaluyong Medical Center to the Cardinal Santos Memorial Hospital at Greenhills, San Juan (TSN, November 14, 1996, pp. 8; 29). At the time, she was unconscious and was assisted by an ambu bag, unable to breathe on her own. Her body was limp and she had prominent bruises on the forehead and the right cheek (TSN, *ibid.*, pp. 8, 16).

Dr. Jose Joey Bienvenida attended to her and in the course of taking her medical history, he interviewed the mother, Ava Cariquez. Ava at first told the doctor that it was her brother, the patient's uncle, who mauled the child and inflicted upon her serious injuries. Ava later changed her story, saying that the little girl actually fell from the stairs (TSN, *ibid.*, pp. 9-10, 25-27).

A CT-scan was taken of the child and the results showed a combination of chronic and acute subdural hematoma on the left frontotemporoparietal (front side and apex) convexity of the brain.

Massive edema and mass effect in the left cerebral hemisphere and right fronto-parietal lobe were noted. A fracture was also noted on the left frontal bone (TSN, *ibid.*, p. 11). Blood clot was found in almost the entire cerebral hemisphere. He also found soft tissue injuries, i.e., hematoma and abrasions, in other parts of the body (TSN, *ibid.*, p. 42). Dr. Bienvenida noted that the injury on the head was a "confluent injury," which means that it was sustained on different dates (TSN, *ibid.*, p. 40); one portion of the injury was "resolving hematoma" which was at least two (2) years old, while the more acute injury was sustained within 24 hours from his examination (TSN, *ibid.*, p. 41). Ethel was thereafter confined at the Intensive Care Unit of the hospital, attached to a respirator (TSN, *ibid.*, p. 16). She was classified as a "brain-dead" patient (*Ibid.*, p. 18).

Ethel's condition however grew worse and she eventually died on May 31, 1996 at about 10:20 in the morning. After her death, the life support system was removed (TSN, *ibid.*, p. 18; Exhibit E). The cause of death was "cardio respiratory arrest secondary to multiple organ system failure, severe massive crania-cerebral trauma" (TSN, *ibid.*, p. 23; Exhibit C-2).

Dr. Antonio Vertido, NBI Medico-Legal Officer, conducted an autopsy on the little girl's body (TSN, November 7, 1996, p. 4). The doctor made the following significant findings: fracture linear, right middle cranial fosse; abrasion, right forehead; contusion, right leg; contusion-abrasion left face; hematoma, forehead right and hematoma, scalp, right fronto-parietal (Exhibit D). In his autopsy report, Dr. Vertido concluded that the cause of death was Traumatic Head Injury, Severe (Exhibit D-2).^[5]

AVA and LEEZEL were the witnesses presented by the defense.

According to AVA, during their breakfast at about 7:30 a.m. on 27 May 1996, she talked with LEEZEL about their up-coming concert on 1 June 1996 at Subic. Then, she went out of the house to make a telephone call. When she left the house, her daughter ETHEL was eating while LEEZEL was playing the guitar. When she returned she saw ETHEL playing with the food. She told ETHEL to hurry up as she was going with her to the office, but ETHEL stubbornly looked at her and continued to play with her food. She again told ETHEL to hurry up and finish her food. ETHEL still said "No." To her repeated order to do so, ETHEL also repeatedly said, "No." AVA then got a plastic belt and hit ETHEL with it on the buttocks a number of times, which made ETHEL cry. Since ETHEL continued to be hard-headed, AVA held her on the shoulder. ETHEL struggled and slipped from AVA's hold, got out of balance, and fell ETHEL hit the sofa and when she bounced back her head hit the edge of the cemented stairs. AVA got shocked and noticed LEEZEL stop playing his guitar and shout: "Ava young anak mo." AVA then held ETHEL and gave her mouth-to-mouth resuscitation. Seeing ETHEL's serious condition, LEEZEL suggested to AVA to bring ETHEL to the hospital, which they did, at first to the Mandaluyong City Hospital and because the hospital cannot provide the best medical care, to the Cardinal Santos Memorial Hospital, where she was brought to and confined at the hospital's Intensive Care Unit (ICU). Early on the morning of 28 May 1996, AVA went to the Mandaluyong Police Station to get her car and to find out the reason why her car was impounded. She was not able to get the car. Instead, she was detained at about 8:00 p.m. of 28 May 1996. AVA came to know that the police found drugs in her car, for which reason she was detained.^[6] Three (3) days after her detention, Lilia Gojul, her sister, went to jail and asked her to sign some papers and asked her permission to take off the respirator of ETHEL in the hospital. She did not give her permission.^[7]

On cross-examination, AVA declared that the cigarette burns on ETHEL's body were caused by sprinkling oil while their maid was cooking; LEEZEL had nothing to do with any of the child's bruises or injuries; when Lilia Gojul, her sister visited her in jail, the former told her that she should point to LEEZEL as the one responsible for ETHEL's death, otherwise, she will do something to her; and that she has no personal relation with LEEZEL. However, in her affidavit,^[8] dated 1 June 1996, and in her reply-affidavit,^[9] AVA pointed to LEEZEL as the one responsible for ETHEL's injuries, stating that when she returned home after making a phone call from outside the house, she found LEEZEL hit ETHEL with the buckle of a belt at the back and front of her head. She tried to stop him but he pushed her. As LEEZEL continued to hit ETHEL with the belt, what she did was to get the antenna of the TV and hit LEEZEL with it at his hand causing him to release the same. She then got hold of ETHEL but because LEEZEL pushed her she fell to the floor with her daughter. This was repeated several times. When she noticed ETHEL was having difficulty in

breathing, she ran to the comfort room in order to give ETHEL a shower to revive her, at the same time applying mouth to mouth resuscitation to her. She went out of the bathroom to bring ETHEL to the hospital.^[10]

In her reply-affidavit AVA declared that when she returned home after making a telephone call, she found LEEZEL hit ETHEL with a buckle of his belt. That was not the first time that she saw him hit ETHEL; he used to hit her whenever he is high on drugs and ETHEL was noisy playing. On those occasions LEEZEL used to hit AVA and they end up fighting because AVA always tried to protect ETHEL from harm.

AVA tried to diminish the value of these admissions in her affidavit and reply-affidavit by testifying that she did not read them before signing and she signed under a state of shock.^[11]

LEEZEL offered two versions for his defense. In his counter-affidavit^[12] of 11 June 1996, he declared that during breakfast in the morning of 27 May 1996, he and AVA talked about the band and their concert in Subic. Thereafter, AVA told him that she was going to make a phone call outside of the house. Before leaving, she ordered ETHEL to hurry up with her food because she was to go with AVA to the latter's office. However, when AVA returned, ETHEL had not finished eating. AVA hit ETHEL very hard, whipped her with a belt, held her by the arms and pushed her, sending ETHEL to hit the corner of the sofa and then to bounce, causing her head to hit the end of the cemented stairs and to fall to the floor. ETHEL was on the verge of death. AVA was shocked. Seeing this, LEEZEL picked up ETHEL and brought her to the comfort room where he poured water on her. Thereafter, he and AVA brought ETHEL to the hospital.^[13]

But, in his testimony in court LEEZEL declared that his statement in his counter-affidavit that AVA pushed ETHEL, causing the latter to fall and to hit the cemented stairs was only narrated to him by AVA and that he never witnessed the incident.^[14] He further declared that he had nothing to do with ETHEL's injuries and the testimony of Lilia Gojul is not true. Lilia had an ulterior motive against him because on one occasion he prevented Catherine, Lilia's daughter from entering AVA's house and because of that, Lilia, her husband and her sons Caesar and Julius kicked him and hit him with a chair. Finally, LEEZEL claimed that he had no idea as to what happened to ETHEL; all that he saw was the child lying on the floor, and he then helped AVA bring the child to the hospital. In the hospital, he was asked by the police to go with them to the Complaints and Investigation Division of the Mandaluyong City Police, where he stayed for more than four hours. Since the police conducted no formal investigation on him, he left for home.^[15]

In its decision^[16] of 19 March 1997, the trial court found AVA and LEEZEL guilty of parricide and homicide, respectively. It decreed as follows:

WHEREFORE, premises considered, this Court finds accused Ava Ma. Victoria Cariquez y Cruz and Leezel Franco y Samson guilty beyond reasonable doubt as principal for the crime of Parricide and homicide respectively and considering the mitigating circumstance that they did not intend to commit so grave a wrong as that committed and there being no aggravating circumstances on record, imposes upon-