

## SECOND DIVISION

[ G.R. No. 103515, October 07, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN SUELTO Y CORDETA, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

Appellant, Edwin Suelto y Cordeta, seeks reversal of the Decision<sup>[1]</sup> dated September 20, 1991, in Criminal Case No. TCS 1112, of the Regional Trial Court of Toledo City, Branch 29. The court found him guilty beyond reasonable doubt of the crime of parricide for the death of his wife, Juanita Suelto.

The Information<sup>[2]</sup> against appellant dated August 15, 1989, reads as follows:

"That at around 1:00 o'clock in the morning of August 6, 1989, at Barangay Don Andres Soriano, Toledo City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a firearm and with intent to kill did then and there willfully, unlawfully and feloniously shoot Juanita Suelto, to whom he has been legally married, thereby hitting and wounding her at her head at the left occipital region resulting in her death secondary thereto.

CONTRARY TO LAW."

During arraignment the appellant pleaded not guilty. After trial, the court *a quo* rendered the assailed decision, disposing as follows:

"WHEREFORE, in view of the foregoing, finding the accused GUILTY beyond reasonable doubt of Parricide under Art. 246 of the Revised Penal Code it is hereby the sentence of this Court that accused suffers the penalty of *Reclusion Perpetua* and to Indemnify the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) and to pay the cost. However, the accused is given full credit of his preventive imprisonment provided that he complied with the rules and regulation of a convicted prisoner.

SO ORDERED."<sup>[3]</sup>

This appeal is before the Court in view of the penalty imposed.

Long after briefs were filed by the parties, appellant wrote the Court requesting that the appeal be withdrawn and the penalty of *reclusion perpetua* be reduced. However, the Solicitor General, when asked for comment, opposed the withdrawal. Considering that the authority of the Court to review the penalty here imposed could not be waived by appellant (*People v. Midtomod*, 283 SCRA 395), we agree with the

Solicitor General that the withdrawal of the appeal, at this late stage, ought to be denied.

Appellant's main defense is denial of the charge of parricide, contending that the death of his wife was due to accidental shooting when he grappled with the gun to prevent her from committing suicide. Before this Court he seeks the reversal of the trial court's decision on the following grounds:

I

THE LOWER COURT ERRED IN OVER-LOOKING AND IGNORING CERTAIN FACTS OF SUBSTANCE AND VALUE WHICH, IF CONSIDERED, WOULD AFFECT THE OUTCOME OF THE CASE.

II

THE LOWER COURT ERRED IN TOTALLY DISCREDITING THE EXEMPTING CIRCUMSTANCE OF ACCIDENTAL FIRING, INTERPOSED BY APPELLANT.

III

THE LOWER COURT ERRED IN NOT ACQUITTING APPELLANT EVEN UPON THE GROUND OF REASONABLE GROUND (SIC).

Considering these assigned errors together, the principal issue now before us is whether the trial court erred in convicting appellant of the crime of parricide and sentencing him to *reclusion perpetua*.

In his brief, appellant contends that the prosecution failed to present any eyewitness to the event such that there was no certainty as to who was holding the gun at the time it exploded; that there was nothing in the entire record stating that the prosecution objected to and contradicted the testimony of the appellant that it was the victim who was holding the gun at the time it fired; that the pictures of the re-enactment of the incident confirmed the details in the narration of the appellant that the victim was on the left side of the accused as he tried to grapple with the left hand of the accused; and that even the mother of the victim testified that the victim was in a depressed mood that day and had reason to attempt killing herself.

Additionally, appellant points out that even the *medico legal* officer and the NBI expert admitted the possibility that the gun fired during the struggle for the gun; that it was possible that it was the finger of the victim which pulled the trigger; that the gun fired within a short distance and that the fatal wound was self-inflicted, and accidental.

Further, appellant argues that the conviction was based on circumstantial evidence; and that the trial court should not have given credence to the contradictory and biased narration of prosecution witnesses. They contradicted each other, he says, on who was asked to fetch the ambulance. Only witness Juanita Carcido mentioned the washing of appellant's hands, and only one of them heard the word "accident" when appellant called for assistance to fetch an ambulance, he points out. More significantly, he insists the prosecution failed to show who was actually holding the gun when it fired. Without this showing, he claims, then the prosecution failed to prove the guilt of the appellant beyond reasonable doubt.

For the state, the Solicitor General maintains that the proposition of appellant, that the trial court erred in relying on the testimonies of biased witnesses who were not present during the shooting over the testimony of the accused-appellant who was the only witness, is absurd. If a witness present at the time of the shooting was required, then conviction of accused would be impossible. The alleged inconsistencies in insignificant details of witnesses Emiliana Barluado and Juanita Carcido's narrations, says the Solicitor General, only signal that their declarations at the trial were unrehearsed and spontaneous. He explains that most likely, as in previous occasions, appellant was threatening his wife, but lost his control and pulled the trigger of the gun. Furthermore, the Solicitor General notes the allegation that the wife had suicidal tendencies had not been established. Appellant himself admitted that the victim loved their daughter very much that it seemed highly improbable that the victim would take her own life. On the matter of inconclusiveness of nitrate burns as proof, the Solicitor General avers that appellant had not fully explained why both of his hands had nitrates.

The Solicitor General notes appellant's defense of accidental shooting is weak. He concludes that the prosecution has sufficiently established appellant's guilt beyond reasonable doubt.

As gleaned from testimonies on record, the pertinent facts are as follows:

On August 5, 1989, accused-appellant arrived home from his work at Atlas Consolidated Mining Corporation, DAS, Toledo City. It was the birthday of his wife, Juanita Suelto who was feeling low that day since there was no money for a celebration. The spouses were later overheard by the neighbors arguing. Then past 12:00 midnight, a gunshot rang from the spouses' bedroom.

According to prosecution witness Emiliana Barluado, who lived ten (10) meters away from the Sultos, at around 1:00 a.m. of August 6, 1989, appellant knocked at her door, shouting for her to fetch an ambulance because "Juaning (sic) meet an accident".<sup>[4]</sup> She hurriedly ran out of the house and with her neighbor, Juanita Carcido, rushed for an ambulance, but none was available. When they returned to the house of the Sultos, the victim had already been brought to the hospital. Barluado also testified that on previous occasions, the victim had confided to her that appellant and the victim often had quarrels, and that at times during these quarrels, the appellant would poke a gun at her and threaten to shoot her.<sup>[5]</sup>

Another witness Juanita Carcido<sup>[6]</sup>, who lived on the ground floor just below the quarters of the Sultos, corroborated the story of Barluado. She narrated that she heard the appellant shouting at her neighbor, Barluado, to fetch an ambulance and the appellant saying, "I shot Juanita."<sup>[7]</sup> Carcido testified that at one point during the commotion, she observed the appellant washing his bloodied hands.<sup>[8]</sup>

NBI forensics expert, Cesar Cagalawan, testified that when he examined both hands of the appellant they proved positive for nitrate. However, witness Cagalawan did not discount the possibility that another person's hands,, trying to take away the gun from the hand of the victim, could have fired the gun and thus be positive for nitrate burns. Below is his testimony on this point:

Q: You were positive in your findings both left and right hands of the presence of nitrate or powder burns?

A: Both left and right hands gave positive for nitrate.

Q: You cannot tell to this Honorable Court whether what hand was used by the accused in allegedly firing the firearm?

A: It is possible left hand or right or both hands were used.

Q: Mr. Cagalawan, what is the radius within which the body of the person positive of nitrate when the firearm was fired?

A: We cannot really tell the exact distance . It is possible it is positive of the presence of nitrate his hands were near the firearm during the firing .

Q: Not necessarily this hand fired the firearm just the same?

A: Still positive for nitrate.

Q: At the distance of one foot, could it be possible that the same result even the subject did not hand the firearm.

A: It is possible.

Q: This could you opine with certainty as an expert if a person who tries to grab the firearm which firearm fired at the distance of one foot from the firearm could it be possible the same result?

A: Possible.

COURT:

Q: Could it be possible both hands fired the firearm?

A: Both hands.

ATTY. ALO:

Q: A person who grabs or who grapple the possession of the firearm and the firearm fires could it be possible the same result as shown in your report?

A: It is possible.<sup>[9]</sup>

Dr. Jesus Cerna, medico-legal officer, in his *post mortem*, reported that from the trajectory of the bullet the direction of the gunshot was forward upward, which indicated that the assailant was standing on the same level and holding the weapon on a lower position behind the victim. He testified that he found no "tattooing" around the area of the wound entrance nor burning of hair. He explained that the absence of "tattooing" and burning of the hair meant that the barrel of the gun was not less than 24 inches away from the head of the victim. During cross examination, Dr. Cerna did not discount the possibility that the same gunshot wound in the victim may be made if the victim herself held the gun and someone tried to grapple the gun away from her head before it fired. He testified as follows:

COURT

Q: Considering that you found in your examination the gunshot at the back of the head what could have been the probable position of the

victim at the time she was shot, she was facing?

A: As I said, Your Honor, the gun was fired from behind. So, the assailant was behind because the entrance of the wound was at the back of the head.

Q: Were there powder burns?

A: When I examined the skin of the wound of entrance and when I examined the head for possible presence of burning of the hair I was not able to find powder burns.

Fiscal Cavada

Q; Which could be a sign of what Doctor?

A: Considering that it is a gunshot wound, if the distance of the nozzle of the gun from the skin of the victim or hair of the victim is within 2 to 3 inches in case of a short arm or 5 to 6 inches in case of a long arm, there will be burning of the hair because the flame which came out of the barrel of the gun would traverse from 2 to 3 inches in case of short arms and 5 to 6 inches in case of long arms, and considering also that there is no sign of powder burns of the skin and based on the forensic method of medicine tattoo can be found from the nozzle if the gun is within 24 inches from the skin of the victim and since there is no sign of tattooing **so I can safely conclude that the distance from the barrel of the gun to the victim is beyond 24 inches.** (Emphasis ours.)

x x x

Q: Doctor, did you really exert efforts to find out whether there were powder burns on the body of the victim particularly burns on the body of the victim particularly on the vicinity of the wound?

A: Yes, Sir, when I particularly examine a victim of violent death like shooting, I always make it a point that I will look for the presence of tattooing on the wound of entrance and if the wound of entrance is found on the head which is covered by hair, I will always see the hair so that the scalp of the skin of the head would be exposed if there will be tattooing that could be seen.

x x x

Q: Now, Doctor, could you point to us just exactly where you found the wound of the victim with your own head using as a reference?

A: Now, that gunshot wound was exactly 11.0 centimeters from the opening of the left ear or head behind this one and 2.0 centimeters below the left external auditory meatus which is located here in this portion.

Q: Now, will you please, now let us come to a hypothetical problem. The situation is where the victim was holding a revolver or the firearm on her left hand and originally the victim was pointing the gun slowly upward on her left temple and another person grabbed the firearm and pushed it