

SECOND DIVISION

[G.R. No. 127818, November 11, 1998]

**PEOPLE OF THE PHILIPPINES. PLAINTIFF-APPELLEE, VS.
GUILLERMO NEPOMUCENO, JR, ACCUSED-APPELLANT .**

D E C I S I O N

MELO, J.:

Accused-appellant Guillermo Nepomuceno, Jr. has interposed the instant appeal in regard to the decision dated November 20, 1996 of the Regional Trial Court of the National Capital Judicial Region (Manila, Branch 46) which decreed:

Wherefore, the court hereby renders judgment finding the accused guilty beyond reasonable doubt of the crime of parricide as defined and penalized under Article 246 of the Revised Penal Code as amended by Republic Act No. 7659 for the death of Grace Nepomuceno and hereby sentences him to suffer imprisonment of Forty (40) years of reclusion perpetua and to pay the heirs of the deceased the sum of P50,000.00 with costs against him.

Pursuant to Article 921, paragraph (1) of the Civil Code, the court declares the accused ineligible to inherit from his wife. The entire estate should go to his son, Giordan Benitez Nepomuceno.

(pp.

20-21, Rollo)

The Information against accused-appellant charged:

That on or about May 2, 1994, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one GRACE NEPOMUCENO Y BENITEZ, his wife, with whom he was married in lawful wedlock, by then and there shooting her with a gun of unknown caliber hitting her on the left hip, thereby inflicting upon the said GRACE NEPOMUCENO Y BENITEZ gunshot wound which was necessarily fatal and which was the direct and immediate cause of her death thereafter.

(p. 5, Rollo)

Upon arraignment, accused-appellant, entered a plea of not guilty and trial ensued in due course. Thereafter, the trial court rendered the judgment of conviction now on appeal.

The prosecution presented seven witnesses, namely, Eden Ontog, SPO2 Rodolfo Rival, Forensic Chemist Mary Ann Aranas, Medico-Legal Examiner Floresto Arizala, Monserrat De Leon, Ballistic Expert Isabelo Silvestre, Jr. and Romeo Pabalan.

Eden Ontog declared that on May 2, 1994, she was the housemaid of the spouses Guillermo Nepomuceno, Jr. and Grace Nepomuceno, having started as such since May 31, 1993. At around 11 o'clock on the evening of May 2, 1994, accused-appellant, who was drunk, arrived and went to their bedroom where Eden and her ward Giordan the one-year old son of the couple, were sleeping. She was awakened by the loud voices of the spouses who were arguing. She saw accused-appellant get a gun from a drawer, so she went out of the room because of fear. After a few moments and while she was outside the room, she heard Grace Nepomuceno say: "Sige patayin mo ako, patayin mo na kami ng anak ko." Then Eden heard a gunshot. She was so scared that she went out of the house, reaching the door of the house of Barangay Chairman Congen Leonardo which is 5 meters away. After ten minutes, she saw accused-appellant coming out of the room. He told her to get a taxi so he could bring the wounded Grace to the hospital. She was left behind in their room to take care of baby Giordan. She tried to call up Monserrat de Leon, the sister of Grace in Pasig to inform her of the incident, but she could not get any connection (tsn, July 27, 1994, pp. 4-17; 24-42).

Mary Ann T. Aranas, a chemist of the National Bureau of Investigation Chemistry Division, declared that she conducted paraffin examination on both hands of the victim and those of accused-appellant. She found the victim's hands negative of nitrates, but found accused-appellant's right hand positive thereof. She gave the opinion that in view of the absence of nitrates on the hands of the victim, it is probable that she did not fire a gun and that accused-appellant, being positive of nitrates, did really fire a gun (tsn, August 31, 1994, pp. 17, 22; tsn, July 8, 1996, p. 6).

Dr. Floresto Arizala, Jr., the Medico~Legal Officer of the NBI who conducted a second-post mortem examination of the victim on May 7, 1994 at the Capitol Memorial Chapels, found that the victim died due to a gunshot wound, with the slug hitting the left internal iliac artery and the small intestines and thereafter resting between the uterus and the sacrum of the victim. He testified that taking into consideration the location of the wound, if the victim were in a sitting or lying position, the trajectory of the slug was upward coming from right to left; and if the victim were in a standing position, the muzzle of the gun should have pointed up. The witness declared that the muzzle of the gun could not have been less than one foot from the victim. He opined that grappling for possession of the gun was impossible because the trajectory of the bullet was going upwards and there were no smudges or signs of close firing. He believed that the victim could have survived if the surgeons had operated immediately (tsn, July 23, 1996, pp. 15-30).

Monserrat de Leon, sister of the victim, declared that Grace would confide to her that accused-appellant was jobless and that Grace had problems with the low income of the store she owned at Zurbaran Mart as compared to her expenses. Accused-appellant would force sex on Grace especially when he was drunk. Her sister had two miscarriages after their first child and it was during one of these miscarriages that she saw accused-appellant carrying a gun in the Mary Chiles Hospital where her sister was confined (tsn, August 12, 1996, pp. 3-28).

Upon the other hand, the defense presented accused~appellant himself as its lone witness. His story was quoted by the trial court thus:

Two days before the incident on May 2, 1994, Grace, the deceased was very much worried about the check (sic) she issued which was post dated May 2, 1994. She would have no funds for the checks. She had been nagging him, displaying her tantrums (nagdadabog) pestering him to do something to be able to fund the checks.

In the noon time of May 2, 1994, he left her spouse in their store and went to his mother's house in San Andres Bukid, Manila. This day was the day after the accused-appellant and his wife, and in-laws arrived from Batangas to attend a town fiesta.

He left the store to avoid further nagging, tantrums and pestering of his wife about his inability to produce money to be able to fund the postdated checks (sic).

At about 11:00 P.M. after dropping at a friend's house, he decided to go home, thinking his wife has already cooled off.

When his wife opened the door, she greeted the husband: 'You left in the store and you room (roam) around, where you able to find money.' He replied, 'where would I get money, do you expect me to hold up people?' (tsn, October 5, 1994, p. 18)

They had some arguments and Eden Ontog went out of their bedroom, and the arguments continued. There was a point in the argument when the wife told the accused thus: 'Wala akong silbi, bakit pa ako nag-asawa sa kanya.'

Because of these continued pestering and nagging of his wife he thought of separation. Perhaps it would be better if he should end his life. He then took a gun from their child's drawer. He sat on the bed holding that gun, engrossed in his thinking what to do. The gun was pointed towards the floor of their room.

In that situation, his wife continued with his nagging and pestering. He just remained silent.

And then Guillermo asked her wife: 'How come you do not treat me as a husband, why do you treat me like this.'

It was at this point that Guillermo decided to end his life. Perhaps seriously, perhaps just to scare his wife to stop all the pestering and tantrums. Surely not only a few husbands would thought (sic) as what that Guillermo was thinking then, he felt desperate. He wanted to finish his life. (p. 24, TSN, October 5, 1994)

It was during that time that their son, Jordan woke up, walked to the space between them (husband and wife) and Nepomuceno block his son's way with his right knee. In the process, he wanted to totally force Grace

from taking possession and control of the gun. He raised his arm holding the gun passing over the left leg of Grace.

The gun went off.

(pp.

16-17, Rollo)

Aggrieved by the decision of the trial court, accused-appellant assigns the following errors:

I

THE TRIAL COURT ERRED IN NOT FINDING THE KILLING WAS ACCIDENTAL, AND THAT THE DECEASED WAS EXEMPT FROM CRIMINAL LIABILITY.

II

ASSUMING THE ACCUSED IS CRIMINALLY LIABLE, THE TRIAL COURT ERRED IN NOT FINDING THE KILLING WAS RESULT OF SIMPLE NEGLIGENCE.

III

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT.

(p. 5,

Appellant's Brief.)

In support of the first assigned error, accused-appellant contends that he did not have the least intention of killing his wife. He urges the Court to consider the circumstances attendant to the killing, which, according to him negate all inferences and deductions, that he would kill his wife. First, the deceased was hit in the upper leg, not in any vital organ. If he had the intention of killing the deceased, he would have shot her at the most vital part of her body.

Secondly, the reaction of the deceased after she was hit was contrary to ordinary and usual human behavior, if her husband really intended to kill her. The deceased just uttered, "Masakit Papa", she did not curse nor mouth evil and harsh language against accused-appellant to show hatred and anger.

Thirdly, if accused-appellant really intended to kill his wife, why did he call a taxi and bring her to the hospital for immediate medical attention?

Fourthly, why should accused-appellant voluntarily surrender to the police, if the incident was not accidental?

Accused-appellant claims exemption from criminal liability under Paragraph 4, Article 12 of the Revised Penal Code because, according to him, the incident occurred when he tried to prevent his wife from killing herself, and he and his wife grappled for possession of the gun.