

## THIRD DIVISION

[ G.R. No. 114185, January 30, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,  
VS. RICARDO TOBIAS @ "DING," ACCUSED-APPELLANT.**

### DECISION

**DAVIDE, JR., J.:**

For the death of Esteban "Jojo" Lim, Jr., accused Ricardo Tobias was charged with murder in a criminal complaint<sup>[1]</sup> filed on 8 October 1990 with Branch 2 of the Municipal Trial Court (MTC) of Santiago, Isabela. The case was docketed as Criminal Case No. II-1753.

On 22 November 1990, upon motion<sup>[2]</sup> of the Prosecutor, the complaint was amended<sup>[3]</sup> from that of murder to "Violation of PD 1866 Resulting to Murder" following the issuance by Capt. Abraham E. Garcillano, Chief of the Records, Legal and Research Branch of the Firearms and Explosives office (LRB-FEO) in Camp Crame, Quezon City, of a certification dated 17 October 1990 that the firearm used in the killing of Lim was "not licensed/registered."<sup>[4]</sup>

The MTC admitted the amended complaint,<sup>[5]</sup> forthwith issued a warrant of arrest, and recommended no bail.<sup>[6]</sup>

The accused filed a motion to reconsider<sup>[7]</sup> the admission on the ground that the amended complaint does not refer to the same offense charged in the original complaint nor to an offense necessarily included therein but to one distinct from that originally charged. This motion was denied by the MTC under Section 14, Rule 110 of the Rules of Court. Appropriate preliminary investigation was had solely on the basis of the prosecution's evidence, since the accused did not submit his counter-affidavits and other supporting evidence required in the subpoena issued to him.

Having found a prima facie case against the accused, the MTC ordered the transmittal of the record of the case to the office of the Provincial Prosecutor for appropriate action pursuant to Section 5, Rule 112 of the Rules of Court.

On 10 January 1991, the office of the Provincial Prosecutor of Isabela filed before the Regional Trial Court (RTC) of Isabela an information<sup>[8]</sup> charging the accused with "Qualified Illegal Possession of Firearm Used in Murder." The accusatory portion thereof reads as follows:

That on or about the 5th day of October, 1990, in the municipality of Santiago, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in his

possession and under his control and custody one (1) Browning pistol, Caliber 9MM with Serial No. RPT 3221943 without first having obtained the necessary permit and/or license therefor and on the occasion of such possession, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with the said illegally possessed firearm one Esteban Lim, Jr. alias Jojo, inflicting upon him gunshot wounds on the different parts of his body which directly caused his death due to severe hemorrhage.

The case was docketed as Criminal Case No. 1476 and raffled to Branch 18 of the said court stationed in Ilagan.

The accused filed a petition for bail on 11 January 1991. <sup>[9]</sup> Upon arraignment on 30 January 1991, the accused entered a plea of not guilty. <sup>[10]</sup>

The trial court ultimately allowed bail to the accused <sup>[11]</sup> in the amount of P100,000.00 when the prosecution changed its stand from a vigorous opposition <sup>[12]</sup> to one recommending the amount of P100,000.00. <sup>[13]</sup> The accused filed his surety bond and was consequently ordered released from detention. <sup>[14]</sup>

In its order <sup>[15]</sup> of 20 March 1991, the trial court decreed the transfer of Criminal Case No. 1476 anant to "Circular No. 7 (of this Court) in connection with Batas Pambansa Blg. 12d the record thereof to Branch 21 of the Isabela RTC in Santiago pursu9."

At Branch 21, the case was docketed as Criminal Case No. 0920. <sup>[16]</sup> The trial on the merits of the case suffered delays in view of various incidents disclosed by the records which include, inter alia, the attempts of the defense and then later the prosecution itself to return the case to Branch 18 in Ilagan, Isabela; the filing with this Court of petitions for certiorari to question the denial of the transfer and the denial of a motion to disqualify the trial judge; the non-appearance of counsel de parte for the accused; and the motion of the de officio counsel to be relieved as such.

The evidence for the prosecution consisted of the testimonies of Clarita Lim, the victim's widow; Pacita Recto, Clarita Lim's mother; Susana Recto, Clarita's younger sister; Renato Turingan, Deputy Chief of Police of Santiago, Isabela; Dr. Ruben Angobong, Regional Medico-Legal officer of the National Bureau of Investigation (NBI) detailed in Ilagan, Isabela; and SPO1 Marie Vida B. Mencias, Secretary of Capt. Abraham Garcillano.

The testimonies of prosecution witnesses Clarita Lim, <sup>[17]</sup> Pacita Recto, <sup>[18]</sup> and Susana Recto <sup>[19]</sup> established the following facts as to how the victim, Esteban "Jojo" Lim, Jr. (hereafter Jojo) was killed by the accused:

At around midnight of 5 October 1990, the accused was drinking with Gerry Giron, Tom Taguinod, and another unidentified person in front of the "Body Botique Tailoring," an establishment owned by the accused. The Body Botique is adjacent to

the video shop owned by Jojo. Only a wall separates the two shops. Jojo was then inside the video shop with his wife Clarita and his sister-in-law, Susana. Suddenly, Clarita heard a gunshot [20] and then the banging of the shop's door. Jojo peered out through the door and saw that the accused was the noisemaker. Jojo stepped out of the video shop and admonished the accused's group. The accused responded by suddenly strangling Jojo with his (accused's) right arm. While Jojo was struggling to free himself, Gerry Giron threw a stone at him, hitting him in the face. Jojo broke free from the accused and chased Giron. It was at this point that the accused, who was then standing about three or four meters behind, shot Jojo. About thirty seconds later, the accused, now standing two meters from Jojo who was already lying on the ground, fired four more shots into the latter. Clarita immediately went to Jojo.

Renato Turingan, the Deputy Chief of Police in Santiago, Isabela, was on patrol when he was called to the crime scene by a tricycle driver. At the crime site, he saw the accused holding a gun while Jojo was lying on the ground. He asked the accused why he had a gun, and the latter answered that he had shot Jojo. Turingan confiscated the accused's gun. Upon being told by the accused that Jojo was holding a hand grenade, Turingan searched the place but found for empty .9mm caliber shells only. He then ordered the driver of the patrol car to take Jojo to the hospital. He, for his part, took the accused to the police station where he asked the latter to present a license for the confiscated firearm. The accused offered his "temporary permit." The police then conducted an investigation on the accused. [21]

Jojo expired at the hospital at around 4:30 a.m. of 5 October 1990. Dr. Ruben Angobong conducted the re-autopsy of the cadaver of Jojo. He found four gunshot wounds, the most fatal [22] of which he designated as "gunshot wound no. 1." [23] This wound was located at the victim's back and followed a path "from rear to front." Dr. Angobong theorized that the assailant was behind the deceased when the former fired the bullet which caused the wound [24] and that, considering the horizontal trajectory of the bullet, both victim and assailant were standing. [25]

Gunshot wound number 2 [26] had an entry point at the back of the victim's right thigh; it had no exit point, as the bullet remained at the end of the thigh bone, inside the victim's body. [27] The entry point of gunshot wound number 3 [28] was at the back of the right thigh with exit point at the right side of the thigh. Gunshot wound number 4 [29] had an entry point at the back of the right leg and an exit point at the right side of the leg. The bullet in each of these wounds followed a rear-to-front and upward path, judging from which Dr. Angobong agreed with the examining prosecutor that in these three wounds the victim was shot from the rear while he was lying on the ground. [30]

As a consequence of the killing of Jojo, Clarita declared that she spent as follows: P18,000.00 for the medical treatment of Jojo; P20,000.00 for funeral expenses; P6,000.00 for the wake; and P6,500.00 for the interment. [31]

SPO1 Marie Vida B. Mencias, who was authorized to appear for Capt. Abraham Garcillano, testified that she prepared the certification issued by Capt. Garcillano that the accused was not licensed to possess a firearm of any kind. She drafted the certification after verifying the master list which enumerates the persons licensed to

possess firearms as of October 1990. Since the FEO records disclosed that the accused was not so licensed, Capt. Garcillano signed the certification. [32] This certification (Exhibit "J") dated 17 October 1990 reads as follows:

THIS IS TO CERTIFY that Ricardo P. Tobias of Santiago, Isabela is not a licensed/registered firearm holder of any kind and caliber per verification from available records on file this Unit as of this date.

Further certified that Pistol Cal. .9mm Browning with Sn-RPT3221943 is not licensed/registered, hence considered loose firearm, per verification from available records on file this Unit as of this date.

SPO1 Mencias added that the FEO keeps copies of all issued gun licenses as well as the applications therefor. Even firearm licenses issued by Regional Commanders are registered with the FEO, and there can be no instance where a license issued by a Regional Commander is not registered with the FEO. [33]

On the other hand, the defense presented seven witnesses, namely, the accused himself, Jovencio Corpuz, Tom Taguinod, SPO3 Julio Palattao, SPO1 Cesar Gabitan, SPO3 Elpidio Agngarayngay, and SPO3 Domingo Malaya. The first three testified on Jojo's killing. Palattao, Gabitan, and Agngarayngay testified on the accused's firearm license. Malaya testified on the record of the Narcotics Command (NARCOM) showing that Jojo was a marijuana user.

The evidence for the defense is summarized as follows:

In the evening of 4 October 1990, Jojo Lim was at the LBC Nightclub arguing with someone. He seemed to be drunk, as when he left the club he was walking "in a zigzag manner." [34]

At that same moment, the accused was drinking with Tom Taguinod and Gerry Giron in front of the Body Botique. At past 11:00 p.m., Jojo arrived driving a motorcycle. He was driving fast, and when he was turning right to his video shop, the front wheel of his motorcycle bumped the door of his shop, thereby surprising the accused and his companions. The motorcycle bounced off the door and bumped it a few more times. This drew out laughter from the accused's group. Jojo looked at the group before getting inside his shop. [35]

Later, the accused and his companions heard Jojo's motorcycle again bumping the video shop's door, but this time from inside the shop. When the door opened, the motorcycle came out running fast and turned toward the provincial road. Some minutes later, the motorcycle came back, again running fast, and turned towards Jojo's shop. The motorcycle toppled down, pinning Jojo's right leg to the ground. Jojo lifted the vehicle to free his leg and then quickly went to the accused's group. When he was near the group, he brought out something from his right pocket which he held with two hands. When Jojo was about two meters away from the group, his hands separated. Taguinod saw a metal ring in Jojo's left hand and another object in the right hand. Jojo exclaimed "Sabay-sabay tayong sasabog dito [We will all explode here]," and Taguinod then realized Jojo was holding a hand grenade. [36]

Jojo grabbed the accused's right shoulder and pushed the latter several times. From his vantage point, Taguinod saw Jojo trying to insert the grenade into the accused's shirt while holding the accused by the shoulder. The accused pleaded with Jojo to no avail. Giron then threw stones at Jojo. The latter went after Giron who ran towards the backdoor of the Body Botique, leaving Jojo out in the street. Then Taguinod heard four successive gunshots about one second apart. He looked for the source of the shots and found the accused holding a gun. [37]

The accused testified that his authority to bear a firearm at the time of the crime where his permit to carry and his application. He filed his application for a firearm license at Tuguegarao in June 1990. He claimed that the application was approved by one Col. Sacramento. On 5 October 1990, he had a permit which allowed him to carry his firearm outside of his residence . On cross-examination, the accused revealed that he inherited his gun from his father. His father never procured a license for the firearm. He added that from the time he applied for a firearm license and until his application was approved, he kept his gun inside his house. [38]

SPO3 Julio Palattao of the Civil Security Force, District II, in Tuguegarao, Cagayan, testified that the accused applied for a firearm license and that a temporary license was extended to him on 21 September 1990, as evidenced by a certification issued by District II Commander Roberto Sacramento. Palattao further declared that the accused was included in a list of licensed firearm holders as of 17 July 1991 and was issued a permit to carry a firearm, valid from 21 September 1990 to 20 September 1991. [39]

SPO1 Cesar Gabitan, PNP member, [40] brought before the trial court a Master List of firearm holders who were issued licenses as of 17 July 1991. He declared that based on the records in his possession, the accused was a licensed firearm holder as of 4 October 1990. Gabitan also explained the disparity between the accused's evidence and that of the prosecution regarding the custody by the FEO of the accused's firearm license. He averred that at the time Capt. Garcillano issued the certification that the accused was not a licensed/registered firearm holder the firearm records of the accused had not yet been transmitted from RECOM II to the FEO. The said records were received by the FEO only on 30 October 1990, while Capt. Garcillano issued his certification on 17 October 1990. [41]

PO3 Elpidio Agngarayngay, whose primary function is to represent the Chief of the FEO, especially with regard to the trial of cases of violation of P.D. No. 1866, brought before the trial court documents showing that the accused was issued a computerized firearm license on 17 July 1991. He also attested that a copy of the accused's temporary license could not be found in the FEO files, but he brought a certification [42] issued by Senior Inspector Joel Crisostomo Garcia, Chief of the Records Branch, FEO, stating that the license could have been misplaced "when the Computer Center of the PNP started pouring into th[e] [o]ffice sacks by sacks of