

## SECOND DIVISION

[ G.R. NO. 141942, October 13, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY PONCE JAMON, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

Appellant Jimmy Ponce Jamon seeks the reversal of the decision <sup>[1]</sup> dated January 20, 2000, of the Regional Trial Court, Quezon City, Branch 86, in Criminal Case No. Q-98-79087 convicting him of murder, sentencing him to *reclusion perpetua*, and ordering him to pay the amount of seventy five thousand pesos (P75,000.00) as civil indemnity and thirty thousand pesos (P30,000.00) as moral damages.

In an information dated September 15, 1998, appellant was charged with murder allegedly committed as follows:

That on or about the 9<sup>th</sup> day of July, 1998, in Quezon City, Philippines, the said accused, with intent to kill, did then and there, wilfully, unlawfully and feloniously and with evident premeditation, and abuse of superior strength, attack, assault and employ personal violence upon the person of VICTORIA EVANGELISTA TACLA, by then and there, shooting the latter at her left chest, with the use of a gun, thereby inflicting upon said victim serious and mortal wounds which were the direct and immediate cause of his (sic) untimely death, to the damage and prejudice of the heirs of the said VICTORIA EVANGELISTA TACLA.

CONTRARY TO LAW. <sup>[2]</sup>

Upon arraignment, appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The prosecution presented as eyewitness Pilar Evangelista Tacla, the appellant's wife and the victim's own mother. Dr. Wilfredo E. Tierra, Medico Legal Officer of the National Bureau of Investigation (NBI), also testified.

On the witness stand, witness Pilar Evangelista Tacla stated that she was the widow of Isabelo Tacla. He died on July 26, 1989. <sup>[3]</sup> They had two daughters namely, Victoria and Lalaine. <sup>[4]</sup> On December of 1995, <sup>[5]</sup> she married Jimmy Ponce Jamon, a widower, with children of his own. <sup>[6]</sup> The marriage took place after six years of courtship. <sup>[7]</sup> They lived with her daughter, Victoria, in the latter's house <sup>[8]</sup> located in Project 6, Quezon City.

On July 9, 1998, at around 9 o'clock in the morning, Pilar said she had a heated

altercation with appellant. Pilar was bent on moving out of Victoria's house. She said she wanted to transfer to their own house in Bagong Silang, Quezon City, to spare her daughters from the shame and hassle of the couple's constant fights over appellant's addiction to women, gambling, and booze<sup>[9]</sup>

Appellant warned Pilar that once they moved out, she could never set foot in her daughter's house again. <sup>[10]</sup> He added in a threatening manner, with his eyes bulging ("*Nanlilisik ang mga mata*"), that if Pilar came back to Victoria's house, he would beat her up <sup>[11]</sup> ("*Bugbog sarado raw ako.*") <sup>[12]</sup>

These threatening words were uttered within the earshot of Victoria, who was then cooking in the adjoining room. <sup>[13]</sup> Chagrined, Victoria ordered her stepfather out of the house. <sup>[14]</sup> She then gathered appellant's clothes on the bed <sup>[15]</sup> and yelled, "Take all your clothes!" <sup>[16]</sup>

Appellant got his pistol which was hidden inside the cut-out pages of a telephone directory on a nearby table and fired it in the air. <sup>[17]</sup> Pilar and Victoria were transfixed. Appellant pointed the revolver at Victoria and announced, "I am going to shoot!" <sup>[18]</sup> Pilar embraced her daughter and was about to bring her out of the room when appellant fired, hitting Victoria at the chest and causing her to fall bloodied on the floor. <sup>[19]</sup>

Afterwards, appellant reloaded the gun and bellowed, "*Sige!*", while pointing the muzzle of the gun at Pilar. But the gun jammed and did not fire. Appellant quickly fled the scene, leaving mother and daughter in an embrace, which turned out to be their last. In the hospital, Victoria was declared dead on arrival.

Pilar also recounted on cross-examination that a lady-boarder, one "Marites," was in the adjoining room at the time of the incident, but she was too horrified to extend assistance to Pilar. Instead, she just hid under her bed the entire time. <sup>[20]</sup>

Dr. Wilfredo E. Tierra, Medico Legal Officer of the NBI, performed an autopsy on the victim's body and pronounced the cause of death to be: "Gunshot wound, anterior chest, Left Side." <sup>[21]</sup> On the witness stand, the physician disclosed that there was hemorrhage in the victim's lung and damage to her heart. <sup>[22]</sup>

When presented as the lone witness in his own defense, appellant identified himself as an accounting clerk of the Philippine Rabbit Bus Liner for 19 years. He declared on the witness stand that the shooting was unintentional. Based on his recollection, he said on July 9, 1998 at about 8:30 a.m., he was surprised when Pilar, his wife of three years, asked him to pack his clothes. <sup>[23]</sup> He admitted telling her that if they leave, he will bar her from setting foot in her daughter's house again. <sup>[24]</sup> All of a sudden, Victoria butted in and hurled invectives at him, "*Putang-ina mo, wala kaming pakinabang sa iyo, dapat mamatay ka na!*" <sup>[25]</sup> (You son of a bitch, you are useless, you deserve to die!) Adding insult to the injury, Victoria threw his clothes out of the house. Appellant claimed his blood pressure soared up.

According to appellant, Victoria went back to the bedroom, got a gun, fired at him, but missed the first time. <sup>[26]</sup> Upon aiming at him the second time, he took the

chance of jumping at Victoria and grabbed the gun from her. [27] He bluntly repudiated the version of his wife Pilar that there was no struggle between him and Victoria for the possession of the gun. He insisted that while he was grappling with her for possession of the gun, it fired and hit Victoria. [28]

Appellant explained that he did not bring Victoria to the hospital for fear of reprisal from Victoria's common-law husband. Instead, appellant immediately fled from the scene, leaving the gun inside the room. [29] He was in hiding for two weeks until he turned himself in to the fiscal. [30]

Appellant also recalled that he married Pilar on December 18, 1995. [31] Together with Victoria, two lady boarders and a grandchild, appellant and Pilar lived at Victoria's house in Project 6, Quezon City. [32] Childless as they were, he endeavored to be in good terms with his stepchildren. [33] Despite their occasional misunderstandings arising from Pilar's domineering character, appellant claimed that he and his wife had a fairly cordial relationship, [34] although he complained about having to ask her for permission before he can play "*tong-its*," [35] a card game.

On cross-examination, appellant lamented that he was "*under de saya*" [36] and it was his wife who "wears the pants". [37] According to him, Pilar usually threw a fit whenever he plays "*tong-its*," which usually lasts from 3 to 4 hours.

He further stated that he contributes from five hundred to six hundred pesos for the monthly household expenditures. [38] He admitted that he was 190 lbs. and 5'5" tall while the deceased was 5'3." [39] He described the gun as a .38 caliber revolver, 7 to 8 inches long. [40] He claimed that it was Victoria's, but she gave it to him for safekeeping. He kept the gun inside the cut-out pages of the telephone directory on their bedside table also upon Victoria's orders. [41]

Appellant maintained that the gun fired while he and Victoria were wrestling for its possession. [42] He, however, admitted that it was in his hand when it fired and that he was probably the one who pulled the trigger. [43]

After the incident, he said he went to Kalookan and later, to Vigan, Ilocos Sur. He surfaced only sometime in August of 1998. [44]

In rebuttal, Pilar Tacla denied that there was any struggle between appellant and Victoria [45] for possession of the gun during the incident on July 9, 1998.

The trial court disbelieved appellant's claim of accidental shooting. It held that appellant's claim was not enough to overcome the positive testimonies of witnesses for the prosecution. The court observed their testimonies to be truthful and credible. Based on the evidence of the parties, the court convicted appellant. It concluded that abuse of superior strength attended the commission of the crime. Appellant at 5'5" in height and 190 pounds in weight contrasted to the victim's 5'3" height and lighter stature. In addition, the court considered the fact that appellant was armed with a deadly weapon. This qualified the killing of Victoria to murder. However, the

court held that there was a dearth of evidence to prove the circumstance of evident premeditation. The court *a quo* decreed as follows:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of murder of Victoria Tacla and hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of said Victoria Tacla the amount of P75,000.00 as civil indemnity and P30,000.00 as moral damages.

SO ORDERED. [46]

Hence, the present appeal before us.

In his brief, appellant assigns the following errors:

I.

The Court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime charged without considering the evidence presented by the defense.

II.

The Court *a quo* gravely erred in CONVICTING THE ACCUSED OF THE CRIME OF MURDER QUALIFIED BY TAKING ADVANTAGE OF SUPERIOR STRENGTH DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH ITS EXISTENCE.

III.

The Court *a quo* gravely erred in AWARDING THE AMOUNT OF SEVENTY-FIVE THOUSAND PESOS (P75,000.00) AS INDEMNITY WITHOUT LEGAL BASIS. [47]

At issue is whether appellant's guilt for the killing of Victoria has been proved beyond reasonable doubt. In the affirmative, we must also inquire whether the killing was attended by abuse of superior strength, to qualify the crime as murder. [48]

According to appellant, certain circumstances cast doubt on the truth and credibility of Pilar's testimony, namely: (1) the fact that Victoria owned the gun; (2) the fact that it was the victim who provoked and caused appellant to commit the crime, since he was only defending himself; (3) the fact that the gun accidentally fired while he was wrestling for its possession; and (4) the fact that Pilar was embracing the victim, making it impossible to hit the victim without hitting her mother. Although appellant admits authorship of the killing, he contests the finding of abuse of superior strength, and contends that he should only be held liable for homicide and not murder.

For the appellee, the Office of the Solicitor General submits that the trial court correctly convicted appellant of the crime of murder qualified by abuse of superior

strength. [49] The OSG, however, agrees with appellant that the indemnity for the victim's death must be reduced to P50,000. [50]

After thoroughly reviewing the records before us, we are in agreement with the submission of the OSG. We sustain the trial court's judgment that appellant indeed committed the offense beyond a shadow of doubt. We find nothing in the testimonies of witnesses for the prosecution that would warrant a reversal of the lower court's judgment. Nothing also appears on record to show that appellant's testimony deserves greater weight and value than those of the prosecution.

Improbabilities claimed by appellant result from a misreading of the testimony by the eyewitness, his own wife Pilar Tacla. Appellant asserts lack of motive on his part to commit the crime charged. He concludes that he had no reason to shoot the victim. Established, however, is the principle that where a reliable eyewitness has fully and satisfactorily identified the accused as the perpetrator of the felony, motive becomes immaterial in the successful prosecution of a criminal case. [51] Whether or not appellant had a motive or reason to shoot the victim, conviction may still follow from the identification and accusing words made by no less than a close kin, [52] his own wife, Pilar Tacla. Moreover, he admits authorship of the killing, so the burden of proof shifts to the appellant.

Appellant resolutely asserts that, contrary to his wife's declaration, the shooting was accidental. He avers it was an aftermath of the struggle between him and the victim for the possession of the gun. He claims that the bruises on the body of the victim are proof of such struggle. [53] On this issue, Dr. Tierra's testimony damns the appellant. According to the medico-legal officer, his examination of the victim's cadaver did not disclose any contusion or hematoma that could suggest a struggle for the firearm, thus:

- Q: Now, when you examined the cadaver of the subject, did your examination disclose any contusion or hematoma consistent with the possible struggle for the possession of the firearm?
- A: None, sir. [54]

Next, if the shooting was indeed accidental as appellant claims, we find it highly unusual that he failed to help his wife and his dying stepdaughter. Instead, he fled the scene posthaste. His flight is indicative of guilt. [55] He said he scurried away for fear of retaliation by the common-law-husband of the victim. But there is no showing at all where, when and how said husband could effect such retaliation.

Appellant contends that the gun belonged to Victoria, who asked him to keep it. The trial court took note that the gun was never presented in evidence, obviously on purpose so as to avoid determination of its ownership, [56] if not for fear of discovery that if it was unlicensed, appellant's culpability could be further aggravated.

The prosecution's evidence shows that several months prior to Victoria's death, appellant had threatened Pilar with the same gun. This prompted Pilar to report the matter to an *Iglesia Ni Cristo* minister. [57] The latter confiscated the gun, but appellant retrieved it two months later. [58] From the foregoing there is basis to