

THIRD DIVISION

[G.R. No. 121668, June 20, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL TAÑEZA Y DACAL, ACCUSED-APPELLANT.

DECISION

GONZAGA-REYES, J.:

Before us is an appeal from the decision of the Regional Trial Court of Sultan Kudarat, Branch 19^[1] in Criminal Case Nos. 2156 and 2157, convicting herein accused-appellant of the crime of murder and acquitting him of the charge of illegal possession of firearm under Presidential Decree No. 1866^[2] (hereafter, "P.D. 1866").

Reproduced hereunder are the two separate Informations under which accused-appellant was charged:

Information in Criminal Case No. 2156

The undersigned First Assistant Provincial Prosecutor accuses Joel Tañeza y Dacal of the crime of Murder, committed as follows:

That on or about 12 o'clock noon of October 21, 1993, at Kalawag III, Municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a Caliber .38 revolver, with intent to kill, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EMERSON UMANDAM with the use of the aforementioned weapon, thereby inflicting gunshot wounds upon the latter which directly caused his death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines.^[3]

Information in Criminal Case No. 2157

The undersigned First Assistant Provincial Prosecutor accuses Joel Tañeza y Dacal of the crime of Illegal Possession of Firearm, committed as follows:

That on or about 12 o'clock noon of October 21, 1993, at Kalawag III, Municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously have in his possession and control One (1) Homemade Caliber .38 Revolver, carried by him outside his residence without first having obtained the necessary license to

possess and/or permit to carry the said firearm from the proper authorities concerned and having used the said firearm in the commission of the crime of murder.

Contrary to law, particularly Section 1 of Presidential Decree No. 1866, Otherwise Known as "Codifying the Laws on Illegal, Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives and Imposing Stiffer Penalties For Certain Violations Thereof and for Relevant Purposes."^[4]

On arraignment, accused-appellant pleaded not guilty to both charges. On June 27, 1994, the trial court ordered a joint trial of Criminal Case Nos. 2156 and 2157.

The evidence of the prosecution may be summarized as follows:

SPO1 Rogelio Docil was at the tricycle terminal in the public market of Isulan, Sultan Kudarat on October 21, 1993 at about 12 o'clock noon. Suddenly, he heard a "burst of gunshots" from the nearby Lucky Ace Bakery, which was about nine to ten meters away. Being a peace officer (although he was then off-duty and was not in uniform), he immediately proceeded to the direction of the gunfire where he saw accused-appellant pointing a gun at Emerson Umandam, who was in a squatting position and holding to his stomach. As SPO1 Docil arrived, Umandam turned to him and said, "Tabangi ako, dal-a ako sa hospital." (Help me, bring me to the hospital.) When prompted to describe victim and accused's relative positions, SPO1 Docil said that accused was standing about three to four meters away from the victim; accused was already outside of the bakery while victim was inside, in-between two bread display counters. Accused-appellant held the gun by his right hand, while his left hand supported the right hand as he pointed it at the victim.

SPO1 Docil approached accused-appellant and took the gun from his hand. He identified himself as a police officer. He then instructed a tricycle driver to take the victim to the hospital, then brought accused-appellant to the police station for investigation.

At the Isulan police station, SPO1 Docil endorsed accused-appellant to SPO4 Eliseo Tatel, the desk officer at the time. He also turned over to SPO4 Tatel the homemade .38 caliber snub-nose revolver recovered from accused-appellant, and four empty shells that were extracted from the gun's chamber. When SPO4 Tatel asked accused-appellant if he had a license or permit to carry the gun, he replied that he had none.

Aida Esgrina, the proprietress of Lucky Ace Bakery, testified to having witnessed the shooting of Emerson Umandam. She stated that Umandam was a long-time employee of hers; he was employed for five years at her bakery in Cotabato City before he moved to other jobs, such as being a baker in accused-appellant's bakery, also in Isulan, Sultan Kudarat. In July 1993 Esgrina re-employed him as a baker and delivery man at the Lucky Ace Bakery.

On the day of the shooting, Esgrina was sitting behind the counter of Lucky Ace Bakery when she noticed accused-appellant outside, about four meters away. The victim, Emerson Umandam, was sleeping on a rattan reclining chair by the door of the bakery, exhausted from a morning's work of selling bread in the barrios. The rattan chair on which Umandam slept was facing the doorway of the bakery, but

Umandam had his face turned to the wall. Esgrina testified that accused-appellant entered the bakery and drew a gun from his waist, then fired two shots at Umandam --- the first shot hit him on the right breast, the second on the stomach. After the first two shots were fired, Esgrina screamed, "Tama na! Tama na!" Accused-appellant fired two more shots, this time while the victim was standing and clutching his stomach. He attempted to fire a fifth time but the gun did not discharge; instead he struck the victim on the head with the gun.

Esgrina stated that she knew accused-appellant, as he talked to her on two separate occasions prior to the shooting incident. She was unaware of any dispute between accused-appellant and Umandam.

In her testimony, Esgrina also claimed that she recovered an empty .38 caliber shell from under a table inside the bakery, presumably from the gun of accused-appellant, which she turned over to SPO4 Jacinto Parcon the next day.

At around 1:30 in the afternoon of October 22, 1993, Esgrina visited Umandam at the Intensive Care Unit of the Sultan Kudarat Provincial Hospital, where she found the latter being interviewed by SPO4 Parcon. This interview was reduced into writing,^[5] to which Umandam affixed his right thumbmark; Esgrina signed the statement as witness. In the statement, Umandam points to accused-appellant as the perpetrator of his injuries. Umandam died on October 23, 1993.^[6]

Esgrina declared that she was the one who spent for the hospitalization expenses of Umandam, as well as for the funeral and wake costs. Although she estimated the costs to have reached P70,000.00, only the amount of P43,029.95 had corresponding receipts.

Dr. Eladio Figuracion, resident physician at the Sultan Kudarat Provincial Hospital, testified to having treated a patient by the name of Emerson Umandam at around 12:45 in the afternoon of October 21, 1993. The patient sustained multiple gunshot wounds, which Dr. Figuracion assessed to be fatal; thus, he decided to conduct an emergency operation to save the patient's life. Umandam died at the hospital two days later. The doctor counted about five gunshot wounds on the body of the victim. In open court, he identified the medical certificate^[7] and death certificate as having been duly prepared by him.

Maria Umandam, mother of the victim, testified that their family experienced great anxiety and suffering as a result of her son's death, and demanded moral damages in the amount of P80,000.00.

For his part, accused-appellant interposed that the killing of Umandam was done in self-defense. In his testimony, accused-appellant admitted to knowing Emerson Umandam, the latter having worked as a former delivery man in his bakery at Jamison Street, Kalawag II, Isulan, Sultan Kudarat. At about 11:40 in the morning of October 21, 1993, he was informed that the light guard of his motorcycle was taken by Umandam. Along with Rodrigo Susalta, an employee in his bakery, they proceeded in his motorcycle to the Lucky Ace Bakery where Umandam worked. Accused-appellant parked his motorcycle about 10 to 15 meters from Lucky Ace Bakery. Umandam was allegedly standing by the doorway of the bakery as he approached. When confronted on why he took the light guard of the motorcycle,

Umandam allegedly retorted that the light guard was owned by him; accused-appellant answered that this was true, but that Umandam owed him P2,000.00. An altercation ensued; Umandam purportedly drew a hand gun from his waist and the two grappled for its possession, whereupon accused-appellant was able to get hold of the gun and it accidentally discharged --- he could not recall how many shots were fired.

Accused-appellant also maintains that he voluntarily surrendered to SPO1 Docil --- that after taking possession of the revolver, he was about to leave when he saw the policeman approaching and he surrendered the gun to the latter. Also, when SPO1 Docil asked him who the owner of the gun is, he answered that it was owned by Emerson Umandam.

Rogelio Susalta corroborated the story of accused-appellant. He claimed that he went with accused-appellant to the Lucky Ace Bakery but that he stayed by the motorcycle which they parked on the shoulder of the road, about 10 to 15 meters from the bakery and on the same side of the road as the bakery. From this distance he saw accused-appellant and the victim argue heatedly, then the victim drew a gun and the two wrestled for possession of the gun. Moments later, he heard about three or four gunshots. He stressed that accused-appellant did not point a gun at the victim, neither was the latter sleeping on the rattan chair when accused-appellant arrived.

Rovaldine Sindol testified that at about 12:00 in the afternoon of October 21, 1993 he was at the public market of Isulan and was passing by the Lucky Ace Bakery when he noticed two men arguing. He went on walking when he heard three to four gunshots from the bakery, and when he turned he saw accused-appellant "moving back", then he saw accused-appellant hand over "a certain thing" to a police officer. Early in his testimony Sindol said he did not know what had been handed to the policeman, but later on he stated that he recognized the "thing" to be a gun.

The trial court found Rovaldine Sindol's testimony fraught with material inconsistencies and wanting in credibility. It also met with disbelief the account of Rodrigo Susalta, who allegedly witnessed the incident 10 to 15 meters away from the bakery and while standing on the same side of the road as the bakery. It also observed that "(b)oth witnesses for the defense could not even declare categorically that they saw the deceased victim holding or drawing a gun."^[8]

The trial court likewise gave no credence to accused-appellant's plea of self-defense, observing that such defense is belied by the number of wounds found on the victim's body; furthermore, it was invoked only during trial and not upon his apprehension right after the incident. In the trial court's words: "A protestation of innocence or justification would have been the logical and spontaneous reaction that the accused would have done to show that he merely acted in self-defense when he committed the crime imputed against him in this case."^[9] On the other hand, it observed that the testimony of Aida Esgrina was not successfully rebutted by the defense, and on the basis of that testimony it is clear that the victim was attacked while he was asleep, with his face turned to the wall, and obviously unable to defend himself. Hence, the trial court ruled that treachery was clearly established and convicted accused-appellant of murder.

The trial court also stated that the statement of Emerson Umandam taken down by SPO4 Parcon "could validly be considered as a dying declaration and is admissible in evidence as part of the *res gestae*."^[10]

As for the charge of illegal possession of firearm, the trial court meted out a judgment of acquittal for failure of the prosecution to prove that accused-appellant had no license or permit to possess the .38 caliber revolver recovered from him. It stressed that proof that the gun is unlicensed may not be dispensed with, as it is an essential ingredient of the offense of illegal possession of firearm.

Thus, the dispositive portion of the decision of the trial court reads:

WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Joel D. Tañeza, guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code.

Accordingly, applying the Indeterminate Sentence Law, the Court hereby sentences:

In Criminal Case No. 2156

1. the accused, Joel D. Tañeza, to suffer the penalty of *reclusion perpetua*;
2. the accused, Joel D. Tañeza, to indemnify Aida Esgrina the amount of Forty Three Thousand Twenty Nine Pesos and Ninety Five Centavos (P43,029.95), as actual damages she incurred in connection with the medical treatment, hospital bills, wake, burial and funeral services rendered to the deceased victim, Emerson Umandam;
3. The accused, Joel D. Tañeza, to indemnify the heirs of the deceased victim, Emerson Umandam:
 - (a) the amount of P10,000.00 as moral damages;
 - (b) the amount of P5,000.00 as exemplary damages;
 - (c) the amount of P50,000.00 as statutory indemnity for the death of the said deceased victim; and to pay the costs.

The homemade .38 caliber snub-nose revolver (Exh. "A") is hereby confiscated and forfeited in favor of the Government, and (shall) be disposed of in accordance with law.

Being a detention prisoner, the accused is entitled to full credit of the entire period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended by R.A. No. 6127, provided he had agreed in writing to abide, by the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.