

EN BANC

[G.R. No. 133007, November 29, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO ADAME, ACCUSED-APPELLANTS.

D E C I S I O N

MELO, J.:

By mandate of Article 47 of the Revised Penal Code, as amended by Section 22, Republic Act No. 7659, otherwise known as the Death Penalty Law, this Court is called upon to discharge its duty to review the death sentence imposed upon accused-appellant by Branch 2 of the Regional Trial Court of the First Judicial Region stationed at the Bangued, Abra for the charge of illegal possession of firearms under Section 1, of Presidential Decree 1866, in an Information reading as follows:

That on or about January 25, 1997, between 5:00 P.M. and 6:00 P.M., at Barangay Sta. Rosa, Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, a person not authorized to possess firearm, did then and there wilfully, unlawfully and feloniously possess and shoot IRENEO P. JIMENEZ, JR., with an unlicensed Homemade gauge 12 shotgun (recovered), thereby inflicting gunshot wound on the chest right side of the said victim which caused his instantaneous death, to the damage and prejudice of the heirs of the offended party and, without first securing the necessary license or permit to possess or carry firearm from the firearms and explosive office of the Philippine National Police.

CONTRARY TO THE PROVISION of Section 1 of P.D. 1866, as amended.

(Record, p. 1)

The antecedent facts are summarized in the People's Brief in this wise:

On January 25, 1997, at around 5:00 to 6:00 o'clock in the evening, appellant entered the yard of the house of Ireneo Jimenez, Jr. which is located at Sta. Rosa, Bangued, Abra. Appellant, while holding a shotgun wrapped with a denim jacket and with only the muzzle of the gun, measuring about one foot, exposed, went to Ireneo, who was then pulling a sack of animal feeds out of a storeroom, and asked him where his (Ireneo) brother, Julian, was, to which question Ireneo answered "I do not know." Appellant repeated this question two more times with Ireneo giving the same answers. Thereupon, after Ireneo had untied the knot which bound the sack and while he was standing up, appellant pointed the shotgun he was holding at Ireneo and fired the same. After being hit in the right chest, Ireneo fell dead on the ground. Thereafter, appellant aimed the shotgun at Mercy, Ireneo's wife, who at that time

was behind Ireneo because she was helping Zenaida Viado in hanging the day's wash nearby. This made Mercy, who witnessed the shooting, scream and run away, and ask for help from his neighbors. Zenaida, who was about six meters away from appellant and who also witnessed the shooting incident, likewise ran away. (TSN, May 19, 1997, pp. 3-10 and 16-18; June 4, 1997, pp. 11-17)

Thereafter, appellant rode an owner-type jeep and drove the same towards north, passing by the house of Amante Fier which is located at Zone 4, Bangued, Abra. Moments after the vehicle passed by, Amante and his son Paolo heard a loud bumping noise. When he proceeded to the place where the sound came from, Amante saw appellant holding a long firearm while trapped inside the jeep which crashed. Amante left and when he returned appellant was already lying on the street. However, Amante did not see anymore the firearm which appellant had earlier. (TSN, June 24, 1997, pp. 3-8)

Freddie Bernal, who also heard a loud noise while he was at his house located at Zone 2, Bangued, Abra, went to the place where the owner-type jeep crashed and saw a shotgun inside the jeep. Freddie told SJO3 Efigenio Barbosa about the shotgun and, upon the latter's instruction, took the shotgun from the jeep and handed the same to SJO3 Barbosa at his house. Later, SJO3 Barbosa gave the shotgun to Senior Inspector Robert Mesa, the Chief of Police of Bangued, who turned over the same to SPO1 Odilon Aspacio, the investigating officer of the shooting incident, who then tagged the firearm, which turned out to be a homemade 12 gauge shotgun with its stock missing (Exhibit D), and engraved his initials, "ORA," and the date, "1-25-97," near the trigger. (TSN, May 19, 1997, pp. 29-31; June 4, 1997, pp. 5-9; TSN, June 24, 1997, pp. 13-16 and 21-26; Exhibit D-2.)

Dr. Pedro Ascaño, the Rural Health Physician of Bangued who conducted the autopsy of the cadaver of Ireneo later in the evening of January 25, 1997, declared that Ireneo died due to "hypovolemic shock secondary to gun shot wound," and that the firearm used in inflicting the wound could have been a shotgun. This is so because, while Ireneo's cadaver had one gun shot wound with one point of entry, the said wound had two points of exit. Also, four slugs were recovered from the cadaver. (TSN, May 8, 1997, pp. 5-16, Exhibit A.)

According to the certification issued by SPO4 Napoleon Pascual, Chief of Firearm and Explosive Section of the Abra Provincial Command, appellant is not a licensed firearm holder and that the 12 gauge homemade shotgun used by appellant in shooting Ireneo is not a licensed firearm. (TSN, May 19, 1997, pp. 22-24, Exhibit E.)

At the time of his death, Ireneo, who was 39 years old, was earning an annual income of P60,000.00 as a Barangay Councilman and while attending to the family store and raising pigs. Mercy Jimenez, the widow, spent around P37,041.00 for the wake and interment of Ireneo. She also suffered extreme sorrow as a result of Ireneo's death. (TSN, June 4, 1997, pp. 18-19; Exhibits F and G and their sub-markings.)

(Rollo, pp. 89-92.)

From the foregoing facts, the trial court rendered the judgment of conviction, thusly:

WHEREFORE, the Court finds the accused Mario Adame alias "Cobra" guilty beyond reasonable doubt of the crime of aggravated illegal possession of firearm for killing with an unlicensed firearm the victim Ireneo Jimenez, Jr. defined and penalized under Sec. 1 of PD No. 1866 as specified in the beginning of this decision in relation to Art. 47 and 62 of the Revised Penal Code as amended by Secs. 22 and 23 of Rep. Act No. 7659, respectively, with all the attending aggravating circumstances of treachery, abuse of superior strength and dwelling without any mitigating circumstance and sentences him to suffer the extreme penalty of DEATH. He is ordered to pay the family of the victim the amounts of P50,000.00 for the death of the latter; P37,041.00 as actual expenses incurred during the wake and interment of the deceased, P500,000.00 in unearned income and P300,000.00 in moral and exemplary damages and to pay the costs of this suit.

SO ORDERED.

(Record, pp. 213-214.)

In the automatic review of this case, appellant assigns the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 1, OF PD1866 IN ITS AGGRAVATED FORM.

II

ON THE ASSUMPTION THAT ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF AGGRAVATED ILLEGAL POSSESSION OF FIREARMS AND IN IMPOSING THE DEATH PENALTY.

Partly, the Court agrees with accused-appellant for, indeed, the trial court erred in convicting him under Section 1 of Presidential Decree No. 1866. The alleged crime of illegal possession of firearm in its aggravated form was committed on January 25, 1997, at which time, it was punishable with the extreme penalty of death under Section 1 of Presidential Decree 1866. Effective July 6, 1997, however, this law was amended by Republic Act No. 8294, Section 1 of which, in part, provides:

If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed shall be considered as an aggravating circumstance.

Beginning aforesaid date, no separate and independent criminal liability for violation of Presidential Decree No. 1866 attaches when a person commits murder or homicide using an unlicensed firearm. Therefore, under the present law, as