

EN BANC

[G.R. No. 123982, March 15, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO2
LEONARDO K. JOYNO, DEFENDANT-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

For automatic review is the Decision dated December 29, 1995 of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11 in Criminal Case No. S-2406 finding accused-appellant Leonardo K. Joyno guilty beyond reasonable doubt of the crime of Parricide and sentencing him to suffer the penalty of death and to indemnify the heirs of the victim in the sum of P50,000.00.

The Information^[1] dated May 4, 1994 charging PO2 Leonardo K. Joyno with the crime of Parricide reads as follows:

"That in the evening on or about the 9th day of March, 1994, in the municipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court the said accused, armed with M16 rifle caliber 5.56 Armalite and with intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot his lawful wife MARIVEL UY JOYNO, thereby inflicting upon her gunshot wound on the vital part of her body which caused her instantaneous death; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

a) Indemnity for victim's death.....P50,000.00

b) b) Loss of earning capacity.....30,000.00

P80,000.00

CONTRARY TO LAW (Viol. of Art. 246, Revised Penal Code)."

Upon arraignment accused duly assisted by counsel entered a plea of not guilty.

At the trial, the prosecution presented the following witnesses: Ruben Campaner, Aurea Bation Vda. de Uy, Dr. Henry G. Cawley and Dr. Guillermo Literatus.

Prosecution witness Ruben Campaner was present at the scene of the shooting incident. He testified that he and the accused were neighbors, their houses being separated only by a fence; that at about 6:00 P.M. on March 9, 1994, he was at the house of the accused drinking with the latter, the victim and a man working at the accused's house; when it was already dark, they transferred to the dining room,

continued drinking beer, Tanduay rum and tuba and partook of the head of "lechon" and rice; that at about 10:45 in the evening, accused and the victim had an altercation regarding the suggestion of the accused to transfer their residence to Mutia with which the victim disagreed; that the commented that accused's parents had "bad character" and were ill-mannered for which reason, accused got angry and told his wife (the victim) to keep quiet; and that the continued talking and the accused shot her.^[2] The police, accompanied by this witness, went to the scene of the crime, found the victim slumped on the table dead in a stooping position, and took pictures of the victim.^[3]

Aurea Bation Vda. de Uy is the mother of the victim. She testified that her daughter, who was married to the accused, died on March 9, 1994 at about 10:45 P.M. at the latter's residence; that she was sleeping at her house when her neighbor woke her up and informed her that her daughter Marivel was shot; that when she went to her daughter's house, she saw her already slumped dead on the table; that she went and reported the shooting incident to the Salug Police Station and saw accused who surrendered himself and his armalite rifle; and that thereafter, she proceeded to the residence of the Joynos and placed the dead body of Marivel on the bed.^[4]

Dr. Guillermo Literatus, the municipal health officer, examined the body of the victim and made the following *Post Mortem* Report.^[5]

"- Wound, gunshot entrance 0.4 inch in diameter, midaxillary area, with dark discoloration of the edges, left penetrating the chest left through and through, with a length of 3 inches, exit has 0. 5 inch in diameter, upper chest area with 3 petechial lesions near the mid portion, sternal line.

CAUSE OF DEATH:

Hypovolemic Shock secondary to massive hemorrhage sustained from gunshot wound."

Dr. Henry G. Cawley, medico-legal officer of NBI-Zamboanga City who prepared the Exhumation Report testified that, based on his findings, the body of the victim bore 2 gunshot wounds on the left side of the chest; the said gunshot wounds were both entrance wounds; and these were the cause of death.^[6]

Accused testified as the lone witness for the defense. He stated that he has been a member of the Philippine National Police since 1987 and that he was legally married to Marivel Uy. Accused's version is that the shooting was purely accidental. He testified that on March 9, 1994, he hired a carpenter named Abundio Sumalpong to fix the roofing of their house; that at around 4:00 P.M. when the work was already finished, he, Abundio and Marivel were drinking at the back of their house until 5:30 P.M.; that Mrs. Dimasuhid, a neighbor, invited Marivel to go to the former's house to attend a birthday party; that he followed his wife Marivel who was drinking together with her relatives; that Mrs. Dimasuhid gave him the head of the "lechon" but because there was no person left in their house, accused told his wife to go home but the latter got angry; that he went home, placed the "lechon" on the table, after which Ruben Campaner arrived^[7]; that his wife returned at about 9:30 in the evening and was angry at him for following her at the party; that he proposed to

transfer residence to Mutia but his wife hated the mere thought of living with her parents-in-law, who according to her, were ill-mannered; that he decided to get his armalite rifle to keep it upstairs so he can rest but his wife tried to take possession of the firearm; that while grappling for possession of the firearm, the firearm accidentally fired twice; that he had no intention to kill his wife'^[8]; that Ruben Campaner was in the comfort room when the gun went off, and that he did not bring his wife to the hospital because he was already shocked; instead, he went to the police station to surrender to the police authorities, including his armalite rifle.^[9]

The court *a quo* found that the evidence of the prosecution has established the guilt of the accused with the attendance of the aggravating circumstances of (1) taking advantage of his public position, accused being a member of the Philippine National Police and having committed the crime with an armalite rifle issued to him, and (2) dwelling; and one mitigating circumstance of voluntary surrender.

The court *a quo* rendered judgment on December 29, 1995, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the Court finds the accused guilty beyond reasonable doubt of the crime charged in the above-quoted information, with the attendance of two (2) aggravating circumstances, and only one (1) mitigating circumstance present but since this is not enough to offset the aforementioned aggravating circumstances, the Court hereby sentences the accused to suffer the maximum penalty provided by law which is DEATH and to indemnify the heirs of the victim in the sum of P50,000.00, the recent case law (People vs. Villanueva, G.R. No. 95851, March 1, 1995).

LET accused be immediately transferred to the Bureau of Corrections in Muntinlupa, Metro Manila (Circular No. 4-92-A of the Supreme Court).

COSTS de officio."

In view of the penalty imposed by the trial court this appeal was filed directly with this Court.

In his brief, accused-appellant raised the following assignment of errors:

"I - THE COURT A QUO GRAVELY ERRED IN APPRECIATING DWELLING AS ONE OF THE AGGRAVATING CIRCUMSTANCES;

II - THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF PARRICIDE AS CHARGED IN THE CRIMINAL INFORMATION; and

III - THE COURT A QUO GRAVELY ERRED IN NOT RENDERING A JUDGMENT OF ACQUITTAL."

Appellant insists that the firing of the M16 armalite rifle which caused the instantaneous death of his wife Marivel was accidental. He claims that he had no intent to kill his wife. He averred that he took his service M16 armalite rifle placed at a nearby crib and when he was about to stand up, his wife Marivel suddenly grabbed the rifle; that he and his wife were grappling for possession of the rifle and in the

process, the gun accidentally fired twice hitting Marivel on her breast and causing her instantaneous death. Appellant argues that the trajectory of the wounds on the breast of Marivel were parallel to the table where they were grappling for the possession of the gun; that had the firing of the gun been intentional appellant would have been in a standing position and in this case, the trajectory of the bullets would be downward.

Appellee, through the Solicitor General alleges that the antecedent circumstances leading to the shooting reveal that accused-appellant deliberately shot his wife. Immediately prior to the incident appellant and the victim were embroiled in a heated argument regarding the appellant's plan to transfer their residence to Mutia, Zamboanga del Norte, the place where her parents-in-law lived; the victim protested and in the course of their argument the victim uttered insults against appellant's parents which enraged appellant; the victim continued to utter unsavory remarks against her in-laws; and appellant lost his temper and he dashed towards where his armalite rifle was located, grabbed it and without warning, fired twice at his wife.

In his Reply Brief, appellant argues that as the weapon involved was a high-powered rifle, Marivel should have been thrown out from the chair she was sitting on and slumped dead on the floor; that instead of being thrown away from where the force and impact of the M16 armalite rifle came from, she slumped dead on the table.

We resolve to affirm the judgment of conviction.

Under Article 246 of the Revised Penal Code as amended by Section 5 of Republic Act 7659, parricide is committed by any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse and is punished by the penalty of *reclusion perpetua* to death.

There is no question that appellant and the victim were legally married on October 12, 1988 at Salug, Zamboanga del Norte.^[10] The incident happened in the presence of an eyewitness, Ruben Campaner, who was then drinking with appellant and the victim. Ruben testified^[11]:

"ATTY. SELDA:

Q: Where were you why did you say that Marivil Uy Joyno was shot by Leonardo Joyno, how come you were able to say that?

A: Because I saw it.

Q: So, you were present?

A: Yes, Sir.

Q: Prior to the shooting incident was there any altercation or argument that arose between Marivil Joyno and Leonardo Joyno?

A: There was sir.

Q: What was that argument about?

A: The argument was that Leonardo Joyno wanted to transfer to Mutia including the wife, but the wife Marivil did not agree with

the proposal because according to Marivil her parents-in-law has bad character or ill-mannered.

Q: When Marivil Joyno answered to Leonardo Joyno that he would not join her husband in going to Mutia because according to her (Marivil) she does not like her parents-in-law because they are ill-mannered, what did Leonardo Joyno reply?

A: He got angry.

Q: How did Leonardo Joyno display his anger towards Marivil Joyno?

A: Leonardo Joyno told her wife not to comment that kind of words to his parents and she was told to keep quiet.

Q: Did Marivil keep quiet?

A: No, sir.

Q: What did she do?

A: She continued talking.

Q: While Marivil Joyno was talking what did Leonardo Joyno do?

A: He shot.

Q: Considering that you have been a neighbor of the Joynos for quiet time, was that the first time you have witness the quarreling incident between the two, this spouses?

A: They always argue.

Q: You have been a privy to their quarrel?

A: Yes, sir.

Q: And usually, when they quarrel what does Leonardo Joyno do?

A: He always hold his firearm.

Q: You said when Marivil Joyno kept on uttering words to her parents-in-law, her husband Leonardo Joyno shot Marivil Joyno, what firearm did Leonardo Joyno use in shooting Marivil Joyno?

A: The issued Armalite rifle.

Q: About how far were you from Marivil Joyno when Marivil Joyno was shot by Leonardo Joyno?

A: Very near.

Q: What was your distance?

A: (the witness pointing the place where he was sitting to the place where the Interpreter was sitting), which is approximately 1 and 1/2 meters.

Q: Considering that it is about 10:45 pm., of March 9, 1994, and it is in the evening, how come that you were able to see it were there lights?

A: Yes, sir.

Q: What kind of lights?