

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO VILLAVER, DEFENDANT-APPELLANT.

G.R. No. L-32104. March 25, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of a decision of the Court of First Instance of Davao (Criminal Case Mo. 9411) finding appellant Narciso Villaver guilty beyond reasonable doubt of the crime of parricide and sentencing him to the extreme penalty of death due to the presence of "the aggravating circumstance of evident premeditation and the deliberate intent to his own legitimate daughter based on immoral and highly contemptible motive, and with no mitigating circumstance to offset the same."

Appellant Narciso Villaver has eight (8) children by his wife. One of his children was his now deceased daughter, Francisca Villaver, the herein victim.

Francisca Villaver was, in the morning of September 24, 1965, with a group of eight (8) persons, including her father, the herein appellant, and one Genara Sordillo. They went to the beach to take a bath and to gather shells. After lunch, appellant brought his daughter Francisca to a mangrove swamp, about 50 meters away from the seashore. After a few minutes, Francisca was seen running back from the mangrove in an uneasy appearance, her dress torn on the left side, and she confided to Genara that her father, the herein appellant, wanted and tried to abuse her.

That night, at about seven o'clock, appellant forced Francisca to swallow and drink "Endrin", a liquid used for killing worms in the ricefield. Appellant grabbed Francisca by the hair with one hand and with the other, forced her mouth to open and poured the poison into her mouth.

The incident was witnessed by Remedios Villaver, a younger sister of the victim. Her mother was in the other room, nursing her baby. The other children were not present.

Francisca was rushed by her mother to a hospital where emergency treatment was applied. Notwithstanding, she died after 25 minutes from arrival.

Cause of death is chemical poisoning.

Appellant denied the charge against him and claimed that about 6:30 in the evening of September 24, 1965, after the family had taken supper, Francisca went up the sala of the house and there he saw her drinking the contents of a bottle which he knew was "Endrin", a poisonous substance which could cause death. He tried to grab the bottle but it was too late. After having drunk the contents of the bottle, Francisca jumped out of the window and ran towards the ricefield. He gave chase but failed to find her. After a futile search for about half an hour, he returned home to attend to a crying baby. Few hours thereafter, the police came and placed him under arrest. He was in the municipal jail when late that night someone told him that his daughter Francisca died at the hospital.

Appealing to this Court, appellant alleged that the lower court erred (1) in giving full credence to the testimony of Remedios Villaver and in convicting him on the basis thereof; (2) in finding that he committed the crime charged; and, (3) in convicting him of the crime of parricide, instead of acquitting him.

In this appeal, appellant would want the court to believe that his daughter Francisca voluntarily drunk "Endrin" despite his attempt to prevent her from taking such liquid.

We cannot give assent to this defense considering the testimony of appellant's minor daughter, Remedios Villaver, as follows:

"Q

Will you kindly relate to this Honorable Court what happened on the evening of September 24, 1965?

A That night my elder sister was poisoned by my father.

Q

Can you tell the Court how your father poisoned your elder sister?

A He made her drink 'Endrin.'

Q

How did your father make your sister drink "Endrin?" . . . Who is this sister you refer to?

A Francisca.

Q Alright how did your father make your sister drink 'Endrin?'

A First he took hold of the hair of my sister Francisca.

Q Whose hair?

A Francisca's hair.

Q Who took hold of the hair of Francisca?

A Narciso Villaver.

Q Narciso Villaver, your father?

A Yes, sir.

Q

After your father Narciso Villaver took hold of the hair of your sister what did your sister do if she did anything?

A

He took hold of her hair and then forced open her mouth in order that she (my sister) could drink that 'Endrin.'

Q How about you, what did you do when you saw that?

A I was about to help my elder sister.

Q And were you able to help your elder sister?

A No, sir, I was not able to help her.

Q Why?

A Because I was afraid of my father.

.....

Q

Who were present when your father was forcing your sister to drink 'Endrin'?

A I was the only one.

COURT: Continue.

FISCAL:

Q How about your mother where was she?

A She was nursing the baby.

Q How old was that child being nursed by your mother?

A One year old.

Q

You said that your father forced open the mouth of Francisca, was your father able to forcibly open the mouth

of your sister Francisca in order to let her drink?

A Yes, sir.

Q

And when your father was able to force open the mouth of your sister, what happened?

A She was able to drink 'Endrin.'

Q Who poured the 'Endrin' into the mouth of your sister?

A My father.

Q

What was the position of your sister when your father was pouring 'Endrin' into the mouth of your sister?

A She was on a sitting position.

Q Where did your father get this 'Endrin'?

A From the upper window-sill.

Q

You mention of 'Endrin' which was forced to be drunk by your sister Francisca, what was the container of that 'Endrin'?

A A bottle.

Q

If that bottle containing that 'Endrin' is shown to you or if you will see that 'Endrin' bottle containing 'Endrin' will you be able to recognize the same?

A

Yes, sir, that is the one. (witness pointing to the bottle on the lawyers' table.)

.....

Q

Before your father forced your sister to drink Endrin was there anything that transpired?

A He was mad.

Q Do you know why he was mad?

A He was mad because the sweetheart of my sister was around.

Q

What did your father say if any which made you conclude that he was mad at that time?

A

He said that he will kill Francisca if she will proceed to marry that fellow, if she will continue her love relations with that man.

Q What did your sister Francisca, say to that remark of your father?

A I don't know what was the answer of Francisca."

(TSN, pp. 30-31, 32-33 & 34, November 2, 1966 hearing)

It is hard to believe that Remedios would falsely accuse her own father of a crime or an act unless the latter had really committed it. The claim that Remedios committed inconsistencies in her testimony is understandable considering her age (she was sixteen when she was on the witness stand). But, the fact is, she was present when the incident occurred and she stoodfast in her testimony that her father forced her sister to drink the poisonous liquid.

Further, there is the testimony of Genara Sordillo that from the house of the appellant she heard Remedios shouting for help; that not long afterwards, Remedios, with her two brothers, arrived in her (Genara's) house crying and telling her that Francisca was made to drink "Endrin" by the appellant.

The claim of the defense that Genara Sordillo had ulterior motive in testifying against the appellant because of their incident concerning the use of irrigation water is not enough; for, even assuming that to be true, the same cannot be sufficient motivation for one to testify falsely against another of a very serious crime. In fact, appellant admitted that Genara went outing with Francisca that morning and this gives lie to the alleged bad blood existing between Genara and appellant's family. Hereunder is the testimony of appellant on this point.

"Q

According to this Genara Sordillo she said that in the morning of September 24, 1965 you and your daughter went with them to Aplaya, Guihing at Hagonoy, is that correct?

A

My daughter went with Genara to Aplaya but I did not go with them.

Q

You mean to tell the Court that you did not go with Genara and your daughter that morning of September 24, 1965?

A No, sir.

Q

And who was the companion of your daughter if any that went with Genara that morning.

A

What I know is it is only Genara and my daughter who went to take a bath in the sea.

Q

According to the testimony of Genara, that morning of September 24, 1965, you tried to abuse your daughter, Francisca, what do you say to this?

A

I could not say anything to that because I was not there, I have not done anything like that." (TSN, pp. 111-112, November 2, 1966 hearing)

Finally, there is the testimony of Police Corporal Ildefonso Bermudo that when he apprehended appellant, the latter readily admitted having poisoned his daughter because of her disobedience. In fact, he pointed to the bottle of Endrin which was used by him.

"Q

What did you do upon knowing that Francisca Villaver was poisoned by her father?

A

As operations officer I immediately rushed to the house of Villaver together with PFC Saraom.

Q What did you do in the house of Narciso Villaver?

A My purpose was to apprehend Narciso Villaver.

Q Were you able to reach the house of Narciso Villaver?

A Yes, sir.

Q Did you find him there?

A Yes, sir.

.....

Q Did he give any answer?

A Yes, mam.

Q What did he say?

A

He answered that it is true he poisoned his daughter. He answered in the positive.

.....

Q

What did you do when he admitted to you that he poisoned his daughter Francisca?

A

When I was asking questions to him we tried to look around in every corner of the house and first we found a bolo and I passed it to my companions, when I turned around I saw a bottle of endrin and I pointed it to Narciso and I asked him what is this, and he told me that is the very endrin, bottle of endrin which I used to poison my daughter." (TSN, pp. 92-93, November 2, 1966 hearing)

However, we agree with the observation of the Solicitor General that the crime was not committed with evident premeditation and with immoral motive. "The evidence adduced does not support the existence of evident premeditation. The second circumstance, while it may find support in the evidence (pp. 5-6, 57-58, id.), though hearsay in nature, same may not be considered as it does not fall under any of the aggravating circumstances enumerated in Art. 14 of the Revised Penal Code. Unlike mitigating circumstances (Art. 13, par. [10], R.P.C.), there is no such thing as similar nature and analogous to those . . . mentioned as aggravating circumstances."

ACCORDINGLY, We find the accused appellant guilty beyond reasonable doubt of the crime of parricide, with the modification that the penalty is reduced to Reclusion Perpetua, there being no aggravating nor mitigating circumstances attendant to the commission thereof. With costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Guerrero, Abad Santos, De Castro, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Concepcion Jr., J., for the death penalty.

Melencio-Herrera, J., concurs with Justice Plana.

Plana, J., votes to affirm the death penalty there being one aggravating circumstance—use of poison (RPC, Art. 14, par. 12).

Aquino, J., is on leave.

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