

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MILAGROS CALMA MABANSAG, TIBURCIO CAPARAZ Y PASCUA,
CESAR PAGSIBIGAN Y ORALES, EMILIO PERALTA Y JOSE AND
DOMINADOR AGUILAR...**

G.R. No. L-46293. January 30, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This is a case of a wife who was charged, together with four (4) others, for the killing of her husband and where her co-accused Tiburcio Caparaz with whom she had illicit relations was discharged from the information to become a state witness.

The information for the crime of parricide filed in the then Court of First Instance of Rizal (Pasay City) against Milagros Calma Mabansag, Tiburcio Caparaz, Cesar Pagsibigan, Emilio Peralta and Dominador Aguilar reads as follows:

"That on or about the 31st day of March 1959, at nighttime, a circumstance deliberately sought to facilitate the commission of the crime in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused; Milagros Calma Mabansag, wife of the deceased Francisco Mabansag, Tiburcio Caparaz y Pascua alias Teddy, Cesar Pagsibigan y Orales, Emilio Peralta y Jose alias Tito and Dominador Aguilar y Dayao, with treachery and evident premediation, conspiring and confederating together and mutually helping one another, with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously shoot Francisco Mabansag, suddenly and without warning and without any risk to the accused, which might proceed from the defense of the victim and as a result thereof, the said Francisco Mabansag died instantaneously." (p. 1, Vol. 1, Rec.)

Upon motion of the prosecution, Tiburcio Caparaz was discharged from the information to become a state witness. In the course of the trial of the case Cesar Pagsibigan, Emilio Peralta and Dominador Aguilar died. After the trial, the court a quo rendered judgment finding Milagros Calma Mabansag guilty beyond reasonable doubt of the crime of parricide and sentenced her as follows:

"IN VIEW OF ALL THE FOREGOING, this Court, after having thus carefully considered the evidence of the Prosecution and the evidence of the Defense, together with their respective memorandum:

'(1) Finds accused MILAGROS CALMA MABANSAG guilty beyond reasonable doubt of the crime of PARRICIDE as charged in the information of November 25, 1959, committed with the aggravating circumstances of evident premeditation and treachery, and hereby sentences her to suffer the penalty of DEATH to indemnify the heirs of Francisco Mabansag in the amount of TWELVE THOUSAND (P12,000.00) PESOS, and to pay the costs; x x x" (p. 550, Vol. II, Rec.)

The case is now before Us on automatic review in view of the death penalty imposed on Milagros Calma Mabansag.

Appellant's brief does not contain a statement of facts. On the other hand, the evidence for the prosecution has been summarized in the People's brief as follows:

"On March 15, 1959, at 1:00 in the afternoon, accused Milagros Calma Mabansag went to see a friend, Tiburcio Caparaz, in the house of the latter's brother at M. Earnshaw Street, Sampaloc, Manila. She asked Caparaz whether he knew somebody whom they could pay to kill someone. In answer to the query of Caparaz, Milagros said that the person whom she wanted to kill was her husband, Francisco Mabansag. Caparaz told Milagros Mabansag that he knew of none who could be hired as a killer in view of which Mabansag left (pp. 25-29, tsn., March 2, 1960.)

"Later that afternoon, Milagros Mabansag returned and told Tiburcio Caparaz that she found somebody to do the killing whom they (Mabansag and Caparaz) would meet at 7:00 in the evening at Sampaloc Market.

"In the evening, as agreed, they went to the Sampaloc Market. Thereat they saw the accused Dominador Aguilar and accused Cesar Pagsibigan. From there, they proceeded to the nearby Edmundo Restaurant. At the restaurant, they discussed the killing of Francisco Mabansag. Dominador Aguilar introduced Cesar Pagsibigan to Milagros Calma Mabansag saying at the same time: 'This is the person whom we could pay to shoot your husband.' (pp. 29-38, tsn., id). Milagros Mabansag asked how much she had to pay to which Pagsibigan replied: 'You just give me P2,000.00.' Milagros, then brought out a picture of her husband Francisco Mabansag and gave it to Cesar Pagsibigan, also giving to the latter the number of the Mabansag house at Lakas Ng Bayan (Pasay City) and the plate number and color of the Mabansag jeep (green and white top). From the restaurant, the four proceeded to the Office of Nagrokoma at Malabon where Milagros pointed to Pagsibigan where her husband was working. After that they parted (pp. 38-44, tsn. id.).

"The following morning, March 16, 1959, Milagros Mabansag, accompanied by Tiburcio Caparaz, went to Juan de la Cruz Studio at Avenida Rizal to secure a loan. After borrowing the amount of P400.00, the two proceeded to the corner of Legarda and Bustillos Street in Sampaloc where they saw Cesar Pagsibigan. Mabansag handed the amount of P400.00 to Pagsibigan. After that, Mabansag and Caparaz went to the house of Caparaz' brother upon reaching the place, Mabansag bade Caparaz goodbye, saying that she would go to the province because something would happen (pp. 45-54 tsn., id.).

"On March 21, 1959, Milagros Mabansag returned to see Tiburcio Caparaz at the latter's house at Tortuosa Street, Sampaloc, Manila. She asked him 'what happened' to which he replied that 'nothing has happened yet.' Later that same day, Mabansag and Caparaz went to the Sampaloc Market. They saw Aguilar who called for Pagsibigan. Milagros Mabansag asked Cesar Pagsibigan why nothing has happened to which Pagsibigan replied that 'I used to follow him in the morning and in the afternoon coming from the Office 'pero hindi namin matira' because I could not get near the jeep because there were many passengers.' Pagsibigan asked for more money and the following day, Milagros Mabansag gave P300.00 to Dominador Aguilar who signed a receipt therefor (pp. 56-68, tsn., Id.).

"On March 27, 1959, Milagros Mabansag went to see Tiburcio Caparaz again and told him that it was necessary that Francisco Mabansag be killed because a case of adultery would be filed by him against her (Milagros) and Caparaz. They, therefore, proceeded to the Sampaloc Market where Milagros gave another P300.00 to Aguilar who signed a receipt therefor (pp. 68-77, tsn., id.).

"On March 31, 1959, Tiburcio Caparaz and Milagros Mabansag met again. Caparaz told Mabansag to better not continue the killing of her husband to which Mabansag retorted 'Just don't say anything and nothing will happen to you.' After that, Caparaz went to see Cesar Pagsibigan, Dominador Aguilar and Emilio Peralta and pleaded with them not to continue the killing of Francisco Mabansag any more. Cesar Pagsibigan replied that 'If it will not happen this day it will never happen anymore', after which he left with Emilio Peralta for Caloocan to look for Francisco Mabansag. Around 3:00 in the afternoon of the same day, Caparaz saw Pagsibigan and Peralta again at which time Pagsibigan said that 'nothing happened because Francisco

Mabansag did not take his lunch at the usual place.' (pp. 80-91, tsn., March 2, 1960)

"Then, Tiburcio Caparaz, Dominador Aguilar, Cesar Pagsibigan and Emilio (Tito) Peralta boarded a taxi and proceeded towards Taft Avenue. They arrived at the corner of Lakas ng Bayan and Taft Avenue (Pasay City) past 5:00 that same afternoon (of March 31, 1959). Pagsibigan instructed Dominador Aguilar to proceed to Lakas ng Bayan saying that 'If the jeep is there you just wave a white handkerchief and if the jeep is not there, you continue on your way towards Sandejas.' Caparaz, Pagsibigan and Peralta stayed behind at Taft Avenue (pp. 92-94, tsn., id.). After Aguilar had left towards the direction of Lakas ng Eyan, the jeep of Francisco Mabansag arrived and entered Lakas ng Bayan. Pagsibigan ordered Peralta to follow the jeep. Pagsibigan told Caparaz to stay at the corner and he (Pagsibigan) also followed the jeep. After the jeep stopped, Francisco Mabansag alighted but returned to the jeep after two (2) minutes. When Mabansag returned, Emilio (Tito) Peralta pointed a gun towards Mabansag and fired (4) shots. Francisco Mabansag fell on his knee. Pagsibigan ran towards the direction of Taft Avenue followed by Emilio Peralta while Caparaz took a passenger jeepney (pp. 95-106, tsn., id.).

"Francisco Mabansag died on the same day of 'shock, severe, secondary to multiple gunshot wounds' (Exh. D, p. 21, Vol. II, Record; p. 2, tsn., March 17, 1962). (pp. 3-8, Appellee's Brief)

In his brief, defense counsel contends that the trial court erred (1) in giving full faith and credit on the testimony of Tiburcio Caparaz, and (2) in convicting the accused. Thus, appellant claims that Caparaz told the court that he was present in the afternoon of March 31, 1959 when Francisco Mabansag was shot by Emilio (Tito) Peralta, whereas in his statement to the police on September 5, 1959 he disclaimed knowledge of the killing of Francisco Mabansag; that Caparaz testified that when Peralta fired the gun, he (Peralta) was behind the jeep of Francisco Mabansag in which case there could be no powder burns on the clothing of the deceased because the distance between the muzzle of the gun and the victim would be more than 36 inches which is the maximum distance for powder guns to gather; and, that the lower court discarded two (2) letters (Exhibits 6 and 7 -Mabansag) of Caparaz to appellant, as extortion notes which should be taken against the credibility of the said state witness.

The trial court which saw and heard Tiburcio Caparaz testify, said -

"x x x [T]he testimony of Tiburcio Caparaz, replete with details, presents a clear picture of the plot and the actual killing of Francisco Mabansag. His testimony, considering the extensive area it covered, touching on the various places, the times, the persons involved, their conversations, the payment of money, and the other circumstances regarding the plot and the killing of Francisco Mabansag, offered itself to the rigid test of equally extensive cross-examination. The Court finds that Tiburcio Caparaz was not discredited by his cross-examination.

"x x x x x x x x

"The detailed narration of Tiburcio Caparaz finds corroboration also from the testimonies of NBI Medico-Legal Officer, Dr. Brion, and of NBI Chemist, Rosa Zamora. Their testimonies and their reports (Necropsy Report and Chemistry Reports) confirm the testimony of Tiburcio Caparaz that Francisco Mabansag was shot when he was about to board his jeep, and that he was shot at a close range; a matter of inches separated the victim's temple and back from the muzzle of the gun. The picture, Exhibit 'F', shows how accurate the testimony of Tiburcio Caparaz is regarding the position of Francisco Mabansag when he fell on his knees immediately after he was shot in succession and at close range.

"x x x x x x x x

"As stated above, Tiburcio Caparaz explained the decision of accused Mabansag to have Francisco Mabansag killed by attributing it to her fear that she and he were to be charged by Francisco Mabansag with the crime of adultery or bigamy. The question is, were there circumstances that could have justified Francisco Mabansag into believing that accused Mabansag, his wife, and Tiburcio Caparaz were having illicit relations? There can

be no dispute that accused Mabansag knew well Tiburcio Caparaz. She admitted this fact. She testified that he used to visit her at her residence at Agoo, La Union. Tiburcio Caparaz also used to work at the Concepcion Watchmen Agency where accused Mabansag had many loan transactions with the employees, through accused Aguilar. Exhibit 'M' is a picture showing Tiburcio Caparaz and accused Mabansag together. What is revealing here is the fact that in this picture, the hand of Tiburcio Caparaz rests on the shoulder of accused Mabansag. That Francisco Mabansag knew Tiburcio Caparaz is shown in another group picture where the three, accused Tiburcio Caparaz and Francisco, Mabansag, with others, appear together. All these circumstances, to the mind of the court, would not justify any conclusion that Francisco Mabansag knew of any illicit relations between Tiburcio Caparaz and accused Mabansag, although, by the common experience of man, a husband can very well know any improper conduct of the wife in relation to another man. As the instant case is a criminal case where every relevant point ought to be demonstrated by proof beyond reasonable doubt, something more is required. This is supplied by the very testimony of accused Mabansag that her husband, Francisco Mabansag, was threatening to sue her for BIGAMY. Her testimony, which is an admission on her part, is credible since her marriage to Tiburcio Caparaz is evidenced by the Marriage Contract (Exhibit 'G') showing their marriage at Talugtog, Nueva Ecija, on November 26, 1958. Did Francisco Mabansag know of this marriage? Accused Mabansag herself admitted that she told him about this marriage.

"x x x x x x x x

"Indeed, Tiburcio Caparaz, without any doubt, is asking the amount of P1,000.00 from accused Mabansag. Is this blackmail just because Tiburcio Caparaz told accused Mabansag that he would not help her if she would fail to give the amount? It does not appear to be so. In the first place, the tenor of the letter is not the common run of blackmail letters where the victim is ruthlessly and bluntly threatened to 'come across or else!' Tiburcio Caparaz, in these two letters, figures as a close friend of accused Mabansag. These letters are personal, informal, intimate letters addressed to one already well-known for a long time. In the second place, Tiburcio Caparaz is not demanding the P1,000.00 as extortion money. Tiburcio Caparaz is borrowing the amount; the amount is subject to repayment as all loans are.

"As stated above, the Court has carefully weighed the testimony of Tiburcio Caparaz. In a sense, his testimony was tainted with treachery against his co-accused Mabansag with whom he had had illicit relations and with whom he was married, against accused Pagsibigan and Peralta who appeared to be violent men of whom he should be afraid, and against Aguilar, his own compadre. It is for this reason that the Court, as shown above had to very carefully examine this testimony and to ascertain whether it finds support on other corroborating evidence, testimonial and documentary. There is still, however, one point that ought to be considered. Are the circumstances narrated by Tiburcio Caparaz probable? For not only must the evidence come from a credible witness, but the evidence must demonstrate probabilities and not improbabilities. The instant case, as established by the testimony of Tiburcio Caparaz, presents this situation: Accused Mabansag is faced with a criminal prosecution by her husband, Francisco Mabansag, for adultery or bigamy in view of her illicit relations with Tiburcio Caparaz and her marriage (bigamous) to him. She is determined to stop Francisco Mabansag from filing a case against her. No woman would like to face a criminal suit. What is more natural than to approach her paramour and disclose to him her plan to kill Francisco Mabansag? She is able to obtain the services of accused Pagsibigan and Peralta. Her choice is well made, for these men are violent men (who later on are to die violent deaths). The plan to liquidate Francisco Mabansag is laid down for money consideration. There is nothing more common than killers for money. The habits and movements of Francisco Mabansag are studied. Killing is a serious business. For some reason or another, no occasion presents the right time and place to execute the plan. Circumstances are not always within the control of the paid assassins. Then comes March 31, 1959, and all the four conspirators, Tiburcio Caparaz, accused Mabansag, accused Peralta, accused Pagsibigan, and accused Aguilar successfully kill Francisco Mabansag. The court finds nothing improbable in this series of events or circumstances attested to by the testimony of Tiburcio Caparaz." (pp. 178, 179, 181, 182, 185, 188, and 189, Rollo)

The prosecution presented also one Jose Ilao who corroborated in effect the claim of Tiburcio Caparaz that appellant Mabansag wanted to have her husband killed. Jose Ilao testified that on several occasions appellant proposed to him the killing of her husband. Hereunder is the testimony of Jose Ilao on this point:

"Q. Sometime in the month of February 1958 do you recall an occasion when you talked with Milagros Mabansag?

A Yes, sir.

Q Where did you talk with the accused, Milagros Mabansag?

A In Baguio, sir. She came to my house.

Q Will you please tell us what transpired at that time when she came to visit you in February 1958, in your house at Baguio City?

WITNESS: (To the Stenographer) Will you read the question.

STENOGRAPHER:

(Reading)

Q Will you please tell us what transpired at that time when she came to visit you in February 1958, in your house at Baguio City?

A While she was there in our house, she befriended me and she was requesting for something.

Q What was that that she was requesting from you?

A At first, she was requesting me to steal the jeep of her husband.

Q Did she tell you who was her husband?

A Francisco Mabansag.

Q You said that at the beginning she requested you to steal the jeep of her husband. Did she make any other request aside from that?

WITNESS: (To the Stenographer)

Will you read the question?

STENOGRAPHER:

(Reading)

Q 'You said that at the beginning she requested you to steal the jeep of your husband. Did she make any other request aside from that?'

A Yes, sir.

Q What was that?

A If I could kill her husband.

Q In connection with that request, will you please tell us the exact words that she used?

A That if I could kill her husband, she was going to give me P3,000.00, and that she would answer for everything in case I would be apprehended.

Q That conversation transpired where?

A In Baguio City.

x x x x x x x x

FISCAL BERNABE:

Q Now, when the accused Milagros Mabansag requested you to kill her husband with the promise that she was going to give you P3,000.00, what did you say to her?

A I told her that I could not do such a thing.

Q What did you say, if any?

A Every time we see each other where we were alone, she was insistent that I kill her husband.

(Later, Jose Ilao clarified the date, when accused Mabansag first requested him to kill her husband, to be February 1959 and not February 1958.)

COURT:

Q So, that request made by accused Milagros Mabansag to kill her husband upon you, in February 1959, was repeated to you?

A Oftentimes, when we see each other.

Q That was after that meeting of yours in February 1959, when she repaired to your house?

A Yes, sir.

FISCAL BERNABE:

Q How many times did she go to your house after February 1959, when she asked you for the first time to kill her husband, offering you as a reward the sum of P3,000.00?

WITNESS: (To the Stenographer) Will you read the question?

STENOGRAPHER: (Reading)

Q 'How many times did she go to your house after February 1959, when she asked you for the first time to kill her husband, offering you as a reward the sum of P3,000.00?'

A Everytime she goes to my house in Baguio.

Q More or less, how many times did she go to your house after February 1959 in order to reiterate her request to kill her husband?

A I cannot remember anymore.

Q Was it more than five times?

A She did not go to my place for that number of times, but everytime I talked to her she repeated the same offer.

Q Now, how many times did she go to your house after February 1959, in order to ask you to kill her husband?

A She went to my house in Baguio not more than five times but maybe four times.

Q To request you to kill her husband?

A Yes, sir." (pp. 12, 13, 16, 17, tsn., June 20, 1962)

We have consistently ruled that "the matter of assigning value to declarations at the witness stand is best and most competently performed by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the defendant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false (People vs. Bermudez, 57 SCRA 629." And, in the case of People vs. Renegado, 57 SCRA 277, We stated that "[t]he findings of the trial court on the credibility of witnesses are not to be disturbed for the trial judge is in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial, unless there is a showing that the trial court had overlooked, mis-understood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; in the case at bar, there is no such showing." It is noteworthy to state that defense counsel in the case at bar observed: "Before we proceed, we wish to acknowledge the scholarly presentation of the case in the decision. We can not help but admire the painstaking efforts of the lower court in dissecting the causes of both the prosecution and defense (p. 156, Rollo)."

Inasmuch as the crime committed is parricide, the court a quo imposed the supreme penalty of death. However, for lack of the required number of votes, the penalty next lower in degree, Reclusion Perpetua, is to be imposed.

WHEREFORE, We AFFIRM the conviction of appellant Milagros Calma Mabansag for parricide, with the modification that the sentence is reduced to Reclusion Perpetua. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

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