

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOLORES DELA CALZADA, ACCUSED-APPELLANT.

Ponente: HERNANDO, J.

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### HERNANDO, J.:

This is an appeal interposed by accused-appellant Dolores dela Calzada from the Decision[1] dated May 30, 2013 of the Regional Trial Court (RTC), Branch 29 of Toledo City in Crim. Case No. TCS-5502 for Homicide.

Accused-appellant seeks the reversal of the judgment of conviction on the ground that the prosecution failed to prove beyond reasonable doubt that she had a participation in the commission of the offense.

#### The Antecedents

In an Information dated January 31, 2006, 1st Assistant Prosecutor Raul Cesar C. Bajarias of the Office of the Assistant City Prosecutor of Toledo City charged accused-appellant Dolores dela Calzada y Ipis and her co-accused Candido Ipis, with Homicide, as follows:

That on or about 17 September 2005, at around 1:00 o'clock in the afternoon, in Carmen, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring, confederating and mutually helping each other, with intent to kill, did then and there, wilfully unlawfully, feloniously assault and attack one PRUDENCIO D. LACIO, thereby inflicting upon him Sepsis Pneumonia; Severe brain injury; intra-ventricular hemorrhage; Diffuse Subarachnoid Hemorrhage, resulting to the death of said PRUDENCIO D. LACIO.

CONTRARY TO LAW.[2]

At their arraignment on June 27, 2006, both accused Candido Ipis and Dolores dela Calzada, assisted by counsel de parte, Atty. Allain Anthony E. Alvez, pleaded not guilty to the offense.[3]

After the prosecution presented its evidence, the defense filed a Motion for Leave to File Demurrer to Evidence[4] with the Demurrer to Evidence[5] itself attached thereto. However, the RTC denied it, ruling that the prosecution was able to prove the corpus delicti of the case.[6] During the pendency of the case, accused Candido Ipis died, which fact of death was confirmed by the private complainant herself during the hearing on July 24, 2012.[7]

#### Evidence for the Prosecution

The Office of the Solicitor General (OSG) narrated in its Brief[8] the version of the prosecution:

At around 1:00 o'clock in the afternoon of September 17, 2005 while a certain Venancio Agustin was passing through the house of the accused-appellant, Dolores, located at Barangay Carmen, Toledo City, he saw the victim, Prudencio Lacio being boxed by Candido Ipis, accused-appellant's brother, on the fact. As a result, the victim staggered and while in this situation, accused-appellant Dolores immediately struck him with a piece of wood two feet in size, hitting Prudencio on the head. As a consequence, the victim fell to the ground.

At about the same time, Nicolasa Lacio, wife of the victim, proceeded to the house of the accused-appellant.

She saw Dolores from afar, running out of her house while bringing something. When Dolores saw her, the former shouted to Nicolasa, "You did not get your husband. Maybe he is already dead." At the house of Dolores, Nicolasa found her husband lying on the terrace. Prudencio was thereafter brought to the hospital where he was confined until he died on September 24, 2005.

Based on the medical records of Don Vicente Sotto Memorial Medical Center in Cebu City as testified to by Dr. Artemio Alexis Cadiz, the victim sustained severe brain injury and intra-ventricular hemorrhage or bleeding in the brain. According to Dr. Cadiz, considering the age of the victim at the time which was 62 years old and his already being feeble and weak, the injuries sustained by the victim as a result of the mauling incident caused his prolonged stay in bed which then led to his catching pneumonia. This and the severe brain injuries of the victim resulted in his death.[9]

### Evidence for the Defense

On the other hand, the accused-appellant narrated her defense in her Brief,[10] as follows:

On September 17, 2005 at about 1:00 o'clock in the afternoon, the deceased Prudencio Lacio who was drunk and armed with a knife, entered the house of the appellant. Upon seeing Candido Ipi who was having lunch with the appellant, Prudencio Lacio angrily said: "Here is the person who I look for, I will kill you all." Prudencio Lacio suddenly attacked Candido Ipi who defended himself by trying to take away from Prudencio Lacio the knife. While grappling with each other, Prudencio fell down and hit his head against the bamboo chair and fell to the ground. As a result, Prudencio Lacio vomited blood and subsequently fell unconscious.

The appellant was so shocked during that time that she was not able to do anything. After seeing Prudencio Lacio hitting his head on the bamboo chair, falling to the ground, vomiting blood and falling unconscious, she went out of her house and shouted for help. She also reported the incident to the police authorities and brought with her the knife which Candido Ipi was able to take away from the possession of Prudencio Lacio.[11]

### The Ruling of the RTC

On May 30, 2013, the court a quo ruled for the conviction of accused-appellant. It held that the evidence disclosed that there was a conspiracy on the part of Dolores and Candido when they killed the victim, who was their brother-in-law. It further ruled that:

This Court says that there was conspiracy between the siblings Dolores dela Calzada and Candido Ipi in killing their brother-in-law Prudencio Lacio. Conspiracy existed here as can be inferred from the concerted actions of the two accused, that was while Candido Ipi was boxing Prudencio Lacio, Dolores dela Calzada also struck on the head Prudencio, a fatal part of the human body with the use of a piece of wood. They were synchronized in their attack to Prudencio. They were motivated by a single criminal impulse – to kill Prudencio. Conspiracy is implied when the accused persons had a common purpose and were united in its execution. xxx. With the presence of conspiracy here, accused Dolores dela Calzada and supposedly her co-accused Candido Ipi had assumed joint criminal responsibility – the act of one is the act of all. The ascertainment of who among them actually caused the fatal injury to the victim even becomes immaterial. xxx

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WHEREFORE, in the light of the foregoing, this Court finds accused DOLORES DELA CALZADA "guilty" beyond reasonable doubt and hence, convicted of the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code and applying the Indeterminate Sentence Law, she is hereby sentenced to an indeterminate penalty of SIX (6) YEARS AND ONE (1) DAY OF Prison Mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of Reclusion Temporal as maximum and to indemnify the heirs of the deceased victim Prudencio D. Lacio the amounts of Fifty Thousand Pesos (Php50,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty-Five Thousand Pesos (Php25,000.00) as temperate damages, all with interest at twelve percent (12%) per annum

computed from the finality of this Decision until fully paid.

With costs against accused Dolores dela Calzada.

SO ORDERED.[12]

While accused-appellant sought reconsideration[13] of the judgment, her motion was denied.[14]

### The Assignment of Errors

The judgment convicting accused-appellant of the offense constrained her to interpose this appeal on the lone ground that the lower court erred in finding her guilty beyond reasonable doubt of the crime of homicide. Appellant asserts that she had no participation in the death of the victim; that she did not strike the victim's head with a piece of wood and that the head injury of the victim was self-inflicted when he hit his head on a bamboo chair. She also pointed out that the findings in the medical certificate does not support the theory of the prosecution that she participated in the crime by striking the victim with the wood on the right side of his face.

On the other hand, the OSG argued that the court a quo did not err in convicting accused-appellant of the offense charged and thus its decision should be sustained.

### The Ruling of this Court

We resolve to deny this appeal.

Accused-appellant insists that the evidence did not disclose that she participated in the killing of the victim. According to her, the victim lost his balance when he was being boxed by Candido (the other accused in this case) causing him to hit his head on the bamboo chair, alluding that this was the proximate cause of his head trauma that resulted to his death.

We are not persuaded.

Contrary to appellant's assertions, the evidence shows that prosecution witness Venancio Agustin testified that he saw Candido boxing Prudencio and thereafter, Dolores, who was at that time on the left side of the victim, suddenly lunged at the victim with a 2-feet piece of wood towards Prudencio, hitting the latter at the right side, back portion of his head,[15] thus:

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Q: You mentioned that you saw according to you the mauling by the two (2) accused against Prudencio, have you observed any confrontation between the three (3) of them prior to any delivery of fistic blows to Prudencio?

A: I did not hear anything, I only saw that they struck the victim.

Q: You mean to tell this Honorable Court, that the two (2) of them simultaneously struck Prudencio?

A: Candido boxed Prudencio and Dolores struck him.

Q: Please stand up Mr. Witness, you mentioned that Candido struck Prudencio, can you please demonstrate before this Honorable Court how Candido boxed Prudencio and Dolores struck also Prudencio?

Record: (At this juncture, the witness made a punching motion with the use of his right hand upward)

Q: And did you see what portion of his body was hit?

Record: Witness pointing to his face.

Q: You mean to tell this Honorable Court, that when you demonstrated a while ago punching motion upward, he was hit on the right portion of his face?

A: Yes, sir on his right face.

Q: And, how strong was it?

A: It is quite strong because the victim somewhat staggered.

Q: At that particular time that Candido hit Prudencio, where was Dolores?

A: At his side and immediately she struck Prudencio.

Q: Which portion of the body of Prudencio was hit?

A: At the right back portion of his head.

Q: Mr. Witness, please stand up again and assuming that you are Prudencio where was Dolores dela Calzada located?

A: Witness pointing at his left side.

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Q: What portion of the body of Prudencio was Dolores dela Calzada situated, was it on the left or right side?

A: Witness pointing at his left side.

Q: In other words, while Dolores dela Calzada was on the left side, she hit Prudencio on the lower right portion of his head?

A: (At this juncture, the witness demonstrating that when Candido boxed Prudencio, Prudencio was quite staggered and then immediate Dolores dela Calzada struck him.)

Q: So what hand of Dolores dela Calzada was used in striking Prudencio?

A: Her two (2) hands (at this juncture, the witness made a swinging motion from her right towards her left).

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Q: Despite the fact Mr. Witness awhile ago you demonstrated the act of Dolores by striking towards the left, you mean to tell this Honorable Court, that he was hit on the right lower portion of the ear?

A: When Candido boxed Prudencio, said Prudencio was a little bit staggered towards the left side and then immediately Dolores struck Prudencio and Prudencio was hit on the right side of his face. (Witness made a swinging motion from the right to the left.)(16]

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The positive identification of appellant by the prosecution eyewitness erases any doubt that indeed Dolores participated in killing the victim. Moreover, the head injury sustained by the victim from the wood used by Dolores fully supports the cause of death indicated in the death certificate as severe brain injury and hemorrhage.[17] As testified to by Dr. Artemio Alexis Cadiz, the medical doctor who was presented as an expert witness by the prosecution, and whose qualifications was admitted by the defense, the brain injury suffered by the victim could have been the result of mauling or by having been struck with a wood.[18] Notably, the victim was first hospitalized on September 18, 2005 and expired thereafter on September 24, 2005 due to pneumonia and sepsis. In effect, the proximate cause of the victim's death was the head injury he suffered at the hands of the accused which later on resulted to pneumonia, sepsis and hemorrhage.

The defense further asserts that the injury sustained by the victim was not the result of a blow inflicted by Dolores but was the result of the victim hurting himself when he struck his head on a bamboo chair and hitting his head on the ground which caused him to vomit blood.[19] However, We find these assertions inconsequential and not duly proved. Needless to state, the defense of the accused is unavailing considering that the prosecution's evidence had duly established that both accused had assaulted the deceased.

Incidentally, We find that the records of this case is incomplete as it did not include the receipt evidencing the cash bond posted by both accused. The original copy of the receipt/s evidencing that the cash bond they posted was not deposited with the court (or with the government). [20] Neither a mere machine copy thereof is extant in the records of this case. In a Motion for Reduction of Bail,[21] both accused Candido and Dolores, sought the reduction of their bail from Php40,000.00 each to Php20,000.00 each. This motion was granted in the Order dated February 17, 2006 by Executive Judge Cesar O. Contreras.[22] Appearing in the records is an approved Cash Bail Bond[23] for the two accused with the amount of twenty thousand pesos each as their bail. However, no official receipt number and the date when the receipt was issued are indicated on the form. Apparently, based on the “alleged” bailbond posted, both accused were released per Order of Release dated February 17, 2006.[24] Inasmuch as Candido was established to have died during the pendency of the case, his criminal liability has been extinguished and the bailbond posted for his temporary liberty ought to have been canceled and returned to the bondsman.[25] Since there is no receipt extant in the records, We cannot rectify this situation.

As regards the case of appellant Dolores, it appears that after the promulgation of the Decision, she was required to fill up a Prisoner’s Information Sheet, which would tend to show that she was incarcerated and placed in prison. However, there is no Mittimus Order attached to the record nor any other document that would show whether she was placed in jail or was allowed to be free on bail during the pendency of the appeal.

All told, We find no reversible error in the assailed judgment of conviction rendered by the court a quo, as well as in its grant of monetary award representing civil indemnity, moral and temperate damages including the interest, and hence, the judgment of conviction should be affirmed.

WHEREFORE, this appeal is DENIED. The Decision dated May 30, 2013 of the Regional Trial Court (RTC), Branch 29 of Toledo City in Crim. Case No. TCS-5502 for Homicide is AFFIRMED in toto. Costs against accused-appellant.

Defense counsel, Atty. Allain Anthony E. Alvez is REQUIRED to manifest to this Court within five (5) days from notice as to the whereabouts of his client, accused-appellant Dolores dela Calzada.

Furthermore, the Presiding Judge of RTC, Branch 29 of Toledo City and/or the Branch Clerk of Court are REQUIRED to SUBMIT within five (5) days from notice the Mittimus or Commitment Order and a copy of the cash bond receipt evidencing payment of the bailbond of accused DOLORES DELA CALZADA and CANDIDO IPIS per Cash Bail Bond[26] which became its basis in issuing the Order of Release dated February 17, 2006.[27]

### **SO ORDERED.**

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

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[1] Penned by RTC Judge Ruben F. Altubar.

[2] Information; RTC records, p. 5.

[3] Order dated June 27, 2006; RTC records, p. 47. Certificate of Arraignment; RTC records, p. 46.

[4] RTC records, pp. 196-203.

[5] RTC records, pp. 205-212. See also the prosecution’s Comment on the Motion for Leave of Court to File Demurrer to Evidence of Accused; RTC records, pp. 222-225.

[6] Order dated September 28, 2009; RTC records, pp. 243-245.

[7] Order dated July 24, 2012; RTC records, p. 314.

[8] Brief for the Appellee; Rollo, pp. 56-57; 61-62.

[9] Ibid. Citations omitted.

[10] Brief for the Appellant; Rollo, pp. 6-30.

[11] Ibid.

[12] RTC Decision; RTC records, pp. 342-352.

[13] Motion for Reconsideration dated June 4, 2013; RTC records, pp. 366-383.

[14] Order dated July 9, 2013; RTC records, p. 408.

[15] Cross-examination of Venancio Agustin; TSN, January 23, 2007, pp. 4-6.

[16] TSN, January 23, 2007, pp. 4-7.

[17] Exhibit "C"; RTC records, p. 172.

[18] TSN, April 15, 2009, p. 13.

[19] Appellant's Brief, *supra*.

[20] Section 14, Rule 114 of the Rules of Court provides:

SEC. 11. Deposit of cash as bail.— The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue, or provincial, city or municipal treasurer, OR THE CLERK OF COURT WHERE THE CASE IS PENDING the amount of bail fixed by the court or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and a written undertaking showing compliance with the requirements of Section 2 of this Rule, the warden or person having custody of the accused shall release him without the necessity of a further order from the court.

The money thus deposited shall be considered as bail and applied to the payment of any fine and costs and the excess, if any, shall be returned to the accused or to whoever made the deposit.

[21] RTC records, pp. 14-15.

[22] RTC records, p. 20.

[23] RTC records, pp. 26-31.

[24] Order of Release dated February 17, 2006; RTC records, pp. 32-34.

[25] Sec. 22, Rule 114 of the Rules of Court provides:

Sec. 22. Cancellation of Bail. – Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

[26] RTC records, pp. 26-31.

[27] Order of Release dated February 17, 2006; RTC records, pp. 32-34.

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