

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME TOMOTORGO Y ALARCON, DEFENDANT-APPELLANT.

G.R. No. L-47941. April 30, 1985

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Jaime Tomotorgo y Alarcon, the accused-appellant in this case, appeals from the decision rendered on December 22, 1977, by the Court of First Instance of Camarines Sur, Branch IV, in Criminal Case No. 403 of said court finding him guilty of the crime of parricide for having killed his wife Magdalena de los Santos. The dispositive portion of said judgment reads, as follows:

"WHEREFORE, in view of the foregoing considerations, the accused Jaime Tomotorgo y Alarcon is hereby condemned to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased Magdalena delos Santos in the sum of P12,000.00 without subsidiary imprisonment, plus costs. And considering the circumstances under which the offense was committed, the court hereby recommends executive clemency for him, after serving the minimum of the medium penalty of prision mayor.

"Let copy of this decision be furnished, his Excellency, the President of the Philippines, and the Chairman of the Board of Pardons and Parole.

"SO ORDERED.

"Given at Naga City, this 22nd day of December, 1977.

"SGD. ALFREDO S. REBUENA

"Judge" (Rollo, pg. 10)

The facts of this case as recited in the decision of the trial court and in the appellee's brief stand uncontroverted and undisputed. From the evidence submitted it is disclosed that the victim, Magdalena de los Santos, was the wife of the herein accused. Several months prior to the occurrence of the fatal incident on June 23, 1977, Magdalena de los Santos had been persistently asking her husband to sell the conjugal home which was then located at Sitio Dinalungan, Barangay Cabugao, Municipality of Siruma, Camarines Sur. She wanted their family to transfer to the house of her husband's in-laws which is in the town of Tinambac, Camarines Sur. (TSN, pp 6-10, December 13, 1977). Accused Tomotorgo would not accede to his wife's request. He did not like to abandon the house wherein he and his wife were then living. Furthermore, he had no inclination to leave because he has many plants and improvements on the land which he was then farming in said municipality of Siruma, Camarines Sur, a town very far from the place of his in-laws where his wife desired their family to transfer to.

On June 23, 1977, at about seven o'clock in the morning, the accused left his home to work on his farm. Upon his return at about nine o'clock that same morning, he found his wife and his three-month old baby already gone. He proceeded to look for both of them and sometime later on, on a trail about two hundred (200) meters from their home, he finally saw his wife carrying his infant son and bringing a bundle of clothes. He asked and pleaded with

his wife that she should return home with their child but she adamantly refused to do so. When appellant sought to take the child from his wife, the latter threw the baby on the grassy portion of the trail thereby causing the latter to cry. This conduct of his wife aroused the ire of the herein accused. Incensed with wrath and his anger beyond control, appellant picked up a piece of wood nearby and started hitting his wife with it until she fell to the ground complaining of severe pains on her chest. Realizing what he had done, the accused picked his wife in his arms and brought her to their home. He then returned to the place where the child was thrown and he likewise took this infant home. Soon thereafter, Magdalena de los Santos died despite the efforts of her husband to alleviate her pains.

After the accused changed the dress of his wife, he reported the tragic incident to the Barangay Captain of their place who brought him to Policeman Arellosa to whom the accused surrendered. He also brought with him the piece of wood he used in beating his wife.

Charged with the crime of parricide, the accused at his arraignment on November 24, 1977, with assistance from his counsel de-oficio, pleaded not guilty to the said offense. However, when his case was called for trial on December 13, 1977, his counsel manifested to the court that after his conference with the accused, the latter expressed a desire to change his previous plea of not guilty to that of guilty. Accordingly, and upon motion by the counsel of the accused and without objection on the part of the prosecution, the trial court allowed the accused to withdraw his original plea. Upon being re-arraigned, the accused entered a plea of guilty. He confirmed the manifestations made by his counsel to the court regarding his desire to change his initial plea. He expressed his realization of the gravity of the offense charged against him and the consequences of his plea. His counsel was then permitted by the court to establish the mitigating circumstances which were then invoked in favor of the accused.

After the accused had testified and upon his plea given in open court, the court below found him guilty of the crime of parricide, but with three mitigating circumstances in his favor, namely: voluntary surrender, plea of guilty, and that he acted upon an impulse so powerful as naturally to have produced passion and obfuscation.

With the imposition by the court below of the penalty of reclusion perpetua on the herein accused and the subsequent denial of his motion for reconsideration of the judgment rendered against him, the accused through his counsel filed a notice of appeal to this Court.

In his appeal, accused argues and contends that the lower court erred:

- "1. In disregarding its own findings of fact which showed manifest lack of intent to kill;
- "2. In disregarding the provisions of Article 49 of the Revised Penal Code which prescribes the proper applicable penalty where the crime committed is different from that intended;
- "3. In not following the mandatory sequence of procedures for determining the correct applicable penalty;
- "4. In denying the appellant the benefits of the Indeterminate Sentence Law." (Appellant's Brief, pg. 1, pars. 1-4)

We find no merit in the appeal of the accused herein which assails only the correctness of the penalty imposed by the trial court on him.

Appellant submits that the penalty for the felony committed by him which is parricide being higher than that for the offense which he intended to commit, and which he avers to be that of physical injuries only, the provisions of Article 49 of the Revised Penal Code which relate to the application of penalties should have been observed and followed by the trial court. The said provision of law which accused invokes provides that:

"Art. 49. Penalty to be imposed upon the principals when the crime committed is different from that intended.— In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed;

"1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period."

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Continuing, appellant argues in his appeal brief submitted to this Court, that:

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"The felony actually committed, parricide, has a higher penalty (reclusion perpetua to death) than the felony intended, qualified physical injuries (reclusion temporal medium and maximum). Hence, since the penalty corresponding to the felony intended shall be imposed in its maximum period, the prescribed penalty is therefore reclusion temporal maximum. This is a divisible penalty.

"Under Article 64, sub-par. 5, of the Penal Code,

"When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances."

"The trial court itself found "that the accused is entitled to three (3) mitigating circumstances with no aggravating circumstances, namely: voluntary surrender, plea of guilty, and obfuscation." We submit that the plea of guilty, which, as we had shown earlier, was improvidently made, should no longer be considered. This leaves only two mitigating with no aggravating. Sufficient compliance with the law. Hence, an automatic lowering of the penalty by one degree, Or to reclusion temporal medium. This being a case where a period constitutes the entire range of the penalty prescribed, and therefore, also a degree."(Appellant's Brief, pp. 8-9)

Appellant maintains the belief that he should be punished only for the offense he intended to commit which he avers to be serious physical injuries, qualified by the fact that the offended party is his spouse. Pursuant to the sub-paragraph of para-graph 4 of Art. 263 of the Revised Penal Code and as his wife is among the persons mentioned in Art. 246 of the same code, appellant contends that the penalty imposable should then be reclusion temporal in its medium and maximum periods. On this mistaken premise, appellant therefore claims that the penalty prescribed by law for his offense is divisible and he should thus be entitled to the benefits of the Indeterminate Sentence Law.

These contentions of the accused are manifestly untenable and incorrect. Article 4 of the Revised Penal Code expressly states that criminal liability shall be incurred by any person committing a felony (delito) although the wrongful act be different from that which he intended and that the accused is liable for all the consequences of his felonious acts.

The reference made by the accused to Article 263 of the Revised Penal Code which prescribes graduated penalties for the corresponding physical injuries committed is entirely misplaced and irrelevant considering that in this case the victim died very soon after she was assaulted. It will be, therefore, illogical to consider appellant's acts as falling within the scope of Article 263 of the Revised Penal Code. The crime committed is parricide no less.

We are in complete accord with and we sustain the ruling made by the courts below that the accused is not entitled to the benefits of the Indeterminate Sentence Law. The court sustains the submissions of the appellee that

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"x x x Article 49 of the Revised Penal Code does not apply to cases where more serious consequences not intended by the offender result from his felonious act because, under Article 4, par. 1 of the same Code, he is liable for all the direct and natural consequences of his unlawful act. His lack of intention to commit so grave a wrong is, at best, mitigating (Article 13, par. 3).

"Article 49 applies only to cases where the crime committed is different from that intended and where the felony committed befalls a different person (People vs. Albuquerque, 59 Phil. 150)

"Article 246 of the Revised Penal Code punished parricide with the penalty of reclusion perpetua to death, which are two indivisible penalties. As the commission of the act was attended by mitigating circumstances with no aggravating circumstance, the lesser penalty, which is reclusion perpetua, should be imposed (People vs. Laureano, et al., 71 Phil. 530; People vs. Francisco, 78 Phil. 697; People vs. Belarmino, 91 Phil. 118)" Appellee's Brief, pp, 6-7). (Underscoring supplied)

We hold that the fact that the appellant intended to maltreat the victim only or inflict physical injuries does not exempt him from liability for the resulting and more serious crime committed. In the case of People vs. Climaco Demiar, 108 Phil. 651, where the accused therein had choked his mother in a fit of anger because the latter did not prepare any food for him, it was ruled that the crime committed by Demiar is parricide (Article 246, Revised Penal Code), the deceased victim of his criminal act being his legitimate mother. Said crime was declared as punishable with reclusion perpetua to death. As held by this Court in that case, the appellant is only entitled to the mitigating circumstance of lack of intent to commit so grave a wrong. (Article 13 (3 Id.) The penalty imposed on the herein accused is therefore correct in the light of the relevant provisions of law and jurisprudence.

The trial court in its consideration of this case had added a recommendation that "executive clemency be extended to the accused-appellant after his service of the minimum of the medium penalty of prision mayor." The Solicitor General likewise concludes and prays in the People's Brief that in view of the circumstances which attended the commission of the offense, a recommendation for the commutation of the penalty would be appropriate. (Appellee's Brief, pg. 7). This Court is constrained to take note that the accused-appellant is said to have been in detention since June 23, 1977 or for more than seven years already. This Court can do no less than express its hope that the accused-appellant can be now extended an absolute or conditional pardon by the President of the Republic of the Philippines or that there be a commutation of his sentence so that he may qualify and be eligible for parole.

WHEREFORE, the appealed judgment is hereby affirmed without any pronouncement as to costs.

Considering the circumstances which attended the commission of the offense, the manifest repentant attitude of the accused and his remorse for his act which even the trial court made particular mention of in its decision and the recommendation made by the Office of the Solicitor General as well as the number of years that the accused-appellant had been imprisoned, this Court can do no less than recommend that executive clemency be extended to the accused-appellant, Jaime Tomotorgo y Alarcon, or that his sentence be commuted so that he can now qualify and be considered eligible for parole. This recommendation of the Court should be promptly brought to the attention of the President of the Republic of the Philippines by the proper authorities in whose custody the herein accused has been placed.

Aside from this, let copy of this decision be furnished the Office of the President of the Republic of the Philippines and the Chairman of the Board of Pardons and Parole.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

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