

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.,
ERNESTO FULGENCIO, DEFENDANT-APELANT.***G. R. No. L-5370. November 10, 1952*

Ponente: MONTEMAYOR, J.

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Convicted by the Court of First Instance of Capiz of the crime of double parricide, and sentenced "to suffer six (6) years of prision correccional, to twenty (20) years of cadena temporal, with all the accessories of the law. to indemnify the heirs of the deceased in the sum of P4, 000, and to pay the costs," Ernesto Fulgencio appealed from that decision to the Court of Appeals; the latter court, however, after studying the case and considering the briefs filled by the prosecution and the defense, agreed with the trial court as to the guilt of the appellant, but believing that the penalty that should be imposed is reclusion perpetua certified, the case to this Tribunal.

The following facts are not disputed. In the month of August, 1950, the old couple Mateo Tuberiades and Felicidad Roberto was living in their humble home in the barrio of Cortes, municipality of Balete, Capiz. The house had only two rooms, namely, a sala or living room and a small bedroom at one end of the sala it was not very high from the ground. With the old couple was living their daughter Estelita Tuberiades with her two small children, her husband then living in manila. Apellant Ernesto Fulgencio (Ernlng) whose mother Rogelia, an elder sister of Estelita had long died, leaving Fulgencio an orphan of both, father and mother in his early boyhood had gone to live with his grandparents Mateo and Felicidad. For some time prior to August, 1950, due to certain disagreement that Fulgencio had with his grandparents, particularly his grandfather Mateo, appellant ceased to live in the house continuously but went to stay and sleep; in one house after another belonging to his friends in adjoining barrios although occasionally, he would come and stay with his grandparents on August 6, 1950, Fulgencio was not in the house and it is not known how long or how many days he had been away. That night as was their wont, the old couple slept in the middle of the living room while Estelita and her children occupied the small bedroom. Shortly after midnight at about one o'clock in the morning of August 7th, 1950, Estelita was awakened by one of her children crying. She heard her mother Felicidad exclaim in a rather loud voice: "Erning do not burn our house", and almost immediately she heard someone running below the house. Not long thereafter there was a tremendous explosion the concussion rendering Estelita unconscious. When she regained consciousness she heard her mother who was then on the near end of the sala next to the bedroom saying in an agonizing voice: "Erningg bombed us." Estelita rushed to her mother's side and found tier arms mangled and a large wound on her abdomen through which her intestines were protruding. Not long thereafter the mother died. Estelita walked across the sala to see her father but on the way she fell thru a hole in the floor about a meter and a half in circumference. She shouted for help and her elder brother Rizal living about 50 brazas away came. She explained to him what happened and what she had heard her mother exclaiming and saying before she died and sent him to the poblacion to report the matter to the authorities. Rizal made his report to the Chief of Police, informing the latter of the possible connection of the appellant with the fatal explosion. The Chief of Police accompanied by the Assistant Sanitary Inspector came to the scene of the crime that same morning. He found Mateo and Felicidad both dead, Mateo at one end of the sala and Felicidad at the other end. Their arms were

mangled; one of the hands of Mateo was severed from the arm. The abdomens of both bore ugly wounds or holes through which their Intestine's were coming out. In his inspection of the premises, the Chief of Police found under the house a native cart destroyed by the explosion. In the frame of the vehicle he found embedded pieces of tin. He also found pieces of the same metal embedded in the trunks of banana trees growing around the house. He looked for the appellant but he was nowhere in the vicinity. After two days he finally located and arrested him in the town of Bañga, the same province of Capiz.

Estellita testifying for the prosecution told the court that the old couple had always pampered the accused and granted his wishes however unreasonable; that in the month of March, 1950 he had asked his grandfather to give him P200.00 for he was going to Iloilo to get married "but the old man gave him only P50.00, The following month Fuligencio returned home from Iloilo and asked for more money and when his grandparents declined to give him the money, he became disgusted and stole the chickens, a trunk and a carabao of his grandparents although the animal was later located. Presumably to appease him, the grandfather gave him P150.00 and with that money appellant went back to Iloilo, ostensibly, to get married. In May he returned home penniless and unmarried and again asked for more money. The grandfather tried to explain to him that if he gave him the little money he had they would left. Because his demands were not met appellant left the house and began to stay and live with his friends in the adjoining barrios, coming to the house only occasionally.

According to Ernesto Perucho, a witness for the prosecution, on August 6, 1950, in the afternoon, appellant passed by his house in an adjoining barrio, carrying a salmon can wrapped in Manila paper. Being a friend the two engaged in conversation in the course of which Perucho asked the accused what he had inside the can to which the defendant answered that it contained viand for tuba. Perucho jokingly suggested that it may be good for "sumsuman" but Fuligencio said that he could not afford it because he was taking it to the old man (his grandfather).

Paciencia Undiano, another witness for the prosecution who was living alone in her house about 50 brazas away from that of the old couple told the court that in the evening of August 6th, the accused passed by her house and asked her if anybody was staying with her, to which she answered in the negative. Not satisfied with the answer and to verify, he opened the window and the door of the house and looked inside to assure himself that there were no other occupants of the house.

Ricardo Mirasol, another witness for the prosecution, a good friend of appellant, and with whom he had been living and staying off and on, stated in court that on the morning of August 6th, which was a Sunday, Fuligencio left the house and wore his (Ricardo's) clothes. The following morning, August 7th, at about two o'clock he heard the accused calling from below the house, particularly for Ricardos mother but she was then asleep and Ricardo answered his call and asked him what he wanted and he said he was leaving the community because he had a disagreement with his grandfather.

Appellant Fuligencio testifying in his own behalf denied that he had any connection or participation in the explosion and in the killing of his grandparents. He said that he reached fourth grade in school but he did not continue his studies because he did not like going to school; that his grandfather gave him P200,00 at one time and he went to Iloilo to get married but the girl whom he was courting refused to marry him because she wanted to continue her studies; that he stayed in Iloilo for three months frequenting the shows there; but spent only P100.00 and when he returned to his home he delivered the remaining P100.00 to his grandparents. This was denied by Estelita who said that she never saw this supposed return of the money to the grandfather nor was it ever mentioned to her. Appellant told the court that on the night of August 6th, 1950, he slept in the house of one Julian Custodio, a friend of his living in an adjoining barrio and he even mentioned other persons who slept in the same house that same night. However, Custodio and one of the inmates testifying informed the court that

appellant did not sleep in the house that night.

We have carefully reviewed the record of this case and we have not the slightest doubt as to appellant's guilt. The lower court which tried the case and saw the witnesses including the accused testify accepted the testimony of the witnesses for the Government but discredited the story told, by the appellant, lone witness for the defense. The Court of Appeals to which the case was appealed analyzed the evidence and agreed with the trial court that the appellant is guilty. We are reproducing the impression of the trial court on the appearance of witness stand and on his credibility;

"The Court observed from the manner the accused testified that he is clever, deliberate, cool and nonchalant as if he does not care what may be the outcome of the serious charge imputed to him. His testimony is not worthy of credit."

It might also be pertinent to quote the comment by the trial court in its decision, expressed in rather picturesque language

"The accused is a shining example of a contemptuous brat spoiled by the love and overindulgence of his grandparents. When he succeeded in getting so easily the sum of two hundred pesos from, his grandfather for supposed expenses in a marriage adventure for so young a boy as the accused, he believed that he could exploit his grandparents of their hard earned money for his profligacy. When he found out that his grandfather was not the easy sucker that he thought him to be as he was refused additional amount after squandering the two hundred, pesos, he was irate and intensely disappointed, so much so that he left the house and began to nurture his diabolical plan to eliminate his grandparents as revenge. That the accused is capable of carrying out his plan, the Court entertains no doubt, judging not only from the strong circumstantial evidence adduced by the prosecution but also from the psychological study of the manner and hardened features of the accused."

Eight witnesses, including his aunt Estelita took the witness stand to testify against him. Of all the residents of the barrio where he lived including those of the adjoining barrios, appellant could not get a single person to be a witness for him and corroborate his story. On the contrary his friends whom he expected to establish his defense of alibi, rebutted and refuted said alibi. Sad as was the situation to which he had been reduced, it seems that he had no one but himself to blame for it,

We believe and we find that the appellant was the one who planted what appears to be a home-made bomb contained in a salmon can under the house right under the spot where he knew his grandparents slept at night. The explosion was so tremendous that it caused a hole one and a half meters in circumference in the floor and hurled his grandparents from the middle to the extreme ends of the sala, killing them; and the salmon tin can which contained the explosive was broken into small pieces which were embedded in the nearby objects like the cart and the banana trunks. The motive is clear; he was disgusted with and perhaps even hated his grandfather for not giving more money and perchance thought that by eliminating the old couple he would eventually come to own whatever properties may be left by them or at least a part of them.

We agree with the trial court and the Court of Appeals that the crime is double parricide and that it also constitutes a complex crime so that the penalty prescribed for the offense of parricide which is reclusion perpetua to death should be imposed in its maximum degree (Art. 48, Revised Penal Code). At the time of the commission of the crime, however, the accused was only seventeen (17) years of age and so according to the provisions of Art. 68, par. 2, of the Revised Penal Code, the penalty next lower should be imposed.

The penalty for the crime committed by appellant is death. The penalty next lower is reclusion perpetua, and this is the penalty that we impose on Ernesto Fuligencio. The indemnity imposed by the trial court is hereby raised to six thousand pesos (P6,000.00) to the heirs of each of the deceased. With these modifications, the decision of the

lower court is hereby affirmed, with costs.

Paras, C. J., Pablo, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.

Feria, Tuason, and Reyes, JJ., did not take part.

Bengzon, J., did not take part.

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