

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. COSME MONLEON, ACCUSED-APPELLANT.

G.R. No. L-36282. December 10, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Cosme Monleon appealed from the decision of the Court of First Instance of Cebu, finding him guilty of parricide, sentencing him to reclusion perpetua, and ordering him to pay the heirs of his deceased wife, Concordia Bongo, an indemnity of twelve thousand pesos plus moral damages in the sum of two thousand pesos (Criminal Case No. BO-121).

After that judgment was read to him in open court on January 11, 1973, he asked that the penalty be reduced (156 tsn). The court advised him to appeal if he was not satisfied with the penalty.

The Solicitor General submits that the judgment of conviction should be affirmed but recommends executive clemency because the penalty of reclusion perpetua appears to be excessive, considering the degree of malice exhibited by Monleon (Art. 5, Revised Penal Code; Sec. 14, Art. IX, 1973 Constitution).

The judgment was based on the following facts:

Appellant Monleon and his wife, Concordia Bongo, who had been married for twenty-six years (Exh. A), were residents of Barrio Lunas, Borbon, Cebu. On June 1, 1970 Monleon, a forty-five year old illiterate farmer, worked in the palihug (a sort of bayanihan) at the farm of Tomas Rosello, his brother-in-law. There, he imbibed copious amounts of tuba, the coconut wine that is a causative factor in the rampancy of criminality or lawlessness in rural areas.

At about seven o'clock in the evening of that day, June 1, Cosme Monleon arrived at his house. He was drunk. He inquired from Concordia whether their carabao had been fed by their ten-year old son, Marciano. She assured him that the carabao had been fed. He repaired to the place where the carabao was tethered to check the veracity of her statement. He discovered that the carabao had not been adequately fed. He became furious.

When he was about to whip Marciano, Concordia intervened. A violent quarrel ensued between them. He placed himself astride his wife's chest, squeezed her neck, pressed her head against a post, and kicked her in the abdomen.

He shouted: "What do I care if there would be someone who would be buried tomorrow. You let your brothers and sisters stand up and I will also include them." Felicisimo, one of the couple's six children, pulled away his father and stopped his assault on Concordia.

The following morning Concordia vomitted blood. She died at eleven o'clock on that morning of June 2. Death was due to "acute abdomen" (Exh. B), a pathologic condition within the belly, requiring surgical intervention (Blakiston's New Gould Medical Dictionary, 2nd Edition, page 2).

Sixteen days after Concordia Bongo's death, or on June 18, Monleon thumbmarked a confession, written in the Cebuano dialect and sworn to before the town mayor (Exh. C). He admitted in that confession that he assaulted his wife and that he had repented for the wrong which he had done to her. He orally admitted to Perfecto Bongo, a lieutenant in the Cebu City police department and a relative of Concordia, that he (Monleon) assaulted his wife because he was drunk and she was a nagger (133-134 tsn Novem-ber 24, 1972).

On July 31, 1970 or about two months after Concordia's death, a medico-legal officer of the National Bureau of Investiga-tion (NBI) exhumed her body. He found bluish-black discolorations on the sphenoid temporal bones of her skull, on the atlas or cervical vertebra below the skull or at the base of the neck, and on the first ribs. The discolorations were due to internal hemorrhage "caused by trauma or external violence" (Exh. D-1; 21-24 tsn). The doctor ventured the opinion that the "acute abdomen" could have been caused "by external violence" (37 tsn).

Appellant Monleon, by means of his testimony and the testi-monies of his nineteen-year old daughter, Felicisima, and his twelve-year old son, Marciano (a third-grade pupil), denied that he used violence against his wife. He testified that he and his wife had merely a verbal quarrel and that Clemencia Bongo-Monleon, the sister of Concordia and the wife of his elder brother, testified against him because Clemencia and Monleon had a boundary dispute regarding the lands inherited by Clemencia and Concordia from their father, Victor Bongo.

Monleon said that Lieutenant Bongo asked him to sign a "recibo" that he would take care of his children (113 tsn). He also said that some persons threatened to kill him if he did not affix his thumbmark to his confession (116 tsn).

As already stated, the trial court convicted Monleon of parricide. In this appeal, his counsel de oficio argues that the trial court erred in giving credence to Monleon's confession, the affidavit of his son, Marciano (Exh. E) and the testimonies of the prosecution witnesses, Clemencia Bongo-Monleon, Epi-fania Bongo, Perfecto Bongo, and the NBI medico-legal officer, Doctor Ceferino Cunanan; in treating the alleged declarations of Concordia Bongo to Clemencia's husband as part of the res gestae and in rejecting the testimonies of Monleon and his two children, Marciano and Felicisima.

The crucial fact in this case is that Monleon feloniously assaulted his wife in the evening of June 1, 1970 by choking her, bashing her head against a post and kicking her in the abdomen. He did not use any weapon but the acts of physical violence which he inflicted on her produced internal complications which caused her to vomit blood the next day and eventually snuffed out her life.

The corpus delicti or the fact of the commission of the crime of which Concordia Bongo was the victim was established by the prosecution witnesses, Clemencia Bongo-Monleon and Epifania Bongo. Hence, Monleon's extrajudicial confession (Exh. C) was corroborated by evidence of the corpus delicti (Sec. 3, Rule 133 and sec. 29, Rule 130, Rules of Court).

The trial court said that it took pains to observe the demeanor on the witness stand of the mayor, Epifania and Clemencia, who all testified for the prosecution, and appellant Monleon himself. It was convinced that the confession "was voluntarily executed by the accused".

Appellant's counsel de oficio contends that there are discrepancies between Monleon's confession and the version given by the prosecution witnesses, Epifania and Clemencia. Those two witnesses testified that Concordia died at eleven o'clock in the morning while Monleon in his confession declared that his wife died at one o'clock in the afternoon. Another discrepancy is that according to prosecution witnesses Monleon was not present when his wife died but according to the confession, he was with her when she breathed her last. Counsel de oficio also points out that the confession was supposed to have been thumbmarked on June 16, 1970 and then sworn to before the

mayor two days later or on June 18 but, according to Lieutenant Bongo, he investigated Monleon in the early morning of June 18 and his confession was executed at that time.

We are of the opinion that those discrepancies do not destroy the probative value of the confession nor negate Monleon's admission therein that he assaulted his wife. A court may reject portions of the confession by reason of the improbability of the facts or statements therein or because of their falsity or untrustworthiness (*People vs. Layos*, 60 Phil. 760; *People vs. Piring*, 63 Phil. 546; *People vs. Villanueva*, 115 Phil. 858; 22 C.J.S.1479).

The mayor and Lieutenant Bongo testified that Monleon was not forced to affix his thumbmark to the confession. There is no evidence that he was tortured or maltreated. Monleon could have complained to the fiscal during the preliminary investigation that he was forced to execute his confession. He did not do so.

Attorney Prospero A. Crescini, appellant's counsel de oficio, examined meticulously the evidence, conscientiously studied the case and submitted a good brief. He points out that Clemencia and Epifania did not mention that they saw each other when they allegedly witnessed the assault made by Monleon on his wife; that they did not report immediately to the authorities the alleged incident; that it was strange that Epifania did not ask her husband Gervasio Bongo, the brother of the victim, to stop the assault, and that Clemencia failed to summon her husband, an elder brother of Monleon, to pacify the latter.

Those acts and omissions of Clemencia and Epifania do not render their testimonies worthless. The two prosecution witnesses are uneducated. The fiscal in his direct examination and the defense counsel did not ask them whether they saw each other in the yard of Monleon's house when they allegedly saw Monleon mauling his wife. Most likely, they assumed that Monleon was merely chastising his wife, as he had repeatedly done in the past, and that he did not intend to kill her. They were not cognizant at first of the grave consequences resulting from Monleon's violent acts. Hence, they did not see the necessity of the intervention of other persons or of the barrio captain and the police.

Appellant's counsel argues that the trial court erred in admitting Marciano Monleon's affidavit which was written in the Cebuano dialect (Exh. E) and which was not accompanied with the corresponding translation. That contention is well-taken.

The trial court erred in admitting that affidavit over the objection of appellant's counsel because section 34, Rule 132 of the Rules of Court provides that documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English, Spanish or the national language. "To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial" (Sec. 34).

Also meritorious is appellant's contention that the trial court erred in ruling that the alleged declarations of Concordia Bongo to the husband of Clemencia Bongo Monleon, as to the violent acts inflicted upon her (Concordia) by appellant Monleon, are part of the *res gestae*. That ruling was made in connection with Clemencia's testimony (not on direct examination but in answer to the questions of the trial judge) that at eight o'clock in the evening of June 1, 1970, or about an hour after Concordia was assaulted by Monleon, she (Concordia) left her house and went to Clemencia's house three hundred meters away and recounted to Clemencia's husband (appellant Monleon's brother) how she was beaten by Monleon (22 tsn).

Appellant's counsel observed that it was incredible that Concordia, after being severely maltreated by Monleon (according to the prosecution's version), would still have the strength to go to Clemencia's house which was located on a hill.

Clemencia's testimony reveals that she must have been confused in making that assertion, assuming that it was

accurately translated and reported. A careful scrutiny of her entire testimony reveals that what she really meant was that Concordia on the following day, June 2, recounted to her, as Concordia recounted also to Epifania, how she was maltreated by Monleon. In all probability what happened was that Clemencia, on arriving at her house at around eight o'clock in the evening of June 1, apprised her husband that she witnessed the assault made by Monleon on her sister, Concordia.

The trial court's error in regarding as part of the *res gestae* the statement supposedly made by Concordia to Clemencia's husband immediately after the incident and its error in admitting Monleon's affidavit are not sufficient to exculpate Monleon or engender any reasonable doubt as to his guilt.

The testimonies of Epifania and Clemencia, the confession of Monleon, as supported by the testimonies of the mayor and Lieutenant Bongo, and the expert opinion of the NBI medico-legal officer are sufficient to establish the guilt of appellant Monleon.

The instant case is covered by article 4 of the Revised Penal Code which provides that criminal liability is incurred by any person committing a felony although the wrongful act done be different from that which he intended. The maltreatment inflicted by Monleon on his wife was the proximate cause of her death.

Monleon in his inebriated state had no intent to kill her. He was infuriated because his son did not feed his carabao. He was provoked to castigate his wife because she prevented him from whipping his negligent son. He could have easily killed his wife had he really intended to take her life. He did not kill her outright.

The trial court did not appreciate any mitigating circumstances in favor of Monleon. The Solicitor General is correct in finding that the extenuating circumstances of lack of intent to commit so grave a wrong and intoxication, which was not habitual, are present in this case. Hence, the penalty imposable on Monleon is reclusion perpetua (Arts. 63[3] and 246, Revised Penal Code).

But considering that Monleon had no intent to kill his wife and that her death might have been hastened by lack of appropriate medical attendance or her weak constitution, the penalty of reclusion perpetua appears to be excessive. A strict enforcement of the provisions of the Penal Code means the imposition of a draconian penalty on Monleon.

This case is similar to *People vs. Rabao*, 67 Phil. 255 where the husband quarrelled with his wife because he wanted to restrain her from giving a bath to their child, who had a cold. In the course of the quarrel, he punched her in the abdomen. As a result she suffered an attack and died. He was convicted of parricide and sentenced to reclusion perpetua. The commutation of the penalty was recommended to the Chief Executive. (See *People vs. Formigones*, 87 Phil. 658; *U. S. vs. Guevara*, 10 Phil. 37; *People vs. Castañeda*, 60 Phil. 604, 609; *People vs. Gungab*, 64 Phil. 779).

Therefore, there is sufficient justification for the Solicitor General's recommendation that Monleon's case be brought to the attention of the Chief Executive so that the penalty of reclusion perpetua may be reduced.

WHEREFORE, the trial court's judgment is affirmed. Pursuant to article 5 of the Revised Penal Code, a certified copy of this decision should be furnished the Chief Executive through the Secretary of Justice (See sec. 3[1], Art. XVII, 1973 Constitution). Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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