

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AURELIO CABALHIN Y DACLITAN, ACCUSED-APPELLANT.

G.R. No. 100204. March 28, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Accused Aurelio D. Cabalhin y Daclitan appeals from the decision* of the Regional Trial Court of Antipolo, Rizal, Branch 73, dated 27 March 1991, finding him guilty of three (3) offenses, namely: frustrated homicide, homicide, and parricide and sentencing him to suffer imprisonment of six (6) months of arresto mayor as minimum to three (3) years of prision correccional as maximum in Criminal Case No. 3081 (for frustrated homicide); imprisonment of four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum in Criminal Case No. 3082 (for homicide); and reclusion perpetua in Criminal Case No. 3094 (for parricide).

The records show that at about 3:30 in the afternoon of 22 February 1987, in Sitio Buro, Barangay San Juan, Taytay, Rizal, the appellant stabbed, with the use of a 13-inch dagger, three (3) persons, namely, Marianita Atison (appellant's wife), Flaviana and Rolito, both surnamed Saldivia (mother and son).

Three (3) separate informations were filed against accused-appellant, docketed as Criminal Case No. 3081, dated 25 May 1987, for: frustrated murder; Criminal Case No. 3082, dated 26 May 1987, for: murder; and Criminal Case No. 3094, dated 25 May 1987, for: parricide, which informations read as follows:

"Crim. Case No. 3081

That on or about the 22nd day of February 1987, in the municipality of Taytay, province of Rizal, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon (dagger), with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon one Flaviana Lacambra-Saldivia on the right lower portion of the breast, x x x x thus performing all the acts of execution which would have produced the crime of murder, as a consequence, but neverthe-less did not produce it by reason of cause or causes independent of his will, that is, due to the timely and able medical assistance rendered to said Flaviana Lacambra-Saldivia, which prevented her death.

CONTRARY TO LAW.

Crim. Case No. 3082

That on or about the 22nd day of February 1987, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a dagger, with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and felonious-ly attack, assault and stab with the said dagger one Rolito Saldivia y Lacambra on the vital parts of his body, thereby inflicting upon the latter mortal stab wounds which directly caused his death.

CONTRARY TO LAW.

Crim. Case No. 3094

That on or about the 22nd day of February 1987, in the municipality of Taytay, province of Rizal, a place within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation to kill his wife with whom he was united in lawful wedlock, entered the house at Sitio Burol, Brgy. San Juan, Taytay, Rizal, where she was then living separately, and said accused armed with a bladed weapon suddenly and without warning and employing means which tended to ensure its commission without danger to himself, did then and there willfully, unlawfully and feloniously, stab his wife, Marianita Atison, repeatedly, as a result of which the said Marianita Atison met her instantaneous death.

CONTRARY TO LAW."[1]

Criminal Case No. 3081 was originally assigned to the Regional Trial Court of Antipolo, Rizal, Branch 73, while Criminal Case Nos. 3082 and 3094 were assigned to Branch 74 of the same court. The latter two (2) cases were consoli-dated later with Criminal Case No. 3081, all three (3) cases having arisen from the same incident.

When arraigned, appellant pleaded not guilty to the offenses charged. The three (3) cases were set for trial. The evidence for the prosecution consisted of the testi-monies of two (2) alleged eye-witnesses to the commission of the crimes, namely: Robin Saldivia (brother of deceased victim Rolito Saldivia) and Igmidio Ducay. A third witness was Romulo del Monte (a barangay tanod in Barangay San Juan).

The testimony of Robin Saldivia is as follows:

"x x x on February 22, 1987 at around 3:30 in the afternoon, he (Robin Saldivia) was in their house in Sitio Burol, Taytay, Rizal. He was lying down with his brother Rolito Saldivia who was sleeping on the floor. Their house had two bedrooms separated by a sala. On the other bedroom, Marianita Atison or 'Ka Nita' and his mother Flaviana Lacambra Saldivia were talking while on the bed. All of a sudden, somebody forcibly entered their house and so he got up and peeped behind the curtain. He saw the accused drew a double-bladed instrument measuring about thirteen inches long from his right side. Sensing danger, Robin Saldivia hid under their house the floor of which was about 4 1/2 feet from the ground. While hiding under the house, he could see the movement of the feet of the accused between the wooden slabs of the floor. Thru these spaces, he saw the accused stabbed Marianita Atison or 'Ka Nita,' his mother Flaviana Lacambra Saldivia and his brother Rolito or 'Lito' Saldivia and blood even dripped on him. After stabbing these three persons, the accused ran away. As a result of this stabbing incident, Flaviana Saldivia sustained two stab wounds on the breast while Marianita Atison and Rolito Saldivia died on the same day."[2]

Igmidio Ducay testified as follows:

"x x x on February 22, 1987 at around 3:30 P.M., he (Igmidio Ducay) was in front of the house of Wenceslao Saldivia in Sitio Burol, Barangay San Juan, Taytay, Rizal. He was playing 'dama' with his friend Alberto Espino when a person carrying a bladed instrument passed by. The bladed weapon or instrument has a length of 12 to 13 inches. This person suddenly entered the house of Wenceslao Saldivia by kicking the door which was closed. Igmidio Ducay stood up and peeped through inside the house. He saw the man suddenly stabbed Marianita Atison Cabalhin, an acquaintance. After that, the man went down from the bedroom and suddenly stabbed Lito who was sleeping face down (nakataob) on top of a table just below the bedroom where Marianita Cabalhin was stabbed. He also saw the man kicked and stabbed 'Manang' or Flaviana Saldivia, wife of Wenceslao Saldivia.

Igmidio Ducay stated that he was about 4-5 meters away from the door where he was peeping when Marianita Cabalhin, Rolito Saldivia and Flaviana Saldivia were stabbed by the man whom he identified as the accused Aurelio Cabalhin. The door was open and everything that was happening inside the house could be seen

outside because there was no room or partition. He saw the accused climbed the bed or 'papag' where Marianita Cabalhin and Flaviana Saldivia were sitting side by side and the accused stabbed them while standing on the 'papag.' After stabbing Marianita and Flaviana, the accused went down and proceeded to Rolito Saldivia who was sleeping on top of the table on the right side of the house and stabbed him also. After Flaviana Saldivia was stabbed, Igmidio Ducay left the place and asked for help. x x x "[3]

Romulo del Monte, on the other hand, testified as follows:

1. That in that afternoon of 22 February 1987 after being informed about the stabbing incident in the house of the Saldivias, he went to said house and saw Nita Cabalhin and Lito Saldivia sprawled on the bed in one room of the house -- Nita Cabalhin was fully dressed while Lito Saldivia was wearing khaki pants but naked up (without T-shirt); he did not see Wenceslao Saldivia (father of Lito Saldivia) in the house and did not bother to ask who the author of the crime was.
2. Between 3:00 and 4:00 p.m. of that same day, he saw the accused Aurelio Cabalhin coming out from an alley where the house of the Saldivias was located. The accused had a white shoulder bag on his left shoulder, his right hand was inside the bag and his pants were bloodied. Nobody told him that said person was Aurelio Cabalhin but he was pointed to as the one who stabbed the victims. When Romulo del Monte saw the accused coming out from an alley, he even greeted him - "O brod, anong nangyari sa iyo at ganyan ka?" but the accused did not answer and he just continued walking. The next time that he saw the accused was in court. (Romulo del Monte gave a sworn statement dated 23 February 1987 in connection with this case).[4]

Appellant admitted having stabbed Marianita Atison, Rolito Saldivia and Flaviana Saldivia, resulting in the death of the first two victims (Marianita and Rolito), and in stab wounds on the breast of the third victim (Flaviana). However, he declared that the stabbing incident occurred as he caught his wife Marianita and Rolito naked in bed and actually engaged in sexual intercourse. The evidence for the defense consists of the testimony of the sole defense witness, appellant himself. His testimony is as follows:

"x x x He and Marianita Atison Cabalhin are husband and wife having been married on November 23, 1972 in Calubian, Leyte (Exhibit '1'). After their marriage, they stayed in the house of his in-laws in Guinduhaan, Wague, Leyte for more or less one year. After that, they transferred to their own house in Wague, Leyte and stayed there for more or less fifteen years. In 1985, they went to Manila where they worked as caretaker of the house of Edgardo Co in Filinvest Subdivision for about seven months. They left the employment of Edgardo Co x x x. They transferred to Sucat, Paranaque where he worked as laborer in a construction and his wife Marianita Atison Cabalhin worked as housemaid.

x x x x x x x x

After working as housemaid in New Alabang Village for more or less five months, Marianita Atison Cabalhin transferred to Meralco Village, Taytay, Rizal where she also worked as housemaid of Lola Waway. At that time, Aurelio Cabalhin was working with Apex in San Pedro, Mandaluyong, Metro Manila and residing in Mangga Site, Sucat, Paranaque. His wife Marianita Cabalhin who was working in Meralco Village, Taytay, Rizal was going home to or staying with her sister Elevita Atison Dagame in Sitio Burol, Barangay San Juan, Taytay, Rizal after her work. They agreed that they would see each other every Sunday at Mangga Site, Sucat, Paranaque. Aurelio Cabalhin had gone thrice to the house of his sister-in-law where his wife was staying. On December 14, 1986, Aurelio Cabalhin went to Sitio Burol, Barangay San Juan, Taytay, Rizal to find out the condition of his wife in the house of Lola Waway. He saw his wife and she told him that her work was fine and she was in good condition. He saw also his sister-in-law Elevita Dagame on that occasion.

On February 14, 1987, Elevita Dagame went to Sucat, Paranaque and asked the accused Aurelio Cabalhin about his wife. Elevita told him that his wife was no longer working in the house of Lola Waway and she was not going home to their house anymore. On February 17, 1987, the accused went to Meralco Village, Taytay, Rizal and verified from Lola Waway if what Elevita Dagame told him was true. Lola Waway told the accused

that his wife was not working with her anymore since January 30. Upon learning that, Aurelio Cabalhin asked the help of Elevita Dagame to gather information regarding the whereabouts of his wife and went back to Sucat, Paranaque.

On February 22, 1987, Aurelio Cabalhin returned to the house of Elevita Dagame in Sitio Buro, Barangay San Juan, Taytay, Rizal to get some informations about his wife. When he arrived there at around 12:00 P.M., the only person in the house was Jun Dagame who is the brother of Reynaldo Dagame, husband of Elevita. According to Jun Dagame, Elevita went to Pasay. The accused talked with Jun Dagame and their conversation lasted for about two hours.

Jun Dagame who was 14 years old, told the accused that his wife Marianita was in the house of Wenceslao Saldivia and had a paramour. He wanted to know if what he was told about his wife was true and so he went to the house of Wenceslao Saldivia which was pointed to him by Jun Dagame who stayed at a distance of about 20 meters away from said house. He went near the door of the house of Wenceslao Saldivia and saw Flaviana Saldivia. He asked her where his wife was and she answered that Marianita Cabalhin was not there. The accused noticed that Flaviana Saldivia became pale and trembled when he asked her about his wife and so he entered the house and Flaviana Saldivia was behind him. He saw a room with curtain and when he parted the curtain (hinawi ko po ang kurtina) he saw his wife lying with a man on the bed. His wife was lying on her back with her legs apart while the man was on top of her with his buttocks between the parted legs of his wife. The man and his wife were engaged in sexual act. He boxed the legs of the man and when he rolled over to the wall, he saw that his wife and the man were naked. Because of anger, he lost control of himself. He saw a knife near the pillow and stabbed the testicles of the man. His wife tried to stop him and he stabbed her also. After that, he stabbed the man and his wife again and again. The accused testified that at the time he was stabbing these two persons, he was already out of his mind because of anger. He could not recall how many times he stabbed them but he was sure that all the stab wounds were on the front portion of their bodies. He did not know what happened to Flaviana Saldivia but on cross-examination, the accused declared that when he stabbed the testicles of the man who he came to know as Lito Saldivia, somebody behind him grabbed his shirt and he also stabbed that person but he does not know if it was Flaviana Saldivia. After realizing that he had taken the law into his hands, the accused left bringing the knife with him and walked towards the highway. His pants were full of blood and he boarded a passenger jeep going to Crossing-JRC. He alighted at Crossing-Mandaluyong and went to the outpost where there was a policeman. He told the police that he was a criminal and he was brought to Capt. Sebastian Davan at the Mandaluyong police headquarters. The accused told Capt. Davan that he killed his wife and paramour. That evening, Capt. Davan brought him to Taytay Police Station and he was incarcerated. x x x "[5]

On 27 March 1991, the trial court rendered judgment finding appellant guilty of the crimes of frustrated homicide (as to Flaviana), homicide (as to Rolito) and parricide (as to Marianita), the dispositive part of which reads as follows:

"WHEREFORE, finding the accused Aurelio Cabalhin y Daclitan guilty beyond reasonable doubt of the crimes of frustrated homicide in Crim. Case No. 3081, homicide in Crim. Case No. 3082 and parricide in Crim. Case No. 3094, the Court hereby sentences him to suffer imprisonment of 6 months of arresto mayor as minimum to 3 years of prision correccional as maximum in Crim. Case No. 3081; imprisonment of 4 years 2 months and 1 day of prision correccional as minimum to 8 years and 1 day of prision mayor as maximum in Crim. Case No. 3082 and reclusion perpetua in Crim. Case No. 3094.

The accused shall be credited with the preven-tive imprisonment he has undergone pursuant to Art. 29 of the Revised Penal Code as amended by Republic Act No. 6127."[6]

In this appeal, appellant contends: (1) that he killed his wife Marianita and Rolito Saldivia under the exceptional circumstances provided under Article 247 of the Revised Penal Code which reads:

"ART. 247. Death or physical injuries inflicted under exceptional circumstances. - Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment."

and (2) that the crime he committed against the person of the other victim, Flaviana Lacambra-Saldivia was only serious physical injuries, not frustrated homicide.

We find no merit in the appeal.

As to the issue on the applicability of Article 247 of the Revised Penal Code to the case at bench, the principal question is whether or not appellant killed his wife Marianita and Rolito as he caught them in the act of committing the sexual act, or immediately thereafter. The appellant contends that in that fateful afternoon of 22 February 1987, he entered a room in the house of the Saldivia family and saw that his wife was "lying on her back with her legs apart while the man was on top of her with his buttocks between the parted legs of his wife." Both the prosecution and defense witnesses gave different versions as to the actual location, position and condition of Marianita and Rolito at the time appellant saw them -- in short, whether they were engaged in the sexual act when allegedly caught by the appellant in the afternoon of 22 February 1987.

It is noted that the trial court gave great weight to the testimony of the prosecution witness, Romulo del Monte (the barangay tanod) whom the trial court believed to be an unbiased witness, and who testified that when he saw Marianita and Rolito on that fateful afternoon of 22 February 1987, Marianita was fully dressed while Rolito was wearing Khaki pants without T-shirt or naked up. The trial court said:

"The claim of the accused that he saw his wife lying on her back with her legs apart while Rolito Saldivia was on top of her with his buttocks between her parted legs is hard to believe if not unworthy of belief in view of his testimony that the two were covered with blanket from their shoulders down to their feet when he first saw them (pp. 26-27, t.s.n., 3/21/90). Considering that Marianita Cabalhin and Rolito Saldivia were covered with blanket from shoulders to feet, it is impos-sible for the accused to see their exact position which he described in detail and what they were doing. The testimony of the accused that his wife and Rolito Saldivia were both naked while engaged in the carnal act was belied by Barangay Tanod Romulo del Monte who went to the scene of the crime minutes after the stabbing incident. Romulo del Monte, an unbiased witness, declared that when he saw Nita Cabalhin and Lito Saldivia bloodied and sprawled on the bed in one room of the house, Nita Cabalhin was fully dressed while Lito Saldivia was wearing Khaki pants without T-shirt or naked up (pp. 20-21, t.s.n., 6/7/88). It should be remem-bered that when this stabbing incident happened, the only persons in the house of Wenceslao Saldivia were Robin Saldivia, Rolito Saldivia, Flaviana Saldivia and Marianita Atison Cabalhin; Wenceslao Saldivia was not at home as he was drinking and eating in the house of his friend (pp. 3-4, t.s.n., 2/17/88); Robin Saldivia who was 13 years old, left their house after the victims were stabbed to call and inform his father about the incident; Marianita Atison Cabalhin died as a result of the stab wounds inflicted upon her; Rolito Saldivia who was seriously wounded was then fighting for life as he died also on the same day while Flaviana Saldivia was also wounded on her breast and in serious condi-tion. It is therefore, highly inconceivable and improbable that the victims Rolito Saldivia and Marianita Cabalhin could still put on their clothes if indeed they were naked."[7]

It is settled rule that the findings of fact of trial courts are given great weight on appeal because they are in a better position to examine the real evidence, and observe the demeanor of the witnesses, and can therefore discern if they are telling the truth or not.[8] We therefore find no reversible error committed by the trial court in appre-ciating the testimony of Romulo del Monte. Hence, as to the factual issue of whether Marianita and Rolito were engaged in sexual intercourse when allegedly caught by appellant, we will respect the factual finding made

by the trial court as the same is supported by the evidence on record.

Under Article 247 of the Revised Penal Code, the killing of the wife by the husband (or vice-versa) is justified if the husband kills her while engaged in sexual intercourse with another man or immediately thereafter. As to the strict application of Article 247, *People vs. Wagas*[9] teaches that:

"x x x The vindication of a Man's honor is justified because of the scandal an unfaithful wife creates; the law is strict on this, authorizing as it does, a man to chastise her, even with death. But killing the errant spouse as a purification is so severe as that it can only be justified when the unfaithful spouse is caught in flagrante delicto; and it must be resorted to only with great caution so much so that the law requires that it be inflicted only during the sexual intercourse or immediately thereafter."

Clearly, in the present case, appellant failed to prove that he killed Marianita and Rolito while in the act of sexual intercourse or immediately thereafter. Therefore, appellant can not invoke Article 247 to be exempt from criminal liability. He is guilty of parricide under Article 246 of the Code, which provides that any person who shall kill his or her spouse shall be punished by the penalty of reclusion perpetua to death.

As to the second argument, appellant contends that he is guilty only of serious physical injuries, not frustrated homicide as he had then no intent to kill the victim, Flaviana.

In applying Article 249[10] of the Revised Penal Code, the essential element of intent to kill the victim must be clearly established in order to convict one of the crime of homicide. The trial court ruled that there was intent to kill on the part of the appellant, considering "the number and location of the stab wounds inflicted upon the victim (Flaviana) -- two stab wounds on the lower right breast, and the weapon used by the accused which was a double bladed dagger measuring about 13 inches long including the handle."

Taking into consideration the number and location of the stab wounds sustained by Flaviana, this Court believes, as aptly observed by the trial court, that there was intent to kill when appellant attacked and wounded Flaviana. We, therefore uphold the ruling of the trial court finding appellant guilty of frustrated homicide in having attacked Flaviana.

The trial court ruled that the appellant was entitled to two (2) mitigating circumstances; the first, for having acted upon an impulse so powerful as naturally to have produced passion or obfuscation (as provided for in Article 13, paragraph no. 6, of the Revised Penal Code) and, the second, for voluntary surrender (Article 13, paragraph no. 7 of the same Code).

The records show that on 22 February 1987 appellant went to the house of the Saldivia family after being informed that he would find there his wife (Marianita) together with her alleged paramour, Rolito Saldivia. The stabbing inci-dent happened, according to the trial court, because appellant acted upon an impulse so powerful as naturally to have produced passion or obfuscation. The evidence further discloses that after appellant stabbed the three (3) victims, he voluntarily went to the Taytay Police Station on that same night of 22 February 1987 and surrendered to Police Captain Davan.

We uphold the ruling of the trial court in appreciating the two (2) mitigating circumstances above-cited.

WHEREFORE, the decision of the Regional Trial Court of Antipolo, Rizal, Branch 73, dated 27 March 1991, rendered in Criminal Cases Nos. 3081, 3082 and 3094 is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

* Penned by Judge Marietta A. Legaspi

[1] Original Records, pp. 227-228

[2] Original Records, p. 229

[3] Original Records, pp. 230-231

[4] Rollo, pp. 73-75

[5] Rollo, pp. 77-80

[6] Original Records, p. 246

[7] Rollo, pp. 81-82

[8] People vs. Rodriguez, G.R. No. 81332, April 25, 1989, 172 SCRA 742; People vs. Solares, G.R. No. 82363, May 5, 1989 173 SCRA 203

[9] People vs. Wagas, G.R. No. 61704, March 8, 1989, 171 SCRA 69

[10] Article 249. Homicide. Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

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