

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN TAKBOBO, ACCUSED-APPELLANT.

G.R. No. 102984. June 30, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The nuptial vows which solemnly intone the matrimonial promise of love "(f)or better or for worse, for richer or for poorer, in sickness and in health, till death do us part," are sometimes easier said than done, for many a marital union figuratively ends on the reefs of matrimonial shoals. In the case now before us for appellate review, the marriage literally ended under circumstances which the criminal law, disdainful of romanticism, bluntly calls the felony of parricide.

Accused-appellant Ruben Takbobo, a middle-aged fisherman, was charged with the killing of his wife in Criminal Case No. CBU-21961 before the Regional Trial Court of Cebu City, Branch 8, in an information which alleges that on or about 11:00 P.M. on March 25, 1991, in Barangay Guiwanon, Ginatilan, Cebu, said appellant, who was the husband of Lucia Takbobo, hacked and stabbed the latter with a knife and bolo, thereby inflicting upon her multiple fatal hack and stab wounds which resulted in her instantaneous death.[1]

Appellant entered a plea of guilty at his arraignment,[2] but, considering the gravity of the offense, the lower court ordered both the prosecution and the defense to submit evidence in order to determine the motive of appellant and the circumstances surrounding the killing of his wife,[3] a course of procedure repeatedly enjoined in our previous decisions and now enshrined in Sections 3 and 4, Rule 116 of the 1985 Rules on Criminal Procedure.

On October 14, 1991, the trial court rendered judgment finding appellant guilty as charged, imposing upon him the penalty of reclusion perpetua, and ordering him to indemnify the heirs of the deceased in the amount of P50,000.00, as well as to pay the costs.[4]

The evidence of record shows that appellant Ruben Takbobo and Lucia P. Takbobo were married in 1969. They had nine children, one of whom is already dead.[5] The couple, together with their youngest daughter, 6-year old Madilyn, and a nephew were residing at Barangay Guiwanon, Ginatilan, Cebu when the fatal incident happened. The other Takbobo children were staying with a certain David Manus since, according to the sworn statement of their daughter, Marybel, "they were afraid of their father." [6]

On the night of March 25, 1991, at around 11:00 o'clock in the evening, young Madilyn was awakened by noise caused by a quarrel between her parents. She claimed that she thereafter witnessed the entire incident that transpired. This is how she testified at the preliminary investigation conducted by the 11th Municipal Circuit Trial Court of Malabuyoc-Ginatilan-Algeria:

"COURT

Q Madilyn, do you know that if you will not tell the truth you will commit a sin?

A Yes.

Q And now you are ready to tell the truth?

A Yes.

Q If you will not tell the truth you will commit a sin?

A Yes.

Q If you will commit a sin you will be in hell?

A Yes.

Q On March 25, 1991, can you still remember who was your companion while you were sleeping?

A Dodong gamay, Mama Lucia and Papa Ruben.

Q While you were sleeping were you able to wake up?

A Yes.

Q What was the reason why you woke up at that time?

A I cannot sleep anymore because it was noisy.

Q What was the reason that (sic) it was noisy (sic) at that time?

A They were quarreling.

Q What were they quarreling about?

A Because he was not able to pay at (sic) Danilo.

Q At that time that they were quarreling, what did your father get?

A A hunting (knife) and a bolo.

Q What did your father do with the hunting (knife) and the bolo?

A He hacked Mama at the feet.

Q What else?

A On the neck. (Witness pointing to her neck.)

Q What else?

A On the hands, on the armpit, on the breast and the other breast was sliced.

x x x

Q In the following morning, what happened to your mother?

A She was already dead.

Q And on the following morning your father was no longer there?

A No more.

Q You said that your father stabbed your mother with a hunting (knife), where did your father get the said hunting knife?

A From the cabinet.

Q And you saw your father g(e)t the hunting knife from the cabinet?

A Yes."[7]

Shortly after the incident, appellant went to the police authorities and told them about the same. The following day, March 26, 1991, he was investigated by Pfc. Alfredo Cavalina of the Office of the Station Commander, Philippine National Police (PNP) at Ginatilan, Cebu for having killed his wife. During that investigation, Reynaldo Singco, also a policeman, was then present and listening about three (3) meters away from them. Singco, testifying for the prosecution, declared that he did not hear appellant state the reason why he killed his wife, and neither did appellant mention that he came from fishing that night.[8]

Appellant appears to have had a propensity for inexplicable resort to violence against the members of his family. Irene Takbobo, a 16-year old daughter of appellant, testified before the trial court that on one occasion before her mother's death, and apparently for no reason, one of her fingers was cut and the third finger of her older sister was split by a bolo wielded by her father, thus: "Suddenly, he hacked us and I was hit, and I was able to cover my head so it was my head he strike (sic) and I parried, that is the reason why my finger was cut."[9]

Appellant, on the other hand, would like to impress upon the Court that he killed his wife because he caught her sleeping with another man. This version of the defense is repeated in appellant's brief as follows:

"x x x. At about 3:00 o'clock in the early morning of March 25, 1991 while he just arrived home from a sea fishing activity, he was surprised when, upon opening their door, he saw his wife sleeping with another man, who happened to be their neighbor, Cadiz Catulong. He tried to kill him by stabbing him but his wife pushed the man who then immediately jumped out of the window. As a result, his wife was hit by his thrust. He then found out that his wife had no panty. He tried to look for Cadiz Catulong but failed to find him. He immediately related the incident to the police though he was not able to execute his affidavit as he was then very confused."[10]

Correspondingly, in his aforesaid brief, the trial court's decision is impugned by appellant for not having appreciated in his favor the mitigating circumstances of passion and obfuscation, voluntary surrender and voluntary plea of guilty.[11]

We have conducted a thorough and careful study of the records of this case and we find no cogent reason to disturb the findings and conclusions of the court below. Appellant admits the killing of his wife but contends that his act was justified since he surprised his wife in a compromising situation with a neighbor, one Cadiz Catulong. He would, therefore, avail of the specific extenuating circumstance[12] provided for and applicable only under the situations contemplated in Article 247 of the Revised Penal Code. This contention of the appellant does not engender credence. His lone testimony, without any other evidence to prove his claim, will not tilt the scales of justice in his favor.

The exceptional circumstance contemplated in Article 247, just like any circumstance which may either absolve or exempt an accused from liability or modify his penalty, must be proved by clear and convincing evidence. Having admitted the killing of his wife, the onus probandi has shifted to appellant to establish that he did so while his wife was in sexual congress with another person, either while they were in flagrante delicto or immediately thereafter. On this score, appellant must rely on the strength of his own evidence and not on the supposed weakness of that for the prosecution.

In the instant case, there was failure of the defense to prove the alleged discovery of the sexual act between the victim and Cadiz Catulong. Nowhere in the records of this case do we find any basis for doubting the testimonies

of appellant's own children, since the admissibility and reliability of testimonies of child witnesses have long been matters of favorable judicial experience.[13] The alleged adulterous interlude was not proven. On the contrary, the uncorroborated testimony of appellant that his wife committed the ultimate act of infidelity is contradicted by the facts established in this case, hence his bare protestations are unavailing.

Furthermore, appellant gave inconsistent answers on the witness stand which cannot but cast a cloud of serious doubt on his story, to say the least. Initially he declared:

"COURT

x x x

Q What was (your) wife doing before the killing?

A My wife was sleeping with another man, I just arrived from fishing.

Q You are sure about that?

A Yes, sir, the man in fact jumped out of the window.

Q Before you went up the house, he jumped?

A I observed."[14]

Then, in a later part of his testimony, when asked by the lower court what he saw upon his arrival from the sea, he gave a completely different answer:

"COURT

Q What was the man doing?

A The man was already putting on his pants, they have already finished the carnal act."[15]

Appellant likewise claimed that "(his) purpose was to kill the man but she pushed the man and my wife was killed."[16] He accordingly wants it to appear that he had no intention of killing his wife. However, the physical evidence, as represented by the pictures taken of the deceased victim,[17] disclose that she was killed with multiple stab wounds. The manner of infliction and the number of physical injuries negate the claim of appellant that he did not intend to kill his wife.

Appellant adamantly insisted in his testimony before the lower court, and also in his brief, that his wife had no panties on the night he allegedly saw her with another man.[18] However, on a closer examination of the pictures marked as Exhibits "A" to "D" for the prosecution, we can not entirely believe the claim of the defense, since two of the exhibits[19] contradict such contention. The records do not show nor has appellant essayed any explanation why in those two exhibits the deceased was apparently wearing her panties.

Finally, from the testimony of Pat. Reynaldo Singco, which the trial court took pains to quote in its decision,[20] during the custodial investigation appellant never mentioned that he surprised his wife in the act of infidelity or that, on that occasion, Catulong was present or was inside their house or, for that matter, anywhere in the vicinity thereof. If it was true that there was really a man inside the house of appellant, the normal human reaction would be to tell that fact to the police right after the stabbing incident when appellant went to the PNP station and/or during the investigation thereafter.

On the issue of whether or not the trial court erred in not appreciating the mitigating circumstances of passion and obfuscation, voluntary surrender and voluntary plea of guilty, we agree with appellant and the Solicitor General

that the crime was attended by the last two mitigating circumstances. The records of the case confirm the compliance by appellant with the requisites for the appreciation of voluntary surrender and voluntary plea of guilty. Both appellant and appellee concur on these particular points. Appellant indeed voluntarily surrendered himself to agents of a person in authority before his arrest could be affected. He likewise admitted his guilt in open court prior to the presentation of evidence by the prosecution.

With respect to the mitigating circumstance of passion and obfuscation, however, it should be noted that the following requisites must concur: (1) there should be an act both unlawful and sufficient to produce such condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his moral equanimity.[21]

In the case at bar, the trial court did not agree with the submission of the defense on this matter. We have earlier discussed that appellant was not able to prove by convincing evidence that he saw his wife sleeping with another man. Hence, as correctly observed by the Solicitor General, that allegation of appellant "is an afterthought to lessen his liability,"[22] and that "what appears is that appellant killed his wife because "he was not in his right mind." [23] Appellant cannot, therefore, be credited with this mitigating circumstance.

Notwithstanding the presence of two mitigating circumstances without any aggravating circumstance, we do not agree with the argument of appellant and, surprisingly, the recommendation of the Solicitor General to reduce the penalty to reclusion temporal. This would patently run counter to the rules for the application of indivisible penalties under Article 63 of the Revised Penal Code, the pertinent portions of which provide:

"ART. 63. Rules for the application of indivisible penalties. - x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied."

x x x

The trial court correctly found the accused guilty of parricide as charged in the information. Article 246 defines the crime of parricide and imposes therefor the penalty of reclusion perpetua to death. Applying Article 63, when the penalty is composed of two indivisible penalties, the penalty cannot be lowered by one degree, no matter how many mitigating circumstances are present. What obviously misled the parties in this case is that they overlooked the fact that the so-called special* mitigating circumstance that they rely on, that is, when there are two or more mitigating circumstances and no aggravating circumstance the court shall impose the penalty next lower to that prescribed by law, is found in paragraph 5 of Article 64 which, as its epigraph shows, provides the "(r)ules for the application of penalties which contain three periods," meaning, divisible penalties. The inapplicability thereof to the present case has long been settled.

In a number of cases,[24] we have held that when there are two or more mitigating circumstances and no aggravating circumstance but the imposable penalties are indivisible in nature, the court cannot proceed by analogy with the provisions of paragraph 5 of Article 64 and impose the penalty lower by one degree. Thus, in a parricide case,[25] the trial court imposed the penalty next lower, which is reclusion temporal, applying paragraph 5 of Article 64 since the crime was attended by two mitigating circumstances without any aggravating circumstance. In reversing the decision of the lower court, we ruled that the penalty imposed was not correct since the rule applicable in said case is found in Article 63, and not in Article 64, of the Code.

ACCORDINGLY, on the foregoing considerations demonstrative of the lack of merit of the instant appeal, the assailed judgment of the court a quo is hereby **AFFIRMED**.

SO ORDERED.

Narvasa, C.J., (Chairman), and Nocon, J., concur.
Padilla, J., on leave.

[1] Original Record, 1.

[2] Ibid., 36.

[3] Ibid., 36 and 43.

[4] Ibid., 46; per Judge Bernardo LL. Salas.

[5] TSN, August 22, 1991, 1.

[6] Original Record, 8.

[7] TSN, April 17, 1991, 2-3, 5; Original Record, 24-25, 27.

[8] TSN, August 30, 1991, 7-8.

[9] Ibid., id., 9.

[10] Accused-Appellant's Brief, 3; Rollo, 25.

[11] Ibid., id., 23.

[12] People vs. Araquel, 106 Phil. 677 (1959).

[13] People vs. Bustos, 45 Phil. 9 (1923); People vs. Alambra, et al., 55 Phil. 578 (1931); People vs. Sabater, et al., 81 SCRA 564 (1978); People vs. Talingdan, et al., 84 SCRA 19 (1978); People vs. Gacho, 124 SCRA 671 (1983).

[14] TSN, August 22, 1991, 2.

[15] Ibid., id., 4.

[16] Ibid., id., 2.

[17] Exhibits 14-A to 14-D; also marked as Exhibits A to D.

[18] TSN, August 22, 1991, 2.

[19] Exhibits "A" and "B".

[20] Original Record, 44-45.

[21] People vs. Alanguilang, 52 Phil. 663 (1929); People vs. Guillano, 107 Phil. 1169 (1960).

[22] Appellee's Brief, 6; Rollo, 54.

[23] Id., 9; *ibid.*, 57.

* Although sometimes referred to as a privileged mitigating circumstance, such categorization is inaccurate. A

privileged mitigating circumstance *inter alia*, cannot be offset by an aggravating circumstance. Art. 64 (5) pre-supposes the absence of any aggravating circumstance hence, in the presence thereof, the mitigation provided therein can neither be invoked nor applied.

[24] *United States vs. Guevara*, 10 Phil. 37 (1908); *People vs. Formigones*, 87 Phil. 658 (1950); *People vs. Borromeo*, 133 SCRA 106 (1984).

[25] *People vs. Relador*, 60 Phil. 593 (1934).

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