

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL MAGTULOY Y MONTARAY, ACCUSED-APPELLANT.

G.R. No. 105671. June 30, 1993

Ponente: NOCON, J.

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NOCON, J.:

There was no eyewitness to the actual killing of the one year and five month old victim in this case. A resort to circumstantial evidence thus became a necessity. The prosecution ascertained the guilt of the accused-appellant through the testimonies of the mother of the victim, the aunt of the victim, a neighbor and the doctor, who provided facts of such nature from which the trial court was led, by a process of deductive reasoning inferred from proven facts pieced together the accused-appellant's guilt.

The accused-appellant, Manuel Magtuloy y Montaray, 19 years old, was charged with the crime of murder in Criminal Case No. C-37869(91) before the Regional Trial Court, National Capital Judicial Region, Branch 126, Kalookan City. The information filed in said case reads, as follows:

"That on or about the 16th day of June, 1991 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, with treachery, evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack and beat one ARTURO CALIWAG, Jr., who is a minor of one (1) year and five (5) months, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.

CONTRARY TO LAW."[1]

Upon arraignment on July 29, 1991, the accused-appellant entered the plea of not guilty. Thereafter, trial on the merits ensued. On March 30, 1992, the trial court rendered its decision based on circumstantial evidence, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered finding MANUEL MAGTULOY y MONTARAY, 'GUILTY' beyond reasonable doubt of the crime of MURDER under Art. 248. Revised Penal Code and therefore sentences him to suffer the penalty of Reclusion Perpetua with the accessories provided by law and to pay the cost.

The accused is further ordered to indemnify the surviving mother of the victim in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency.

The accused who is presently under detention in the City Jail, Kalookan City, is immediately ordered to be transferred to the National Penitentiary for security reason.

SO ORDERED."[2]

Hence, the present appeal.

The facts of this case, as culled from the brief filed by the Office of the Solicitor General are, as follows:

Betty Mirallo Vda. de Caliwag and her son Arturo Caliwag, Jr., a minor one year and five months old, together with her live-in-partner of four months, herein appellant, resided at Peralta Street, Maligaya Park, Novaliches, Kalookan City at the time material to the case at bar. Ever since appellant moved in with Betty Mirallo four months earlier, appellant, who had no work, took care of Betty's son whenever she was in Cubao selling siopao.

At 8:00 o'clock in the morning of June 16, 1991, Betty Mirallo, after an argument with appellant, left her son in appellant's care as she had to go to Cubao to sell siopao and softdrinks. Appellant and the child were the only ones left in the house (TSN, August 12, 1991, p. 5; TSN, November 6, 1991, p. 7).

At 11:30 of the same morning, appellant, carrying the child Arturo Caliwag, Jr. who appeared to be dead, approached his neighbor, Cristituto Abrazaldo, and said: 'Kuya, help me. If the child dies, I will be blamed.' When Abrazaldo touched the child's stomach, blood came out of his mouth. Abrazaldo then told appellant to bring the child to a doctor (TSN, August 19, 1991, p. 10).

When Betty Mirallo arrived at the hospital where her son was pronounced dead, appellant approached her and asked for forgiveness (TSN, August 12, 1991, p. 13). An autopsy examination revealed that Arturo Caliwag, Jr. sustained a hematoma or external injury on the left chest and the left jaw (TSN, August 28, 1991, p. 7). The hematoma, caused by a dulled instrument such as a fist blow or a piece of wood, resulted in a laceration of the right auricle of the heart causing internal bleeding and then shock (TSN, August 28, 1991, pp. 16, 19).[3]

Lydia Mirallo de Dios, aunt of the victim, testified that during the wake, the accused-appellant intimated to her that he slapped the victim which caused the latter to hit the door and fall down the stairs. After learning about it, she caused the arrest of the accused-appellant. While they were inside the police car on the way to the police station, the accused-appellant asked for her help and forgiveness.

In this appeal, the accused-appellant raised as sole error of the trial court in holding: "X X X THAT THE PROSECUTION HAS SATISFACTORILY PROVED THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT BY CIRCUMSTANTIAL EVIDENCE; HENCE IT ERRED WHEN IT CONVICTED APPELLANT." [4]

In particular, the accused-appellant asseverates that the established facts enumerated by the trial court in its questioned decision are insufficient to form a solid basis for his conviction without transgressing his constitutional right on the presumption of innocence.

Given the version of the fact that the accused-appellant left their house and when he returned, saw the victim at the foot of the stairs already bleeding, and even assuming the correctness of the doctor's finding that the victim suffered from violence the question that nags our mind is did the victim accidentally fall from the stairs or was he thrown down the stairs. If he was thrown down the stairs who is the person responsible? Is it the accused-appellant?

That the accused-appellant was responsible for the victim's death is open to serious question according to the defense on the basis of the following facts: a) he was the one who brought the victim to their neighbor, Cristituto Abrazaldo, asking for help; b) upon advice of Abrazaldo, the accused-appellant brought the victim to the hospital; and c) while the victim was lying in state at their house, he stood vigil together with other friends and sympathizers.

On the other hand, the Office of the Solicitor General is not convinced that the accused-appellant had nothing to do with the victim's death.

After reviewing the evidence on record. We find the Solicitor General's misgiving about the accused-appellant's pretended innocence correct and concur with the findings and conclusions of the court below in convicting him.

In finding the accused-appellant liable for the death of the victim, the trial court relied on the following established circumstantial evidence:

- "1) That accused Manuel Magtuloy y Montaray and private complainant Betty Mirallo vda. de Caliwag are live-in partners and that the couple lived in Betty Mirallo vda. de Caliwag's house in Maligaya Park, Novaliches, Kalookan City, together with her son (victim), one (1) and five (5) months old Arturo Caliwag, Jr.;
- 2) That it was also established that the care and custody of Arturo Caliwag, Jr. was left to the accused whenever the mother goes to Cubao to vend siopao and cold drinks;
- 3) That the child is not the son of the accused but the child of Betty Mirallo vda. de Caliwag alone by her deceased spouse;
- 4) That Betty Mirallo vda. de Caliwag trusted the accused with the custody of her son;
- 5) That the house of Betty Mirallo vda. de Caliwag has no stairs and that you only take one step in reaching the flooring of her shanty;
- 6) That the medico-legal officer, P/Capt. Florante F. Baltazar of the PNP Crime Laboratory testified that if a child falls from the floor to the ground at a height of one (1) meter, it will not produce hematoma or 'pasa' and that if a child falls on a hard pavement instead of a sandy or muddy ground, his conclusion will still be the same, that no hematoma will be produced considering that there was no other injury in the body of the victim;
- 7) That on that fateful day (June 16, 1991) the accused and the victim were left alone in the house with the child still asleep."

"Betty Mirallo vda. de Caliwag testified that there were several occasions when the accused maltreated her and the child. She said that she did not go to the police to report such maltreatments because the accused begged her forgiveness. On one occasion, she claimed she went home and saw the accused boxing her child and that she brought her son to the doctor who just gave her receipts (sic) for medicine but she did not secure a medical certificate because she did not know that this will happen. This point was not rebutted by the defense. The senseless and brutal killing of the victim by the accused is not without motive at all. The surviving mother courageously stated that she and the accused quarreled on that day (June 16, 1991) because she had told the accused that she and her child were going home to her province in the Visayas and that the accused apparently did not like the idea. She said that despite this misunderstanding, she still left her son to the accused and went to work because they had nothing to eat and in fact, the night before, they did not have supper. She and her son were supposed to have left for the Visayas the following day, June 17, 1991. To this, failure on the part of the accused to refute it is fatal to his defense." [5]

The entire records and proven facts of the case yield the inescapable conclusion that the prosecution's evidence, albeit circumstantial, is of a sufficient quantum to establish the guilt of the accused. [6] There is more than one circumstance. The facts from which the inferences are derived are proven. The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. [7]

The following circumstantial evidence is crucial: 1) the victim was not the son of the accused-appellant but of Betty Mirallo vda. de Caliwag by her deceased husband; 2) on several occasions, he maltreated not only the mother of the victim but also the victim himself; 3) in the morning of June 16, 1991, he quarreled with the mother of the victim; 4) he and the victim were left alone in the house on the same date; and 5) while they were in the hospital he asked forgiveness from the mother of the victim.

With respect to the second and third circumstances, We have held that if there is doubt as to whether the defendant is or is not the person who committed an act, the existence or non-existence of a motive for the doing of the act is a circumstantial evidence leading to the inference that he is or is not the author of the act done.[8] In addition, while evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time, it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.[9]

It appears from the records that the accused-appellant could not get along with the victim's mother. Quarrels between the two were frequent. On occasions like this the accused-appellant usually vented his anger on the victim. In the morning of June 16, 1991, the victim's mother and the accused-appellant again quarreled simply because he did not like the idea that she and the victim will be going home to her province in the Visayas. The accused-appellant failed utterly to refute this testimony.

The trial court found the testimony of the mother of the victim credible:

"x x x, the Court considers the testimony of the mother of the victim as more truthful and consistent with the natural course of things and human experience. The Court also noted the preciseness of the testimony of the mother and her being able to answer the questions directly and she can even remember what day it was when they were supposed to leave for the province. The testimony of the mother is simple and straightforward and is therefore believable than that of the accused. In fine, the testimony of the mother is found by this Court as in conformity to knowledge and common experience of mankind. (People vs. Salcedo, G.R. No. 86975, March 18, 1991)."[10]

It is a fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because it is in a better position to observe the demeanor of witnesses while testifying in the case.[11]

Turning now to the arguments of the accused-appellant:

1) The accused-appellant does not dispute that on June 16, 1991, he and the victim were left alone in the house, with the latter still asleep. According to him, he left the house later and when he returned, he saw the victim at the foot of the stairs of their house already bleeding. The existence of a stair, however, is belied by his own admission on cross-examination that there were no stairs in their house.[12]

Moreover, the accused-appellant's testimony is uncorroborated as he is the only witness presented by the defense. The absence of corroborative witnesses leads to the finding that the defense version was simply a concoction devoid of any credibility.[13]

2) The accused-appellant likewise submits that if he indeed committed the act imputed to him he would not have brought the victim to their neighbor, witness Abrazaldo, asking for help; nor bring him to the hospital; or stayed in their house and stood vigil while the victim was lying in state.

The accused-appellant's simulated innocence is clearly non sequitur to his decision not to flee.[14] Apart from the fact that there is no case law holding that non-flight is conclusive proof of innocence,[15] We view these seemingly sympathetic acts as indicia of the accused-appellant's remorse for the serious consequence of his wrongdoing, taking into consideration the testimonies of Betty Mirallo Vda. de Caliwag that while she was in the hospital, he asked for her forgiveness and that of Lydia Mirallo de Dios that while they were inside the police car going to the police station, he likewise asked for her forgiveness. The accused-appellant's unusually submissive stance when he was arrested destroys further his alleged innocence.[16] On cross-examination, he declared "that he did not say anything nor shout or protest when he was put to jail because the aunt of the child slapped him at the back; that he did not complain because he was afraid of rumors that he was a sadist." [17] His self-serving

declarations do not detract from the circumstantial evidence on record pointing to his culpability for the death of the victim. In relation to his live-in partner and the victim, he was a brute, that it is inconceivable that a mere slap on his back by the sister of her live-in partner and rumors that he was a sadist cowed him into protecting his innocence.

The trial court correctly appreciated the qualifying circumstance of treachery because when a person attacks a child of tender years treachery is present, even if the manner of attack is not shown.[18] The accused-appellant was 19 years old while the victim was 1 year and 5 months old.

However, the trial court erred in appreciating the aggravating circumstances of abuse of superior strength and evident premeditation. Abuse of superior strength is deemed absorbed in treachery and cannot be separately considered.[19] Evident premeditation may not be appreciated absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out.[20]

Article 248 of the Revised Penal Code provides that the crime of murder is punishable by reclusion temporal in its maximum period to death. Inasmuch as there are neither aggravating nor mitigating circumstances that attended the commission of the crime, the penalty that should be imposed on the accused-appellant is the medium period of the penalty prescribed by said article, conformably with Article 64 of the Revised Penal Code, or reclusion perpetua.[21] Notwithstanding Our previous finding that the aggravating circumstances of abuse of superior strength and evident premeditation should not be appreciated in this case, the proper penalty is still reclusion perpetua.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, p. 6.

[2] Rollo, p. 21.

[3] Rollo, pp. 59-61.

[4] Rollo, p. 36.

[5] Rollo, pp. 18-19.

[6] *People v. Madriaga IV, et al.*, G.R. No. 73057, 171 SCRA 103 (1989).

[7] Section 4, Rule 133 of the Revised Rules on Evidence.

[8] *People v. Gallo*, G.R. No. 70193-96, 157 SCRA 17 (1988).

[9] Section 34, Rule 130 of the Revised Rules on Evidence.

[10] Rollo, pp. 19-20.

[11] *People v. Pimentel, et al.*, G.R. No. L-47915, 147 SCRA 25 (1987).

[12] TSN, November 6, 1991, pp. 19-21.

[13] *People v. Ramos*, G.R. No. 88301, 203 SCRA 237 (1991).

[14] People v. Hangdaan, et al., G.R. No. 90035, 201 SCRA 568 (1991).

[15] Ibid.

[16] People v. Marcos, G.R. No. 83325, 185 SCRA 154 (1990).

[17] Rollo, p. 17.

[18] People v. Ganohon, G.R. Nos. 74670-74, 196 SCRA 431 (1991).

[19] People v. Pascual, et al., G.R. No. L-42769, 204 SCRA 618 (1991).

[20] People v. Peñones, G.R. No. 71153, 200 SCRA 624 (1991).

[21] People v. Sadia, et al., G.R. No. 92633, 203 SCRA 62 (1991).

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