

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MALABAGO Y VILLAESPIN, ACCUSED-APPELLANT.

G.R. No. 115686. December 02, 1996

Ponente: PUNO, J.

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PUNO, J.:

This is an automatic review of the decision of the Regional Trial Court of Dipolog City, Branch 10 which imposed the penalty of death on accused-appellant, Pedro Malabago y Villaespin, in Criminal Case No. 6598, viz:

WHEREFORE, the court finds accused Pedro Malabago guilty beyond reasonable doubt of the crime of PARRICIDE as defined and penalized under Article 246 of the Revised Penal Code. With reluctance and a heavy heart therefore, inspired by the personal feeling and view of the undersigned with respect to the wisdom of the penalty of death for any crime, the court finds itself with no other alternative but to impose the penalty provided for by the express mandate of the law which is now restored under Republic Act No. 7659. The accused (Pedro Malabago y Villaespin) is hereby sentenced to DEATH for the terrible crime he has committed and, to indemnify the heirs of the victim in the sum of P50,000.00 conformable to the recent jurisprudence on the matter (*People v. Sison*, 189 SCRA 643).

Cost de officio.

SO ORDERED

DIPOLOG CITY, Philippines, this 10th day of May 1994.

(Sgd.)

WILFREDO C. OCHOTORENA

Acting Presiding Judge"[1]

In an information dated January 7, 1994, accused-appellant was charged with the crime of parricide committed as follows:

"That in the evening, on or about the 5th day of January 1994, at Barangay Gulayon, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously hack and strike with a bolo one Letecia R. Malabago, his lawfully wedded wife, hitting the latter on her face and neck, which caused the victim's instantaneous death, to the damage and prejudice of the heirs of the victim, in the amount of P30,000.00 as death indemnity, and also moral and exemplary damages in the amounts to be established during the trial."[2]

The following facts were established by the prosecution: On January 5, 1994, at about 7:00 in the evening, Guillerma Romano, appellant's mother-in-law, was tending her sari-sari store in Barangay Gulayon, Dipolog City. The Store and its premises were lit by a kerosene lamp and the fluorescent light from the adjoining house of Dodong Opulentissima. Guillerma's daughter, Letecia Romano Malabago, arrived and sat on one of the benches outside the store. She had just come from selling some jackfruit. Allandel, Letecia's fourteen-year old son,

appeared and sat on the bench facing her. He listened to his mother and grandmother who were conversing. A few minutes later, accused-appellant came and interrupted his wife and mother-in-law's conversation. He and Letecia began arguing. Guillerma turned away but heard the couple's altercation over money and appellant's jealousy of someone. Suddenly, Guillerma heard a loud sound and she thought that appellant slapped Letecia on the face. Letecia cried out "Agay!" Looking out the store window, Guillerma saw Letecia's face bloodied with a slash along her right ear. Appellant was facing Letecia, and with a bolo in his hand, struck her again, this time hitting the lower left side of her face, from the lips down to the neck. Letecia fell to the ground. Guillerma rushed towards her daughter and shouted for help.[3] She was lifeless.

Appellant fled to Dodong Opulentissima's house. Dodong Opulentissima later called the police. They came, fetched appellant and brought him to their station.[4] On investigation, the police found a bloodied bolo in the pineapple plantation near appellant's house.[5]

Letecia was found to have died of "cardio-respiratory arrest; shock hemorrhage, massive; hack wounds, multiple." [6]

Accused-appellant pled not guilty to the crime. He claimed that on January 5, 1994, he was in the poblacion of Dipolog City. He alleged he did not know who hacked his wife and had no means of finding the culprit because he was placed in jail after her killing.[7] He claimed through his son, Allandel, as defense witness, that Guillerma testified against him because she was against their marriage. He was then jobless.[8] The proceedings show that Guillerma, together with her husband, catalino, and appellant's and Letecia's three children namely, Allandel, Aljun and Alex later signed as affidavit of desistance and moved to dismiss the case against him.[9]

The trial court upheld the prosecution and on May 10, 1994 convicted accused-appellant of parricide and sentenced him to death pursuant to republic Act No. 7659.

Before us appellant assigns the following errors:

"I

The sentence of death imposed by the trial court on the appellant is an unconstitutional penalty for being violative of fundamental human rights and is, thus, null and void.

II

The judgment of conviction is null and void for having been rendered by a trial court ousted of jurisdiction because of the grave violations of the appellant's rights to due process committed by no less than the presiding judge himself as shown by his conduct at trial.

III

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in convicting the appellant of parricide considering that the prosecution failed to prove his guilt beyond reasonable doubt as demonstrated by:

- (a) The prosecution's failure to prove the legitimate marital relation between appellant and the victim;
- (b) The prosecution's failure to prove the fact and cause of death;
- (c) The prosecution's failure to establish the chain of custody over the alleged instrument of death;

IV

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in convicting the appellant when it arbitrarily and selectively gave full weight and credence only to Guillerma Romano's inculpatory but inconsistent and inadmissible testimony and disregarded her exculpatory statements.

V

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in peremptorily dismissing the appellant's defense of alibi as inherently weak.

VI

Assuming without conceding that the finding of parricide is correct, the trial court nevertheless gravely erred in appreciating the existence of treachery as an aggravating and qualifying circumstance.

VII

Assuming without conceding that the finding of parricide is correct, the trial court nevertheless gravely erred in refusing to consider the mitigating circumstance of voluntary surrender in favor of the appellant, despite the prosecution's failure to contradict and challenge the appellant's claim of this mitigator.

VIII

Assuming without conceding that it was not ousted of jurisdiction, the trial court nevertheless gravely erred in awarding civil indemnity arising from the death of Letecia Malabago considering that the prosecution failed to prove said death as a fact during trial."^[10]

We affirm the trial court's findings with modification

The crime of parricide defined in Article 246 of the Revised Penal Code as amended by Republic Act 7659^[11] states:

"Art. 246. Parricide. -- Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death."

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.^[12]

The key element in parricide is the relationship of the offender with the victim.^[13] In the case at parricide of a spouse, the best proof of the relationship between the accused and the deceased is the marriage certificate. In the absence of a marriage certificate. However, oral evidence of the fact of marriage may be considered by the trial court if such proof is not objected to.^[14]

Guillerma Romano testified on direct examination that:

"PROSECUTOR MAH:

Q

On January 5, 1994 at about 7:00 in the evening, can you still recall where you were at that particular time?

A

I was in my store.

Q

While you were in your store at that particular time and date, can you still remember if there was an unusual incident [that] happened?

A

Yes, sir.

Q

Please tell us what that incident was about?

A

At that moment, I heard a loud sound (paka).

Q

Did you investigate what that loud sound [was] all about?

A

I did not mind because they are husband and wife.

Q

What was that loud sound about?

A

I thought it was a slap on the face but she was nit by a bolo.

Q

What was that incident about?

A

There was an altercation between husband and wife.

Q

After the altercation between husband and wife, what happened?

A

I saw the hacking two times and I saw blood.

Q

Who was hacked?

A

My daughter Letecia was hacked by Pedro Malabago.

x x x x x x x x x."[15]

Guillerma Romano's testimony on direct examination affirmed the narration in her affidavit taken the day after the incident. The affidavit was adopted by the prosecution as its Exhibit "A" and it reads in part:

"Q

What is your purpose in coming to the Office of the Investigator of the Dipolog City Police?

A

To file a complaint against Pedro malabago y Villaespin, 42 years old and a resident of Gulayon, Dipolog City,

Q

What is your complaint against said person?

A

He hacked to death my daughter who is his wife with the use of a bolo.

Q

How many times did the suspect hack his wife, Letecia R. Malabago?

A

Twice, hitting the victim on the right side of her face and on the neck resulting in her instanteneous death.

x x x x x x x x."[16]

Appellant did not object to Guillerma's testimony and sworn statement that he and Letecia were husband and wife.[17] Appellant himself corroborated Guillerma's testimony, to wit:

"COURT:

(to the witness)

Q

You are Pedro Malabago, the accused herein?

A

Yes, sir.

Q

What is your relation to the late Letecia Romano Malabago?

A

She was my wife, your honor.

Q

You mean to say you were legally married to Letecia Romano Malabago?

A

Yes, sir.

Q

Who solemnized the marriages?

A

Mayor Barinaga, your honor.

Q

When?

A

In the year 1970, your honor.

Q

Who were the witnesses, could you still remember?

A

I can only remember Sergio Vidal, your honor.

Q

But then you were legally married by civil ceremony officiated by Mayor Barinaga?

A

Yes, your honor.

x x x x x x x x."[18]

The testimony of the accused that he was married to the deceased is an admission against his penal interest. It is a confirmation of the *semper praesumitur matrimonio* and the presumption that a man and a woman deporting themselves as husbands and wife have entered into a lawful contract of marriage.[19]

Appellant alleges that the prosecution failed to establish the fact and cause of Letecia's death because Dr. Dominador Celemin, the City Health Officer who signed the death certificate, did not personally examine her cadaver.[20] It is content that the consent of the death certificate issued by Dr. Celemin is hearsay.[21]

Letecia's death certificate is not the only proof of her death. Guillerma, in her affidavit, stated that her daughter died as a result of the hack wounds.²² Called also as a hostile witness to the defense, she testified:

"COURT

Q

At the time, you actually saw the accused hacked (sic) the bolo to (sic) your daughter?

A

Yes, you honor.

Q

In fact, you witnessed the blood oozing on the face of your daughter?

A

Yes, your honor.

Q

In other words, you actually saw the accused herein hack the bolo to your daughter, am I right?

A

Yes, your honor.

Q

And the cause of death of your daughter was hacking of Pedro Malabago?

A

Yes, your honor.

Q

I have observed a while ago while you were testifying, you were crying. Why?

A

Because of worries that Pedro had done to my daughter.

Q

You mean to say, you cried because your daughter was killed by her husband?

A

Yes, your honor.

x x x x x x x x."[23]

Appellant affirmed on cross examination that his wife died as a result of the hacking, thus:

"FISCAL MAH:

(to the witness)

Q

Mr. Witness, you know Letecia Malabago because she was your wife?

A

Yes, sir.

Q

Where is she now?

A

She is already buried in the cemetery.

Q

You mean to say she is already dead?

A

Yes, sir.

Q

What was the cause of her death?

A

She was hacked, sir.

Q

Hacked by whom?

A

I do not know who hacked my wife.

x x x x x x x x."[24]

Accused-appellant also claims that the trial court showed partiality to the prosecution by unduly interfering in the presentation of evidence. By asking questions, the judge allegedly elicited prejudicial admissions from witnesses without affording appellant's counsel the right to examine them on their answers to the court, in violation of appellant's constitutional right to due process and right against self-incrimination.[25]

The records disclosed that the questions the trial judge propounded were made mainly to clarify what the prosecution and defense witnesses had testified on direct and cross examinations. The essential elements of the crime of parricide like appellants's marriage to Letecia, the cause of Letecia's death and appellant's participation therein were facts already established by the prosecution in its evidence in chief. Using his discretion, the trial judge questioned the witnesses to clear up obscurities in their testimonies and sworn statements.[26] The wise use of such discretion cannot be assailed as a specie of bias.

A judge is called upon to ascertain the truth of the controversy before him. He may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time[27] and clarify obscure and incomplete details after the witness had given direct testimony.[28] After all, the judge is the arbiter and he ought to satisfy himself as to the respective merits of the claims of both parties in accord with the stringent demands of due process.[29] In the case at bar, the trial judge had strong reasons to question the material witnesses who executed affidavits of desistance contradicting their previous stance. If to the mind of the parties, the trial judge was unduly interfering in their presentation of evidence, they were free to manifest their objection. They were likewise free to ask redirect questions from their witness after interrogation by the trial court. In the instant case, however, they never manifested that the questions of the trial judge had traversed the allowable parameters. Even assuming that some of the questions were incriminating, we cannot hold that the witnesses were compelled to incriminate themselves. The records show they answered the questions of the court freely and voluntarily and without any objection from their respective counsels.

The prosecution evidence is based solely on the testimony of Guillerma Romano. Nonetheless, her testimony is clear, spontaneous and straightforward. Her inconsistencies are minor and inconsequential and they are not incongruous with her credibility.[30] Her testimony was not eroded even when she was presented by the defense as a hostile witness. She admittedly signed the affidavit of desistance for the sake of her three grandchildren and this is understandable in light of the circumstances of the case. Allandel and his brothers pled that she withdraw the complaint because they did not want their father to be in prison.[31] Deep in her heart, however, Guillerma wanted justice for her daughter and thus, she testified for the prosecution.[32] The fact that she objected to her daughter's marriage to appellant is too flimsy a reason to impel her to testify against the father of her grandchildren.

We agree with the trial court that appellant's defense of alibi is weak and unconvincing. Appellant was positively identified as the one who hacked his wife to death. Moreover, it was not physically impossible for him to be at the scene of the crime on that fateful evening. The poblacion of Dipolog City is merely four kilometers from Barangay Gulayon and this distance may be traversed within a few minutes by motorized vehicle.[33]

Be that as it may, we find that the trial court erred in appreciating the aggravating circumstance of treachery. For

treachery to be present, two conditions must concur: (a) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (b) the means, method and manner of execution were deliberately and consciously adopted by the offender.[34] It is true that appellant hacked his wife who was then unarmed and had no opportunity to defend herself. However, the evidence does not show that appellant deliberately and consciously employed this particular mode of attack to ensure the killing of the victim. The unembroidered facts reveal that appellant hacked his wife in the midst of a sudden, unscripted heated argument. This precludes the idea that appellant priorly planned to kill his wife. Indeed, appellant was not carrying his bolo at that time. The bolo was hanging in its usual place on one of the posts of the sari-sari store.[35] Treachery, to be appreciated, must spark an attack that is deliberate, sudden and unexpected not where it is prefaced by an unforeseen heated argument with the victim standing face to face with her assailant.[36]

The trial court also erred in disregarding the mitigating circumstance of voluntary surrender. In answer to questions by the trial court, appellant declared:

"COURT:

(to the witness)

x x x x x x x x

Q

Do you have suspects as to the alleged killers of your wife?

A

I have no suspect, your honor.

Q

Because you denied killing your wife, you did not surrender to the police authorities?

A

I surrendered because I was accused of killing my wife.

Q

Immediately after the incident?

A

Yes, sir.

Q

Was it placed in the police blotter that you surrendered?

A

Yes, sir.

Q

Will you give the name of the person or police officer to whom you surrendered?

A

I forgot the name, your honor.

Q

Are you telling the truth?

A

Yes, sir.

x x x x x x x x."[37]

Appellant testified that he voluntarily surrendered to the police when they fetched him at Dodong Opulentissima's house. The prosecution did not dispute appellant's claim of voluntarily surrender. Guillerma herself testified that without any resistance, appellant went with the police when they fetched him at Dodong's house.[38] Indeed, appellant did not escape after Dodong Opulentissima called the police. Instead, he voluntarily placed himself at the disposal of the police authorities.

In the absence of an aggravating circumstance[39] and the presence of a mitigating circumstance the penalty imposable to appellant is reclusion perpetua.[40]Considering the death of the victim, a civil indemnity of P50,000.00 must be awarded to her heirs.

In light of the above disquisitions, the Court need not resolve the alleged unconstitutionality of R.A. No. 7659, as amended. Nonetheless, the Court expresses its appreciation to the scholarly arguments of our amici curiae, Senator Arturo M. Tolentino and Fr. Joaquin G. Bernas, S.J., on the constitutional aspects of R.A. No. 7659, as amended. Death not being the *lis mota* of the instant case, the Court has to await for more appropriate case to pass upon the constitutionality of R.A. No. 7659, as amended.

IN VIEW WHEREOF, the decision appealed from is affirmed with the modification that the penalty of death imposed by the Regional Trial court of Dipolog City, Branch 10 on accused-appellant Pedro Malabago y Villaespin in Criminal Case No. 6598 is reduced to reclusion perpetua.

SO ORDERED

Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban and Torres, Jr., JJ., concur.

Narvasa, C.J., join Justice Padilla in his dissenting opinion.

Padilla J., see Dissenting Opinion.

[1] Decision, pp. 16-17, Records, pp. 57-58.

[2] Information, Records, p. 1.

[3] Exhibit "A," records, pp. 4, 25; TSN of March 18, 1994, pp. 9-15, 20-21, Records, pp. 68-74, 79-80; TSN of May 6, 1994, p. 13, Records, p. 132.

[4] TSN of March 18, 1994, p. 17, Records, p. 136.

[5] Id., pp. 12, 19; Exhibit "B".

[6] Exhibit "C," Records, p. 27.

[7] TSN of April 15, 1994, pp. 10-14, Records, pp. 113-117.

[8] TSN of May 6, 1994, p. 7, Records, p. 126.

- [9] Exhibit "1," Records, p. 36.
- [10] Brief for Appellant, pp. 14-16, Rollo, pp. 97-99.
- [11] Section 5.
- [12] Reyes, L.B., the Revised Penal Code, vol. 2, p. 414 [1993].
- [13] Id., at 414.
- [14] People v. Cruz, 109 Phil. 288, 291 [1960].
- [15] TSN of March 18, 1994, pp. 9-10, Records, pp. 68-69.
- [16] Records, pp. 4, 25.
- [17] Exhibit "A," Records, pp. 4, 25; TSN of March 25, 1994, p. 15, records, p. 99; TSN March 18, 1994, p. 9; Records, p. 68.
- [18] TSN of April 15, 1994, p. 13, Records. p. 116.
- [19] Rule 131, section 3 (aa), Revised Rules on Evidence; People v. Majuri, 96 SCRA 472. 475 [1980].
- [20] Brief for the Appellant, pp. 79-80, Rollo, pp. 162-163.
- [21] TSN of March 25, 1994, pp. 9-11, Records, pp. 93-95.
- [22] Exhibit "A," Records, pp. 4, 25.
- [23] TSN March 18, 1994, pp. 21-22, Records, pp. 80-81
- [24] TSN of April 15, 1994, p. 11, Records, p. 114.
- [25] Brief for the Appellant, p. 32, Rollo, p. 115.
- [26] Canon 3, Rule 3.06 of the Code of Judicial Conduct provides:
- "Rule 3.06. while a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of the truth."
- [27] Domanico v. Court of appeals, 122 SCRA 218, 225 [1983].
- [28] Valdez v. Aquilizan, 133 SCRA 150, 153 [1984].
- [29] People v. Ancheta, 64 SCRA 90, 97 [1975].
- [30] People v. Poyano, 235 SCRA [1994]; People v. Apolonia, 235 SCRA 124 [1994]; People v. Israel, 231 SCRA 155 [1994].
- [31] TSN of April 15, 1994, pp. 5-6, Records, pp. 108-109.
- [32] Id., p. 6.
- [33] TSN of April 15, 1994, pp. 13-14, Records, 116-117.
- [34] People v. Verchez, 233 SCRA 174 [1994]; People v. Ruelan, 231 SCRA 650 [1994]; People v. Talavar, 230 SCRA 281[1994].

[35] TSN of March 18, 1994, pp. 16-17, records, pp. 75-76.

[36] *People v. Gasper*, 225 SCRA 189, 197 [1993]; *People v. Balderama*, 226 SCRA 537 [1993].

[37] TSN of April 15, 1994, p. 15. Records p118.

[38] TSN, of March 18, 1994, p. 17, Records, p. 76.

[39] Revised Penal Code, Art. 63, par. 2 (2).

[40] *Id.*, par. 2 (3).

DISSENTING OPINION

PADILLA, J.:

I vote to affirm the death penalty imposed by the trial court. There was, in my view, treachery employed by the accused-appellant in killing his wife because the latter, even in the course of her arguments with accused-appellant (her husband), did not expect the latter to suddenly and unexpectedly hack her. She had no opportunity to defend herself from so sudden and precipitate an attack. In *People v. Lualhati*,¹ the Court stated thus:

"There was no sufficient provocation on the part of the victim which would have placed him on guard and prepared him for accused-appellant's assault. In *People v. Cruz* (213 SCRA 611) we held that there was treachery if the commission of the crime was sudden and unexpected even if the armed attack was made face to face. Thus, under the circumstances, the victim was clearly not in any position to defend himself to the unreasonable and unexpected attack of the accused-appellant."

There was also, in my view, no voluntary surrender on the part of accused-appellant as to entitle him to the mitigating circumstance on this score. He did not voluntarily surrender. He was fetched by the police authorities in the house of Dodong Opulentisima. In *People v. Flores*,² the Court stated:

"Neither can we accept accused-appellant's plea of voluntary surrender. He did not surrender to the police. In fact, the evidence adduced shows that it was the police authorities who came to the factory looking for him. It was there that accused-appellant was pointed to them. Seeing that the police was already approaching him, accused-appellant did not offer any resistance and peacefully went with them. With the police closing in, accused-appellant actually had no choice but to go with them. To be sure, no surrender was made by accused-appellant."

By this senseless and brutal killing of his wife, the mother of his three (3) children, accused-appellant, in my opinion, has lost the right to live. Society will be far better off without him around. While compassion is, in itself, a virtue, it cannot and should not replace justice under law, in this particular case, justice to the victim and her three (3) orphaned children.

[1] G.R. Nos. 105289-90, 21 July 1994, 234 SCRA 325.

[2] G.R. Nos. 103801-02, 19 October 1994, 237 SCRA 653.

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