

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARLITO TUMULAK, APPELLANT.

G.R. No. 177299. November 28, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This Petition for Review on Certiorari assails the July 19, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. H.C. No. 00107 which affirmed with modification the Judgment[2] rendered by Branch 25 of the Regional Trial Court (RTC) of Cagayan de Oro City, finding appellant Charlito Tumulak guilty beyond reasonable doubt of the crime of parricide.

In an Information[3] dated March 26, 1998, Charlito Tumulak (Charlito) was charged for parricide committed as follows:

That on or about February 10, 1998, at more or less 4:00 o'clock in the afternoon at Purok 3, Poblacion, Municipality of Claveria, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill, then and there, willfully, unlawfully boxed and mauled and feloniously beaten (sic) and strike with the used (sic) of hard object his father Marcelino Tumulak, thereby inflicting serious physical injuries on different parts of the body of the victim which causes (sic) his instantaneous death.

Charlito pleaded not guilty. Trial on the merits then ensued with the prosecution presenting: (i) Regalada Decena-Tumulak, Marcelino's wife; Dr. David Mendoza, the Municipal Health Officer of Claveria, Misamis Oriental, who conducted the post-mortem examination of Marcelino; and (iii) Judge Romeo Ambongan Almajar of the Municipal Circuit Trial Court, Jasaan, Claveria, Misamis Oriental, who conducted the preliminary investigation of the case. The prosecution's version of the incident is as follows:

On a Vespera of the fiesta of the Municipality of Claveria, Misamis Oriental at about 4:00 o'clock in the afternoon of February 10, 1998, Regalada Decena, wife of the victim, witnessed accused Charlito Tumulak mauled (sic) and beat his father Marcelino Tumulak inside their house by boxing, kicking and striking him with hard objects on different parts of his body.

Marcelino Tumulak, a sexagenarian, is short in height, small in body built, and skinny. He enjoyed a temporary relief when Regalada Decena, the second wife out of martyrdom, covered the body of Marcelino Tumulak absorbing the body blows of the fist of the son Charlito Tumulak, who rested for a while. Charlie Tumulak poured kerosene on Marcelino and Regalada. He resumed the punishment of his father Marcelino by kicking him. Marcelino Tumulak collected his wits and marshaled his last ounce of strength and managed to escaped (sic) and walk towards the house of Roel Chalico and his wife Sabina.

She further testified that Charlie Tumulak mauled and beat his father to death because he had a grudge on his father who burned his own chicken cage used by Charlie Tumulak.

Regalada Decena, instead of following her husband to the house of her sister, Sabina Chalico, went directly to

the Tanod and reported the incident.

The Barangay Tanod, accompanied by Regalada Decena, went to the scene and found the lifeless and mangled body of Marcelino.

Dr. David A. Mendoza, Municipal Health Officer of Claveria, Misamis Oriental, conducted an external examination of the Cadaver of Marcelino Tumulak at the scene of the crime at Banban Ani-e, Claveria, Misamis, Oriental.

He issued a Certificate of Death which indicated the cause of death as Internal Hemorrhage probably due to blunt trauma R/O fracturing of the 6[th] – [7th] rib.

Judge Romeo Almajar, the Presiding Judge of the Municipal Circuit Trial Court of Jasaan Claveria, Misamis, Oriental, testified that when he asked accused Charlie Tumulak about his counter-affidavit, during the preliminary investigation accused Charlie Tumulak admitted having mauled and beat his father as shown in his resolution.[4]

Only appellant testified for his defense. He denied killing his father and declared that he had a good relationship with him and his stepmother. On February 10, 1998, he was in the cockpit arena from 1:00 until 5:00 in the afternoon. Thereafter, he proceeded to Patring Tagarda's house in Purok 3, Claveria, Misamis Oriental. He never went to his father's house on that day.

Not persuaded by appellant's denial and alibi, the trial court rendered a judgment of conviction, viz.:

Wherefore, premises considered, this court hereby finds the accused Charlie Tumulak guilty beyond reasonable doubt of the crime of Parricide with the attendance of one generic aggravating circumstance of cruelty and sentences the accused Charlie Tumulak to death by LETHAL INJECTION and to indemnify the surviving spouse actual damages the sum of eleven thousand pesos (P11,000.00) as funeral expenses and indemnity of seventy-five thousand pesos (P75,000.00), and seventy-five thousand pesos (P75,000.00) as moral and exemplary damages and to pay the cost.

The accused is, likewise, credited in the service of his sentence consisting of deprivation of liberty with the full time during which [he had] undergone preventive imprisonment.

SO ORDERED.[5]

Initially, this case was brought to this Court for automatic review with the case docketed as G.R. No. 145448.

In his Brief, appellant assigned the following errors allegedly committed by the trial court:

I

THE TRIAL COURT ERRED IN APPRECIATING AGAINST ACCUSED THE AGGRAVATING CIRCUMSTANCE OF CRUELTY.

II

THE TRIAL COURT ERRED IN IMPOSING UPON THE ACCUSED THE SUPREME PENALTY OF DEATH.[6]

The Office of the Solicitor General (OSG) also filed its Brief,[7] recommending the modification of the penalty imposed upon the accused, and the damages awarded in favor of the victim's heirs, arguing that:

I

THE LOWER COURT ERRED WHEN IT CONSIDERED THE AGGRAVATING CIRCUMSTANCE OF CRUELTY IN IMPOSING THE PENALTY OF DEATH ON APPELLANT NOTWITHSTANDING THE FACT THAT THE SAID AGGRAVATING CIRCUMSTANCE WAS NOT STATED IN THE INFORMATION.

II

THE LOWER COURT'S AWARD OF ACTUAL DAMAGES HAS NO FACTUAL BASIS: CIVIL INDEMNITY AND MORAL DAMAGES AWARDED ARE EXCESSIVE.[8]

However, on September 7, 2004, the Court transferred this case to the CA consistent with its ruling in *People v. Mateo*.^[9]

On July 19, 2006, the CA rendered the assailed Decision, affirming with modification appellant's conviction. In modifying the penalty, the appellate court held that the RTC erred in appreciating the aggravating circumstance of cruelty in determining the imposable penalty because it had not been alleged in the Information. The CA, likewise, deleted the award of actual damages for lack of factual basis and reduced the civil indemnity and moral damages awarded in favor of the victim's heir. The dispositive portion of the CA's Decision reads:

FOR THE REASONS STATED, the appealed Judgment finding appellant Charlito Tumalak GUILTY beyond reasonable doubt of parricide is AFFIRMED with MODIFICATION that he shall suffer the penalty of reclusion perpetua and pay the surviving spouse the sums of: P50,000.00 as civil indemnity, and moral damages in the amount of P50,000.00. The award of P11,000.00 as actual damages is deleted.

SO ORDERED.^[10]

Appellant is now before the Court reiterating his contention. Both the OSG and the Public Attorney's Office (PAO), counsel for the accused, reiterated the arguments in their respective briefs filed during the pendency of this case upon automatic review and prior to its transfer to the CA.

Despite appellant's assignment of errors, this Court, nonetheless, resolved to review not only the penalty imposed on the appellant but also his very conviction pursuant to the doctrine that an appeal in a criminal case throws the whole case open for review.^[11] After a meticulous review of the records, this Court upholds the conviction of the appellant.

We agree with the courts below that the evidence for the prosecution meets the requisite evidence beyond reasonable doubt.

Regalada positively identified the appellant as the culprit. Both the trial court and the appellate court found her testimony credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand which opportunity provides him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.^[12]

Appellant's weak defense of denial and alibi cannot stand a chance against the declaration of Regalada identifying him as the killer and describing the manner in which he perpetrated the crime. We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator

of the crime. They are facile to fabricate and difficult to disprove, and are generally rejected.[13]

Besides, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity.[14] Apart from testifying that he never went to his father's house in the afternoon of February 10, 1998, appellant was unable to show that it was physically impossible for him to be at the scene of the crime.

Furthermore, appellant failed to show that Regalada was prompted by any ill motive to falsely testify or accuse him of killing his father. Appellant himself admitted that he had a good relationship with his stepmother. The Court adheres to the established rule that, in the absence of any evidence showing reason or motive for the witness to perjure, their testimony and identification of the assailant should be given full faith and credit.[15]

Between the categorical statements of the prosecution witnesses, on one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[16] Appellant's challenge of his conviction is starkly puerile.

Under Article 294 of the Revised Penal Code, as amended by Section 5 of Republic Act (R.A.) No. 7659, the penalty for parricide is composed of two indivisible penalties, reclusion perpetua to death. The CA was correct in disregarding the aggravating circumstance of cruelty in determining the proper penalty because it has not been alleged in the Information. We, therefore, sustain the appellate court in imposing the penalty of reclusion perpetua.

As to the monetary awards imposable, a modification is in order. In addition to the CA's award of P50,000.00 civil indemnity and P50,000.00 moral damages, temperate damages of P10,000.00 must also be awarded to the heirs of Marcelino. Regalada testified that the family incurred expenses for funeral and burial expenses, but she was not able to present receipts. It is settled that where the amount of actual damages cannot be determined because no receipts were presented to prove the same, but it is shown that the heirs are entitled thereto, temperate damages may be awarded.[17] Considering that funeral expenses were obviously incurred by the victim's heirs, an award of temperate damages is proper.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. HC-No. 00107 is AFFIRMED with MODIFICATION. Appellant Charlito Tumulak is found GUILTY beyond reasonable doubt of the crime of parricide as defined in Article 294 of the Revised Penal Code, as amended by R.A. No. 7659. There being no aggravating or mitigating circumstance in the commission of the crime, he is hereby sentenced to suffer the penalty of reclusion perpetua. The appellant is ordered to pay the heirs of Marcelino Tumulak the amount of P10,000.00 as temperate damages, P50,000.00 as civil indemnity, and P50,000.00 as moral damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Ricardo R. Rosario and Sixto C. Marella, Jr., concurring; rollo, pp. 4-8.

[2] CA rollo, pp. 14-16.

[3] Id. at 5.

[4] RTC Decision, CA rollo, pp. 14-15.

[5] Id. at 16.

[6] Id. at 39-40.

[7] Id. at 61-73.

[8] Id. at 66.

[9] Id. at 81.

[10] Rollo, p. 8.

[11] Ernesto Garces v. People of the Philippines, G.R. No. 173858, July 17, 2007.

[12] Ruben Lascano v. People of the Philippines, G.R. No. 166241, September 7, 2007.

[13] People of the Philippines v. Bernard Mapalo, G.R. No. 172608, February 6, 2007.

[14] People of the Philippines v. Norberto Delim, G.R. No. 175942, September 13, 2007.

[15] People of the Philippines v. Henry Togahan, G.R. No. 174064, June 8, 2007.

[16] Id.

[17] People of the Philippines v. Leoson Dela Cruz, G.R. No. 171272, June 7, 2007; People v. Abrazaldo, 445 Phil. 109, 126 (2003).

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