

## **PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. ROLANDO BOTONG; MALIBIRAN ACCUSED, AND BEVERLY TIBO-TAN, ACCUSED/APPELLANT.**

*G.R. No. 178301. April 24, 2009*

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-178301/>

### **AUSTRIA-MARTINEZ, J.:**

For review is the November 13, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02167 which affirmed the Joint Decision[2] dated September 23, 2003 of the Regional Trial Court (RTC), Special Court for Heinous Crimes, Branch 156, of Pasig City, Metro Manila, finding Rolando "Botong" Malibiran (Rolando) and Beverly Tibo-Tan (appellant) guilty of Murder and Parricide, respectively, and sentencing them to suffer the penalty of reclusion perpetua.

The conviction arose from the death of Reynaldo Tan (Reynaldo) on February 5, 1995. The antecedents that led to Reynaldo's death, however, go way back in the 70's when Reynaldo left his common-law wife, Rosalinda Fuerzas (Rosalinda), and their two (2) children, Jessie and Reynalin, in Davao, and went to Manila to seek greener pastures. While in Manila, Reynaldo met and had a relationship with appellant. They eventually married in 1981. Reynaldo and appellant begot three (3) children - Renevie, Jag-Carlo and Jay R.

In 1984, Reynaldo's and Rosalinda's paths crossed again and they resumed their relationship. This led to the "souring" of Reynaldo's relationship with appellant; and in 1991, Reynaldo moved out of the conjugal house and started living again with Rosalinda, although Reynaldo maintained support of and paternal ties with his children.

On that fateful day of February 5, 1995, Reynaldo and appellant were in Greenhills with their children for their usual Sunday gallivant. After finishing lunch at the Kimpura restaurant, the family separated at around 2:00 o'clock in the afternoon to do some shopping. Later, they regrouped and purchased groceries at Unimart. At around 4:00 o'clock in the afternoon, the family stepped out of the shopping mall and Reynaldo proceeded to the parking lot to get his red Honda Accord, while the rest of his family stayed behind and waited. Immediately thereafter, the family heard an explosion coming from the direction where Reynaldo parked his car. Appellant and Renevie got curious and proceeded to the parking lot. There, they saw the Honda Accord burning, with Reynaldo lying beside the driver's seat, burning, charred and bleeding profusely. A taxi driver named Elmer Paug (Elmer) appeared and pulled Reynaldo out of the car. Reynaldo was then rushed to the Cardinal Santos Medical Hospital where he eventually died because of the severe injuries he sustained.[3] The underlying cause of his death was Multiple Fracture & Multiple Vascular Injuries Secondary to Blast Injury.[4]

An investigation was conducted by the police after which two separate Informations for Murder and Parricide, dated September 10, 1997, were filed against appellant, Rolando and one Oswald Banaag (Oswaldo).

The Information in Criminal Case No. 113065-H accused Rolando and Oswald of the crime of Murder, to wit:

On February 5, 1995, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the

accused, conspiring and confederating with Beverly Tibo-Tan, and three other individuals whose identities are still unknown, did then and there willfully, unlawfully, and feloniously, with intent to kill, treachery, evidence (sic) premeditation and with the use of explosion, plan, plant the explosive, and kill the person of Reynaldo C. Tan, by placing said grenades on the driver's side of his car, and when said victim opened his car, an explosion happened, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death.

The accused Oswaldo, without having participated in said crime of murder as principal, did and there willfully, unlawfully and feloniously take part, as an accomplice, in its commission, by cooperating in the execution of the offense by previous and simultaneous acts.

Contrary to law.[5]

The Information in Criminal Case No. 113066-H accused appellant of the crime of Parricide, to wit:

On February 5, 1995, in San Juan Metro Manila and within the jurisdiction of this Honorable Court, the accused, while still married to Reynaldo C. Tan, and such marriage not having been annulled and dissolved by competent authority, conspiring and confederating with Rolando V. Malibiran, and three other individuals whose identities are still unknown, did then and there willfully, unlawfully and feloniously with intent to kill, treachery, evidence (sic) premeditation and with the use of explosion, plan, plant the explosive, and kill the person Reynado C. Tan, by placing said grenades on the driver's side of his car, and when said victim opened his car, an explosion happened, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death.

Contrary to law.[6]

Rolando and appellant pleaded not guilty on arraignment.[7] Their co-accused, Oswaldo, was later discharged and utilized as one of the prosecution witnesses.

The prosecution presented Jessie Tan, Inspector Silverio Dollesin, Elmer Paug, Police Inspector Wilson Lachica, Supervising Investigating Agent Reynaldo Olasco, Rosalinda Fuerzas, Janet Pascual (Janet), and Oswaldo, as its witnesses.

For its part, the defense presented the following witnesses, namely: Renevie Tan, Romulo Bruzo (Romulo), Tessie Luba, Emily Cuevas, Jose Ong Santos, Victorino Feliz, Virgilio Dacalanio and accused Rolando. Appellant did not testify in her behalf.

The RTC summed up the testimonies, as follows:

#### THE EVIDENCE FOR THE PROSECUTION

1. Jessie Tan, a son of Reynaldo with Rosalinda Fuerzas, testified that he moved to Manila from Davao in 1985 to study at the instance of his father Reynaldo and to enable then to bring back time that had been lost since his father left his mother Rosalinda and the latter's children in Davao (TSN, Jan. 27, p.14); In 1991 Reynaldo moved to their house because his relationship with Beverly was worsening, and to exacerbate matters, Beverly had then a lover named Rudy Pascua or Pascual, a contractor for the resthouse of Reynaldo. Reynaldo and Beverly were then constantly quarreling over money (TSN, February 10, 1999, pp. 28-29); Jessie had heard the name of Rolando Malibiran sometime in 1994 because one day, Reynaldo came home before dinner feeling mad since he found Rolando Malibiran inside the bedroom of Beverly at their White Plains residence; Reynaldo had his gun with him at the time but Malibiran ran away (TSN, January 27, 1999, pp. 19-21). He eventually came to learn about more details on Rolando Malibiran from Oswaldo Banaag, the family driver of Beverly who was in the house at White Plains at the time of the incident (Ibid, p. 22). One night in December of the same year (1994) Jessie overheard Reynaldo talking to Beverly over the phone, with the latter fuming mad. After the phone conversation he asked his father what happened because the latter was already having an

attack of hypertension and his father told him that Beverly threatened him and that "he, (Reynaldo) will not benefit from his money if he will continue his move for separation" (p. 40 *ibid*). This threat was taped by Reynaldo in his conversation with Beverly (Exh. "B") Jessie himself has received threat of his life over the phone in 1989 (p. 30 *ibid*).

At the lounge at Cardinal Santos Hospital, on the day of the mishap, Jessie testified on the emotional state of his mother Rosalinda while in said Hospital; that she was continuously crying while she was talking to Jessie's uncle. When asked where Beverly was and her emotional state, he said that Beverly was also at the lounge of the said hospital, sometimes she is seated and then she would stand up and then sit again and then stand up again. He did not see her cry "hindi ko po syang nakitang umiyak" (pp. 52-23 *ibid*). When asked if his father had enemies when he was alive, he said he knows of no one (p.54 *ibid*). Jessie was informed by his mother (Rosalinda) few months after the death of Reynaldo that there was a letter by Rosalinda addressed to his uncle which stated that "if something happened to him, Beverly has a hand in it" (p. 56 *ibid*, Exh. "D" Letter dated March 24, 1999)

On cross examination, he admitted having gone to Mandaluyong City Jail and talked with Oswaldo Banaag about latter's claim that both accused have planned to kill his father. When asked if he knows the consequences if Beverly is convicted, on the matter of Conjugal Partition of Property, Jessie knows that Beverly's share would be forfeited. Counsel confirmed Jessie's request of whatever property of his father remaining shall be shared equally by the legitimate and illegitimate children. Thus, Jessie confirmed as the agreement between them (p. 28, March 24, 1999 TSN).

2. Mr. Salonga, a locksmith in Greenhills Supermarket whose work area is at the entrance door of the grocery of Unimart testified that he can duplicate any key of any car in five (5) minutes. And that he is accessible to any one passing to Greenhills Shopping Complex (p. 45, March 24, 1999 TSN). The Honda Car representative on the other hand testified that the Honda Accord of the deceased has no alarm, that the Honda Accord key can be duplicated without difficulty. And the keyless entry device of the said vehicle can be duplicated (pp. 46-47 *ibid*, Stipulation. Order p. 335 record Vol. 1).

3. Inspector Selverio Dollesin, the Chief of the Bomb Disposal Unit of the Eastern Police District, and the Police Officer who conducted the post aftermath report of the incident whose skills as an expert was uncontroverted, testified that the perpetrator knew who the intended victim was and has reliable information as to his position when opening the vehicle. If the intended victim does not usually drive and usually sits on the rear portion of the vehicle (p. 49, April 14, 1999 TSN) Inspector Dollesin's conclusion states that the device (bomb) was placed in front of the vehicle in between the driver's seat and the front door because the perpetrator had information about the victim's movements, otherwise he could have placed the device underneath the vehicle, in the rear portion of the vehicle or in any part thereof (p. 53 *ibid*). He testified that persons who have minimal knowledge can set up the explosive in the car in five (5) minutes (p. 65 *ibid*). The explosion will commence at about 4-7 seconds (p. 66 *ibid*).

4. Elmer Paug, the taxi driver, testified that on February 5, 1995 he was just dropping a passenger to Greenhills Shopping Complex when he heard a loud explosion at the parking level. Being curious of the incident he hurriedly went out to look for a parking, then proceeded to the area where the explosion occurred. He saw a man wearing a shirt and short who is about to give assistance to a man who was down on the ground bloodied. Finding that the man could not do it on his own, Elmer rushed through to give aid. He held both arms of the victim, grabbed him in the wrists and dragged him out and brought him farther to the burning car. (pp. 7 July 7, 1999 TSN). The man lying on the pavement has burnt fingers and hair, chest bloodied and skin already sticking to Elmer's clothes (p. 8 *Ibid*). He noticed two women at about two arm length from the car where he was. The younger woman shouted "Daddy, Daddy, kaya mo iyan". She was crying had wailing (p. 10 *ibid*). He said that the older woman gestured her left hand exclaimed in a not so loud voice "wala bang tutulong sa amin?" while her right hand clutched her shoulder bag (p. 11 *ibid*). When asked if the older woman appears to be alarmed, Elmer testified that he cannot say, and said she looked normal; he did not notice her crying.

Neither of the two female rendered assistance to drag the victim, they just followed him when he pulled him out. The older woman never touched the victim. (p. 12 *ibid*). Considering that his Taxi is quite far where the victim was lying, he flagged a taxi, and the victim was brought to Cardinal Santos Hospital (pp. 15-16 *ibid*).

On cross examination, he was asked what the meaning of normal is, and he said "natural Parang walang nangyari" It looks like nothing happened (p. 42 *ibid*). Her was uncertain as to whether the two females joined the deceased in the taxi cab (p. 43) as he left.

5. Police Inspector Wilson Lachica testified that he was the police officer who investigated the case. In the Cardinal Santos Hospital he was able to interview Beverly Tan. He asked her name, address, name of the victim, how the incident happened and who their companions were. She answered those questions in a calm manner (p. 13, Sept. 21, 1999 TSN). As per his observation which was told to his superiors, he has not seen remorse on the part of the victim, (meaning the wife) for an investigator that is unusual. Based on his more than six years of experience as an investigator, whenever a violent crime happened, usually those relatives and love ones appears hysterical, upset and restless. Her reaction at the time according to him is not normal, considering that the victim is her husband. He interviewed persons close to the victim even at the wake at Paz Funeral in Quezon City. He was able to interview the daughter of the lady-accused; the other lady and family or relatives of the victim, the same with the driver of the lady accused. He came to know the identity of the policeman linked with the lady accused, named Rolando Malibiran. He testified that he obtained the information that he desired from the widow nonchalantly and marked with blithe unconcern, which in his observation is unusual since she is supposed to be the one who would diligently push through in the investigation. When asked the level of interest as regards accused Malibiran, witness testified that because of the manner of the commission of the crime through the use of explosives, only a trained person can do that job (pp. 15-16 *ibid*).

6. Supervising Investigating Agent Reynaldo Olasco testified that his only observation on the demeanor of Beverly Tan is that she did not give her statement readily without the assistance of her counsel which for the investigator is quite irregular. Considering that she is the legal wife, he could not see the reason why Beverly would bring a counsel when she is supposed to be the complainant in the case (p. 11, April 5, 2000 TSN). He testified that after having interviewed a representative from Honda, they had set aside the possibility that it was a third party who used pick lock in order to have access to the Honda Accord and the presumption is that the duplicate key or the main key was used in opening the car. The assessment was connected with the statement of Renevie that she heard the clicking of all the locks of the Honda Accord, which she was sure of when they left the car in the parking lot (p. 12 *ibid*) In 1998 they arrested Rolando Malibiran in Candelaria Quezon, he was fixing his owner type jeep at that time. The arresting officers waited for Beverly Tan, and after thirty minutes they were able to arrest Beverly Tan on the same place (p 8, May 31, 2000 TSN). They searched the premises of the place where they reside and found a white paper which he presumed to be "kulam" because there's some oracle words inscribe in that white piece of paper and at the bottom is written the same of Jessie (pp. 8-9 *ibid*). On cross examination, he admitted that 70% of the information on the case was given by Oswaldo Banaag through the persistence of the NBI which convinced him to help solve the case. It was disclosed to the investigating officer after he was released, that's the only time he gave in to the request (p. 14, may 31, 2000 TSN). As to how the NBI operatives effected the arrest, it was through an information from the Lucena Sub-Office (p. 17, *Ibid*).

7. Rosalinda Fuerzas testified that her life in Makati was "medyo magulo lnag kase nanggugulo sya sa amin." When asked who this "siya" was, she said Beverly. That one day Beverly called on her and harassed her, and one day she received a murder letter threatening that she (Rosalinda) would be around the newspaper saying that she would be killed, like what they did in the news papers, puputu-putulin iyong mga dodo o anuman dahil mang-aagaw daw ako (Rosalinda) ng asawa (p. 11 *ibid*, June 27, 2000 TSN). She stated that her husband wanted to separate with Beverly because he found out that the latter has paramour named Rudy Pascua contractor of Jollibee (pp. 13-14 *ibid*). She had never seen Beverly appeared to be lonely when her husband

was then kidnapped. A telephone conversation with Beverly was recorded by Reynaldo which was a quarrel regarding money. In the Cardinal Santos Hospital, she did not see Beverly's appearance to be lonely but appeared to be a criminal, and Beverly did not cry (pp. 13-17 *ibid*). She mentioned the letter of Reynaldo that if something happened to him, Beverly is the one who killed him (p. 26 *Ibid*; pp. 24-25, Exh. "D, Vol. 1-A Record).

8. Janet Pascual testified that she was able to know Rolando Malibiran, because on March 1993 when she was in White Plains, Beverly showed her a picture of him (Malibiran) and said to her that he is her boy friend. Witness told her that he was handsome. She was close to Beverly that she frequently stayed in White Plains when Beverly and Reynaldo is no longer living in the same roof. They played mahjong, chat and has heard Beverly's hurtful emotions by reason of her philandering husband Reynaldo. Beverly told her of how she felt bad against underwear not intended for her (p. 9, Oct. 11, 2000 TSN); that on August 1994, Malibiran told Beverly that he has a "kumapre" who knows how to make "kulam" for an amount of P10,000.00. That Reynaldo would just sleep and never wake up. Witness testified that they went to Quiapo to buy the needed ingredients but nothing happened (p. 14 *Ibid*). The accused wanted to kill Reynaldo in a way that they would not be suspected of having planned it, and for him just to die of "bangungot". She testified that they wanted to separate their properties but it did not push through, referring to Beverly and Reynaldo. That Beverly heard of the house being built in Corinthian intended for Rosalinda and family. In July 1994 Malibiran told witness testified that she heard this on their way to Batangas, it was Beverly's birthday (p. 16 *ibid*). On October 1994 she asked by Malibiran to convince Beverly to marry him, this was asked at the time when Beverly was in Germany (p. 17 *ibid*).

When asked whether Beverly and Rolando ever got married the witness testified that the two got married on November 8, 1994. (p. 155 Vol. 1-A records Exh. "JJ" Certificate of Marriage). That she executed an affidavit of corroborating witnesses for Beverly and Malibiran to facilitate the processing of their exemption in obtaining marriage license requirement (p. 128 *Ibid*; Exh. "BB"). She is an employee of the Municipality of San Juan. After getting married they discussed how Malibiran would get inside the car of Reynaldo. On December of 1994, Beverly was able to duplicate Reynaldo's key at the time when they have shopped for many things, Reynaldo asked her to bring the goods to the car in the compartment as the kids would still shop (p. 17 *ibid*). After having done so, she proceeded to a key duplicator in Virra Mall and had the key duplicated. Thereafter on the succeeding days or weeks, she was able to give the duplicate to Malibiran. That they would use the grenade since Malibiran has one in his house but his only problem is how to get inside the car and place the grenade (p. 18, Oct. 11, 2000 TSN; Vide p. 35 *ibid*)

As to when the killing would take place, the witness heard that they will do it during the baptism of the child of Gloria, Rolando Malibiran's sister. They chose that date so that they would not be suspected of anything and that pictures would be taken in the baptism to reflect that Malibiran took part in the same (pp. 17-18 *ibid*). During Reynaldo's internment when asked whether Beverly looked sad, witness said that she did not see her sad (p. 20 *ibid*). On February 8, 1995, during the wake, witness met Malibiran in a canteen in White Plains and they rode a Canter owned by Beverly, on the road while the vehicle was cruising along Katipunan avenue near Labor Hospital, Malibiran told her among others that on the day he placed a grenade on Reynaldo's car he saw a security guard roving and so what he did was to hurriedly tie the wire in the grenade (p. 21 *ibid*) not connected with the wire unlike the one intended for Reynaldo which has a connection (p. 21 *ibid*). As far as she knows, there were four or five grenades placed. She told this secret to another friend so that in case something happened to her, it was the doing of Malibiran and Beverly.

On Cross examination, she was asked whether Malibiran did it alone, she said that he has a look out as what Malibiran told him (p. 26 *ibid*). When confronted why she was testifying only now, she said she was bothered by her conscience. As to how did she get the information of key duplication, she said that it was told to her by Beverly (p. 35 *ibid*). It was also disclosed that she did ask Atty. Morales for a sum of P5,000.00 for he to buy medicine.

9. Oswaldo Banaag (or Banaag) testified that Beverly told him that she and Malibiran had a relationship (p. 39, April 1994 TSN). He testified that on April 10, 1994 Beverly asked him to look for a hired gunman, if he could not find one, he just look for a poison that would kill Reynaldo, ten thousand (P10,000.00) pesos was given him for this (p. 14 Ibid). In his sworn statement he said that Beverly asked him to seek means for Reynaldo to die. That she will pay any amount just for him to get out of her life. He has driven for her in going to Hilltop Police Station, Taytay Rizal to see Rolando Malibiran. That Malibiran blames Beverly of the reason why Reynaldo is still alive and then volunteered himself to remedy the situation, that he would seek a man that would kill Reynaldo he made an example of a man they killed and threw in Antipolo "Bangin" with Beverly, Malibiran and two other persons who appear to be policeman because they have something budging in their waste [sic] which is assumed to be a gun, they went to Paombong Bulacan via Malabon. He heard that they would fetch a man in Bulacan that knows how to place a bomb in a vehicle. Near the sea they talked to a person thereat. From Paombong they rode a banca and went to an islet where the planning was discussed as to how much is the fee and how the killing will be had. They ordered him to return back to the vehicle and just fetched them in Binangonan.

He swore that on February 5, 1995 around 10:30 a.m. Beverly asked one of her siblings to call Reynaldo for them to be picked up because every Sunday, the family would go out for recreation. Around 12:00 pm he was asked by Beverly to follow where they will go and when they are already parked, he was instructed to fetch Malibiran in Caltex, Katipunan near Shakeys and bring them to the place where Reynaldo was parked. In the Caltex station he saw Malibiran with two persons who looked like policemen and another person he previously saw in Bulacan. He drove the L300 Van, and brought them to the parking lot where Reynaldo's Honda Car was parked and Malibiran told him just drove [sic] in the area and come back. At around 3:00 p.m. after half an hour he saw Malibiran and company and I picked them up. He heard from the person in Bulacan "Ayos na, siguradong malinis ito." Then he was asked to drive them to Hilltop Police Station. He discovered the death of Reynaldo when he saw and read newspaper, he called Beverly to confirm this incident and he was asked to be hired again and drove for her. When he was in White Plains already, he was asked by Beverly and Malibiran not to squeal what he knows of, otherwise, his life will just be endangered. That Beverly and Malibiran were lovers since March 1993, when they met each other in a piggery in Marikina. There was an incident that Reynaldo saw Malibiran in their own bedroom, and there was almost a gunshot incident, he was there because he was asked to drive the vehicle. Beverly Tan's source of money was from Reynaldo Tan, that he (Banaag) was asked frequently by Beverly who in turn would give it to Malibiran (Exh. "y", pp. 122-125 Vol. 1-A, Sworn Statement November 29, 1996).

On March 29, 1996 he was no longer driving for Beverly because he was arrested by the Presidential Anti-Crime Commission for his alleged involvement in the kidnapping of the father of the classmate of Renevie Tan. He was later on acquitted (p. 16, Feb. 20, 2001 TSN) and released from incarceration on May 7, 1997. When asked whether Jessie Tan helped him to be acquitted in the kidnapping case, he said no (p. 16 ibid).

On Cross examination, he was asked how many times did Jessie Tan visit him in prison, he said that it was Atty. Olanzo who visited him for about six times and that he saw Jessie when he was already out of jail (pp. 24-25 ibid). He testified that there was one incident when Reynaldo and Mabiliran almost had a shootout in the bedroom downstairs because Malibiran was inside the bedroom where Beverly was, Reynaldo have a gun at that time bulging in his waste [sic] (p. 40 ibid).

Further on Cross, he testified that sometime in June 1994, he with Beverly went to Hilltop Police Station and fetched Malibiran and company to go to Paombong Bulacan, they passed by Malabon before going to Bulacan. When they reached the bridge near the sea, they rode a banca, about six of them plus the one rowing the boat towards an Island. In the Island, there was one person waiting (p. 44-45 ibid). he stayed there for just for about ten (10) minutes, and during that period, at about one arms length he overheard their conversation concerning a man to bring the bomb in the car. When asked who was in the banca then, he said it was Beverly, Botong

(Malibiran), Janet and the man they picked up at Hilltop. He was told to return the L300 and just wait for them in Binangonan, hence he rode a banca to return to the bridge and then drove the L300 Van towards Binangonan (p. 50 *ibid*). When asked if he knows that Malibiran is engaged in the fishing business of bangus, he had no idea (p. 45 *ibid*).

#### DEFENSE EVIDENCE

For the defense, in opposition to the testimony of Elmer Paug, it called to the witness stand Renevie Tan. She testified that she believe that her mother (Beverly) did not kill her dad because she was with them at the time of the incident (p. 6 Feb. 5, 2002 TSN). That it is not true that they did nothing when his dad was lying on the ground at the time of the incident. That her mom screamed at that time and did tried to pull her dad who was under the car that she kept going around to find a safer place to pull him out because the car was burning and so they could not pick her dad without burning. Her mother tried crawling underneath the car so she can reach him but he pulled her mom aside and pulled dad risking himself from burning (p. 11 *ibid*) She found out that the person who helped them was the taxi driver, Elmer Paug.

That a driver of a Ford Fiera or Toyota Tamaraw of some kind of delivery van boarded her dad with her mom and headed for Cardinal Santos Hospital. She said that if is not true that her mom appeared unaffected or acting normal as if nothing happened. That it is likewise not true when Elmer Paug said that he alone carried her dad's body, and said that there was another man who helped put her dad on the car (p. 14 *ibid*). She swore that her mom was shocked and was crying at that time (pp. 112-115, Exh. "U" Sworn Statement of Renevie Tan). She admitted that it was only the taxi driver who pulled out his dad from the danger area to a safer place at about four (4) meters, while Elmer Paug was dragging her dad, they where there following him (p. 43 February 5, 2002, TSN). That she touched her father when they where (p. 45 *ibid*). It was confirmed in her testimony that it was the taxi drivers who looked for a taxi cab ( p. 46 *ibid*). She asked if she observed whether her mom carried a portion of her dad's body or arms, hands, legs or buttocks of her father, she said she could not remember (p. 7-8, February 12, 2002 TSN). When asked whether her mom has a shoulder bag at that time, she could not remember.

She testified that her parents keep quarreling to each other may be in 1988-89 and stopped in 1991. it was a once a month quarrel (pp. 23-24 *ibid*). A certain Janet Pascual frequently stayed in their house in the months of October 1994 until February of 1995, and her mom's relationship with Janet was cordial (pp. 27-28, *ibid*). As regards to Malibiran, she knows him at the month of August or September of 1994 but no knowledge of a marriage that took place between her mom and Malibiran on November of the same year (p. 30 *ibid*).

Romulo Bruzo, the security guard of Tan Family at White Plains testified that there was an offer of half a million to him by an unknown person and a demand for him to leave the employ of Beverly Tan and a threat to his life should he testify before the Court. He testified that Banaag was a family driver of the Tan in White Plains from March 1993 until August 1994, after said date, he was taken by Reynaldo Tan as driver at Winreach. He testifies that the statement of Oswaldo Banaag that he came over to White Plains on February 5, 1995, drove the L300 Van and followed the family to Greenhills Shopping Complex is false. Because at that time, the L300 was still parked inside White Plains, it was just a concocted statement of Banaag because he has a grudge on Mrs. Tan as she did not help him when he was incarcerated in Camp Crame (p.47-48 *ibid*).

He was told by Banaag that they were supposed to kidnap the three siblings of Beverly Tan but he took pity on them because Beverly is a nice person to him. He stated that Jessie Tan helped him to be acquitted (p. 49 *ibid*) and promised good job and house to live in.

As regards Janet Pascual, he testified that he had an altercation with her (Janet) because there was an instruction for him by Renevie for Janet not to let inside the house. That Janet got mad at them because she is not been [sic] treated the way Renevie's mom did not to her. Likewise, Renevie has refused to give her P5,000.00 allowance as her mom did before to Janet for the latter's medicine (pp. 50-51).

On account of said incident, she made a threatening remark that if she will not be treated fairly and the P5,000.00 allowance be not given to her, she will go to the Tan Brother and she will testify Mrs. Tan. When asked whom she was angry of Bruzo said it was against Renevie and Atty. Morales. She was angry with the latter because she thought that Atty. Morales was telling Renevie not to give her allowance anymore and refuse access inside the white plains (p. 51 *ibid*).

When asked if he knows Malibiran, he said that he was able to join him twice when there was a delivery of rejected bread for fish feeds in Bulacan. That he saw him eight (8) times in a month in 1994 and just twice a week in the month of August, September and October of said year. (p. 52 *ibid*). He also saw him on July of 1994 on the occasion of Beverly's Birthday.

That on February 5, 1994, Beverly called on him to relay to Roger to fetch the three kids in Green Hills. When asked the tone of Beverly at the time of the phone call, he said the tone was that she was scared and confused (p. 63 *ibid*)

Tessie Luba, the caretaker of Manila Memorial Park testified that she was paid by Beverly to take care of the tomb of Reynaldo and that in some points in time Jessie took over and later her services were not availed of anymore (p. 23, April 30, 2002 TSN) That she saw Beverly with Banaag on November 1996 (p. 8 *ibid*) and Jessie with Banaag in one occasion in going to the tomb on November 1997 (p. 47 *ibid*) and in April 2001 (p. 20 *ibid*).

Emily Cuevas, one of the friends of Beverly testified that Janet Pascual is a back fighter and a traitor, that Janet tried to convince her to testify against Beverly and if witness will be convinced, Janet will receive a big amount of money about three (3) million from another source. Testified that it is not true that Beverly and Malibiran orchestrated or masterminded the death of Reynaldo, and that Janet testified because she needed money because she is sick and diabetic (p. 7, May 21, 2002 TSN). She knows such fact by heart that they are innocent and that they are good people (p. 20 *ibid*).

Victorino Felix, a police officer testified that Malibiran is a member of the Aquarius Multi-Purpose Cooperative, a cooperative that is engaged in the culture of fish particularly "Bangus" at Laguna De Bay particularly Bagumbong, Binangonan, Laguna.

He testified that sometime in 1994, he together with Malibiran waited at Tropical Hut, Cainta for them to be picked up for Bulacan to purchase fingerlings. They were fetched by an L300 Van driven by Oswaldo Banaag and they were around six or seven at that time that headed first to Dampalit, Malabon, Metro Manila to meet the owner of the fish pond, finding that the owner thereof was already in Bulacan they proceeded thereat, at Taliptip, Bulacan. In said place, they left the L300 Van along the bridge, near the sea and from there they rode a motor banca in going to the fingerlings ponds. He testified that Oswaldo was not with them in going to the pond from Taliptip (pp. 11-13, Sept. 3, 2002 TSN). When asked where he was, he said he drove the L300 back (p. 14 *ibid*). The pond was about three kilometers from Talilip, and they were able to buy fingerlings, loaded it in another water transport going to Laguna Lake from Bulacan traversing Pasig River and thereafter they returned back to Binangonan (p. 15 *ibid*).

On Cross, he testified that has met Banaag many times because he used to deliver rejected for bangus feeds, but said that it was only once when Banaag drove with him, that is sometimes in 1994 (p. 20 *ibid*). he testified that Malibiran together with him went to Talilip, Bulacan to procure some fingerlings sometime in June 1995 to mid 1996 (Joint Order, Sept. 3, 2002, p. 366 Vol. III record).

Virgilio Dacanilao testified that on February 5, 1995 at about 12:00 noon he was at the residence of one Gloria Malibiran Santos and from there, he saw accused Rolando Malibiran together with his wife and children, witness' parents-in-law and sisters-in-law. When asked who his parents-in-law is, he said Fernando Malibiran and Jovita Malibiran, the parents of Rolando Malibiran (p. 5, Sept. 17, 2002 TSN). He said that they left the occasion at around 5:00pm and at that time, accused Malibiran, with Boy Santos and Eduardo was still playing

"pusoy". When asked if there was such a time that Malibiran left the house of Gloria Santos, he said, he did not go out of the house sir (pp. 5-7 *ibid*).

On Cross examination, it was disclosed that he knows Malibiran at the time witness was still his wife, the sister of Malibiran, that was sometime in 1988. when asked if he considered Malibiran to be close to him as the brother of his wife, he said yes sir (p. 10 *ibid*). Asked if his relationship with him is such that he would place Malibiran in a difficult situation, he answered, it depends on the situation (p. 11 *ibid*). Witness was asked how long it would take to reach Unimart Supermarket from his residence in Malanday, he estimate it to be more or less half an hour (p. 13 *ibid*). He testified that no game was ever stop [sic] on the reason that they have to wait for Malibiran.

Said witness testimony was corroborated by Jose Ong Santos, the father of the child who was baptized on said occasion. He testified that he played "pusoy" with Malibiran at around 2:00pm, until 6:30 to 7:00 pm and there was never a time that Malibiran left the table where they were playing except when he feels like peeing (p. 10 July 16, 2002 TSN). It was estimated at about five times, and it took him about three to five minutes everytime he would rise to pee and return to the table. That Malibiran may have left their house at around 6:30 or 7:00 in the evening on February 5, 1995 (p. 11, *ibid*)

On Cross examination, he testified that the idea of baptism was rushly scheduled, because he won in a cockfight three to four days before the baptism of his child at about February 1 or 2 of 1995. That amount was about P50,000.00 (pp. 20-21 *ibid*). Malibiran did not take any participation in the baptism nor was he present at the church, but was already at the reception with his family, for lunch. He testified that Malibiran left by call of nature, to pee, about four to five times and a span of five minutes (p. 31 *ibid*).

Accused Rolando Malibiran in his Counter-Affidavit said that he does intelligence work for seven years. He doesn't know Banaag as to reckless discuss a supposed plot to kill somebody within his hearing. That would be inconsistent with the entire training and experience as a police officer. Especially when the expertise is intelligence work. Banaag drove for them in June or July 1995 not in June of 1994 (for months after the death of Reynaldo) [pp. 147-152, Exh. "HH" Vol. 1-a record].

He testified that he met Banaag sometime in the last quarter of 1993 at the piggery of Beverly Tan (pp. 12-13, Oct. 8, 2002 TSN). He admitted that he was with Banaag using the L300 Van of Beverly in one occasion, in 1994 when they purchased fingerlings from Bulacan. They procured the same because their cooperative was culturing "bangus" in Barangay Bombon, Binangonan, Rizal (pp. 14-15). He testified that in Bulacan, Banaag was left at the foot of the bridge where the L300 was parked (p. 19 *ibid*) and heard that Beverly told Banaag to go back, in White Plains (p. 21, *ibid*). After procuring the fingerlings, they rode a big banca called "pituya" then they went back to Pritil, Binangonan. In Pritil, they waited for Banaag (P. 26 *ibid*).

He denied having met Janet Pascual on Wednesday at about February 8, 1995 because since Tuesday (February 7, 1995) he was already confined in the Camp by Order of his Unit Commander, Chief Inspector Florentin Sipin (p. 5, January 21, 2003 TSN) because he was under investigation by the Presidential Anti-Crime Commission. He admitted that he met Beverly in the last quarter of 1993 (p. 8, October 22, 2002) but denied having intimate relations with her (p. 21 *ibid*).

He testified that he met Janet Pascual only once, on November 1994, but said that they never talked (p. 12, November 12, 2002 TSN). He denied having married Beverly Tan nor did he ever requested Janet Pascual to secure a license for them to get married. He denied having had a trip with Janet in Bulacan and admitted that he went to Zamables once, with Beverly, kids and yaya as well as his father (p. 25, *ibid*), that was sometime in 1994, before Reynaldo died. He testified that he used his own vehicle with his father in going to Zamables. He denied seeing Reynaldo; he said he just heard him based on his conversation with Beverly Tan which took place in the piggery in Marikina. In sum, the place of incidents where he managed to meet and talk with Beverly Tan was in the piggery in Marikina; at Camp station in Taytay Rizal; in Bulacan when they procured fingerlings in Binangonan; Malabon; Zambales; White Plains and Cainta. (pp. 30; 32; 35 *ibid*).

He testified that he was arrested in Candelaria Quezon on December 1998 (p. 11 January 21, 2003) but denied living with Beverly Tan at the time of the arrest. He said he just saw Beverly thirty (30) minutes after his arrest in the town proper of Candelaria, Quezon (P. 21, *ibid*). He denied that he uttered the remark "its better to kill Rene since you are not benefiting from him" (p. 38 *ibid*); never have access to grenades; never asked Beverly Tan how he could get inside Reynaldo's Car never claimed to be a sharp shooter and had never went to Batangas uttering the remarks mentioned by Janet Pascual nor went to Batangas at the time of Beverly's birthday.

On Cross examination, he said that he never talk to Janet at the time of his restriction and thereafter. He had no commercial dealing with Janet nor have any romantic relations with her (p. 8, *ibid*). It was only when the case was filed he was able to talk to her (p. 5, February 4, 2003 TSN). He testified that he evaded arrest because there was a pending petition for review filed by his lawyer before the Department of Justice despite the fact that there is an existing warrant of arrest which he found out at the end of 1997 (p. 15 *ibid*).

On September 23, 2003, the RTC found Rolando guilty of Murder and appellant, of Parricide. The dispositive portion of the Joint Decision reads as follows:

WHEREFORE, the Court finds both accused guilty beyond reasonable doubt as charged. Accused Rolando Malibiran for the crime of Murder in Criminal Case No. 113065-H and accused Beverly Tibo-Tan for Parricide in Criminal Case No. 113066-H defined and penalized under Article 248 and Article 246, respectively, of the Revised Penal Code, as amended, in relation to Republic Act No. 7659 with the attendant circumstances of treachery, evident premeditation and use of explosion and sentencing both accused the supreme penalty of DEATH, and ordering them to pay jointly and severally to the heirs of Reynaldo Tan the amount of Fifty Thousand (P50,000.00) Pesos as indemnity for death, Eighty Thousand (P80,000.00) Pesos as actual damages; Fifty Thousand (P50,000.00) as moral damages; and to pay the costs.

SO ORDERED.[8]

Appellant then appealed to this Court; the appeal was, however, referred to the CA pursuant to *People v. Mateo*. [9]

In its Decision dated November 13, 2006, the CA affirmed the Decision of the RTC. The CA, however, took judicial notice of Republic Act No. 9346 prohibiting the imposition of the death penalty and thus reduced the penalty to reclusion perpetua. The dispositive portion of the said Decision reads as follows:

WHEREFORE, premises considered, the joint decision dated September 23, 2003 of the Regional Trial Court, Special Court for Heinous Crimes, Branch 156, Pasig City in Criminal Case No. 113065-H for Murder and Criminal Case No. 113066-H for Parricide is hereby AFFIRMED with Modification in that the supreme penalty of death imposed on both accused-appellants is hereby reduced to RECLUSION PERPETUA.

SO ORDERED.[10]

As manifested by the Office of the Solicitor General (OSG), Rolando did not file a Motion for Reconsideration or a Notice of Appeal from the CA Decision.[11] For all intents and purposes, the judgment of conviction as to Rolando became final and executory on December 14, 2006. This was confirmed by CA Resolution dated January 29, 2007, which noted that "pursuant to the report dated January 23, 2007 of the Judicial Records Division that no motion for reconsideration or notice of appeal had been filed by counsel for appellant Rolando Malibiran, entry of judgment is issued against said appellant x x x." [12]

This review shall therefore pertain only to appellant Beverly Tibo-Tan's conviction.

Appellant and the OSG were required by the Court in its Resolution dated October 3, 2007 to file supplemental briefs, if they so desired. The OSG filed a Manifestation and Motion that it would no longer file any supplemental

brief. As regards appellant, records show that, as of even date, she had not filed any supplemental brief, despite due notice.[13]

In the Brief she filed with the Court prior to the endorsement of the case to the CA, appellant raised the following assignment of errors:

I.

THE REGIONAL TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT BEVERLY TIBO TAN GUILTY OF THE CRIME OF PARRICIDE BASED MERELY ON CIRCUMSTANCIAL EVIDENCE, THE REQUISITES THEREOF NOT HAVING BEEN SUBSTANTIALLY ESTABLISHED;

II.

THE REGIONAL TRIAL COURT SHOULD HAVE NOT APPRECIATED THE TESTIMONY OF PROSECUTION WITNESS OSWALDO BANAAG AS ITS BASIS FOR ESTABLISHING CONSPIRACY BETWEEN ACCUSED-APPELLANT MALIBIRAN AND ACCUSED-APPELLANT BEVERLY TAN, SUCH TESTIMONY BEING HEARSAY ON SOME PARTS AND REplete WITH INCONSISTENCIES;  
[14]

Before proceeding to the merits of appellant's arguments, the Court takes note of the RTC's observation regarding appellant's stoic stance during and after the incident and her non-presentation as witness. The RTC took this negatively against appellant. The Court differs therefrom.

Appellant's seeming indifference or lack of emotions cannot be categorically quantified as an indicium of her guilt. There is no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence. It has already been stated that witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently -- some may shout, some may faint and others may be shocked into insensibility.[15]

Also, appellant's failure to testify in her defense should not be taken against her. The Court preserves the rule that an accused has the right to decline to testify at the trial without any inference of guilt drawn from his failure to be on the witness stand.[16] The constitutional right to be presumed innocent still prevails.

This notwithstanding, the totality of the circumstantial evidence presented against appellant justifies her conviction of the crime of Parricide.

Appellant claims that the circumstantial evidence proven during trial only shows that there was a possibility that appellant may have conspired with Rolando, but nevertheless claims that it came short of proving her guilt beyond reasonable doubt.[17]

Appellant further argues that the testimony of Oswald was in some parts hearsay and replete with inconsistencies.[18] Specifically, appellant contends that the testimony of Oswald that "he overheard a conversation between Malibiran (Rolando) and Beverly (appellant) that they will fetch a man in Bulacan that knows how to place a bomb in a vehicle" is hearsay.[19] Likewise, in her Reply Brief,[20] appellant claims that the testimony of Janet is hearsay.

Contrary to the claim of appellant, the testimonies of Oswald and Janet are not covered by the hearsay rule.

The hearsay rule states that a witness may not testify as to what he merely learned from others either because he was told, or he read or heard the same. This is derived from Section 36, Rule 130, Revised Rules of Court, which

requires that a witness can testify only to those facts that he knows of or comes from his personal knowledge, that is, that are derived from his perception. Hearsay testimony may not be received as proof of the truth of what he has learned.[21]

The law, however, provides for specific exceptions to the hearsay rule. One is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[22] The witness who testifies thereto is competent because he heard the same, as this is a matter of fact derived from his own perception, and the purpose is to prove either that the statement was made or the tenor thereof.[23]

In this case, Oswaldo's testimony that he overheard a conversation between Rolando and appellant that they would fetch a man in Bulacan who knew how to place a bomb in a vehicle is admissible, if only to establish the fact that such statement was made and the tenor thereof. Likewise, Janet may testify on matters not only uttered in her presence, since these may be considered as independently relevant statements, but also personally conveyed to her by appellant and Rolando.

Appellant further argues that Oswaldo's testimony to the effect that he drove the L300 van of the Tan family and brought Rolando to the parking lot where Reynaldo's Honda Accord was parked, was refuted by defense witness Romulo, the security guard of the Tan family. Romulo testified that the L300 van never left White Plains on the day of the incident.[24]

While the defense may have presented Security Guard Romulo to refute the testimony of Oswaldo, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court, considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[25] Thus, in the absence of any palpable error, this Court defers to the trial court's impression and conclusion that, as between Oswaldo and Romulo, the former's testimony deserved more weight and credence.

There is nothing on record to convince the Court to depart from the findings of the RTC. On the contrary, the testimony of Janet as corroborated by Oswaldo, though circumstantial, leaves no doubt that appellant had in fact conspired with Rolando in bringing about the death of her husband Reynaldo. As a rule of ancient respectability now molded into tradition, circumstantial evidence suffices to convict, only if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

The case of the prosecution was primarily built around the strength of the testimonies of Janet and Oswaldo. The salient portions of Janet's testimony are extensively quoted hereunder:

Q.

Anything else significant that happened in the remaining of 1994, Ms. Pascual?

A.

After they were married, they talked about what they're gonna do for Rene.

Q.

Where did they discuss it?

A.

Inside the car, Botong was asking Beverly how would he be able to get inside the car since he has no key and Beverly said that she can do something about it and so it was in the last week of November 1994 of first week of December 1994 when they shopped for so many things.

Q.

Who is (sic) with him?

A.

Rene, Beverly and her three kids. Rene asked her since Rene and kids would still shop, Rene asked her to brings the goods to the car in the compartment.

Q.

And then?

A.

And after Beverly placed the things inside the compartment, she had with her the key, she proceeded to a key duplicator in Virra Mall and had the key duplicated.

Q.

When did she give the key to Malibiran, if you know?

A.

That was already December, I cannot recall the exact date, sir.

Q.

Why did Mr. Malibiran need the key?

A.

Because they planned, since they cannot use the gun Butch said that they would use grenade instead because he had a grenade in his house. But their only problem is how to get inside the car.

COURT:

Who is Butch?

A.

Mr. Malibiran, your Honor.

COURT

Butch and Botong are one and the same person?

A.

Yes, your Honor.

Q.

Did they discuss how, where and when they would planted the grenade in the car of Rene?

A.

I heard from them that they would do it during the baptismal of the child of Gloria who is the sister of Butch.

Q.

And Butch is Botong?

A.

Botong, sir.

Q.

Do you know when that binyag when supposed to be held?

A.

The baptismal be held on February 5, 1995, sir.

Q.

Why did they choose that date of the binyag?

A.

So that if a picture was taken during the baptism, there would be witnesses that they were in the baptism, they would not be suspected that they have something to do with that.[27]

x x x x

Q.

What day of the week was this?

A.

Sunday, Ma'm.

Q.

What kind of kind [sic] was duplicated?

A.

The key in the new car of Rene the Honda Accord.

Court:

But in the first place, you were not there when it was duplicated? How you were [sic] able to know that it was indeed duplicated?

A.

Because after Beverly had duplicated the key, she told me that she was able to have the key duplicated and she told me how she did it and she told me that she will give the key to Butch.

Q.

Did she show you the duplicated key?

A.

Ginanoon niya lang.

Q.

What does it looked [sic] like?

A.

Iyong mahaba na malaki. Hindi ko na inano basta susi, nag-iisa.

Q.

On what occasion did she tell you about this?

A.

None, I was just in White Plains.

Q.

When was this?

A.

That was December, 1994.

Q.

What was their decision when they will execute the plan?

A.

It will be during the baptismal of the child of Gloria because Butch is one of the sponsors.[28](Emphasis Supplied)

In addition, Oswald testified on the occurrences on the day of the incident, in this wise:

Q:

Why did you go to Greenhills?

A.

I was told by Ate Beverly to follow them wherever they go.

Q.

What time did she tell you to go there?

A.

After lunch, sir.

Q.

What vehicle did you use to follow her?

A.

L300, sir.

Q.

Upon whose instruction?

A.

Ate Beverly, sir.

Q.

Did you in fact follow her?

A.

Yes, sir.

Q.

What time did they reach. the[W]hiteplains?

A.

Almost 1 o'clock, sir.

Q.

Incidentally, who was with Beverly?

A.

Kuya Rene Tan, Beverly Tan, Renebie, Jag and JR.

Q.

What car did they use?

A.

Honda Accord.

Q.

Color?

A.

Red, sir.

Q.

Who drived [sic]?

A.

Kuya Rene, sir.

Q.

What part of Greenhills did they go?

A.

The parking lot in front [sic] of Unimart, sir.

Q.

What did you do when they come [sic] to Greenhills?

A.

When I found out they already parked and Kuya Rene got in I went straight to Katipunan.

Q.

Why?

A.

Because I was told by Ate to fetch Botong.

Q.

Where in Katipunan?

A.

In Caltex near Shakeys.

COURT

Who is Botong?

A.

Rolando Malibiran, Your Honor.

Q.

The accused in this case?

A.

Yes, your Honor.[29]

x x x x

Q.

You picked up Malibiran at Caltex on February 5, 1995?

A.

Yes, sir.

Q.

What time was that?

A.

Around 2 o'clock, sir.

Q.

Who if any was with him?

A.

Two guys. One whom I saw in [sic] Bulacan and the one whom we sinakay at Hilltop.

Q.

When did you go in [sic] Bulacan?

A.

In June 1994, sir.

Q.

With whom?

A.

Botong, Beverly, Janet, I and two guys in Hilltop because that is the instruction of Beverly.

Q.

Do you know the name of the two guys from Hilltop?

A.

If given the chance I can recognize them but I do not know them by name.

Q.

What did you do in Bulacan?

A.

We went to the Island near the sea.

Q.

What did you do at that Island?

A.

They talked to a person.

Q.

What if you know the date [sic] all about?

A.

As far as I remember they talked about the plans about the killing of Kuya Rene.[30]

x x x x

Q.

Where did they ride on Feb. 5, 1995?

A.

In Katipunan, sir.

Q.

What did they ride?

A.

L300 that I was driving, sir.

Q.

Where if any did you go after picking them up?

A.

From Caltex we proceeded to Greenhills.

Q.

Why?

A.

Because that is the instruction of Ate Beverly. Where they were, I will drop them there.

Q.

Did you do that?

A.

Yes, sir.

Q.

Where exactly did you drop them on?

A.

In the place where Kuya Rene was parked.[31]

x x x x

COURT:

x x x What happened while they were inside the vehicle while you were going back to the place as instructed by Beverly?

A.

After that I brought them where the car of Kuya Rene was parked, Your Honor. Before they alighted, Botong asked, dito na ba?[32]

Atty. Rondain:

So you replied Opo, dyan po pumasok si Kuya Rene?

A.

After I alighted they just go [sic] around.

Q.

Where?

A.

In Greenhills, sir.

Q.

Then, what happened?

A.

After half an hour I saw Kuya Botong, the three of them. Then they stopped me and the three of them boarded the vehicle.

Q.

What happened?

A.

After they boarded, the man from Bulacan said, ano pare, malinis na paggawa nito. Then, I was told by Botong to bring them to Hilltop.[33]

Based on the foregoing, the testimonies of Janet and Oswaldo clearly link appellant to the planning of the crime. True, as intimated by appellant, she may not have been at the scene of the crime at the time of the explosion;<sup>[34]</sup> but then again, if she was, then she would have suffered the same fate as Reynaldo. Moreover, the nature of the crime and the manner of its execution, i.e., via a booby trap, does not demand the physical presence of the perpetrator at the very time of its commission. In fact, the very manner in which it was carried out necessitated prior scheming and execution for it to succeed. Thus, appellant's absence from the actual scene of the crime does not negate conspiracy with Rolando in plotting the death of her husband. A conspiracy exists even if not all the parties committed the same act, but the participants performed specific acts that indicated unity of purpose in accomplishing a criminal design.<sup>[35]</sup> Moreover, direct proof of previous agreement to commit an offense is not necessary to prove conspiracy -- conspiracy may be proven by circumstantial evidence.<sup>[36]</sup>

The testimonies of Janet and Oswaldo established the following set of circumstances which, if taken collectively, show the guilt of appellant: that appellant and Rolando conspired, planned and agreed to kill Reynaldo using a grenade; that appellant duplicated the key to the red Honda Accord of Reynaldo so that Rolando could gain access to the car; that appellant thereafter gave the duplicate key to Rolando; that on February 5, 1995, appellant told Oswaldo to follow the red Honda Accord of Reynaldo until the latter parked the car; that appellant told Oswaldo to thereafter pick up Rolando at Katipunan and bring the latter to where Reynaldo parked his red Honda Accord. Reynaldo died soon after due to injuries he sustained from an explosion caused by grenades planted in his car.

Another notable fact is that according to the expert opinion of Inspector Selverio Dollesin, Chief of the Bomb Disposal Unit of the Eastern Police District, the perpetrator had information about the victim's movements. Dollesin also observed that the perpetrator knew his intended victim, since the grenade was specifically placed in between the driver's seat and the front door. That the perpetrator knew the victim's movements was further corroborated by the affidavits executed by the Tan children, Renevie<sup>[37]</sup> and Jag Carlo<sup>[38]</sup>, attesting that while they spent their Sundays with their father, this was the only time that they spent a Sunday in Greenhills. Only someone who had close personal contact with Reynaldo would know his movements, where the car would be parked, and that he was the one who usually drove the red Honda Accord, such that it was precisely positioned to

ensure damage to the intended victim.

There is no doubt that, based on the testimony of Janet, it was Rolando who planted the grenades inside the car of Reynaldo, to wit:

Q.

Where did you go?

A.

When I was inside the Canter, Botong (Rolando) was asking me while the vehicle was moving slowly. He asked me what happened in the funeral parlor.

Q.

And what did you say?

A.

I told him that Major Penalosa called me for an interview but I did not say anything.

Then were already in front of the V. Luna Hospital.

COURT

What Hospital?

A.

V. Luna, your Honor, along Katipunan.

COURT

Luna in Katipunan?

A.

V. Luna is going to Katipunan, your Honor. It was Labor Hospital, your Honor and not V. Luna. Then Botong told me that on the day he placed the grenade, he was seeing a guard roving and so what he did since he was already perspiring at that time he hurriedly tied the wire in the grenade.

Atty. Rondain:

Iqoute na lang natin.

COURT

Dinali-dali niyang ibinuhol ang alambre. That's her term.[39] (Emphasis Supplied)

What sealed appellant's fate was that, as observed by the RTC, there were already outstanding warrants of arrest against appellant and Rolando as early as September 11, 1997; yet they evaded arrest and were only arrested on December 4, 1998.[40] It is well settled that flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. "The wicked flee, even when no man pursueth; but the righteous are as bold as a lion." [41] Appellant did not even proffer the slightest explanation for her flight.

All told, this Court is convinced beyond a reasonable doubt that appellant is guilty of the crime as charged. Moreover, considering the manner in which appellant and Rolando planned and executed the crime, the RTC was

correct in appreciating the aggravating circumstances of treachery, evident premeditation, and use of explosives. Thus, appellant is guilty of the crime of Parricide as provided in the Revised Penal Code, to wit:

Article 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 reclusion perpetua to death. (Emphasis Supplied)

Moreover, the Revised Penal Code provides for death as the proper penalty:

Article 63. Rules for the application of indivisible penalties.

x 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:

When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

However, as observed by the CA, with the effectivity of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law is reclusion perpetua.[42] The applicability of R.A. No. 9346 is undeniable in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restringenda*. Penal laws that are favorable to the accused are given retroactive effect.[43]

In addition, appellant is not eligible for parole pursuant to Section 3 of R.A. No. 9346, which states:

SECTION 3. Persons convicted with reclusion perpetua, or those whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Lastly, as to the award of damages, the RTC awarded the following amounts: (1) P50,000.00 as civil indemnity for death, (2) P80,000.00 as actual damages, and (3) P50,000.00 as moral damages.

In the recent case of *People v. Regalario*,[44] the Court stated:

While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still P75,000.00. x x x the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

As to the award of moral and exemplary damages x x x. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to reclusion perpetua pursuant to Republic Act No. 9346, the award of moral damages should be increased from P50,000.00 to P75,000.00 while the award of exemplary damages should be increased from P25,000.00 to P30,000.00.

Consistent therewith, the RTC's award should be modified: the civil indemnity should be increased to P75,000.00, and moral damages to P75,000.00.

Moreover, although not awarded by the RTC and pursuant to Regalario, exemplary damages in the amount of P30,000.00 is likewise warranted because of the presence of the aggravating circumstances of intent to kill, treachery, evident premeditation and the use of explosives. The imposition of exemplary damages is also justified under Art. 2229 of the Civil Code in order to set an example for the public good.[45]

However, the award of P80,000.00 by the RTC as actual damages is deleted for lack of competent evidence to support it. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the court.[46] In lieu thereof, appellant should pay temperate damages in the amount of P25,000.00, said amount being awarded in homicide or murder cases when no evidence of burial and funeral expenses is presented in the trial court,[47] and in accordance with prevailing jurisprudence.[48] Under Article 2224 of the Civil Code, temperate damages "may be awarded when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

Finally, Section 11, Rule 122 of the Rules of Court provides that:

An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Since Rolando did not appeal the decision of the CA, only portions of this judgment that are favorable to Rolando may affect him. On the other hand, portions of this judgment that are unfavorable to Rolando cannot apply to him. Thus, he cannot be made liable to pay for exemplary damages, as the same were not awarded by the RTC.[49] However, he benefits from this Court's finding that, instead of actual damages, only temperate damages should be awarded to the heirs of the victim.

WHEREFORE, the Court of Appeals Decision dated November 13, 2006 and Resolution dated September 23, 2003, finding appellant Beverly Tibo-Tan guilty beyond reasonable doubt of Parricide and sentencing her to suffer the penalty of RECLUSION PERPETUA are hereby AFFIRMED. Appellant is ineligible for parole and is further ordered to pay, jointly and severally with Rolando Malibiran, the heirs of Reynaldo Tan the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as temperate damages. In addition, appellant is solely liable to pay the heirs of Reynaldo Tan the amount of P30,000.00 as exemplary damages.

Costs de oficio.

### **SO ORDERED.**

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Noel G. Tijam and Arturo G. Tayag, rollo, pp. 3-50.

[2] CA rollo, pp. 62-78.

[3] TSN, January 27, 1999.

[4] RTC Records, Volume II, p.8, Death Certificate.

[5] Records, Vol. I, pp. 1-3.

- [6] Records ,Vol. I, pp. 77-79.
- [7] Records, Vol. I, p. 222.
- [8] Records, Vol. I, p. 78.
- [9] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.
- [10] CA rollo, p. 353.
- [11] Rollo, p. 59.
- [12] CA rollo, p. 360.
- [13] Rollo, p. 64.
- [14] CA rollo, p. 353.
- [15] Rivera v. Court of Appeals, G.R. No. 125867, May 31, 2000, 332 SCRA 416.
- [16] Arroyo Jr. v. Court of Appeals, G.R. No. 96602, November 19, 1991, 203 SCRA 750; People v. Gargoles, No. L-40885, May 18, 1978, 83 SCRA 282.
- [17] CA rollo, p. 124.
- [18] CA rollo, p. 124.
- [19] Id. at 124-125.
- [20] Id. at 272-282.
- [21] Fullero v. People, G.R. No. 170583, September 12, 2007, 533 SCRA 97.
- [22] People v. Lobrigas, G.R. No. 147649, December 17, 2002, 394 SCRA 170.
- [23] People v. Cusi, Jr., No. L- 20986, August 14, 1965, 14 SCRA 944; Cornejo, Sr. v. Sandiganbayan, No. L-58831, July 31, 1987, 152 SCRA 559.
- [24] CA rollo, p.125.
- [25] People v. Navida, G. R. No. 132239-40, December 4, 2000, 346 SCRA 821, 830.
- [26] Rules of Court, Rule 134, Section 4.
- [27] TSN, October 11, 2000, pp. 17-19.
- [28] TSN, October 11, 2000, pp. 35-36.
- [29] TSN, February 21, 2001, pp. 6-8.
- [30] TSN, February 21, 2001, pp. 9-10
- [31] TSN, February 21, 2001, p. 11.
- [32] TSN, February 21, 2001, p. 12.
- [33] TSN, February 21, 2001, p. 12-13.
- [34] CA rollo, p. 125.

- [35] Acejas III v. People, G.R. No. 156643, June 27, 2006, 493 SCRA 292.
- [36] Tigoy v. Court of Appeals, G.R. No. 144640, June 26, 492 SCRA 539.
- [37] Exhibit "U," Envelope of Exhibits.
- [38] Exhibit "V," Envelope of Exhibits.
- [39] TSN, October 11, 2000, p.21.
- [40] CA rollo, p. 296.
- [41] People v. Abatayo, G.R. No. 139456, July 7, 2004, 433 SCRA 562; People v. Lobrigas, supra note 22.
- [42] People v. Ortoa, G.R. No. 176266, August 8, 2007, 529 SCRA 536, 555.
- [43] People v. Canuto, G.R. No. 166544, July 27, 2007, 528 SCRA 366.
- [44] G.R. No. 174483, March 31, 2009.
- [45] People v. Dacillo, G.R. No. 149368, April 14, 2004, 427 SCRA 528.
- [46] People v. Bonifacio, G.R. No. 133799, February 5, 2002, 376 SCRA 134.
- [47] People v. Dacillo, supra note 45.
- [48] People v. Notarion, G.R. No. 181493, August 28, 2008; People v. Ausa, G.R. No. 174194, March 20, 2007, 518 SCRA 602; People v. Astudillo, G.R. No. 141518, April 29, 2003, 401 SCRA 723.
- [49] People v. Gandia, G.R. No. 175332, February 6, 2008, 544 SCRA 115.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.