

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO CALONGE Y VERANA, ACCUSED-APPELLANT.*G.R. No. 182793. July 05, 2010*

Ponente: VILLARAMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-182793/>**VILLARAMA, JR., J.:**

For review is the Decision[1] dated November 29, 2007 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01516 which affirmed with modification the Joint Decision[2] dated August 10, 2005 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27 in Criminal Case Nos. 4077-4080 finding the above-named accused-appellant guilty beyond reasonable doubt of parricide and frustrated parricide.

The facts as culled from the records:

Rosita A. Calonge was appellant's legitimate wife, with whom he had three (3) children, namely: Melody, Dony Rose and Kimberly whose respective ages at the time of the incident were nine (9), seven (7) and six (6) years.[3] The family lived in a four (4) by five (5) meters house at a farm land near the house of Rosita's parents at Barangay Cabuluan, Villaverde, Nueva Vizcaya.

On December 1, 2001 at around 6:00 o'clock in the morning, the Villaverde Police Station received a radio call from the barangay captain of Cabuluan that a massacre took place in their locality. By 7:30 a.m., the responding team led by PO3 Alfelmer Balut arrived at the area. Rosita's bloodied body was found lying on the ground about fifteen (15) meters away from their house. Her right hand was loosely clasping a knife. Lying on his back near the stairs was appellant who was also wounded but still conscious. Beside him were a bolo and a flashlight, both stained with blood. While the windows of the house were locked with a piece of tie wire, the door was already opened, its metal lock was found three (3) to five (5) meters from the door and seven (7) to ten (10) meters from the body of Rosita. Inside the two (2) "bedrooms" of the house separated only by a curtain, they found the lifeless bodies of the two (2) young girls, Kimberly and Dony Rose. The other child, Melody, was also bloodied but alive and conscious. They brought Melody to the Veterans Regional Hospital where she was treated and confined for seventeen (17) days.[4]

Police investigators found no signs of struggle or forcible entry as the things inside the house were not disarranged. Photographs of the three (3) dead victims (Rosita, Dony Rose and Kimberly) were also taken at the crime scene. When interviewed by the policemen, Melody's grandmother, Ana O. Amlag, said that Melody told her it was their father (appellant) who attacked her, her mother and her sisters. Melody's grandparents said they knew it was appellant because they had heard Rosita shouting that appellant will kill them. On the other hand, when appellant was asked what happened and who attacked him, he answered he does not know. Appellant asked to be treated also and they brought him to the hospital.[5]

While still in the hospital, Melody, assisted by her first cousin Ana Fe Huang, gave her statement to the police. She identified her father, who had a quarrel with her mother the previous night, as the one (1) who hacked her and also fatally stabbed her mother and two (2) sisters.[6]

On January 17, 2002, appellant was charged with parricide and frustrated parricide under the following Informations:

Criminal Case No. 4077

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, stab ROSITA CALONGE y AMLAG, legal wife of the accused, thus inflicting upon the latter mortal wound which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[7]

Criminal Case No. 4078

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, hack KIMBERLY CALONGE y AMLAG, 06 years old, daughter of the accused, thus inflicting upon the latter mortal wounds which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[8]

Criminal Case No. 4079

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed/pointed object, stab DONY ROSE CALONGE y AMLAG, 07 years old, daughter of the accused, thus inflicting upon the latter mortal wounds which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY TO LAW.[9]

Criminal Case No. 4080

That on December 01, 2001 in the morning, at Barangay Cabuluan, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did then and there willfully, unlawfully and feloniously, with the use of a bladed object, hack Melody Calonge y Amlag, 09 years old, daughter of the accused, thus inflicting upon the latter fatal wounds and performing all the acts of execution which should have produced the crime of Parricide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, the timely medical attendance given which prevented the victim's death, but nevertheless resulted to her damage and prejudice.

CONTRARY TO LAW.[10]

When arraigned, appellant pleaded not guilty. During the trial, the prosecution presented as witnesses PO3 Alfelmer Balut, Dr. Telesforo A. Ragpa (Municipal Health Officer), Lourdes Amlag, Dr. Lirio Marie Ronduen-Adriatico and Melody A. Calonge.

The sole witness for the defense was appellant who gave a different version of the incident. According to

appellant, he came home on the night of November 30, 2001 at around 6:00 o'clock. After taking coffee, he took supper with his family. At about 8:30 p.m., he put Kimberly to sleep while his wife together with Dony Rose was in the kitchen preparing for their food the following morning because they will go to church. He could not remember what time he fell asleep but when he woke up in the morning, he was no longer in their house but in a hospital. Only then he realized that he was wounded on the chest and neck. He tried to inquire from people in the hospital what happened but no voice came out of his mouth. He does not know who caused his injuries as he could not recall anything that transpired from the time he slept until the morning of December 1, 2001. Appellant denied that he and his wife quarrelled the previous night. What he knows is that his wife had a quarrel with spouses Manong Sante and Manang Paula, as the latter who is the sister of his wife did not want them to stay in the place.[11] On cross-examination, appellant claimed that the doors of the house were still open at that time because somebody else was still using the kitchen. He denied that he sharpened his bolo that same night, as in fact all his carpentry tools were placed in their kitchen. As to his flashlight, appellant insisted it was his wife who was using it that night but he admitted that it was already placed very near the door where he had put Kimberly to sleep. He actually placed his bolo, flashlight and those other items in a shelf just four (4) meters away from where he slept.[12]

On August 18, 2005, the trial court promulgated its Joint Decision dated August 10, 2005 convicting appellant of the crimes charged, the fallo of which reads:

WHEREFORE, finding the accused Dionisio Calonge y Verana GUILTY beyond reasonable doubt of three counts of parricide and one count of frustrated parricide, he is hereby sentenced as follows: (1) for the killing of Kimberly Calonge and Dony Rose Calonge, the said accused is hereby sentenced to suffer death penalty by lethal injection for each case; to pay the heirs of the said victims, the sums of P75,000.00 for each case as civil indemnity and P50,000.00 as moral damages; and to pay the heirs actual damages in the sum of P21,255.00 for the death of Kimberly, Dony Rose and Rosita A. Calonge; (2) for the killing of Rosita Calonge, the said accused is hereby sentenced to suffer the penalty of reclusion perpetua; and to pay the heirs of Rosita the sum of P50,000.00 as civil indemnity and the sum of P50,000.00 as moral damages; (3) for the crime of frustrated parricide for wounding Melody Calonge, he is hereby sentenced to suffer the penalty of 8 years and 1 day of prision mayor as the minimum term to 20 years of [reclusion temporal[13]] as the maximum term; to pay the victim moral damages in the sum of P25,000.00; exemplary damages in the sum of P20,000.00 and P11,015.00 as actual damages.

SO ORDERED.[14]

On appeal, the CA affirmed the trial court's judgment but modified the death penalty imposed on appellant in Criminal Case Nos. 4078 and 4079 (parricide committed against Kimberly and Dony Rose) by reducing it to reclusion perpetua.[15] Appellant filed a notice of appeal[16] and accordingly the records of the case were elevated to this Court.

On August 11, 2008, the Court resolved to require the parties to file their respective supplemental briefs, if they so desired.[17] In a Manifestation dated October 29, 2008, the Public Attorney's Office, representing the appellant, informed the Court that it would no longer file a supplemental brief; it was adopting its main brief on record.[18] The Office of the Solicitor General, representing the People, likewise omitted to submit a supplemental brief.[19]

Appellant seeks the reversal of his conviction by the RTC and CA on the following grounds:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS MELODY CALONGE DESPITE ITS EVIDENT CONTRADICTIONS AND APPARENT UNREALITY.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[20]

Appellant contends that the trial court overlooked the following inconsistencies and contradictions in the testimony of Melody: (1) the alleged misunderstanding between her parents prior to December 1, 2001, which she first denied but changed it during a subsequent hearing when she claimed her parents had a quarrel before the stabbing incident occurred, (2) the time of such quarrel for which she gave three (3) different answers (8:00 to 9:00 p.m. of November 30, 2001; 2:00 early morning of December 1, 2001; and 6:00 to 7:00 p.m. of November 30, 2001), and (3) whether it was Melody or her mother who was first hacked by her father. These inconsistent statements of the alleged eyewitness engender doubt as to their reliability and veracity.

Appellant further argues that Melody's identification of appellant as the perpetrator of the crimes remained uncorroborated. The failure to present such other alleged witnesses (her grandparents) was not satisfactorily explained by the prosecution. He assails Melody's testimony as highly incredible. While Melody claimed that she saw appellant hacked and stabbed her sisters, the fact is that, during that time, according to her, she was sleeping together with her mother in another room inside their house. Moreover, it was impossible for Melody to have seen that the person who killed her mother and two (2) sisters was appellant when in fact, according to her, there was no light inside their room when the incident happened. Clearly, the prosecution failed to discharge its burden of proving the identity of the offender.

We disagree.

It is plain that the errors imputed to the trial court are factual and chiefly assail its evaluation of the credibility of witnesses. The doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to the appellate court.[21] We find no cogent reason to deviate from the findings and conclusions of the RTC and CA in this case.

It was established from prosecution evidence that the lone survivor Melody saw appellant using his bolo and knife, struck at her mother who was able to evade it and run outside the house. Appellant then turned to Melody, and hacked her three (3) times before stabbing Dony Rose and Kimberly who were both still sleeping. After finishing off his family, appellant inflicted his lone superficial wound before lying down on the floor, apparently to avoid suspicion that he was himself the culprit and create an impression that a trespasser had attacked all of them in the night. Melody vividly recounted to the court what she had witnessed while pretending to be still asleep even after she was hacked by appellant.

Melody's account was corroborated by the findings of prosecution witnesses Dr. Ragpa (who conducted the autopsy on the bodies of the three [3] victims) and Dr. Ronduen-Adriatico (who examined and treated Melody). Dr. Ragpa testified that Rosita sustained only a single stab wound on the chest. He explained that the width of such wound, 2 ½ inches, was caused by a single upward thrust and pulling out of the bladed instrument. The six (6)-inch deep wound hit the lower tip of the heart and resected the pulmonary vessels. For Rosita, the cause of death was hypovolemic shock due to resected pulmonary blood vessels. As for Kimberly, she sustained a hacking wound on the left axilla (armpit), probably inflicted in a lying position, which cut the head of the left humerus and resecting the axillary blood vessels. Kimberly also died from hypovolemic shock due to injured/resected left axillary blood vessels. Dony Rose had one (1) incised wound and one (1) stab wound on her chest, which

penetrated the left ventricle of the heart. She likewise died of hypovolemic shock due to penetrating stab wound on the chest.[22] On the other hand, Dr. Ronduen-Adriatico testified that Melody sustained five (5) wounds and had three (3) amputations of the three (3) digits of her right hand. She found the wounds located at the left side of the head, lower lip, left side of the neck, left shoulder, chest and the third, fourth and fifth fingers. Although the only fatal wound is that at the left side of the neck, the combination of all wounds would have caused the death of Melody had there been no timely medical assistance rendered on the patient. The neck wound was a fatal injury (victim could have died in less than six [6] hours) because of its proximity to large blood vessels such as carotid and tubular vessels.[23]

We hold that the trial court did not err in finding Melody's testimony clear and unequivocal, despite her answers not being as complete as would be desired, considering her age and difficulty of translating the questions to her in the Ifugao dialect. Her account of the incident was consistent with the physical evidence, particularly the findings of Dr. Ragpa and Dr. Ronduen-Adriatico on the injuries sustained and cause of death of the victims as a result of the carnage wrought upon their family by appellant.

The inconsistencies mentioned by appellant relate only to minor details and not to the fact of the fatal stabbing of his wife and two (2) children in his own hands. We have consistently ruled that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies. Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, they do not impair credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.[24] Discrepancies referring only to minor details and collateral matters - not to the central fact of the crime - do not affect the veracity or detract from the essential credibility of a witness as long as it is coherent and intrinsically believable on the whole.[25]

It must be further stressed that during her testimony, Melody had to be assisted by an interpreter as she responded to the questions in the Ifugao dialect. Besides, ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.[26] Despite the language barrier, Melody remained categorical and steadfast in declaring that it was her very own father, appellant, who hacked her, her mother and her younger sisters using his bolo and knife in the early morning of December 1, 2001 at their house. Thus, she testified during the direct examination:

PROS. TURINGAN:

Q.

Do you recall of any incident at that evening that is relevant to this case involving the killing of your sister Dony Rose, Kimberly, your mother and the fact that you were wounded?

A.

Yes, there was sir.

Q.

What was that incident that you recall Melody?

A.

He hacked us, sir.

Q.

Who hacked you?

A.

My papa, sir.

COURT:

Q.

Do you know the full name of your papa or nickname?

A.

Yes, sir I know.

Q.

What is the full name of your papa?

A.

Dionisio Calonge, sir.

x x x x

PROS. TURINGAN:

Q.

What did your father use in hacking you Melody?

A.

The knife and the bolo, sir.

x x x x

PROS. TURINGAN:

These bolo and knife, how are they related to the bolo and knife used by your father in hacking you, your sister and your mother?

A.

He stabbed and then he hacked, sir.

Q.

By the way, these bolo and knife, do you know who own these bolo and knife?

A.

Yes, sir.

Q.

Who own these bolo and knife Melody?

A.

My father sir.

Q.

How are these knife and bolo related to the bolo and knife used by your father in hacking your sister, yourself and your mother?

A.

He used that bolo in hacking and stabbing my mother and my sister, sir.

Q.

Who was hacked first by your father Melody?

A.

I, sir.

Q.

After hacking [you] Melody. . .By the way, what part of your body was hacked by your father?

A.

This one, sir. (Witness showing to the Court the three fingers that were cut from the middle finger up to the small finger of the left arm and also below the shoulder of the left arm).

Q.

Where else, Melody?

A.

(Witness showing to the Court the scar located at the left side of her lower lip and also at the back of her left ear).

Q.

After your father Melody hacked you, what happened next?

A.

My mother, sir.

COURT:

Q.

What was done to your mother?

A.

He stabbed her, sir.

PROS. TURINGAN:

Q.

And after he stabbed your mother, what did your father do next Melody?

A.

He returned back and used the bolo in hacking me three times, sir.

Q.

After that, what happened next Melody?

A.

Next, sir my father used the bolo in stabbing my sister's armpit and used in hacking her abdomen.

Q.

Which of these bolo and knife did he use in hacking and stabbing your sister?

ATTY. TABAGO:

Who? Sister?

A.

Both, sir.

COURT:

Q.

Are you saying that your father was holding two weapons at the same time?

A.

Yes, sir.

Alright, go ahead.

PROS. TURINGAN:

Q.

After that what did your father do?

A.

He pretended to stab his body, his neck and his abdomen, sir.

Q.

What did your father use in stabbing and wounding himself?

A.

The bolo, sir.

Q.

You are referring to this Exh. "G"?

A.

Yes, sir.[27] [Emphasis supplied.]

CONTINUATION OF DIRECT

BY PROS. TURINGAN:

Q.

When was that again when your mother and your sisters were hacked and stabbed by your father?

A.

December 1, 2001, sir.

Q.

In the early morning of December 1, 2001 were there other persons in your house aside from you, your father, mother and your sisters?

A.

None, sir.

Q.

The weapons used by your father in hacking and stabbing you, your mother and your sisters, if you can see them could you be able to identify them?

A.

Yes, sir.

Q.

There are here a bolo and a knife Melody, can you please examine these bolo and knife and tell the Court if these are the same weapons used by your father in hacking and stabbing you, your mother and your sisters?

A.

Yes, sir.

Q.

Who owns these bolo and knife Melody?

A.

My father, sir.[28]

As to appellant's assertion that Melody could not have seen her father stab her two (2) sisters who slept on the other room since it was still dark inside the house, Melody (during cross-examination[29]) had described their "rooms" as not actually separated by walls. She could thus see her two (2) sisters and appellant from where she was sleeping.[30] The policemen who investigated the crime scene also found that the partition was just a curtain.[31] Melody slept beside her mother while her sisters were beside their father on the other "room." [32] And while indeed it was still dark when appellant started hacking his wife and daughters, Melody had sufficient illumination provided by the flashlight used by appellant. This was mentioned by Melody in the later part of her direct examination:

Q.

Please tell the Court how you were able to see your father hacked and stabbed you, your mother and sisters?

A.

(No answer yet)

COURT:

Q.

x x x Why don't you start with where was she at the time the hacking and stabbing took place?

PROSECUTOR:

We withdraw that, your Honor. Aside from these bolo and knife Melody, was your father holding any other things?

A.

Yes, sir.

Q.

What was that Melody?

A.

Flashlight, sir.

Q.

Can you identify that flashlight it (sic) [if] you can see it Melody?

A.

Yes, sir.

Q.

There is here a flashlight marked as Exhibit "I". Can you please examine this flashlight and tell the Honorable Court if it is the same flashlight you mentioned?

A.

Yes, sir.

Q.

Who owns this flashlight Melody?

A.

My father, sir.

x x x x[33]

Q.

Could you please tell the Court how this flashlight was being held by your father?

A.

He put in his head the flashlight, sir.

Q.

Can you demonstrate how he placed in his head Melody?

A.

(Witness demonstrating how he placed the flashlight at the left side of her head with the use of a rubber tied on the flashlight).[34] [emphasis supplied.]

On cross-examination, Melody fixed the time of the incident at 4:00 in the morning when she woke up to prepare food. However, she went back to bed because she knew that appellant was already awake. Her mother and sisters were still asleep. Appellant then started hacking, first her mother, who evaded the blow and was able to run outside to seek help from her grandmother and aunt. Returning to Melody, appellant hit her three (3) times before following her mother outside.[35] At this point, Melody also recalled that her parents quarrelled on the night of November 30, 2001. Before they went to sleep, she saw her father sharpening his bolo. When she asked appellant what he was doing, he replied that he will kill Uncle Santy and his family. Melody said that she pretended to be still asleep when she woke up the next morning because she had seen appellant placed that bolo under his pillow. As to the exact time the quarrel took place, it can be gleaned from the transcript of stenographic notes that Melody initially could not estimate with reference to the night before they slept, but she eventually declared that her parents quarrelled from 6:00 o'clock until 7:00 o'clock in the evening of November 30, 2001.[36]

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 ascendant or other descendant, or the legitimate spouse of accused.[37] The key element in parricide is the relationship of the offender with the victim.[38] All the elements of the crime were clearly and sufficiently proved by the prosecution.

Even granting *arguendo* that Melody did not see the actual stabbing of her mother and two (2) sisters, the attendant circumstances point to no one else but the appellant as the perpetrator. Direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt. The oft-repeated rule has been that circumstantial evidence is adequate for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[39] While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person.[40]

As correctly found by the CA, the following circumstances taken together established without doubt that it was appellant who inflicted fatal wounds on Rosita, Melody, Dony Rose and Kimberly inside their house early morning of December 1, 2001: (1) after having a quarrel with Rosita the previous night, appellant was seen by Melody sharpening his bolo which he later hid under his pillow; (2) the bolo, knife and flashlight used in the hacking of the victims belong to appellant, and which were found in his possession when policemen arrived at the scene; (3) the medical findings showed that the victims' injuries were caused by sharp and bladed instruments; (4) there were no sign of forcible entry as the things inside the house were not disarranged; (5) the only persons inside the house were appellant, Rosita and their three children who slept in adjacent rooms separated only by a curtain;

(6) the only house near appellant's house was that of his parents-in-law; (7) Rosita was heard by her relatives shouting for help before their bodies were discovered; (8) appellant sustained only superficial wounds and was found conscious by the policemen; (9) appellant could not explain or say anything about how and when he and the victims were injured; and (10) Melody saw her father initially strike at her mother before the latter ran outside the house, and then stab her also five (5) times.

Appellant simply raises the defense of denial, which is inherently weak and cannot prevail over the positive identification^[41] made by Melody that he was the one (1) who hacked her, her mother and her sisters. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness,^[42] as in this case, the child of the assailant who survived his murderous rampage.

Under Article 246 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 (2) indivisible penalties, reclusion perpetua to death.

In the killing of Dony Rose and Kimberly, the trial court was correct in appreciating the aggravating circumstance of treachery. There is treachery when the attack is so sudden and unexpected that the victim had no opportunity either to avert the attack or to defend himself.^[43] Indeed, nothing can be more sudden and unexpected than when a father stabs to death his two (2) young daughters while they were sound asleep and totally defenseless. Thus, for the parricide committed against both Dony Rose and Kimberly, appellant was properly meted the death penalty in Criminal Case Nos. 4079 and 4078. Since the killings were committed in 2001, the trial court was correct in imposing upon appellant the supreme penalty of death. In view, however, of the passage and effectivity of R.A. No. 9346 on June 24, 2006, proscribing the imposition of the capital punishment, the CA correctly modified the imposable penalty on appellant to reclusion perpetua, without eligibility for parole, in line with Sections 2 and 3 of the said law.^[44]

SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Persons convicted of offenses punished with reclusion perpetua or 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. (Underscoring supplied.)

As to the killing of Rosita, neither treachery nor evident premeditation was present considering that she was able to parry the first thrust of appellant and ran away outside the house, and there is no evidence proving that appellant determined to commit the crime even as Melody recounted that she saw his father sharpening his bolo before they slept the previous night. Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.^[45] There is paucity of evidence as to the time, motive and the means chosen by appellant to carry out the intent to kill his entire family. There being no aggravating or mitigating circumstance, the trial court was correct in sentencing appellant to the lower penalty of reclusion perpetua^[46] in Criminal Case No. 4077.

On the civil indemnity awarded by the trial court in the amount of P75,000.00 each and another P50,000.00 each as moral damages, for the deaths of Dony Rose and Kimberly, the Court sustains the same. Likewise, the heirs of

Rosita are entitled to civil indemnity of P50,000.00 and another P50,000.00 as moral damages.

With regard to the frustrated felony, Article 250 of the Revised Penal Code, as amended, provides that -

ART. 250. Penalty for frustrated parricide, murder, or homicide. - The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes.

We therefore find the penalty imposed by the trial court proper and correct for this offense.

The trial court awarded Melody moral damages in the amount of P25,000.00, and another P20,000.00 as exemplary damages which are justified under Articles 2219 (1) and 2229 of the Civil Code. Further, under Article 2230 of the New Civil Code, exemplary damages are awarded to serve as a deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.[47]

Melody is likewise entitled to the sum of P11,025.00 as cost of her treatment and hospitalization. Anent actual or compensatory damages, it bears stressing that only substantiated and proven expenses or those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts.[48] Prosecution witness Lourdes Amlag testified that the family incurred expenses in connection with the funeral, wake and burial, totalling P21,255.00, as shown in the itemized list submitted to the trial court.[49]

WHEREFORE, premises considered, the Decision dated November 29, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01516 is hereby AFFIRMED.

With costs against accused-appellant.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

[*]Designated additional member per Special Order No. 843 dated May 17, 2010.

[1] CA rollo, pp. 108-125. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[2] Records, pp. 252-265. Penned by Judge Jose B. Rosales.

[3] Exhibit "B" and Pre-Trial Order, records, pp. 15 and 93.

[4] TSN, July 10, 2002, pp. 3-4, 7-13; TSN, August 6, 2002, pp. 1-2; TSN, September 11, 2002, pp. 4-6; TSN, October 9, 2002, pp. 5-9; Exhibits "O" and "Q", records, pp. 199-200.

[5] Exhibits "P", "P-2" and "P-1", records, pp. 16, 41 and 60; TSN, August 6, 2002, pp. 1-4, 6-7, 10, 12.

[6] Exhibit "G", records, p. 4; TSN, July 10, 2002, p. 13; TSN, August 6, 2002, pp. 7-8, 14-17.

[7] Records, p. 1.

[8] Id., p. 29.

- [9] Id., p. 49.
- [10] Id., p. 68.
- [11] TSN, February 23, 2005, pp. 4-7.
- [12] Id., pp. 8-9, 11-12; TSN, February 24, 2005, pp. 2-3.
- [13] As amended by Order dated September 5, 2005, records, p. 267.
- [14] Id., p. 265.
- [15] CA rollo, p. 125.
- [16] Id., pp. 128-131.
- [17] Rollo, p. 25.
- [18] Id., pp. 28-31.
- [19] Id., p. 33.
- [20] CA rollo, p. 45.
- [21] People v. Villamor, G.R. Nos. 140407-08 & 141908-09, January 15, 2002, 373 SCRA 254, 265, citing People v. Visaya, G.R. No. 136967, February 26, 2001, 352 SCRA 713, 725-726.
- [22] Exhibits "I", "J" and "K", records, pp. 193-195; TSN, March 5, 2003, pp. 2-9.
- [23] TSN, June 2, 2004, pp. 2-8.
- [24] People v. Castro, G.R. No. 172370, October 6, 2008, 567 SCRA 586, 595-596, citing People v. Bato, G.R. No. 134939, February 16, 2000, 325 SCRA 671, 677 and People v. Valla, G.R. No. 111285, January 24, 2000, 323 SCRA 74, 82.
- [25] People v. Suarez, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.
- [26] People v. De la Cruz, G.R. No. 116726, July 28, 1997, 276 SCRA 352, 357, citing People v. Salazar, G.R. No. 84391, April 7, 1993, 221 SCRA 170, 177.
- [27] TSN, March 6, 2003, pp. 18-23.
- [28] TSN, July 9, 2003, pp. 2-3.
- [29] TSN, September 17, 2003, p. 4.
- [30] Id.
- [31] TSN, October 9, 2002, p. 8.
- [32] TSN, September 17, 2003, p. 3.
- [33] TSN, July 9, 2003, pp. 3-4.
- [34] TSN, July 16, 2003, pp. 2-3.
- [35] TSN, July 17, 2003, pp. 5-6; TSN, September 17, 2003, pp. 6-9.
- [36] TSN, September 17, 2003, pp. 11-13; TSN, September 18, 2003, pp. 2-3; TSN, November 12, 2003, pp. 2-7.

- [37] LUIS B. REYES, The Revised Penal Code, 2006 Edition, Book II, p. 457.
- [38] *Id.*; *People v. Malabago*, G.R. No. 115686, December 2, 1996, 265 SCRA 198, 206.
- [39] *People v. Mactal*, G.R. No. 141187, April 28, 2003, 401 SCRA 612, 617-618, citing *People v. Abella*, G.R. No. 127803, August 28, 2000, 339 SCRA 129; *People v. Bago*, G.R. No. 122290, April 6, 2000, 330 SCRA 115; *People v. Sañez*, G.R. No. 132512, December 15, 1999, 320 SCRA 805, 815; *People v. Dela Cruz*, G.R. No. 108180, February 8, 1994, 229 SCRA 754, 764; *People v. De Guzman*, G.R. No. 92537, April 25, 1994, 231 SCRA 737 and *People v. Retuta*, G.R. No. 95758, August 2, 1994, 234 SCRA 645.
- [40] *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 221-222.
- [41] *People v. Dela Torre*, G.R. No. 83326, May 27, 1997, 272 SCRA 615, 623.
- [42] *People v. Tumalak*, G.R. No. 177299, November 28, 2007, 539 SCRA 296, 304.
- [43] *People v. Delima, Jr.*, G.R. No. 169869, July 12, 2007, 527 SCRA 526, 539, citing *Andrada v. People*, G.R. No. 135222, March 4, 2005, 452 SCRA 685, 695.
- [44] *People v. Castro*, *supra* note 24 at 607.
- [45] *People v. Torpio*, G.R. No. 138984, June 4, 2004, 431 SCRA 9, 15-16, citing *People v. Recepcion*, G.R. Nos. 141943-45, November 13, 2002, 391 SCRA 558, 590.
- [46] See *People v. Ayuman*, G.R. No. 133436, April 14, 2004, 427 SCRA 248, 260.
- [47] *People v. Castro*, *supra* note 24, at 609, citing *People v. Gandia*, G.R. No. 175332, February 6, 2008, 544 SCRA 115, *People v. Daleba, Jr.*, G.R. No. 168100, November 20, 2007, 537 SCRA 708.
- [48] *People v. Listerio*, G.R. No. 122099, July 5, 2000, 335 SCRA 40, 66.
- [49] Exhibits "L", "M" and "N", records, pp. 196-198; TSN, January 28, 2004, pp. 2-5.

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