

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SUSAN LATOSA Y CHICO, ACCUSED-APPELLANT.

G.R. No. 186128. June 23, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This is an appeal from the Decision[1] dated April 23, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02192 which affirmed the April 12, 2006 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 159, convicting appellant Susan Latosa y Chico of parricide.

Appellant was charged with parricide in an information[3] which reads,

That, on or about the 5[th] of February 2002, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the legitimate wife of one Felixberto Latosa y Jaudalso, armed with and using an unlicensed gun, with intent to kill, did then and there willfully, unlawfully and feloniously shoot her husband, Felixberto Latosa y Jaudalso, hitting him on the head, thereby causing the latter to sustain gunshot wound which directly caused his death.

CONTRARY TO LAW.

Upon arraignment on June 25, 2002, appellant, with the assistance of counsel, pleaded not guilty. Trial thereafter ensued.

The prosecution's evidence established the following version:

On February 5, 2002, at around 2:00 in the afternoon, appellant and her husband Major Felixberto Latosa, Sr. (Felixberto) together with two (2) of their children, Sassymae Latosa (Sassymae) and Michael Latosa (Michael), were at their house in Fort Bonifacio. Felixberto, Sr. was then asleep[4] when Sassymae saw appellant take Felixberto Sr.'s gun from the cabinet and leave. She asked her mother where she was going and if she could come along, but appellant refused.[5]

Moments later, appellant returned and told Sassymae to buy ice cream at the commissary. Appellant gave her money and asked her to leave.[6] After Sassymae left, appellant instructed Michael to follow his sister, but he refused as he was hungry. Appellant insisted and further told Michael not to make any noise as his father was sleeping. Nevertheless, appellant went back inside the house and turned up the volume of the television and the radio to full.[7] Shortly after that, she came out again and gave Michael some money to buy food at the grocery.

Instead of buying food, Michael bought ice candy and returned to the barracks located at the back of their house. Michael thereupon saw his friend Mac-Mac Nisperos who told him that he saw appellant running away from their house. Michael did not pay any attention to his friend's comment, and simply continued eating his ice candy. Moments later, a certain Sgt. Ramos arrived and asked if something had happened in their house. Michael replied in the negative then entered their house. At that point, he saw his father lying on the bed with a hole in the left portion of his head and a gun at his left hand.

Michael immediately went outside and informed Sgt. Ramos about what happened. Sgt. Ramos told him that appellant had reported the shooting incident to the Provost Marshall office.[8] Then, Sassymae arrived and saw her father with a bullet wound on his head and a gun near his left hand.[9]

Felixberto Latosa, Jr., one (1) of the legitimate sons of appellant and the victim, also testified that sometime in December 2001, their father told him and his siblings over dinner about a threat to their lives by a certain Efren Sta. Inez.[10]

Appellant, testifying on her own behalf, on the other hand claimed that when Felixberto, Sr. woke up, he asked her to get his service pistol from the cabinet adjacent to their bed. As she was handing the pistol to him it suddenly fired, hitting Felixberto, Sr. who was still lying down. Shocked, she ran quickly to Felixberto, Sr.'s office and asked for help.[11] She also claimed that when Felixberto, Sr. asked her for his gun, she was on her way out of the house to follow her children who left for the market on an errand she had earlier given Sassymae. She claimed that she wanted to drive for them because it was hot. She ran after them but after a few minutes, when she realized that she did not have with her the keys to their jeep, she went back to their house. Felixberto, Sr. then asked again for his gun, and it was then that it fired as she was handing it to him.[12]

Appellant further described herself as a good mother and a good provider for their six (6) children whom she raised by herself while Felixberto, Sr. was in Mindanao. She claimed that they testified against her because they were manipulated by her brother-in-law, Francisco Latosa.[13] She denied that Sassymae saw her holding a gun when she asked her to buy ice cream, alleging that Michael and Sassymae saw her holding the gun only when she placed it inside the cabinet before they proceeded to the hospital.[14]

Appellant also denied her children's testimony[15] that she was having an affair with a certain Col. Efren Sta. Inez (Sta. Inez), a policeman. She claimed that she first met Sta. Inez when her youngest brother was killed on June 6, 2001 by unidentified men. Sta. Inez was the one (1) who assisted her. She was alone at that time since her husband informed her that he could not leave his post in Mindanao for he had to rush some papers. She allegedly only saw Sta. Inez twice but admitted that Sta. Inez went to the precinct when he learned of the shooting incident.[16] She also denied that she was terminated from her job at the Philippine Public Safety College due to immorality for having said affair. She claimed that she was terminated because she had incurred numerous absences from her work as she grieved the death of her youngest brother and had lost interest in her work after his death.[17]

The RTC found appellant guilty beyond reasonable doubt for killing her husband Felixberto, Sr. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, this Court finds the accused SUSAN LATOSA Y CHICO "GUILTY" beyond reasonable doubt of the crime of parricide under Art. 246 of the Revised Penal Code as amended by RA 7659 in rel. to Sec. 1[,] 3[rd] par. PD 1866 as amended by RA 8294 and Sec. 5, RA 8294 and hereby sentences the said accused to suffer the penalty of reclusion perpetua and to further indemnify the victim the amount of P50,000 as civil indemnity[,] P50,000 as moral damages and P25,000 as exemplary damages.

SO ORDERED.[18]

The RTC held that the claim of accidental shooting was inconsistent with the evidence considering the location of the gunshot wound, which was at the left temple of Felixberto, Sr., and the fact that the gun was found near Felixberto, Sr.'s left hand despite his being right-handed. The trial court found that appellant planned the killing by asking her two (2) children to leave the house and, after the shooting, placing the gun near the victim's left hand to suggest that the death was suicide. But appellant overlooked the fact that Felixberto, Sr. was right-handed.

The trial court noted that despite the grueling cross-examination of the defense counsel, the Latosa children never wavered in their testimonies about what they knew regarding the circumstances surrounding the shooting incident. Their testimonies bore the hallmarks of truth as they were consistent on material points. The RTC found it inconceivable that the children would testify against their own mother or concoct a story of parricide unless they were impelled by their passion to condemn an injustice done to their father.[19]

The RTC, in finding appellant guilty, considered the following circumstantial evidence established by the prosecution: (1) shortly before the shooting, appellant asked her two (2) children to do errands for her which were not usually asked of them; (2) at the time of the shooting, only the appellant and Felixberto, Sr. were in the house; (3) appellant was seen running away from the house immediately after the shooting; (4) when Michael went inside their house, he found his father with a hole in the head and a gun in his left hand; (5) the medico-legal report showed that the cause of death was intracranial hemorrhage due to the gunshot wound on the head with the point of entry at the left temporal region; (6) the Firearms Identification Report concluded that appellant fired two (2) shots; (7) Felixberto, Sr. was right-handed and the gun was found near his left hand; (8) Sassymae testified that she heard Sta. Inez tell appellant "bakit mo inamin. Sana pinahawak mo kay Major iyong baril saka mo pinutok"; (9) appellant's children testified that they were informed by Felixberto, Sr. regarding the threat of appellant's paramour, Sta. Inez, to the whole family; and (10) Francisco Latosa presented a memorandum showing that appellant was terminated from her teaching job by reason of immorality.[20]

On appeal, the CA upheld the decision of the RTC. The CA held that since appellant admitted having killed her husband albeit allegedly by accident, she has the burden of proving the presence of the exempting circumstance of accident to relieve herself of criminal responsibility. She must rely on the strength of her own evidence and not on the weakness of the prosecution, for even if this be weak, it cannot be disbelieved after the appellant has admitted the killing.[21]

The CA, however, found appellant's version of accidental shooting not credible. Citing the case of *People v. Reyes*,[22] the CA held that appellant's claim of accidental shooting was negated by the following facts: (1) a revolver is not prone to accidental firing as pressure on the trigger is necessary to make the gun fire, cocked or uncocked; and (2) when handing a gun to a person, the barrel or muzzle is never pointed to that person. In this case, appellant held the gun in one (1) hand and extended it towards her husband who was still lying in bed. Assuming that appellant was not aware of the basic firearm safety rule that the firearm's muzzle is never pointed to a person, she failed to explain why the gun would accidentally fire, when it should not have fired unless there was pressure on the trigger. The location of Felixberto, Sr.'s wound also showed that the shooting was not accidental. Appellant did not dispute that Felixberto, Sr. was lying down during the shooting and that after the incident, the gun was found near his left hand. The CA found that it was contrary to human nature that a newly awakened military man would suddenly ask his wife, who was busy doing other things, to bring his firearm, and patiently wait for her to come back to their house, when the gun was just inside an adjacent cabinet only two (2) meters away from his bed.[23]

The dispositive portion of the CA decision reads as follows:

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court of Pasig City, Branch 159, in Criminal Case No. 122621-H finding SUSAN LATOSA y CHICO guilty beyond reasonable doubt of the crime of parricide under Article 246 of the Revised Penal Code and sentencing her to suffer the penalty of reclusion perpetua and ordering her to pay the heirs of Felixberto Latosa the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages is AFFIRMED.

SO ORDERED.[24]

Undaunted, appellant filed a Notice of Appeal on May 12, 2008.[25]

Appellant argues that the circumstantial evidence presented by the prosecution was insufficient to prove that she intentionally killed her husband. She insists that the gun fired accidentally while she was giving it to Felixberto, Sr. Since she had no experience in handling firearms, she was not able to foresee that it would fire accidentally and hit her husband. After her husband was hit, she immediately rushed to his office and asked for assistance.[26]

The only issue the Court has to resolve in this case is whether the exempting circumstance of accident was established by appellant.

The basis of appellant's defense of accidental shooting is Article 12, paragraph 4 of the Revised Penal Code, as amended, which provides:

ART. 12. Circumstances which exempt from criminal liability. - The following are exempt from criminal liability:

x x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

Thus, it was incumbent upon appellant to prove with clear and convincing evidence, the following essential requisites for the exempting circumstance of accident, to wit:

1. She was performing a lawful act;
2. With due care;
3. She caused the injury to her husband by mere accident;
4. Without fault or intention of causing it.[27]

To prove the circumstance she must rely on the strength of her own evidence and not on the weakness of that of the prosecution, for even if this be weak, it can not be disbelieved after the accused has admitted the killing.[28]

However, by no stretch of imagination could the pointing of the gun towards her husband's head and pulling the trigger be considered as performing a lawful act with due care. As correctly found by the CA, which we quote in full:

Appellant's version that she "accidentally shot" her husband is not credible. Appellant's manner of carrying the caliber .45 pistol negates her claim of "due care" in the performance of an act. The location of the wound sustained by the victim shows that the shooting was not merely accidental. The victim was lying down and the fact that the gun was found near his left hand was not directly disputed by her. We find it contrary to human nature that a newly awakened military man would suddenly ask his wife for his firearm, and even patiently wait for her return to the house, when the said firearm was just inside the cabinet which, according to appellant, was just about two meters away from his bed.

x x x x

In the case at bench, appellant held the gun in one hand and extended it towards her husband who was still lying in bed. Assuming arguendo that appellant has never learned how to fire a gun and was merely handing the firearm over to the deceased, the muzzle is never pointed to a person, a basic firearms safety rule which appellant is deemed to have already known since she admitted, during trial, that she sometimes handed over the gun to her husband. Assuming further that she was not aware of this basic rule, it needed explaining why the gun would accidentally fire, when it should not, unless there was pressure on the trigger.[29]

There is no merit in appellant's contention that the prosecution failed to prove by circumstantial evidence her

motive in killing her husband. Intent to kill and not motive is the essential element of the offense on which her conviction rests. Evidence to prove intent to kill in crimes against persons may consist, inter alia, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.[30]

In the instant case, the following circumstantial evidence considered by the RTC and affirmed by the CA satisfactorily established appellant's intent to kill her husband and sustained her conviction for the crime, to wit:

The prosecution established the following circumstantial evidence:

(1) Susan Latosa, the accused, asked her twins to do errands for her. She first asked Sassymae to go to Commissary to buy ice cream, thereafter, she asked Michael to follow his sister at the Commissary which according to the prosecution witnesses was not the usual thing the accused would do;

(2) Thereafter, it was only the accused and the victim who were left alone in the house;

(3) After the witness Michael, son of the accused and the victim left and proceeded at the barracks located at the back of their house, Susan Latosa was seen running away from the house by Michael's friend named Macmac;

(4) Immediately thereafter, Michael Latosa went inside the room of their barracks and saw his father with sort of a hole in the head, blood on the nose and had a gun in his left hand (TSN, May 5, 2003, pp. 7-8, 12-13);

(5) The cause of death of the victim Felixberto Latosa was intracranial hemorrhage due to gunshot wound of the head (per Medico-legal Report No. M-052-2002, Exh. P);

(6) Susan Latosa's paraffin test yielded positive result for the presence of gunpowder nitrate in her right hand;

x x x

(8) The point of entry of the gunshot wound found on the victim was located at the left temporal region as evidenced by Medico Legal Report No. M-052-2002 (Exhibit P);

(9) The victim was a right-handed and the gun was found on the latter's left hand;

(10) Sassymae Latosa [testified] that she heard Col. Sta. Inez [tell] her mother, ..."bakit mo inamin. Sana pinahawak mo kay Major iyong baril saka mo pinutok." (TSN, May 19, 2002, p. 13); and

(11) The children testified that they were informed by the victim regarding the threat of Sta. Inez to the whole family who alleged[ly] has an amorous relationship with their mother. Francisco Latosa presented a memorandum that accused was terminated from her teaching job by reason of immorality.[31]

Moreover, the Court finds no cogent reason to review much less depart now from the findings of the RTC as affirmed by the CA that appellant's version is undeserving of credence. It is doctrinally settled that the assessments of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[32] We find none in this case.

One last note. On the matter of damages, the CA awarded exemplary damages in the amount of P25,000.00. We increase the award to P30,000.00 in light of prevailing jurisprudence^[33] fixing the award of exemplary damages to said amount.

WHEREFORE, the appeal of Susan Latosa y Chico is DISMISSED. The April 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02192 is hereby AFFIRMED with MODIFICATION. The amount of exemplary damages is increased to P30,000.00.

With costs against the accused-appellant.

SO ORDERED.

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

[*] Additional member per Special Order No. 843.

[1] Rollo, pp. 2-17. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Remedios A. Salazar-Fernando and Sesinando E. Villon concurring.

[2] CA rollo, pp. 21-45. Penned by Judge Rodolfo R. Bonifacio.

[3] Records, pp. 1-2.

[4] TSN, November 8, 2005, pp. 10-11.

[5] TSN, May 19, 2003, pp. 4-6, 20.

[6] Id. at 5.

[7] TSN, May 5, 2003, pp. 9-11.

[8] Id. at 8, 11-13, 15.

[9] TSN, May 19, 2003, p. 5.

[10] TSN, July 15, 2003, pp. 3, 5-6.

[11] TSN, November 8, 2005, pp. 18-24.

[12] Id. at 13-19.

[13] Id. at 27-28.

[14] Id. at 42-44.

[15] TSN, May 19, 2003, p.4; TSN, May 5, 2003, pp. 17-18.

[16] TSN, November 8, 2005, pp. 29-32.

[17] Id. at 36-41.

[18] CA rollo, p. 45.

[19] Id. at 43-45.

[20] Id. at 42-43.

[21] Rollo, p. 14.

[22] No. L-33154, February 27, 1976, 69 SCRA 474, 478-479.

[23] Rollo, p. 15.

[24] Id. at 17.

[25] Id. at 18-19.

[26] CA rollo, pp. 64-70.

[27] Toledo v. People, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 105.

[28] People v. Nepomuceno, Jr., G.R. No. 127818, November 11, 1998, 298 SCRA 450, 464.

[29] Rollo, p. 15.

[30] Rivera v. People, G.R. No. 166326, January 25, 2006, 480 SCRA 188, 197.

[31] CA rollo, pp. 42-43.

[32] People v. Pili, G.R. No. 124739, April 15, 1998, 289 SCRA 118, 131.

[33] People v. Mortera, G.R. No. 188104, April 23, 2010, p. 14.

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