

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAY MANDY MAGLIAN Y REYES, ACCUSED-APPELLANT.

G.R. No. 189834. March 30, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the December 23, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02541, which affirmed the May 8, 2006 Decision in Criminal Case No. 8393-00 of the Regional Trial Court (RTC), Branch 22 in Imus, Cavite, The RTC found accused Jay Mandy Maglian guilty of parricide.

The Facts

An Information[2] charged the accused as follows:

That on or about the 4th day of January 2000, in the Municipality of Dasmarinas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court[,] accused with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, and set on fire Mary Jay Rios Maglian, his lawfully wedded spouse, who as a result sustained 90% Third Degree Burns on the face and other vital parts of the body that caused her death, to the damage and prejudice of hte heirs of the said Mary Jay Rios Maglian.

During his arraignment, the accused pleaded "not guilty."

The prosecution presented witnesses Lourdes Riosm Norma Saballero, Dr. Ludovino Lagat, Amy Velasquez, and Ramon Oredain. The defense, on the other hand, presented accused Maglian, Atty. Ma. Angelina Barcelo, Atty. Rosemarie PErey-Duque, Police Officer 3 (PO3) Celestino San Jose, and Lourdes Panopio as witnesses.

The facts established during the trial below.

The accused is a businessman engaged in the lending business and the buying and selling of cars and real estate. He and atty. Mary Jay Rios (Mary Jay) were married on January 29, 1999. They had a son, MAteo Jay.[3]

On January 4, 2000, the accused and Mary Jay were having dinner at their home in Dasmariñas, Cavite when they got into an argument. The accused did not want Mary Jay to attend a party, causing them to fight. Incensed, the accused collected the clothes that MARY Joy had given him for Chirstmas and told her he would burn them all and started pouring kerosene on the clothes. Mary tried to wrestle the can of kerosene from him and, at the same time, warned him not to pour it on her. Despite his wife's plea, the accused still poured gas on her, thus setting both the clothes and his wife on fire.[4]

The accused brought Ma Jay to the De la Salle University Medical Center Das Mariñas. After four days, she was transferred by her aunt to the burn unit of the East Avenue Medical Center in Quezon City, were her condition improved. Subsequently, however, the accused transferred her to St. Claire Hospital, which did not have a burn unit. Since her condition deteriorated, Lourdes Rios, Mary Jay's mother, had her transferred to the Philippine General Hospital (PGH) in Manila but she was no longer able to recover. Before she expired, she told her mother

what had happened to her, declaring, "Si Jay Mandy ang nagsunog sa akin. (Jay Mandy burned me.)" She passed away on February 24, 2000.[5]

The accused, in his defense, said the burning incident was completely accidental. He said it was Mary Jay who was being difficult while they were arguing. She threatened to throw away the clothes he had given her. To spite her, he also took the clothes that she had given him and told her he would burn them all. He then got a match and a gallon of kerosene. Mary Jay caught up with him at the dirty kitchen and took the match and kerosene from him. In the process, they both got wet from the spilled kerosene. She got angry at how he was looking at her and screamed, "Mandy, Mandy, wag yan, wag yan, ako na lang ang sunugin mo. (Mandy, don't burn that, burn me instead.)"

Accused, trying to avoid further provoking his wife, left his wife and went upstairs to his son. While climbing the stairs, he heard Mary Jay shouting, "Mandy, Mandy, nasusunog ako. (Mandy, I'm burning.)" He ran down the steps and saw the blaze had reached the ceiling of the kitchen. He embraced his wife and called out to his mother to help them. He poured water on her when the fire could not be put out and brought her to the living room. He then carried Mary Jay to the car while shouting for help from the neighbors. In the process, he sustained burns on his legs and arms.[6]

While Mary Jay was still confined at the East Avenue Medical Center, the accused learned from a certain Judge Tanguanco that using "red medicine" would help heal his wife's burn wounds. The hospital, however, did not allow him to use the "red. medicine" on Mary Jay. He thus had his wife transferred to PGH. When there was no space at the hospital, she was transferred to St. Claire Hospital with the help of a certain Judge Espanol. The doctors at St, Claire advised him to stop using the "red medicine" on his wife when her wounds started to get worse and began emitting a foul odor.[7]

The accused asserted that his mother-in-law, Lourdes Rios, and their laundrywoman, Norma Saballero, accused him of burning his wife since his wife's family had been angry with him ever since they got married. His mother-in-law and Mary Jay's siblings used to ask money from them and would get angry with him if they did not receive any help.[8]

The accused likewise claimed that his late wife made a dying declaration in the presence of PO3 Celestino San Jose and Atty. Rosemarie Perey-Duque. This allegation was corroborated by PO3 San Jose, who testified that Mary Jay was a friend and he had visited her at East Avenue Medical Center on January 13, 2000. He was there to take Mary Jay's statement upon instructions of Chief Major Bulalacao.[9] PO3 San Jose narrated the incident during his direct examination by Atty. Bihasa:

Q

What, if any, was the reply of Atty. [Mary Joy] Rios?

A

She nodded her head.

Q

And after that, what happened next:

A

I told her that I will get her statement and she told me that she could give her statement.

Q

And after Atty. Rios told you that she was capable of giving her statement, what if any transpired?

A

I took her statement, which was in my handwriting.

Q

Her statement was in your handwriting but who uttered those statements?

A

It was Atty. Rios.[10]

Atty. Duque testified that the last time she spoke with Mary Jay was on January 13, 2000, when she visited her at the hospital along with PO3 San Jose. The statements of Mary Jay were reduced into writing and Atty. Duque helped in lifting the arm of the patient so that she could sign the document.[11]

The Ruling of the Trial Court

The RTC rendered its Decision on May 8, 2006, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds and so it hereby holds that the prosecution had established the guilt of the accused JAY MANDY MAGLIAN y REYES beyond reasonable doubt and so it hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Inasmuch as the civil aspect of this case was prosecuted together with the criminal aspect, the accused is also hereby ordered to indemnify the heirs of the deceased the following amounts of:

- Php5 00.000 as actual damages
- Php500,000 as moral damages,
- Php200,000 as exemplary damages,
- Php200,000 as attorney's fees; and
- Cost of suit against the accused.

SO ORDERED.[12]

The Ruling of the Appellate Court

On appeal, accused-appellant faulted the trial court for not giving credence to the dying declaration Mary Jay made to her friends who became defense witnesses. He averred that the trial court erred in not admitting the deposition by oral examination of Atty. Ma. Angelina Barcelo which would corroborate the testimonies of the defense witnesses regarding the handwritten dying declaration of Mary Jay. The trial court was also questioned for giving credence to the perjured and biased testimonies of prosecution witnesses Lourdes Rios and Norma Saballero. Lastly, accused-appellant averred that the trial court erroneously disallowed the defense from presenting Dr. Ma. Victoria Briguela, a qualified psychiatrist, who could testify that Mary Jay's mental, psychological, and emotional condition on February 24, 2000 was disoriented and she could not have made a dying declaration on said date.

The CA upheld the ruling of the trial court. The dying declaration made by Mary Jay to her mother Lourdes and laundrywoman Norma had all the essential requisites and could thus be used to convict accused-appellant. It noted that while the testimonies of Lourdes and Norma on the dying declaration had some inconsistencies, these were

immaterial and did not affect their credibility. It observed that no ill motive was presented and proved as to why the prosecution's witnesses would make false accusations against accused-appellant.

Hence, we have this appeal.

On December 14, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, represented by the Office of the Solicitor General, manifested that it was adopting its previous arguments.

The Issue

In his Supplemental Brief, accused-appellant raises the following issue:

Whether the guilt of accused-appellant has been established beyond reasonable doubt.

Accused-appellant contends that (1) he never or did not intend to commit so grave a wrong as that committed or so grave an offense as the felony charged against him; and (2) that he voluntarily, and of his own free will, surrendered or yielded to the police or government authorities. He claims that the victim's dying declaration showed that what happened to her was an accident. He avers that this was corroborated by three witnesses. The victim's attending physician, he insists, also testified that he was told by the victim that what happened to her was an accident.

If not acquitted, accused-appellant argues that, in the alternative, his sentence must be reduced due to mitigating circumstances of no intention to commit so grave a wrong and voluntary surrender. He claims he is entitled to the latter since he voluntarily surrendered to the authorities before criminal proceedings were commenced against him. The reduction of his sentence, he contends, must be by at least another degree or to prison mayor or lower.

The Ruling of the Court

We affirm accused-appellant's conviction.

Dying declaration

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." [13] It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." [14]

The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death." [15] The question to be answered is which dying declaration satisfies the aforementioned circumstances, the one made by Mary Jay to Lourdes and Norma, or the one she made before Atty. Duque and PO3 San Jose.

Accused-appellant contends that his late wife's dying declaration as told to the defense witnesses Atty. Duque and PO3 San Jose effectively absolved him from any wrongdoing. However, it is the dying declaration presented by the prosecution that satisfies all the requisites provided in the Rules. In contrast, the dying declaration for the defense did not show that Mary Jay's death at the time of said declaration appeared to be imminent and that she was under a consciousness of impending death.

Moreover, We defer to the factual finding that the witnesses for the prosecution were more credible. Mary Jay's

dying declaration to her mother Lourdes and to Norma showed that accused-appellant was the one who set her in flames. Lourdes and the Maglians' laundrywoman Norma both testified that Mary Jay, moments before her actual death, told them that it was accused-appellant who was responsible for burning her. Lourdes and Norma both testified that at the time of Mary Jay's declaration, she was lucid and aware that she was soon going to expire. Furthermore, the so-called dying declaration made by Mary Jay to defense witnesses Atty. Duque and PO3 San Jose suffers from irregularities. The dying declaration allegedly made to Atty. Duque and PO3 San Jose was handwritten by the latter but he did not have it sworn under oath. We reiterate too that it was not clear that it was executed with the knowledge of impending death since the statements were made more than a month before Mary Jay died.

We agree with the trial and appellate courts that Lourdes and Norma were both credible witnesses and had no motive to lie about Mary Jay's dying declaration. The appellate court correctly pointed out that although Lourdes was Mary Jay's mother, this relationship did not automatically discredit Lourdes' testimony. And while accused-appellant alleged that Lourdes as his mother-in-law did not approve of him, he could not give any improper motive for Norma to falsely accuse him. Between the two competing statements of the two sets of witnesses, the one presented by the prosecution should clearly be given more weight as it satisfies the requisites of an admissible dying declaration.

No intent to commit so grave a wrong

The Revised Penal Code provides under Article 13(3) the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed. We held, "This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act." [16] We also held, "This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury sustained by the victim." [17]

Aiming for this mitigating circumstance, accused-appellant once again relies on the statements of the defense witnesses that Mary Jay told them what happened to her was an accident. However, as earlier discussed, Mary Jay's dying declaration contradicts the alleged exculpatory statement she earlier made to the defense witnesses. Moreover, the prosecution took pains in court to demonstrate that fighting over the kerosene container would not have caused Mary Jay to be drenched in kerosene. As aptly explained by the trial court:

The court is convinced that the deceased did not take possession of the gallon container with kerosene. The accused had full control and possession of the same. He is a bulky and very muscular person while the deceased was of light built, shorter, smaller and weaker. When a demonstration was made in open court about the struggle for possession of the container, it was shown that the contents of the same did not spill owing to the little amount of liquid and its narrow opening. To be able to wet 90 percent of the body surface the kerosene content of the gallon container must have been poured over the head of the deceased. This explains why when she got ignited, the flames rose up to the ceiling and burned her from head to toe. [18]

It is extremely far-fetched that accused-appellant could accidentally pour kerosene on his wife and likewise accidentally light her up and cause third degree burns to 90% of her body. We, thus, agree with the trial court's finding that accused-appellant knew the fatal injuries that he could cause when he poured kerosene all over his wife and lit a match to ignite a fire. There was no disparity between the means he used in injuring his wife and the resulting third degree burns on her body. He is, thus, not entitled to the mitigating circumstance under Art. 13(3) of the Code.

Voluntary surrender

An accused may enjoy the mitigating circumstance of voluntary surrender if the following requisites are present: "1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary." We explained, "The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture."

To avail himself of this mitigating circumstance, accused-appellant claims that he voluntarily yielded to the police authorities on October 14, 2002, or before the commencement of the criminal proceedings against him. He avers that this claim is backed by the records of the case and a certification made by the Dasmariñas Police Station. He contends that both the RTC and the CA inexplicably did not appreciate this mitigating circumstance in his favor.

A review of the records shows that accused-appellant on October 16, 2000 filed with the Department of Justice (DOJ) a Petition for Review of the Resolution of the private prosecutor in the instant case. Subsequently, a warrant of arrest for the parricide charge was issued against him on October 30, 2000.[21] However, a Motion, to Defer Implementation of Warrant of Arrest was filed by accused on November 13, 2000[22] and was granted by the RTC on December 12, 2000 in view of the petition for review he had filed before the DOJ.[23] On September 11, 2002, the DOJ issued a Resolution[24] denying the petition of accused-appellant. The defense later submitted a Certification[25] issued by the Philippine National Police-Dasmarinas Municipal Police Station dated October 18 2002 stating the following:

THIS IS TO CERTIFY that the following are excerpts from the entries on the Official Police Blotter of Dasmarinas Municipal Police Station, appearing on page 0331 and 0332, blotter entry nos. 1036 and 1047 respectively, dated 15 October 2002, quoted verbatim as follows:

150740H October 2002 - "P/I Apolinar P. Reyes reported that one Jaymandy Maglian y Reyes, 30 years old, resident of #24 Bucal, Sampalok II, Dasmarinas, Cavite, with Warrant of Arrest issued by RTC Branch 21, Imus, Cavite, in CC# 8393-00 for Parricide, voluntarily surrendered to him on October 14, 2002. Subject is turned over to this station on this date".

151350H October 2002 - "One Jaymandy Maglian was transferred to BJMP and escorted by P/I Apolinar Reyes".

(Entries written by SPO3 Ricardo V. Sayoto - duty desk officer)

We find that in the case of accused-appellant, all the elements for a valid voluntary surrender were present. Accused-appellant at the time of his surrender had not actually been arrested. He surrendered to the police authorities. His surrender was voluntary, as borne by the certification issued by the police. There is, thus, merit to the claim of accused-appellant that he is entitled to the mitigating circumstance of voluntary surrender.

It bears noting that parricide, however, according to Art. 246 of the Revised Penal Code, is punishable by two indivisible penalties, reclusion perpetua to death. The Code provides under Art. 63(3) that when a law prescribes a penalty with two indivisible penalties and the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. But Section 3 of Republic Act No. (RA) 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) provides that "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." The proper sentence in the instant case would, thus, be reclusion perpetua which is

still the lesser penalty.

Anent an issue previously raised by accused-appellant and which was not discussed by the CA, while accused-appellant claims that the trial court erred in not admitting the deposition by oral examination of Atty. Ma. Angelina Barcelo, We note that the records show that an Order[26] was issued by Judge Norberto J. Quisumbing, Jr. granting accused-appellant's motion to take oral deposition of Atty. Barcelo.

Pecuniary liability

The trial court ordered accused-appellant to pay PhP 500,000 as actual damages; PhP 500,000 as moral damages; PhP 200,000 as exemplary damages; and PhP 200,000 as attorney's fees.

We modify the monetary awards, those being excessive. We award a civil indemnity ex delicto as this is "mandatory upon proof of the fact of death of the victim and the culpability of the accused for the death." [27] As We ruled, "When death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases." [28] Current jurisprudence pegs the award of civil indemnity at PhP 50,000. [29]

Moral damages should also be awarded even absent allegation and proof of the emotional suffering by the victim's heirs. The amount should be decreased to PhP 50,000 in accordance with jurisprudence. [30] Exemplary damages in the lowered amount of PhP 30,000 are likewise in order in this case charging parricide, as the qualifying circumstance of relationship is present. [31]

As to the attorney's fees awarded, these must be reasonable in accordance with Art. 2208 of the Civil Code. We, thus, reduce the attorney's fees to a more reasonable amount of PhP 50,000.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 02541 affirming the RTC Decision that found accused-appellant guilty beyond reasonable doubt of parricide is AFFIRMED with MODIFICATION. The fallo of the RTC Decision should be modified to read, as follows:

WHEREFORE, premises considered, this Court finds and so it hereby holds that the prosecution had established the guilt of the accused JAY MANDY MAGLIAN y REYES beyond reasonable doubt and so it hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Inasmuch as the civil aspect of this case was prosecuted together with the criminal aspect, the accused is also hereby ordered to indemnify the heirs of the deceased the following amounts of:

- a. PhP 500,000 as actual damages;
- b. PhP 50,000 as civil indemnity;
- c. PhP 50,000 as moral damages;
- d. PhP 30,000 as exemplary damages;
- e. PhP 50,000 as attorney's fees; and
- f. Cost of suit against accused-appellant.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Brion, [*] and Perez, JJ., concur.

[*] Additional member per Raffle dated October 11, 2010.

[1] Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. Del Castillo

and Arcangelita M. Romilla-Lontok.

[2] Rollo, pp. 4-5.

[3] CA rollo, p. 57.

[4] Id. at 51.

[5] id.

[6] Id. at 57-58.

[7] Id. at 59.

[8] Id. at 60.

[9] Records, p. 20.

[10] Id.

[11] CA rollo, p. 56.

[12] Records, p. 1130. Penned by Judge Cesar A. Mangrobang.

[13] *Marturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 305.

[14] *People v. Cerilla*, G.R. No. 177147, November 28, 2007, 539 SCRA 251, 262.

[15] *Geraldov. People*, G.R. No. 173608, November 20, 2008, 571 SCR A, 420, 430.

[16] *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 837.

[17] *People v. Gonzalez, Jr.*, G.R. No. 139542, June 21, 2001, 359 SCRA 352, 379.

[18] CA rollo, p. 73.

[19] *De Vera v. De Kera*, G.R.No. 172832, April 6, 2009, 584 SCRA 506, 515.

[20] Id.

[21] Records, p. 55.

[22] Id. at 57.

[23] Id. at 54.

[24] Id. at 77-78.

[25] Id. at 199.

[26] Id. at 127-128.

[27] *People v. Español*, G.R. No. 175603, February 13, 2009, 579 SCRA 326, 340.

[28] *People v. Lopez*, G.R. No. 176354, August 3, 2010.

[29] *People v. Combate*, G.R. No. 189301, December 15, 2010.

[30] Id.

[31] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 522. See also *People v. Malibiran*, G.R.

No. 178301, April 24, 2009, 586 SCRA 668, 705.

[32] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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