

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELIAS BORROMELO, DEFENDANT-APPELLANT.

G.R. No. 61873. October 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the then Circuit Criminal Court, Fourteenth Judicial District, Cebu-Bohol (now Regional Trial Court), finding accused Elias Borrromeo guilty beyond reasonable doubt of the crime of parricide and sentencing him to suffer the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify the heirs of the deceased Susana Taborada-Borrromeo, in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

Records show that at high noon of July 3, 1981, the four-year old niece of Elias and Susana Borrromeo reported to Matilde Taborada, mother of Susana, that Susana was shouting frantically for help because Elias was killing her. The 71-year old Matilde Taborada told the child to go to Geronimo Taborada, her son, who was then working in their mango plantation. Upon hearing the report of the child, Geronimo informed his father and together they went to Susana's hut. The windows and the door were closed and Geronimo could only peep through the bamboo slats at the wall where he saw Susana lying down, motionless, apparently dead beside her one-month old child who was crying. Elias Borrromeo was lying near Susana still holding on to a bloody kitchen bolo.

Susana's father called for the Mabolo police and, after a few minutes, police officer Fernando C. Abella and three policemen arrived. The peace officers shouted and ordered Elias to open the door. Elias answered calmly that he would smoke first before he would open the door. When he did, the peace officers found Susana already dead, her intestine having spilled out of her abdomen. A small kitchen bolo was at her side.

When questioned, the accused Elias Borrromeo could only mumble incoherent words.

Dr. Jesus Serna, police medico legal officer, submitted his necropsy report (Exhibits "A" & "B") which states that the cause of death was "stab wounds, multiple, chest, abdomen, left supraclavicular region and left shoulder." There were five (5) incised wounds and six (6) stab wounds on the deceased.

In his brief, accused-appellant contends that the trial court erred (1) in holding as it did that appellant and Susana Taborada (the deceased) were legally and validly married in a church wedding ceremony, when the officiating priest testified otherwise and there was no marriage contract executed on the occasion or later on; hence, the accused could only be liable for homicide; (2) in failing to appreciate in favor of appellant the mitigating circumstances of provocation or obfuscation and voluntary surrender, without any aggravating circumstance to offset the same; and, (3) in convicting appellant of the crime of parricide and in imposing upon him the penultimate penalty of reclusion perpetua.

Appellant in his brief, page 9, concurs with "the trial court's finding to the effect that he killed Susana Taborada (the deceased) without legal justification." The main issue raised by him is that he and Susana were not legally

married and therefore the crime committed is not parricide, but homicide.

Other than the stand of appellant's counsel against the existence of marriage in order to lessen or mitigate the penalty imposable upon his client, accused Elias Borromeo himself admitted that the deceased-victim was his legitimate wife. Hereunder is his testimony on this point:

"Q Please state your name, age and other personal circumstances?

A ELIAS BORROMEO, 40 years old, married, farmer, resident of Putingbato, Babag, Cebu City.

THE COURT:

Q You say you are married, who is your wife?

A Susana Taborada.

Q When did you get married with Susana Taborada?

A I forgot.

Q Where did you get married?

A Near the RCPI station in Babag.

Q There is a church there?

A There is a chapel.

Q Were you married by a priest or a minister?

A By a priest.

Q Who is this priest?

A Father Binghay of Guadalupe.

Q Do you have any children with Susana Taborada?

A We have one.

Q How old is the child?

A I already forgot, I have been here for quite a long time already." (pp. 4-5, tsn., December 12, 1981 hearing)

There is no better proof of marriage than the admission of the accused of the existence of such marriage. (Tolentino vs. Paras, 122 SCRA 525).

Persons living together in apparent matrimony are presumed, in the absence of any counter presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in constant violation of decency and law. (Son Cui vs. Guepangco, 22 Phil. 216) The presumption in favor of matrimony is one of the strongest known in law. The law presumes morality, and not immorality; marriage, and not concubinage; legitimacy, and not bastardy. There is the presumption that persons living together as husband and wife are married to each other. The reason for this presumption of marriage is well stated in Perido vs. Perido, 63 SCRA 97, thus:

"The basis of human society throughout the civilized world is that of marriage. Marriage is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested.

Consequently, every intendment of the law leans toward legalizing matrimony. x x x"

And, the mere fact that no record of the marriage exists in the registry of marriage does not invalidate said marriage, as long as in the celebration thereof, all requisites for its validity are present. The forwarding of a copy of the marriage certificate to the registry is not one of said requisites. (Pugeda vs. Trias, 4 SCRA 849)

Anent the second and third assigned errors, suffice it to say that the penalty for parricide is reclusion perpetua to death. (Article 246, Revised Penal Code) Paragraph 3, Article 63 of the Revised Penal Code, provides that where the law prescribes a penalty composed of two indivisible penalties and the commission of the act is attended by some mitigating circumstances, with no aggravating circumstance, the lesser penalty shall be applied. Thus, assuming the presence of the mitigating circumstances of provocation or obfuscation and voluntary surrender, without any aggravating circumstance to offset the same, the penalty is still reclusion perpetua.

WHEREFORE, the appealed decision is hereby AFFIRMED, with the modification that the indemnity of P12,000.00 is increased to P30,000.00. With costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

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