

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SUKARNO MAWALLIL Y KARS, DEFENDANT-APPELLANT.

G.R. No. 63154. June 19, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

Sukarno Mawallil appealed from the decision of the Court of First Instance of Zamboanga City, convicting him of parricide, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P20,000 to the heirs of his wife, Sophia Sera (Criminal Case No. 4702).

Circumstantial evidence against the accused. - The prosecution's evidence shows that the spouses Sukarno Mawallil and Sophia Sera, who were married in 1978 and had a four-month-old son, lived with Sophia's parents in Baliwasan Grande, Zamboanga City. Sukarno was jobless. He was studying criminology while Sophia was taking the secretarial course at the Ateneo de Zamboanga.

Sukarno had a propensity to jealousy. He suspected that Sophia was studying in order to engage in flirtations. Their frequent quarrels were provoked by the husband's jealousy. When they quarrelled, Sukarno always threatened Sophia with a Batangas knife (Exh. A). On November 21, 1980 they had a serious spat. Sukarno left the house with his son and went to his aunt's place. He returned to the house when his wife and his sister-in-law fetched him.

Two days later, Sunday, November 23, 1980, Sukarno left the house, telling his wife that he was going to Isabela, Basilan. In the afternoon of that day, Sophia and her sister entered the Rizal Theater. Inside the theater, Sophia was surprised to see Sukarno seated in front of her. He left fifteen minutes later.

When Sophia and her sister returned home at six o'clock, Sukarno was already at home seated in the sala. He laughed when his wife commented that he did not go to Isabela at all but was in the moviehouse. Then, he told her that he was taking her out to have dinner at the barbecue stand on Cawa-Cawa Boulevard, now R. T. Lim Boulevard. They went out supposedly to eat.

At around past nine o'clock on that Sunday night, the Sera family heard over the radio that the dead body of Sophia was at the funeral parlor (Exh. L). She was allegedly the victim of a holdup.

Before that radio announcement, at about nine o'clock, Leovigildo Aquino, a security guard of the Western Mindanao State University, while on his way to his quarters on R. T. Lim Boulevard, passing the fenced campus of the university, heard a woman's voice shrieking "Ay". Some minutes later, he saw a half-naked man (shirtless) stopping a jeep. Aquino and another security guard, Said Lim, went to Pitul road near the Arts and Sciences Building. They saw a slain woman and the same shirtless man (who had stopped a jeep) standing by. The man was Sukarno. (See sketches, Exh. H and O).

Aquino focussed his flashlight on him and asked him what happened. Sukarno told him that he had been held up. He begged Aquino not to use his flashlight. The mayor and policemen arrived at the scene of the crime after being

alerted by Aquino. They found the dead body of Sophia, 22, with 17 incised, punctured and lacerated wounds.

Among the fatal wounds were (a) an incised wound below the left nipple, (b) four punctured wounds in the abdomen, (c) three incised wounds in the sternomastoid muscle, (d) two lacerated wounds in the head (occipital and parietal bones) and (e) an incised wound four by two inches in the neck, cutting a big blood vessel and nerve (Exh. K).

At the scene of the crime, the police found a bloodstained Batangas knife (Exh. A and P), about six feet from the victim's body. It was the same knife with which Sukarno used to threaten Sophia. The police also found his "Citron" wrist watch (Exh. B) of which Sukarno denied ownership although at first he had told the police that he was robbed of a watch and money. On Sukarno's person was found his wife's purse with eight pesos in coins (Exh. N).

Sukarno was shirtless and wearing denim pants. He had covered with his shirt Sophia's dead body. He volunteered the information that he and his wife had been held up. The police took the body to the funeral parlor. Sukarno went with them. He requested that he be allowed to stay in the office of the funeral parlor and that he be permitted to get in touch with his parents.

He was afraid of reprisals from the victim's parents. The police took him to the police station. He desired to stay in the city jail for security reasons. He never talked with his in-laws when he saw them at the funeral parlor except to tell his sister-in-law that Sophia was dead. He did not join them when they cried and mourned for Sophia. He never returned to Sophia's house after the killing.

Sukarno did not attend the funeral of Sophia nor the prayers for her on the seventh, twentieth, fortieth and one hundredth day which were held in accordance with Muslim customs. In fact, during the trial, when his mother-in-law and her companions passed near him in court, he told them: "Go ahead. You proceed with the case. I will kill all of you".

Sukarno's version. - Sukarno narrated an elaborate and overly embellished story as to how he was held up and his wife was killed. His counsel de oficio did not mention this story in his brief.

He testified that on Sunday, November 23, 1980, he boarded the M/V Don Julio at Zamboanga City at noontime and arrived at Isabela, Basilan at around one-thirty. He was engaged in the buy-and-sell of gold. He had with him P10,000. He borrowed P3,000 from a friend named Abdulgafar.

With the P13,000, he bought two gold coins at P6,500 each. He returned to the city on the M/V Don Julio at six o'clock in the evening. He sold the two gold coins for P13,500 to Abdul Putal in Sta. Maria.

At seven-thirty in the evening, he and his wife went to the discotheque at the Sunset Barbecue Stand on R. T. Lim Boulevard. At eight forty-five, they left the disco and boarded a tricycle with a "back rider" which stopped near another tricycle with another "back rider" at the Pitul road separating the Trade School and the university.

There, he was held up by four persons. He was boxed and stabbed. He gave to his wife the money which was tied to a piece of cloth around his waist. He told her to run. His assailants continued assault-ing him until he became unconscious. When he regained consciousness, he heard his wife shouting for help. He went to the back of the university where his wife was. He found her dead.

He ran to Lim Boulevard, stopped two jeeps and requested for assistance. The drivers refused to help. He went back to his wife and saw a security guard (Aquino) who informed him that he had already called the mayor and the police. When they arrived, Sukarno apprised them of the holdup and the killing of his wife by the robbers.

He disclaimed ownership of the knife and watch. He was not a jealous husband. He loved his wife and hated his

mother-in-law. Before he was actually held up, he allegedly gave to his wife the money in the piece of cloth containing P13,500.

Trial Judge Abdulwahid A. Bidin branded Sukarno's story as inherently incredible. It was uncorroborated. The wife of Abdul Putal, the goldsmith, denied that her husband bought two gold coins from Sukarno.

The trial court found that the trips made by Sukarno on the M/V Don Julio during the hours mentioned by him were not true. The truth was that the Don Julio went to Basilan in the morning and returned to the city at two o'clock on November 23, 1980 as shown in its logbook (Exh. U and V). Moreover, Sophia and her sister saw Sukarno in the Rizal Theater at three o'clock in the afternoon when he was supposedly in Basilan.

The trial court also found that there was no robbery because there was nothing to be taken from Sukarno. His claim that he was assaulted, when in fact he was not hurt at all, save for a scratch, was described by the trial court as unbelievable, miraculous and fantastic. The scratch was the only resistance which his helpless wife could give against his vicious attack. The court concluded that "it was the accused who attacked and killed his wife" (p. 125, Record).

Ruling. - As already stated, the trial court convicted Sukarno of parricide. In this appeal, counsel de oficio argues that the crime is not parri-cide because Sukarno and Sophia were not married in accordance with article 17 of Presidential Decree No. 1083, the Code of Muslim Personal Laws of the Philippines, and neither was Sophia divorced in accordance with the said Code. It should be noted that Sukarno never questioned his marriage and Sophia's divorce in the lower court, which took for granted that the divorce and marriage were valid. His lawyer admitted the marriage (2 tsn August 12, 1981).

Sophia was first married to Nusi Munib whom she divorced on March 7, 1977 before Hadji Yasin Sakaluran, a Muslim leader, as shown in Exhibit J. Sakaluran had officiated at similar divorces more than a thousand times. The divorce was in accordance with Muslim customs, as authorized under Presidential Decree No. 793, effective as of June 19, 1969. That decree allows divorce on the ground of incompatibility (7-8, 16-18, tsns August 12, 1981), a ground recognized in section 52(g) of the Code of Muslim Personal Laws of the Philippines.

More than a year after the divorce, Sophia, then 19, eloped with Sukarno to Siasi, Sulu, where his parents resided. They were married there on April 4, 1978 by Imam Karimuddin Jamiudin after Sophia's parents had given their consent and a dowry of P5,000 was paid by his parents.

Later, they returned to Zamboanga City and lived with her parents. The marriage was in conformity with Muslim customs. Sukarno admitted the marriage and spoke of Sophia in his testimony as his wife (20-21 tsns January 21, 1982). As to the enforceability of the Code of Muslim Personal Laws in the absence of Shari'a Courts which have not been organized up to this time, see *Vda. de Maraog vs. Silapan*, G.R. No. 64519, March 29, 1984.

Hence, the rule of *semper praesumitur pro matrimonio* applies in this case (Sec. 5[bb], Rule 131, Rules of Court). Every intendment of law or fact leans toward the validity of the marriage (Art. 220, Civil Code). Sukarno's killing of Sophia must be regarded as parricide within the meaning of article 246 of the Revised Penal Code.

Counsel de oficio's contention that evident premeditation was not proven is meritorious. It was not proven because there was no showing of a sufficient interval of time between the determination and execution of the crime to allow the accused to reflect upon the consequences of his act and overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings.

The trial court erred in considering passion and obfuscation as mitigating. Sukarno acted more in a spirit of

lawlessness rather than due to a sudden and legitimate impulse of natural and uncontrollable fury. Voluntary surrender to the authorities is extenuating.

There being one mitigating circumstance and no aggravating circumstances, the lesser penalty for parricide which is reclusion perpetua must be imposed (Art. 63[3], Revised Penal Code).

WHEREFORE, the judgment of the trial court is affirmed with the modification that the indemnity is increased to P30,000. Costs de oficio. SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

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