

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSA DAVID DIMACALI, ACCUSED-APPELLANT.

G.R. No. 68036. August 31, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

The appellant, Rosa David Dimacali, was convicted by the Regional Trial Court of Manila of the felony of parricide, for the killing of her husband, Romeo Dimacali, and was sentenced to suffer the penalty of reclusion perpetua.[1]

The verdict against appellant Rosa David is grounded entirely on the testimony of a single witness, Lourdes Tongcol. Tongcol testified that in the late afternoon of the day of the killing, March 1, 1980, she went to Rosa's house; that she was received by a sister of Romeo, who asked her why she had come to call, and she said she wished to collect the cost of two (2) packs of "Marlboro" cigarettes that Romeo (Romy) had earlier asked her to buy from a certain "Wilma"; that she was told that Romy was sleeping; that Rosa overheard this conversation, whereupon she picked up a knife with a black handle, about 8 or 9 inches long, and forthwith stabbed her sleeping husband with it; and that on seeing this, she (Tongcol) became frightened and ran away.¹

Tongcol's story, which the Court a quo accepted as entirely veracious, is, quite curiously, at variance with the version of the slaying set forth in the information. The information asserts that the appellant killed her husband by "pushing the latter while ascending the stairs with a bladed weapon in his hand, causing him to fall on the ground floor, thereby inflicting a stab wound on the right side of his chest which was the direct and immediate cause of his death thereafter."²

As intriguing is the coincidence between this version of the occurrence in the indictment, and that given by Rosa Dimacali herself when she testified before the Trial Court.

The deceased Romeo was apparently a far from ideal husband, a jobless gambler and womanizer, a drunkard given to laying hands on his wife when besotted, specially when demands for money were refused.³ The Court a quo described him as "the type of husband who could drive his wife into fits of desperation."⁴ What actually happened on that unfortunate afternoon of March 1, 1980, according to Rosa, was that she had asked Romeo to massage her hand that had been sprained in the course of a quarrel the night before. Her request having been rudely and disdainfully spurned, she cursed him and said to him: "Anong klase kang lalaki, sinaktan mo na nga ako, ganyan pa ang sasabihin mo." He replied, "Mabuti nga at iyan lamang ang inabot mo," and suddenly boxed and kicked her. He then asked for some money. When she refused, he grabbed P200.00 from her. She went up to the second floor of their house and shouted at him. His response was to get a kitchen knife and rush up the stairs. But when he reached the top of the stairs, Rosa pushed him. He fell down the stairs and landed on the ground floor, face down, after which he rose and went out of the house. Rosa learned later from her sisters that Romeo had suffered a stab wound which, as it turned out, was a fatal one.⁵

As will be observed, the key issue is one of credibility, as it invariably is in criminal cases. And the applicable

rule is well known: the findings of fact of the trial court are entitled to great respect having been made on the basis of direct, personal observation by the Trial Judge of the witnesses while giving evidence, the Judge being at all times fully aware of the essential necessity of making an accurate assessment of the credibility not only of the witness' testimony but of the witness himself; hence, those findings will not on appeal be lightly disturbed, unless there are serious and substantial grounds to doubt the correctness of the Lower Court's appraisal of the witnesses' credit and that of the evidence given by them.¹

Indeed, pursuant to the cognate rule, also well known, and worth stressing from time to time: that except in cases where the penalty of reclusion perpetua or higher has been imposed --- in which situation an appeal to this Court is a matter of right on the part of the accused,² the Trial Court's findings of fact will not be reviewed by this Court, its exercise of appellate jurisdiction being (1) entirely a matter of sound judicial discretion, and (2) allowed only on questions of law which must be "distinctly set forth" in a petition for review on certiorari, and "only when there are special and important reasons therefor."³

A review of the evidence in this case is therefore indicated, particularly as regards the testimony of Lourdes Tongcol on whose credit, as stated, the appellant's conviction has been made to rest. The review reveals several circumstances seriously casting doubt on the reliability of her testimony.

Self-contradictions taint her evidence, to begin with. She first declared that on that tragic day of March 1, 1980, present at the house of the spouses Romeo and Rosa were 2 sisters of Romeo and a sister of Rosa's.⁴ Later she said that only 2 sisters of Rosa were present on that occasion, aside from Rosa and Romeo.⁵ Still later, she reiterated that no sister of Romeo's was in fact present.⁶ She also sought first to make the Court believe she had been to the Dimacalis' house four times prior to the killing, but was shortly made to admit that her visit on March 1, 1980 was the first and only one.⁷ Again, she deposed initially that she had repaired to the victim's house to collect payment for cigarettes that Romeo had bought from her; but after being made to admit that she was a vendor only of suman so lihiya and nothing else, she altered her declaration somewhat by saying that what had really transpired was that she had purchased the cigarettes on credit from someone else, at Romeo's behest.¹

There is, too, the matter of Lourdes Tongcol's patently poor eyesight, so poor in fact that as quite frankly acknowledged by her, she could not see persons clearly, only "white figures" whose faces she could not however recognize very well; and that she "cannot go places without being led by somebody." As a matter of fact, the record discloses that being only one meter away from the Trial Judge, she could not discern how many fingers the Judge was holding up for her to see, saying there were four when there were only three.² This generates no little uncertainty about the accuracy of her observations as to who were the persons present at the scene of the crime, what knife was being grasped by whom and what sort of knife it was, or whether in fact it was a knife that was being held, as well as the movements and actuations of the people involved.

There is moreover the denial of Lourdes Tongcol's presence at that place and time, not only by the appellant herself but also by the very persons that Tongcol had declared she had seen there, the appellant's sisters: Manuela David and Marcela David. Both ladies, who were residing in the same apartment as the Dimacalis, were quite emphatic and categorical in their denials.³ And their denials are echoed by a person who has not been shown to be other than a disinterested witness, Miguel Cildes, a neighbor of the Dimacali Spouses, who was in the company of Manuela and Marcela David at the time.⁴ And there is, furthermore, the decedent's negation of his wife's complicity in his mortal wounding, also testified to by Marcela David. She declared that she "helped carry ** (the injured Romeo) with her sister, Manuel, and they brought him to the hospital; that she asked her brother-in-law who wounded him, and he just shook his head; then she asked if it was his wife, Rosa, but he also just shook his head **."⁵

It may not be amiss to remark additionally, that the Tongcol story is not easy to accept. It seeks to induce belief that the appellant had stabbed her husband in his sleep for no other cause than her discovery that he had not paid Tongcol for two (2) packs of cigarettes which he had purchased from her some months earlier! This at once brings to mind the oft-repeated truism that evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.¹

Taking account of all these unprepossessing circumstances, and the further fact that Lourdes Tongcol had admittedly had a quarrel with the appellant,² as well as the fact that she did not immediately report what she had supposedly seen to the police or other public authority, having done so only after the interment of the deceased,³ it becomes extremely difficult to accord any credit to her testimony. Parenthetically, this tardiness in disclosing to the police what she allegedly saw could explain why there is a discrepancy between the version of the occurrence contained in the indictment and that testified to by Tongcol, and, in contrast, why a concordance exists between the former and the appellant's own narrative: when the information was filed, the facts in the fiscal's possession were only those thus far unearthed by the police investigation, and Tongcol's story had not yet been made known to anyone.

Of course, the appellant's story that she had pushed her husband and caused him to fall down the stairs because he was angrily coming at her with a knife grasped in his fist, and that as a result he had somehow been pierced by his own knife, cannot be viewed without a total absence of scepticism, although it is not from the forensic aspect entirely impossible,⁴ and is, to be sure, the only other alternative version emanating from the evidence on record. It was moreover initially accepted by the fiscal who set it out in the information, although a different version was presented during the trial.⁵ In any event, even conceding weakness in the proofs of the defense, that probative debility cannot be utilized as foundation for a defendant's conviction which can only result from the strength of the evidence of the prosecution, as establishing guilt beyond reasonable doubt.⁶

WHEREFORE, the judgment of the Regional Trial Court subject of the instant appeal is reversed and set aside, and the accused-appellant, Rosa David Dimacali, is acquitted for failure of the prosecution to prove her guilt beyond reasonable doubt, with costs de oficio.

Teehankee, C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] Crim. Case No. 52089, Branch VII, Hon. A. P. Purisima, presiding

1 TSN, Nov. 19, 1980, pp. 4-9

2 Rollo, p. 5

3 TSN, June 8, 1983, p. 9, 13-15

4 Rollo, p. 10

5 TSN, June 8, 1983, pp. 2-16

1 SEE *Peo. v. Burgos*, 144 SCRA 919, citing *Peo. v. Cabrera*, 100 SCRA 424

2 Sec. 5 (2) [d], ART. VIII, 1987 Constitution

3 Sec. 3, [c] and [d], Rule 122, 1985 Rules on Criminal Procedure (eff. Jan. 1, 1985); Secs. 1, 2 and 4, Rule 45, Rules of Court; SEE *Sotto v. Commission on Elections*, 76 Phil. 516, 521

4 TSN, Nov. 19, 1980, pp. 6-7

5 TSN, *id.*, pp. 21-22

6 TSN, July 20, 1962, p. 14

7 TSN, *id.*, pp. 20-21

1 TSN, Nov. 19, 1980, pp. 5, 15-16

2 TSN, July 20, 1982, pp. 26-32

3 TSN, June 17, 1982, pp. 46-47; Nov. 9, 1982, p. 7

4 TSN, Dec. 22, 1981, pp. 9-11

5 Decision of Court *a quo rollo*, p. 9; *Italics supplied*

1 *Peo. v. Macatangay*, 107 SCRA 188; *Peo v. Alvarez*, 55 SCRA 81; *Peo v. Dayag*, 56 SCRA 439; *Salonga v. Pano*, 134 SCRA 438; *Peo v. Mendoza*, 137 SCRA 492; *Peo. v. Patag*, 144 SCRA 429

2 TSN, June 8, 1983, p. 16

3 TSN, Nov. 19, 1980, p. 10

4 TSN, July 20, 1981, pp. 52-53

5 SEE footnote No. 2 and related text, p. 2 *supra*

6 SEE *Peo. v. Tabayoyong*, 104 SCRA 727; *Peo. v. Castelo*, 133 SCRA 667

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