

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMICIANO PERALTA, ACCUSED-APPELLANT.

G.R. No. 94570. September 28, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

The lifeless body of Rosita Peralta was found in her house in the early morning of March 2, 1982. Blood trickled from her nostrils and mouth and there were nail marks and bruises on her chin and neck. She had been strangled.

After investigation, particularly of the victim's daughter Siony, an information for parricide was filed against Rosita's husband, Domiciano Peralta. He pleaded not guilty upon his arraignment before the Regional Trial Court of Camarines Sur. The trial that followed was presided by four judges in succession.[1] Judge Benjamin V. Panga rendered the decision convicting the accused and sentencing him to reclusion perpetua and all accessory penalties. It also made him liable to the victim's heirs in the amount of P30,000.00 as civil indemnity and P5,000.00 in moral damages, and for the costs.[2]

The prosecution witnesses were Dr. Wilfredo Galan, the medical officer who performed the autopsy on Rosita Peralta;[3] Atanacia Ramos, her mother;[4] and Judge Juan B. Paaño, Jr., who took Rosita's sworn statement.[5] The defense presented the accused himself[6] and his daughter Siony.[7]

Dr. Galan established the cause of death and declared that it occurred at about half past four in the morning of March 2, 1982.[8]

Atanacia testified that at about 4:30 that morning, her granddaughter Siony came to her house and frantically told her that the accused was strangling his wife, Rosita. The two rushed to the couple's house and, after unlocking the door, found Rosita already dead. Domiciano was nowhere in sight. They immediately reported the matter to the police, who eventually arrested the appellant as the suspected killer.[9]

For his part, Domiciano claimed that at the supposed time of his wife's strangulation, he was at his place of work in Maybayawas, Catagbacan, Goa, Camarines Sur. He learned of her death at 3:00 o'clock that afternoon and, later, that he was suspected of her killing. That same day, he proceeded to the Goa Police Station where he was made to sign a document, which turned out to be a confession. Disclaiming it at the trial, he said that he signed it without the assistance of counsel or full awareness of its contents.[10]

Siony, the daughter, had earlier implicated her father in the sworn statement she made at the preliminary investigation of the case.[11] She now appeared to testify on his behalf. She swore on the stand that she did see someone strangling her mother in the morning in question but insisted that she could not identify that person.[12] In effect, she said that the culprit was not her father, thus contradicting her earlier assertion that she saw him strangling her mother.

After the defense had rested, the prosecution presented Judge Paaño as rebuttal witness. He affirmed the regularity of the preliminary investigation he conducted and declared that Siony's narration of the strangulation of her

mother by the accused was completely voluntary.[13]

After assessing the evidence (mostly the testimonies of the witnesses as recorded), Judge Panga opted in favor of the prosecution and rejected both the appellant's alibi and his daughter's change of stand. The decision held that Siony's statement at the preliminary investigation was more credible because it was made shortly after the occurrence of the killing. Moreover, her narration of the incident jibed with the detailed medical findings of the injuries sustained by the victim as indicated in the autopsy report.[14]

We agree with the conclusion of the trial court. There were, in our view, certain circumstances that may have persuaded the daughter to change her former declaration and testify in favor of her father.

First, the appellant was her father after all, and she probably felt that she should not be responsible for his incarceration for the rest of his life. Second, her testimony was given seven years after the incident and therefore could not be expected to be as accurate as the statement she made in the preliminary investigation only hours after the killing. Third, during all this time, her father had been under detention and she must have believed that this was punishment enough for him. Lastly, she was, at the time she testified in court, living with her father's sister,[15] who may have greatly influenced her testimony and caused her to recant her earlier statement.

There is another important point. The statement she made to her grandmother when she rushed to inform her of her father's attack on her mother was part of the *res gestae* under Section 42, Rule 130 of the Rules of Court. This section provides:

Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

Res gestae means the "thing done." As held in *People v. Sanchez*,[16] it refers to those exclamations and statements made by either the participants, victims or spectators to a crime immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.

There are three requisites for the admission of evidence as constituting part of the *res gestae*, to wit: 1) that the principal act, the *res gestae*, is a startling occurrence; 2) that the statements were made before the declarant had time to contrive or devise; and 3) that the statements must concern the occurrence in question and its immediately attending circumstances.[17]

Siony rushed to Atanacia immediately upon seeing her father strangling her mother to death. Her spontaneous declaration to Atanacia was part of the *res gestae* and is assumed to preclude the probability of premeditation or fabrication.[18] Since the utterance was made under the immediate and uncontrolled domination of the senses rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing Siony's real belief as to the facts just observed by her.[19]

Besides, it is settled that where a witness testified for the prosecution and retracts his testimony and subsequently testified for the defense, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence.[20] The well-known rule is that retractions are generally unreliable and are looked upon with considerable disfavor by the courts.[21] In the case before us, Siony testified during the preliminary examination conducted by Judge Paaño that the appellant choked her mother to death. Her subsequent

retraction was an afterthought and has no probative value at all.

The appellant's alibi is flawed, not only by its inherent weakness but also by its implausibility. There is only a five-minute walking distance between his place of work and his house, where the killing occurred. It was not impossible or even difficult for him to commit the crime and return or go to Maybayawas, assuming he was really there. Significantly, no one has corroborated his alibi, which is all the weaker for this deficiency.

There is no reason to impute improper motives, or even inaccuracy, to Judge Paaño, who testified to facts relating to the discharge of his official duties. Credence is generally accorded the testimonies of prosecution witnesses who are enforcers of the law and are presumed to have performed their duties in a regular manner.[22]

We also reject the defense theory that Judge Panga could not have correctly evaluated the testimony of the witnesses because he had not presided at the trial of the case. While it is true that the trial judge who did so would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. He can also rely on the transcribed stenographic notes taken during the trial as the basis for his decision, which is what Judge Panga did. As we observed in *People v. Abaya*: [23]

x x x And the mere fact that Judge Alfredo C. Flores did not preside at the trial of this case in its entirety, having taken over only when the last defense witness was to be presented, did not detract from the validity, much less the correctness, of his decision. The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge.

There is no need to rule on the appellant's extrajudicial confession as it was not submitted in evidence by the prosecution. Evidence not formally offered or whose purpose has not been specified is not supposed to be considered by the court.[24] In any event, the confession was not necessary to prove the appellant's guilt beyond the shadow of a doubt as this has been established by the evidence of the prosecution.

The mitigating circumstance of voluntary surrender cannot be appreciated in this case because the appellant went to the police station not to give himself up but to verify the charge filed against him. Neither can the aggravating circumstance of abuse of superior strength be considered because only of the fact that the husband was stronger than the wife, which is usually the situation between a man and a woman. There is no evidence of the gross physical disparity between the appellant and his victim. Moreover, the appellant was unarmed and it has not been shown that he sought the aid of other persons or employed any other physical advantage to enable him to kill his wife.

Domiciano Peralta admitted at the trial that Rosita was his lawful wife.[25] Article 246 of the Revised Penal Code provides that any person who shall kill his father, mother or child, whether legitimate or illegitimate or any of his ascendants or descendants or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death. There being no mitigating or aggravating circumstances in this case, the lesser penalty shall be imposed, conformably to Article 63 of the said Code.

WHEREFORE, premises considered, the decision of the trial court is **AFFIRMED**, with the modification that the civil indemnity is hereby increased to P50,000.00, in accordance with present policy. Costs against the appellant.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Judges Rebecca Salvador, Eleuterio T. Decena, Bonifacio C. Intia and Augusto O. Cledera

[2] Rollo, pp. 16-22.

[3] TSN, June 21, 1983.

[4] Ibid., August 17, 1983.

[5] Id., April 7, 1987.

[6] id., February 27, 1985.

[7] id., January 6, 1987.

[8] id., June 21, 1983, p. 8; Exh. "A."

[9] id., August 17, 1983, pp. 7-13.

[10] id., February 27, 1985, pp. 2 -8.

[11] Exh. "B."

[12] TSN, January 6, 1987, pp. 5-7.

[13] Ibid., April 7, 1987, pp. 3-10.

[14] Exh. "A."

[15] TSN, January 6, 1987, p. 20.

[16] 213 SCRA 70.

[17] People vs. Sanchez, 213 SCRA 70.

[18] Ibid.

[19] Id.

[20] People vs. Mindae, 216 SCRA 572.

[21] People vs. Logronio, 214 SCRA 519; People vs. del Pilar, 188 SCRA 37; People vs. Domenden, 6 SCRA 343.

[22] People vs. Pacleb, 217 SCRA 92.

[23] 185 SCRA 424.

[24] Section 34, Rule 132, Rules of Court.

[25] TSN, July 1, 1986, p. 3.

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