

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO GELAVAR, ACCUSED-APPELLANT.

G.R. No. 95357. June 09, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 26, Surallah, South Cotabato, finding Eduardo Gelaver guilty beyond reasonable doubt of Parricide (Art. 246, Revised Penal Code) and sentencing him to "suffer the penalty of reclusion perpetua and to indemnify the heirs of his wife, Victoria Pacinabao, in the amount of P30,000.00." (Decision, p. 7; Rollo, p. 28)

In the Information filed with the trial court and docketed as Criminal Case No. 643, Eduardo Gelaver, was charged with Parricide, committed as follows:

"That on or about the 24th day of March, 1988 at 7:00 o'clock in the morning, more or less, in Barangay Poblacion, Municipality of Sto. Niño, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, said accused with intent to kill and being then armed with a knife did then and there wilfully, unlawfully and feloniously attack, assault and stab one VICTORIA GELAVAR Y PACINABAO, his lawfully wedded wife, with the use of the said knife hitting her and wounding her on the different parts of her body and as a result thereof said Victoria Gelaver y Pacinabao died instantly." (Rollo, p. 7)

At his arraignment, appellant entered a plea of "not guilty", and thereafter trial on the merits ensued.

The prosecution presented Randy Mamon, who testified that at 7:00 a.m. of March 24, 1988, he heard shouts coming from the house of Tessie Lampedario in Barangay Poblacion, Municipality of Sto. Niño, South Cotabato. He saw the appellant and a woman having a heated argument. Thereafter, appellant held the neck of the victim, dragged her and with a knife on his right hand, stabbed the latter three times on the breast. Appellant then went out of the gate and fled in the direction of the public market of Sto. Niño. (TSN, June 27, 1988, pp. 7-10)

Eduardo Gelaver admitted killing his wife but claimed that he did so after catching her having carnal act with her paramour.

Appellant testified that he was married to Victoria Pacinabao, with whom he begot four children. (TSN, December 19, 1988, p. 9) They lived together at their conjugal home until July 3, 1987 when she abandoned her family to live with her paramour. (TSN, December 19, 1988, pp. 10-11) He did not know the name of his wife's paramour nor the name of the owner of the house where his wife and her paramour had lived together.

Appellant further testified that on March 24, 1988, after he was informed by his daughter that his wife and paramour were living at a house in front of the Sto. Niño Catholic Church, appellant immediately repaired to that place. Upon entering the house, he saw his wife lying on her back and her paramour on top of her, having sexual intercourse.

Appellant's version of the killing was that when his wife saw him, she pushed her paramour aside. Her paramour

immediately stood up, took a knife placed on top of the bedside table and attacked appellant. The latter was able to wrest possession of the knife and then used it against the paramour, who evaded the thrusts of the appellant by hiding behind the victim. Thus, it was the victim who received the stab intended for the paramour.

As to why he continued to stab his wife, appellant said that his mind had been "dimmed" or overpowered by passion and obfuscation by the sight of his wife having carnal act with her paramour.

Appellant faults the trial court in imposing the penalty of reclusion perpetua for the crime of parricide, instead of the penalty of destierro for killing under exceptional circumstances pursuant to Article 247 of the Revised Penal Code. (Appellant's Brief, p. 1)

Appellant's contention is bereft of merit.

Before Article 247 of the Revised Penal Code can be operative, the following requisites must be compresent:

"1. That a legally married person or a parent surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person.

"2. That he or she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter.

"3. That he has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse." (II Reyes, The Revised Penal Code, 12th Ed., pp. 452-453; Underlining supplied)

These requisites must be established by the defense.

Implicit in this exceptional circumstance is that the death caused must be the proximate result of the outrage overwhelming the accused after chancing upon his spouse in the act of infidelity (People v. Abarca, 153 SCRA 735 [1987]). In this case, appellant wants this Court to believe that he caught his wife and her paramour in sexual intercourse. However, his testimony is tainted with inconsistencies which leads Us to believe otherwise.

Appellant's failure to inform the police that he killed his wife when he saw her having sexual intercourse with her paramour, devastated in one fell swoop whatever credibility could possibly be accorded to his version of the incident. As noted by the Solicitor General, the natural thing for a person to do under the circumstances was to report to the police the reason for killing his wife. (Appellee's Brief, p. 8; Rollo, p. 76) Appellant's contention that he thought that only the killing itself should be blotted, reserving the details to the defense lawyer, sounded like a spoonfed afterthought.

If there was a naked man with the victim, he would have had no time to get dressed because he was then under attack by appellant. There would then have been the spectacle of a man in the nude running in the streets.

The trial court noted several contradictions in appellant's testimony. Appellant claimed that he chased the paramour but was unable to overtake him and at the same time, he testified that the paramour stayed in the room and used the victim as a shield against appellant's attack with the knife. Appellant also claimed that upon entering the gate of the fence, he saw his wife and her paramour having carnal act and at the same breath, he testified that he saw his wife and her paramour only when he opened the main door of the house.

The trial court found as contrary to human nature appellant's claims that he went to confront the paramour of his wife unarmed and that he never learned the name of the paramour inspite of the fact that his wife, allegedly, had been living with the paramour in the same town for almost a year before the incident.

Absent any substantial proof that the trial court's decision was based on speculation, the same must be accorded

full consideration (People v. Martinada, 194 SCRA 36 [1991]) and should not be disturbed on appeal (Mercury Drug v. CIR, 56 SCRA 694 [1974]).

Appellant's claim that on the day prior to his killing of the victim, his daughter Sheryl had confided to him that her mother was living with a paramour at the house in front of the Sto. Niño Catholic Church, was belied by Sheryl herself. In her testimony, she stated that she did not know the house where the crime was committed and she had not gone to that place. She further testified that she had not seen her mother in any other house except that of her grandfather's. (TSN, January 17, 1989, p. 5)

The trial court was correct in finding the presence of the mitigating circumstance of voluntary surrender to the authorities. Appellant, immediately after committing the offense, voluntarily placed himself at the disposal of the police authorities as evidenced by the entry in the official police blotter. (Exh. "1")

However, the trial court erred in finding the presence of the mitigating circumstance of passion or obfuscation "as a result of his (appellant's) wife leaving their home and their children." (Rollo, p. 28) Before this circumstance may be taken into consideration, it is necessary to establish the existence of an unlawful act sufficient to produce such a condition of mind. The act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have recovered his equanimity. (I Revised Penal Code, Aquino, 1987 ed., 267) The crime was committed almost a year after the victim had abandoned the conjugal dwelling.

WHEREFORE, the judgment appealed from is AFFIRMED except with the MODIFICATION that the indemnity, should be increased to P50,000.00 (People v. Sison, 189 SCRA 700 [1990]).

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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