

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY TALISIC Y VILLAMOR, ACCUSED-APPELLANT.

G.R. No. 97961. September 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The accused-appellant admits having killed his wife but insists that he did so only after surprising her in the very act of sexual intercourse with another man. However, he fails to substantiate the stringent elements required by law to absolve him of criminal responsibility. His defense appears no more than an amalgam of confusion, contradiction and concoction.

Statement of the Case

The foregoing sums up our ruling in this appeal from the Decision[1] of the Regional Trial Court of Iligan City, Lanao del Norte, Branch 5, in Criminal Case No. 1969, finding accused-appellant guilty of parricide.

Second Assistant City Fiscal Norma B. Siao charged accused-appellant in an Information dated May 13, 1988, which reads as follows:

That on or about May 8, 1988, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having conceived a deliberate intent to kill his wife Janita Sapio Talisic, did then and there willfully, unlawfully and feloniously and with evident premeditation, attack, assault, stab and wound his wife, as a result of said attack, the said Janita Sapio Talisic died.

Contrary to and in violation of Article 246 of the Revised Penal Code.”

Arraigned on October 26, 1988, the accused, with the assistance of Counsel de Oficio Daniel T. Bayron, pleaded not guilty to the charge.[2] Trial ensued in due course. Thereafter, the trial court rendered its Decision, which disposed as follows:

The foregoing premises considered, the Court finds the inculpatory evidence of the prosecution quite satisfying and sufficient to establish that the crime of parricide was committed here and that the guilt of the accused has been proven beyond reasonable doubt.

WHEREFORE, the accused is hereby sentenced to suffer the penalty of reclusion perpetua, and to indemnify for civil liability the heirs of the victim in the amount of (P50,000.00).

SO ORDERED.”[3]

In view of the penalty imposed, the accused appealed directly to this Court.

The Facts Version of to the Prosecution

The facts as gathered from the testimonies of Prosecution Witnesses Dr. Regino Gaite, Danilo Talisic and Victoria Sapyo Tautho are as follows:

Sixteen-year old Danilo Talisic testified that at dawn of May 8, 1988, his mother, Janita Talisic, was stabbed to death with a chisel by his father Jimmy Talisic, who afterwards displayed the bloodied weapon before their altar. Realizing that his mother was already dead, Danilo decided to bring his younger sister to their grandfather's house.[4] They passed by the house of their aunt, Victoria Sapyo Tautho, a sister of the deceased, and related to her the bizarre killing. The latter hurried to the house of the deceased, arriving at six o'clock that morning. She was aghast at the bludgeoned body of her sister and the bloodstained chisel at the altar.[5] In the meantime, Danilo also related the killing to his paternal grandfather, Simon Talisic, who thereupon proceeded to the house of his son, Accused-appellant Jimmy Talisic, and brought the latter to the military camp at Tipanoy, Iligan City.[6]

Substantially corroborating Danilo's testimony, Victoria Sagio Tautho stated that she found her sister's lifeless body sprawled on the floor of their living room, as well as the crimson-drenched chisel at the altar.

Dr. Regino Gaite examined the body of the deceased and issued the necropsy report (Exhibit "B"). On the stand, he described the sixteen stab wounds inflicted on the victim, as follows:

Q During the examination on the 16 stab wounds you have mentioned, will you please tell this Honorable Court how deep was the penetration of these injuries on the dead body of the victim?

A Some were four inches deep; some were two, depending on the site of the body.

Q I would like to call your attention to this document, and tell us how deep was the penetration of the injuries Nos. 2, 3, 4, 5 and this No. 6, which is in the neck of the victim?

A Four inches deep.

Q In your opinion, Doctor, these particular injuries numbered you have indicated, will these be sufficient to cause the death of the victim?

A Numbers 2, three are in the external region; Nos. 4 and 5 are above the heart; then No. 6 is in the carotid region, leftside.

Q What about the injuries on the left arm of the victim, Dr., how deep was the penetration indicated, Nos. 10, on the left arm of the victim, 11, 12, 13, 14, 15, and 16?

A Two inches deep."[7]

According to him, these multiple wounds resulted in hemorrhage and shock which ultimately caused the death of the victim.[8]

Version of the Defense

The defense presented only the testimony of Jimmy Talisic which is summarized in the six-page Appellant's Brief,[9] dated November 4, 1991, as follows:

Testifying for his defense, accused-appellant declared that between the hours of 3:00 and 4:00 in the early morning of May 8, 1988, she (sic) was requested by his wife to fetch water from a well as they had earlier (planned) to go to the city together. As requested, he then fetched water from a well about 200 meters away from their house which took him about 30 minutes to do so. When he came back from the well and while climbing up the stairs, he was surprised to see a man lying on top of his wife. He tried to draw his bolo and stabbed the man who, however, was able to run away. He tried to run after him but did not overtake him. He came back to their house but only to be met by a stabbing thrust from his wife using a chisel. He was not hit as he was able to parry the blow, thus prompting him to grab the chisel from his wife. He lost his temper and stabbed her to death."

Issue

In his brief, appellant contends:

“The trial court erred in not finding that accused-appellant had killed his wife under exceptional circumstances and in not applying the provision of Article 247 of the Revised Penal Code.”

The crucial question in this appeal is whether the totality of the evidence presented before the trial court justifies the application of Article 247 of the Revised Penal Code.

The Court’s Ruling

We affirm the judgment of the trial court.

Applicability of Article 247 of the Revised Penal Code

At the outset, it must be underscored that appellant admits killing his wife. This is clear from his testimony:

Q Can you recall where were you between the hours of 3:00 and 4:00 A.M. of May 8, 1988?

A Yes.

Q Where were you?

A I fetched water from the well.

Q Where is this well located?

A In the lower portion of my house.

Q How far is this well from your house?

A 200 meters.

Q Can you describe to the court the condition of the road going to that well where you fetched water?

A Yes, Sir.

Q Please describe to the Honorable Court?

A It is rolling.

Q Were you able to fetch water from the well?

A Yes.

Q Now, will you please tell the Court why you fetch water at this early morning of May 8, 1988?

A I fetched water because we were planning to go down early to the city.

Q You said we, who is your companion?

A My wife is my companion in going down to the City, so she requested me to fetch

water so she can take a bath.

Q Are you referring to the late Janita Sapio?

A Yes, Sir.

Q Where (sic) you able to go back to your house after fetching water from the well?

A Yes.

Q When you reached your house, what did you discover if there was any?

A When I arrived home and climbed up the stairs, I put the plastic container of water, and I saw a man lying on top of my wife. I drew my bolo and stabbed the man, but I was not able to hit the man because he ran away.

Q What did you do after, when you said that the man who was lying on top of your wife ran away?

A I ran after him.

Q Were you able to catch up with that man?

A. No, I was not able to catch up.

Q What did you do next?

A When I went back to my house, I was stabbed by my wife with a chisel because there was a chisel placed on the wall.

Q What did you do when you were stabbed by your wife with [the] chisel?

A I was able to parry it and grabbed the chisel from her.

Q What did you do next after grabbing the chisel from your wife?

A I lost my temper because I was so mad, so I stabbed her because she was unfaithful to our marriage because we were legally married.

Q Do you know who was that man you saw on top of your wife?

A. No, I was not able to recognize because it was dark.”[10]

However, he argues that he killed his wife under the exceptional circumstance provided in Article 247 of the Revised Penal Code, which reads:

Art. 247. Death or physical injuries inflicted under exceptional circumstances. Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro. xxx.”

An absolatory cause is present “where the act committed is a crime but for reasons of public policy and sentiment there is no penalty imposed.”[11] Article 247 is an example of an absolatory cause. Explaining the rationale for this, the Court held:

x x x. The vindication of a man’s honor is justified because of the scandal an unfaithful wife creates; the law is strict on this, authorizing as it does, a man to chastise her, even with death. But killing the errant spouse as a purification is so severe that it can only be justified when the unfaithful spouse is caught in flagrante delicto; and it must be resorted to only with great caution so much so that the law requires that it be inflicted only during the sexual intercourse or immediately thereafter.”[12]

Having admitted the killing, the accused must now bear the burden of showing the applicability of Article 247. Accordingly, the defense must prove the following

1. That a legally married person (or a parent) surprises his spouse (or his daughter, 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.”[13]

We stress that the burden of proof to show the concurrence of all three elements rests on the defense. Most critically, Appellant Jimmy Talisic must prove that he caught his wife in flagrante delicto; that he killed her while she was in the very act of voluntary sexual intercourse with another man or immediately thereafter. Sadly for him, he has miserably failed to do so.

In deciding this appeal, the Court is guided by this general rule:

x x x, when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court’s choice is generally viewed as correct and entitled to the highest respect because it is more

competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.”[14]

After a thorough review of the records of this case, we find no reason -- as indeed appellant has failed to provide any -- to overturn the trial court's well-reasoned ruling. Verily, the claim of the accused-appellant is thoroughly unworthy of belief. He was unable to controvert the finding of the trial court as follows:

The version of the accused that he caught the victim in flagrante delicto of adultery is quite difficult to swallow hook, line and sinker. It is very unlikely for a wife in her right senses to indulge in marital infidelity knowing that her husband is just around the corner and would soon come back because he was just away for a short while to fetch water. If there was tryst, the victim could have chosen to perpetrate the adulterous act not in the living room of their very own house. The plausible place of assignation would have been outside to avoid impending danger of being caught.

One thing more, it is very unlikely that after the victim was caught in flagrante, she would just stay put, watch her husband run berserk, chasing her paramour with a lethal weapon (bolo). The normal reaction of one in this kind of dreadful situation is to swiftly flee from the scene while there is yet time.

This assertion of the accused is simply out of this world to contemplate. All the more it became weird when he further said that the victim prepared to meet him with a chisel since he was carrying a long bolo.

If the accused was attacked by the victim with a chisel, would he not use his bolo since he was admittedly raging mad due to the victim's infidelity? Why used [sic] a chisel when the bolo in hand was more handy?” [15]

We agree with these conclusions of the court a quo for they are manifestly founded on the oft-repeated dictum that “[e]vidence, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself - such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.”[16]

Moreover, even assuming arguendo that appellant did indeed surprise his wife in flagrante delicto, his account of subsequent events is implausible. It is difficult to believe his story of how, upon catching sight of the infidelity, he immediately drew his bolo and hacked but missed the other man who, amazingly, had sufficient time to pull up his pants, button up, elude said attack and escape unscathed. Further, his claim that he did not recognize the man or even see his face is irreconcilable with his insistence that the color of the latter's short pants was yellow. His declarations as to the location of the alleged paramour's short pants are also conflicting. Worse, the defense of appellant is belied by his own incredible and inconsistent testimony.

Appellant's testimony[17] quoted earlier, in which he admits killing his wife and describes the circumstances attending the same, is clearly incompatible with his further account, viz.:

Q After you fetched water from the well located 200 meters from your house, what time did you reach your house?

A I estimated it around 30 minutes.

Q You said and I would like to refresh your memory that you fetched water between the hours of 3:00 and 4:00 in the morning, please inform this Honorable Court, Jimmy Talisic, whether upon reaching your house it was still dark or the sun was about to rise?

A The surrounding is still dark.

Q By the way, Jimmy Talisic, is your house well-lighted?

A No, very small, kerosene lamp.

Q Now, you said also upon reaching your house you were confronted with a sight wherein you saw a man lying on top of your wife, is that correct?

A Yes.

Q And that immediately you released the plastic container of the water and drew your bolo and stabbed the man who was lying on top of your wife, is that correct?

A He immediately ran.

Q Now, Jimmy Talisic, will you please convince the Honorable Court whether the person that you have seen on that particular time was a man or not?

A A man.

Q Did you recognize that person?

A No, I did not recognize him clearly.

Q That man on top of your wife was he naked or was he clothed?

A He was clothed; he wore short pants.

Q What was the color of the pants?

ATTY. BAYRON:

He cannot recognize, Your Honor.

FISCAL TABIMINA:

Precisely, Your Honor, we are trying to elicit something from this man.

COURT:

Answer.

WITNESS:

A Yellow.

FISCAL TABIMINA:

Could it be white...

ATTY. BAYRON:

Yellow, Your Honor.

COURT:

He said yellow.

FISCAL TABIMINA:

You were not able to catch up with him because he ran away, is that correct?

COURT:

Q What happened with the yellow pants of the man?

A He immediately put it up and jumped through the window and ran away.

Q But you said you immediately drew your bolo to stab him, how can he put up his pants?

A My house is so wide that he was able to run when I drew my bolo.

Q Just be candid with the Court. This is in the interest of your children. You even recognize the color of the pants as yellow therefore you saw what was the position of the pants when you saw the man lying on top of your wife. Where were the pants when you saw the man lying on top of your wife?

A It was at his side.

Q You mean to say that the pants were not on his legs?

A It was at his knee; inserted up to his knee.

Q Not at his side as you said earlier?

A Inserted up to his knees only.

Q But you said a while ago that the short pants was at the side of the man; which is which, the pants were on his side or still on his knees?

A It was at his knees.”[18]

As astutely and correctly observed by the trial court:

Looking at the face value of this testimony, is it possible for one caught in surprise, attacked by an irate husband to yet put on his pants before fleeing away? Of course, this version that the paramour’s pants was just on his side was changed when accused sensed the futility (sic) of his lying. He said that the pants was still actually inserted up to said paramour’s knees.

Again, let us take a hard look if there is a glimmer of truth to this later version. How can a man with pants on his knees surprisingly caught in the act of adultery, presto stood up and jumped out of the window to avoid impending attack from an irate husband? Indeed, if there was such an intruder on that fateful dawn in the home with the victim caught by surprise as aforesaid, he could surely be killed or at least wounded by the sudden attack of accused. Yes, if such a thing did not happen it was so because there was none at all. x x x.”[19]

The foregoing demonstrate that Article 247 of the Revised Penal Code is inapplicable to this case because appellant failed to prove the essential requisite of having caught his wife and her alleged paramour in flagrante delicto. Indeed, appellant succeeded only in demonstrating his utter lack of credibility on the witness stand.

On the other hand, the records of this case clearly bolster the trial court’s conclusion that Appellant Jimmy Talisic did not catch his wife with another man that fateful morning. Jimmy’s deep-seated suspicion of his wife’s infidelity and his resentment of her maltreatment of their children, coupled with his erratic and turbulent temper, could explain why he killed her. The following portion of Jimmy’s testimony sheds light on the matter:

Q After that, you immediately stabbed your wife?

A Yes.

Q How many times?

A I do not know because I lost my temper.

Q Could it be 10 times?

A I do not know how many times.

Q By the way, let us go back before May 8, 1988, did you have an idea whether your wife had an affair with another man?

A I do not know it because I was always at the farm, and what I managed to look at is farm activities.

Q Before that incident, am I correct that your wife was all along faithful to you and no affair with another man?

ATTY. BAYRON:

Objection, Your Honor, he did not know whether his wife had an affair with another man.

COURT:

Let him answer.

WITNESS:

Yes.

COURT:

Q In other words, you do not suspect your wife of infidelity?

A I was suspicious because when I sent her down to Iligan City and gave her money when she come home the money left is too small.

FISCAL TABIMINA:

Q And because of that you are now changing your statement that you suspect your wife to have an affair with another man?

A In my suspicion.

Q By the way, when your wife was still alive, how does your wife treat your children?

A She was so irritable with her treatment of our children.

Q Please explain why she was irritable with her treatment of your children?

A She easily gets angry. Whenever my children do some foolishness and bad actions, immediately she would whip them.”[20]

All in all, we find no ground to reverse or modify the well-reasoned rulings of the trial court. Appellant’s uncorroborated, implausible and flimsy testimony has not convinced us one whit that he caught his wife in the very act of voluntary sexual intercourse with another man in the living room of their house while he was momentarily away fetching water. In fact, he has not even convinced us that such a man was in their house when he brutally killed his wife. A man betrayed and aggrieved by his wife’s brazen unfaithfulness would have immediately surrendered to the authorities and confessed the truth, instead of simply awaiting his father to bring him to the military camp. Incredible - that about sums up appellant’s case.

WHEREFORE, the appeal is hereby DENIED and the Decision of the trial court convicting Jimmy Talisic y Villamor of parricide is hereby AFFIRMED in toto. Costs against appellant.

SO ORDERED

Narvasa, C.J., (Chairman), Melo, and Francisco, JJ., concur.

[1] Penned by Judge Maximino Magno-Libre.

[2] Record, p. 17.

[3] Decision, pp. 9-10; Rollo, pp. 47-48.

[4] TSN, February 7, 1989, pp. 14-15; Record, pp. 63-64.

- [5] Ibid., pp. 27-28; Record, pp. 76-77.
- [6] Ibid., pp. 15-16; Record, pp. 64-65.
- [7] TSN, pp. 5-6, February 7, 1989; Record, pp. 55-56.
- [8] Ibid., p. 6; Record, p. 56.
- [9] Appellant's Brief prepared by the Public Attorney's Office, p. 3; Rollo, p. 34.
- [10] TSN, pp. 5-7, March 21, 1989; Record, pp. 85-87.
- [11] I Reyes, The Revised Penal Code, 13th ed., 1993, pp. 231-232.
- [12] People vs. Wagas, 171 SCRA 69, 74, March 8, 1989.
- [13] People vs. Gelaver, 223 SCRA 310, 313-314, June 9, 1993, per Quiason, J. *Italics supplied*.
- [14] People vs. Alimon, G.R. No. 87758, p. 12, June 28, 1996, per Panganiban, J.; citing People vs. Vallena, 244 SCRA 685, June 1, 1995, and People vs. Tismo, 204 SCRA 535, December 4, 1991.
- [15] Appealed Decision, pp. 5-6; Rollo, pp. 43-44.
- [16] People vs. Escalante, 238 SCRA 554, 563, December 1, 1994, per Padilla, J.
- [17] *Supra*.
- [18] TSN, pp. 9-12, March 21, 1989; Record, pp. 89-92.
- [19] Decision, pp. 7-8; Rollo, pp. 43-44.
- [20] TSN, pp. 12-14, March 21, 1989; Record, pp. 92-94.

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