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EN BANC

[G.R. Nos. 139225-28, May 29, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL ALCALDE Y PASCASIO, ACCUSED-APPELLANT.

DECISION

DAVIDE JR., C.J.:

For automatic review[1] is the Consolidated Judgment[2] of 30 April 1999 of the Regional Trial Court, Branch 28, Santa Cruz, Laguna, in Criminal Cases Nos. SC-6651 to SC-6654, convicting accused-appellant Arnel Alcalde y Pascasio (hereafter ARNEL) of two counts of parricide committed against his wife WENDY and his 11-month-old son ARWIN and two counts of frustrated parricide committed against his two daughters BERNALYN and ERICA.

On 24 September 1997, the Office of the Provincial Prosecutor of Laguna filed before the trial court two informations for parricide and two informations for frustrated parricide.

Upon his arraignment on 22 October 1997,[3] ARNEL, who was assisted by a counsel *de parte*, refused to speak. Pursuant to Section 1(c) of Rule 116 of the Rules of Court, the trial court entered for him a plea of not guilty in each of the cases. On the same occasion, the defense waived pre-trial. The cases were then consolidated and jointly tried.

The witnesses initially presented by the prosecution were SPO2 Nicanor Avendaño, Dr. Nilo Pempengco, Dr. June Mendoza, and Salud Suillan.

SPO2 Nicanor Avendaño testified that upon his arrival at the house of ARNEL in Barangay Bubukal, Santa Cruz, Laguna, at about 1:00 p.m. of 29 August 1997, he found the house in disarray. He saw a naked woman lying dead on a wooden bed with both hands and feet tied from behind, as well as a dead child on a crib. The dead woman was WENDY, and the dead child was ARWIN. Some clothes and a puppy were also burned. Avendaño and his team recovered a piece of steel near WENDY's face and empty bottles of gin and *Royal Tru-Orange* on top of the cabinet. They took pictures of the dead bodies and caused the entry of the incident in the police blotter. He learned later that ARNEL's two daughters, BERNALYN and ERICA, had been rushed to the provincial hospital for treatment before he and his team arrived at the crime scene.[4]

Dr. Nilo Pempengco, the physician who conducted an examination of the dead bodies of WENDY and ARWIN, testified that the cause of their death was cardio-respiratory arrest due to severe traumatic head injury and multiple contusion hematoma.[5] The injuries could have been caused by any hard and blunt object like a piece of metal, piece of wood, or even a hand.

Dr. June Mendoza, a physician-surgeon of the Laguna Provincial Hospital, testified that he treated BERNALYN and ERIKA on 29 August 1997. He found in BERNALYN multiple "contusion hematoma,"[6] which could have been inflicted by a blunt and hard object and by a rope but which would not have caused immediate death even if not properly treated.[7] He found in ERIKA contusions and lacerated and incised wounds,[8] which would not have caused death even if no immediate medical attention had been given.[9]

Salud Suillan, WENDY's mother, declared that WENDY and ARNEL lived with her at her residence in Banca-Banca, Victoria, Laguna, for nine months after their marriage and that during their sojourn at her house she noticed ARNEL's uncontrollable jealousy. ARNEL used drugs, which frequently caused his tantrums.[10] When asked whether she knew who killed WENDY and ARWIN, Salud answered that according to Jose Alcalde, ARNEL was the killer.[11] On cross-examination, she admitted that ARNEL had been continuously treated at the University of Sto. Tomas Hospital in Manila from 1993 up to 1997. However, she did not know whether he was treated for a mental illness.[12]

After the prosecution rested its case and formally offered its exhibits, the defense filed a motion for leave of court to file a demurrer to evidence,[13] which was granted. On 27 April 1998, the defense, through counsel *de parte* Atty. Renato B. Vasquez, Sr., filed a demurrer to evidence[14] based on the following grounds:

> (a) The accused has not been adequately informed of the nature and cause of accusation against him during the arraignment;
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> (b) Not an iota of incriminatory evidence, direct or circumstantial, has been adduced and presented by the prosecution during the trial; and
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> (c) The constitutional presumption of innocence of the accused has not been overcome by any evidence or contrary presumption.

In support thereof, the defense alleged that ARNEL was afflicted with psychosis and could not comprehend, and that despite his strange behavior characterized by his deafening silence, motionless appearance, and single direction blank stare the trial court insisted on his arraignment. Thus, ARNEL was not adequately apprised of the nature and cause of the accusation against him. Moreover, no concrete evidence pointing to ARNEL as the culprit was presented by the prosecution. Hence, the constitutional presumption of innocence of an accused prevails.

In its Order of 22 May 1998,[15] the trial court denied the demurrer to evidence and set the dates for the presentation of the evidence for the defense. However, in a Manifestation dated 4 June 1998,[16] Atty. Vasquez informed the court that the defense opted not to present evidence for ARNEL's defense, as the prosecution failed to prove his guilt beyond reasonable doubt.

On 16 July 1998, the prosecution filed its Comment[17] on the manifestation and prayed for the re-opening of the presentation of prosecution's evidence for the purpose of proving that ARNEL was at the scene of the crime. In its Order of 21 August 1998,[18] the trial court allowed the prosecution to present additional evidence. The defense questioned the propriety of the said order before the Court of Appeals in a petition for *certiorari.*

In its resolution of 17 December 1998,[19] the Court of Appeals dismissed the petition for non-compliance with Section 1, Rule 65, Rules of Court, and for the further reason that the order sought to be set aside was interlocutory in character and could not, therefore, be the subject of a petition for *certiorari*; and that even granting that the exception applied, the trial court committed no capriciousness in issuing the assailed order.

The prosecution thereafter presented SPO1 Neptali de la Cruz and Jose Alcalde as additional witnesses.

SPO1 Neptali dela Cruz, testified that at around 1:30 p.m. of 29 August 1997, while he was on duty at the Police Assistance Center Base, Barangay Bubukal, Santa Cruz, Laguna, he received a report of a killing incident at the house of ARNEL. He proceeded to the place with SPO2 Edilberto Apuada. There, he saw ARNEL seated outside the house while being held by two persons. He and Apuada entered the house and saw the dead bodies of WENDY and ARWIN. He noticed that ARNEL was motionless and silent when the dead bodies were being brought out of their house. [20]

Jose Alcalde, father of ARNEL, testified that at 1:30 p.m. of 29 August 1997 he heard the news that ARNEL's house was burning. Along with one Martin, his carpenter, Jose proceeded to ARNEL's house. Upon entering the house, he saw ARNEL with raging eyes, holding a kitchen knife and a hammer. Jose tried to pacify and convince ARNEL to surrender his weapons to him. Jose's effort proved futile. It was only upon the intervention of ARNEL's two brothers that ARNEL was successfully disarmed. Jose left ARNEL to the care of his brothers because he had to bring to the hospital the almost lifeless bodies of BERNALYN and ERIKA.[21]

After the prosecution finally rested its case, the trial court set on 8 October 1998 the presentation of the evidence for the defense. However, on 7 October 1998, counsel for ARNEL, Atty. Vasquez Sr., informed the trial court of his inability to communicate with ARNEL because of ARNEL's "out of touch of the world" behavior. Atty. Vasquez manifested that the defense was constrained to submit the case for decision.[22]

In its decision of 30 April 1999,[23] the trial court found that the prosecution's evidence has duly established a succession of circumstantial evidence that leads to the inescapable conclusion that ARNEL committed the crimes charged. It gave due credence to the testimony of Jose Alcalde. It found significant the fact that right from the start of the investigation of the incident up to the time the cases were submitted for decision, no other person was suspected of having anything to do with the gruesome family massacre. The trial court added that ARNEL's culpability was further bolstered by his failure to offer any evidence for his defense despite ample opportunity to do so.

In determining the appropriate penalty in Criminal Case Nos. SC-6651 and SC-6654 for the killing of WENDY and ARWIN, the trial court applied Article 246 of the Revised Penal Code, as amended by Section 5, R.A. No. 7659, which reads:

> ART. 246. *Parricide.* -- 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.

Taking into account the two aggravating circumstances of treachery and abuse of superior strength, it imposed the death penalty in both cases.

As for Criminal Cases Nos. SC-6652 and SC-6653, the trial court found ARNEL guilty of the crime of frustrated parricide after considering the severity of the wounds suffered by his daughters BERNALYN and ERIKA, which clearly showed his intent to kill them.

In the Appellant's Brief, the defense, through a new counsel, Atty. Eduardo A. Cagandahan, states that the trial court committed the following errors:

1. …in proceeding with the case against the accused who had not been duly informed of the nature and cause of accusation against him during the arraignment or trial.

2. …when it failed to have the accused medically examined to ascertain whether he was in possession of his mental faculties when he allegedly committed the acts imputed to him, or that he was suffering from mental aberration at the time … the crime was committed, and when he entered the plea and during the trial on the merits despite the observation of the court a quo, as contained in the order dated August 21, 1998.

In support thereof, the defense assails the validity of ARNEL's arraignment, and asserts that with ARNEL's questionable mental state he could not have understood the proceedings. It then cites the trial court's Order dated 21 August 1998, wherein the trial court made its own observation regarding ARNEL's strange behavior at the time of arraignment. The Order reads in part:

> Finally, it is worthwhile to recall that when the accused was arraigned in all the four cases, the Court was constrained to enter for him a PLEA OF NOT GUILTY in all said cases as the accused acted strangely in a manner as if he [was] out of touch with the world and would not utter any word. But since the defense opted not to present any evidence, no defense whatsoever could be entertained for the accused.

Furthermore, the defense calls our attention to the Medical Certificate[24] issued by Dr. Ramon S. Javier, M.D., FPPA, FPNA, of Sto. Tomas University Hospital, stating that ARNEL was first brought to his clinic on 3 December 1993, and was confined at the psychiatric ward several times for bipolar mood disorder (manic-depressive psychosis). His last confinement in that hospital was from 12 to 24 February 1997, or six months before the "family massacre." The medical abstract[25] issued by Dr. Ma. Corazon S. Alvarez, which was also submitted by the defense, likewise shows the several hospitalizations of ARNEL while in detention at the Bureau of

Corrections, Muntinlupa City, and the finding that ARNEL was suffering from bipolar mood disorder with psychotic features. The defense then prays for ARNEL's acquittal or, in the alternative, the remand of the case to the lower court for further proceedings and for the determination of ARNEL's mental state.

In the Brief for the Appellee, the Office of the Solicitor General (OSG) maintains that under Section 11, paragraph (a), Rule 116 of the Rules of Criminal Procedure, suspension of arraignment on the ground that accused appears to be suffering from an unsound mental condition, which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto, may be granted upon motion by the party. In these cases neither accused nor his counsel *de parte* asked for the suspension of the arraignment on that ground. Such failure was tantamount to an admission that ARNEL was not suffering from any mental disorder or to a waiver of the right to move for suspension of arraignment. Besides, for the defense of insanity to prosper, it must be proved that the accused was insane at the very moment when the crime was committed. The trial court was not duty-bound to initiate the determination of ARNEL's alleged mental incapacity.

Finally, the OSG agrees with the trial court that the chain of circumstances in these cases proved beyond reasonable doubt that ARNEL committed the crimes charged. It, however, submits that ARNEL should be meted the penalty of *reclusion perpetua* only, instead of death, in Criminal Cases Nos. SC-6651 and SC-6654 because the aggravating circumstances of treachery and abuse of superior strength cannot be appreciated against ARNEL. It agreed with the trial court insofar as Criminal Cases Nos. SC-6652 and SC-6653 are concerned.

After a painstaking scrutiny of the records of these cases, we rule for ARNEL.

We cannot subscribe to the claim of the OSG that the failure of ARNEL's counsel *de parte* to ask for the suspension of his arraignment on the ground that ARNEL was suffering from an unsound mental health amounted to a waiver of such right. It must be recalled that ARNEL's arraignment was on 22 October 1997. At the time, what was applicable was Section 12(a) of Rule 116 of the 1985 Rules on Criminal Procedure, which reads:

> SEC. 12. *Suspension of arraignment.* – The arraignment shall be suspended, if at the time thereof:
>
> > (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

Nowhere in that Section was it required that a motion by the accused be filed for the suspension of arraignment. Hence, the absence of such motion could not be considered a waiver of the right to a suspension of arraignment. True, Section 11(a) of the Revised Rules of Criminal Procedure, which was invoked by the OSG, requires a motion by the proper party, thus:

> SEC. 11. *Suspension of arraignment.* -- <u>Upon motion by the proper party</u>, the arraignment shall be suspended in the following cases: