

THIRD DIVISION

[G.R. No. 140794, October 16, 2001]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO AGLIDAY
Y TOLENTINO, APPELLANT.**

DECISION

PANGANIBAN, J.:

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act. Malice is the antithesis of reckless imprudence. Once malice is proven, recklessness disappears.

The Case

Before us is an appeal from the September 14, 1997 Decision^[1] of the Regional Trial Court of San Carlos City (Branch 57) in Criminal Case No. SCC 3054. The assailed Decision disposed as follows:

"WHEREFORE, in the light of the foregoing consideration, the court finds the accused Ricardo T. Agliday guilty beyond reasonable doubt of parricide and hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of fifty thousand pesos (50,000.00).

"The PNP Bayambang[,] Pangasinan is directed to turn over the shotgun to the Firearm and Explosive Division, Camp Crame, Quezon City."^[2]

This case originated from the April 22, 1999 Information,^[3] in which Ricardo Agliday y Tolentino was accused of parricide, allegedly committed as follows:

"That on or about February 25, 1999, in the evening, at [B]arangay Nalsian Sur, [M]unicipality of Bayambang, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, wil[l]fully, unlawfully and feloniously shoot his son Richard V. Agliday with a shotgun, unlicensed causing his death shortly thereafter due to '[c]ardio respiratory arrest, hypovolemic shock, gunshot wound, pt. of entry at the (L) upper inner quadrant of gluteus, 3 x 3 cm. (+) contusion collar', as per Certificate of Death issued by Dr. Rod Alden Tamondong, M.D.,

medical officer III, Region I Medical Center, Arellano St., Dagupan City, to the damage and prejudice of his legal heirs."^[4]

On arraignment, appellant, assisted by Atty. Bernardo S. Valdez, pleaded not guilty.^[5] After trial in due course, the lower court rendered the assailed Decision. Atty. Carlito M. Soriano, counsel for appellant, filed the Notice of Appeal on September 22, 1999.^[6]

The Facts

Version of the Prosecution

In its Brief,^[7] the Office of the Solicitor General summarized the prosecution's version of the facts as follows:

"Prosecution witness Conchita Agliday, wife of appellant Reynaldo Agliday, testified that about 8:00 o'clock on the evening of February 25, 1999 while washing dishes in the kitchen of their house, her son Richard Agliday was shot with a shotgun by her husband-appellant Ricardo Agliday (pp. 4-5, tsn, July 5, 1999). As a result, her son Richard fell on his belly; her husband-appellant ran away. Although shocked, Conchita was able to rush out of her house to call for help. Richard was first brought to the Sto. Niño Hospital, then to the San Carlos General Hospital, and finally to the Region I Hospital in Dagupan City (pp. 5-6, id.).

"Before the shooting, Conchita and her husband quarreled over her working as a laundrywoman (p. 7, id.). Her son, Richard, at the time of his death, was only nineteen (19) years old and in 4th year college (p. 9, id.).

"Prosecution witness Rey Agliday, another son of appellant, testified that he was in their house resting on a wooden bed at the time of the incident in question (p. 3, tsn, June 18, 1999). Rey saw his father-appellant shoot his brother Richard with a shotgun, as he was about four (4) meters from them (p. 4, id.).

"Before the shooting incident, Rey recounted [that] his mother and his father-appellant had a quarrel, but he did not interfere. His brother Richard, on the other hand, intervened and for that reason appellant got his shotgun and shot Richard. Appellant surrendered to the barangay captain who accompanied him to the police authorities. Rey executed a sworn statement (Exhibit `A') on the shooting incident (p. 5, id.).

"Dr. Rod Alden Tamondong, medical health officer, Region I Medical Center, Dagupan City declared that he attended to the medical needs of Richard Agliday. Richard came in looking very pale, weak, and semi-conscious (p. 3, tsn, July 13, 1999). He died at the emergency room.

"Dr. Tamondong found a gunshot wound at the left buttock of the victim which had no point of exit; he also found multiple metallic objects therein based on the contusion color of the wound and the x-ray result (pp. 4-5, id.). He stated that the cause of the victim's death was cardio-respiratory arrest secondary to the decrease of the circulating blood of the victim (pp. 4-5, id.). But he did not issue a medical certificate as he was then on official leave; he only issued a death certificate (Exhibit `D') (p. 5, id.)."[8]

Version of the Defense

Appellant, in his Brief,[9] submits his own narration of the events:

"Appellant Ricardo T. Agliday is a barangay tanod of Nalsian Sur, Bayambang, Pangasinan.

"Sometime on February 25, 1999, at or about 8:00 o'clock in the evening, appellant was at the first floor of his house. He was cleaning a homemade shotgun which he intended to bring to [his] night patrol in their barangay, with fellow barangay tanods.

"While his wife Conchita and his son Richard were about to go upstairs, and while appellant was cleaning the homemade shotgun, the gun accidentally went off and Richard's buttock was hit.

"Appellant went near his son and embraced him. Appellant and some relatives brought Richard to the Sto. Nino Hospital at Bayambang, Pangasinan. They later transferred him to the San Carlos General Hospital. Finally, they brought him to the Region I Medical Center at Dagupan City, where he expired.

"Thereafter, appellant returned to Bayambang, Pangasinan. He directly went to the house of Barangay Captain Jose Matabang, Jr. to whom he voluntarily surrendered. The barangay captain brought the appellant to [the] police station of Bayambang, Pangasinan, with the homemade shotgun which [had] accidentally hit Richard." [10]

Ruling of the Trial Court

Faced with two conflicting versions of the facts, the trial court gave credence to the prosecution witnesses who gave straightforward, spontaneous, sincere and frank accounts of the events that had unfolded before their very eyes. Because of their relationship with appellant, there was no reason for them to testify falsely against him. The first witness (Rey) was appellant's son who was the victim's brother, while the other witness (Conchita) was appellant's wife who was the victim's mother.

The defense of appellant that what happened was an accidental shooting was

disbelieved by the trial court. It viewed such stance as his desperate attempt to exculpate himself from the consequences of his acts.

Hence, this appeal.^[11]

The Issues

Appellant submits the following issues:

"First Assignment of Error

"The Honorable Court *a quo* erred in its findings of facts which[,] had they been in accordance with the evidence adduced, will suffice to support a judgment of acquittal for accused-appellant."^[12]

"Second Assignment of Error

"The Honorable Court *a quo* erred in convicting accused appellant [of] parricide."^[13]

This Court's Ruling

The appeal is devoid of merit.

First Issue : *Credibility of Witnesses*

Appellant contends that the trial court erred in giving credence to the prosecution witnesses despite his avowals to the contrary. He claims that it should have believed him because he had absolutely no reason or motive to kill, much less shoot, his own son whom he considered to have had a very bright future. He further alleges that the corroborating testimonies of Jose Matabang and SPO1 Emilio Opina, who were not related to the parties and had absolutely no motive to testify falsely against him, were more credible than those of his wife and other son.

We disagree. Long settled is the rule in criminal jurisprudence that when the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial court.^[14] That is, unless the lower court has reached conclusions that are clearly unsupported by evidence, or unless it has overlooked some facts or circumstances of weight and influence which, if considered, would affect the results.^[15]

Matabang's testimony was basically what appellant had told him and, hence, biased and limited. The testimony of Opina -- that he had been told by Conchita that the shooting was accidental -- was contradicted by her own statements in open court that she was still in shock when the police officer conducted the preliminary investigation. Such statements taken *ex parte*, like affidavits, are held as inferior to testimonies given in open court.^[16] Thus, we find no ground in the case at bar to

overturn the factual findings of the trial court.

Second Issue:
Accident as an Exempting Circumstance

Appellant protests the trial court's ruling that his defense of accidental shooting was fabricated. According to him, he was cleaning the shotgun that he would have used for the evening patrol with other *barangay* tanods when he accidentally touched the trigger and hit Richard, who was going up the stairs into the house with Conchita. [17] He therefore contends that he should be acquitted on the basis of the exempting circumstance of accident under Article 12 (paragraph 4) of the Revised Penal Code.

We are not persuaded. Both the trial court and the solicitor general rejected this defense on the basis of the eyewitness testimonies of Conchita and Rey. Under Article 12 (paragraph 4) of the Code, criminal liability does not arise in case a crime is committed by "[a]ny person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it." The exemption from criminal liability under the circumstance showing accident is based on the lack of criminal intent.

The declarations of innocence by appellant are contradicted by the testimonies of his wife and son. On the witness stand, Conchita recounts the incident as follows:

"Q: You said that you were at home on February 25, 1999 at about 8:00 o'clock in the evening; what were you doing if you can still remember?

A: I was washing dishes, sir.

Q: While doing so, do you recall if there was any unusual incident that happened?

A: Yes, sir.

Q: What was that unusual incident?

A: My son was shot by my husband, sir.

Q: Where did your husband [shoot] your son?

A: In the kitchen, sir.

Q: What weapon did your husband use in shooting your son?

A: Shotgun, sir." [18]

In her Sworn Statement given to SPO1 Emilio Opina of the Bayambang Police Station, she declared: