

EN BANC

[G.R. No. 115686, December 02, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MALABAGO Y VILLAESPIN, ACCUSED-APPELLANT.

D E C I S I O N

PUNO, J.:

This is an automatic review of the decision of the Regional Trial Court of Dipolog City, Branch 10 which imposed the **penalty of death** on accused-appellant, Pedro Malabago y Villaespin, in Criminal Case No. 6598, **viz:**

WHEREFORE, the court finds accused Pedro Malabago guilty beyond reasonable doubt of the crime of PARRICIDE as defined and penalized under Article 246 of the Revised Penal Code. With reluctance and a heavy heart therefore, inspired by the personal feeling and view of the undersigned with respect to the wisdom of the penalty of death for any crime, the court finds itself with no other alternative but to impose the penalty provided for by the express mandate of the law which is now restored under Republic Act No. 7659. The accused (Pedro Malabago y Villaespin) is hereby sentenced to DEATH for the terrible crime he has committed and, to indemnify the heirs of the victim in the sum of P50,000.00 conformable to the recent jurisprudence on the matter (People v. Sison, 189 SCRA 643).

Cost de oficio.

SO ORDERED

DIPOLOG CITY, Philippines, this 10th day of May 1994.

(Sgd.)
WILFREDO C. OCHOTORENA
Acting Presiding Judge"^[1]

In an information dated January 7, 1994, accused-appellant was charged with the crime of parricide committed as follows:

"That in the evening, on or about the 5th day of January 1994, at Barangay Gulayon, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously hack and strike with a bolo one Letecia R. Malabago, his lawfully wedded wife, hitting the latter on her face and neck, which caused the victim's instantaneous death, to the damage and prejudice of the heirs of the victim, in the amount of P30,000.00 as death indemnity,

and also moral and exemplary damages in the amounts to be established during the trial."^[2]

The following facts were established by the prosecution: On January 5, 1994, at about 7:00 in the evening, Guillerma Romano, appellant's mother-in-law, was tending her sari-sari store in Barangay Gulayon, Dipolog City. The Store and its premises were lit by a kerosene lamp and the fluorescent light from the adjoining house of Dodong Opulentissima. Guillerma's daughter, Letecia Romano Malabago, arrived and sat on one of the benches outside the store. She had just come from selling some jackfruit. Allandel, Letecia's fourteen-year old son, appeared and sat on the bench facing her. He listened to his mother and grandmother who were conversing. A few minutes later, accused-appellant came and interrupted his wife and mother-in-law's conversation. He and Letecia began arguing. Guillerma turned away but heard the couple's altercation over money and appellant's jealousy of someone. Suddenly, Guillerma heard a loud sound and she thought that appellant slapped Letecia on the face. Letecia cried out "Agay!" Looking out the store window, Guillerma saw Letecia's face bloodied with a slash along her right ear. Appellant was facing Letecia, and with a bolo in his hand, struck her again, this time hitting the lower left side of her face, from the lips down to the neck. Letecia fell to the ground. Guillerma rushed towards her daughter and shouted for help.^[3] She was lifeless.

Appellant fled to Dodong Opulentissima's house. Dodong Opulentissima later called the police. They came, fetched appellant and brought him to their station.^[4] On investigation, the police found a bloodied bolo in the pineapple plantation near appellant's house.^[5]

Letecia was found to have died of "cardio-respiratory arrest; shock hemorrhage, massive; hack wounds, multiple."^[6]

Accused-appellant pled not guilty to the crime. He claimed that on January 5, 1994, he was in the poblacion of Dipolog City. He alleged he did not know who hacked his wife and had no means of finding the culprit because he was placed in jail after her killing.^[7] He claimed through his son, Allandel, as defense witness, that Guillerma testified against him because she was against their marriage. He was then jobless.^[8] **The proceedings show that Guillerma, together with her husband, catalino, and appellant's and Letecia's three children namely, Allandel, Aljun and Alex later signed as affidavit of desistance and moved to dismiss the case against him.**^[9]

The trial court upheld the prosecution and on May 10, 1994 convicted accused-appellant of **parricide** and sentenced him to **death** pursuant to republic Act No. 7659.

Before us appellant assigns the following errors:

"I

The sentence of death imposed by the trial court on the appellant is an unconstitutional penalty for being violative of fundamental human rights

and is, thus, null and void.

II

The judgment of conviction is null and void for having been rendered by a trial court ousted of jurisdiction because of the grave violations of the appellant's rights to due process committed by no less than the presiding judge himself as shown by his conduct at trial.

III

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in convicting the appellant of parricide considering that the prosecution failed to prove his guilt beyond reasonable doubt as demonstrated by:

- (a) The prosecution's failure to prove the legitimate marital relation between appellant and the victim;
- (b) The prosecution's failure to prove the fact and cause of death;
- (c) The prosecution's failure to establish the chain of custody over the alleged instrument of death;

IV

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in convicting the appellant when it arbitrarily and selectively gave full weight and credence only to Guillerma Romano's inculpatory but inconsistent and inadmissible testimony and disregarded her exculpatory statements.

V

Assuming without conceding that the trial court was not ousted of jurisdiction, it nevertheless gravely erred in peremptorily dismissing the appellant's defense of alibi as inherently weak.

VI

Assuming without conceding that the finding of parricide is correct, the trial court nevertheless gravely erred in appreciating the existence of treachery as an aggravating and qualifying circumstance.

VII

Assuming without conceding that the finding of parricide is correct, the trial court nevertheless gravely erred in refusing to consider the mitigating circumstance of voluntary surrender in favor of the appellant, despite the prosecution's failure to contradict and challenge the appellant's claim of this mitigator.

Assuming without conceding that it was not ousted of jurisdiction, the trial court nevertheless gravely erred in awarding civil indemnity arising from the death of Letecia Malabago considering that the prosecution failed to prove said death as a fact during trial."^[10]

We affirm the trial court's findings with modification

The crime of parricide defined in Article 246 of the Revised Penal Code as amended by Republic Act 7659^[11] states:

"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."

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.^[12]

The key element in parricide is the relationship of the offender with the victim.^[13] In the case at parricide of a spouse, the best proof of the relationship between the accused and the deceased is the marriage certificate. In the absence of a marriage certificate. However, oral evidence of the fact of marriage may be considered by the trial court if such proof is not objected to.^[14]

Guillerma Romano testified on direct examination that:

"PROSECUTOR MAH:

Q On January 5, 1994 at about 7:00 in the evening, can you still recall where you were at that particular time?

A I was in my store.

Q While you were in your store at that particular time and date, can you still remember if there was an unusual incident [that] happened?

A Yes, sir.

Q Please tell us what that incident was about?

A At that moment, I heard a loud sound (paka).

Q Did you investigate what that loud sound [was] all about?

A I did not mind because they are husband and wife.

Q What was that loud sound about?

A I thought it was a slap on the face but she was nit by a bolo.

Q What was that incident about?

A There was an altercation between husband and wife.

Q After the altercation between husband and wife, what happened?

A I saw the hacking two times and I saw blood.

Q Who was hacked?

A My daughter Letecia was hacked by Pedro Malabago.

x x x x x x x x x."[15]

Guillerma Romano's testimony on direct examination affirmed the narration in her affidavit taken the day after the incident. The affidavit was adopted by the prosecution as its Exhibit "A" and it reads in part:

"Q What is your purpose in coming to the Office of the Investigator of the Dipolog City Police?

A To file a complaint against Pedro malabago y Villaespin, 42 years old and a resident of Gulayon, Dipolog City,

Q What is your complaint against said person?

A He hacked to death my daughter who is his wife with the use of a bolo.

Q How many times did the suspect hack his wife, Letecia R. Malabago?

A Twice, hitting the victim on the right side of her face and on the neck resulting in her instanteneous death.

x x x x x x x x x."[16]

Appellant did not object to Guillerma's testimony and sworn statement that he and Letecia were husband and wife.[17] Appellant himself corroborated Guillerma's testimony, to wit:

"COURT: (to the witness)

Q You are Pedro Malabago, the accused herein?

A Yes, sir.

Q What is your relation to the late Letecia Romano Malabago?

A She was my wife, your honor.

Q You mean to say you were legally married to Letecia Romano Malabago?

A Yes, sir.

Q Who solemnized the marriages?

A Mayor Barinaga, your honor.

Q When?

A In the year 1970, your honor.

Q Who were the witnesses, could you still remember?

A I can only remember Sergio Vidal, your honor.

Q But then you were legally married by civil ceremony officiated by Mayor Barinaga?

A Yes, your honor.

x x x x x x x x x."[18]

The testimony of the accused that he was married to the deceased is an admission against his penal interest. It is a confirmation of the **semper praesumitur matrimonio** and the presumption that a man and a woman deporting themselves as husbands and wife have entered into a lawful contract of marriage.[19]