

## FIRST DIVISION

[ G.R. No. 189834, March 30, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAY  
MANDY MAGLIAN Y REYES, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

This is an appeal from the December 23, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02541, which affirmed the May 8, 2006 Decision in Criminal Case No. 8393-00 of the Regional Trial Court (RTC), Branch 22 in Imus, Cavite, The RTC found accused Jay Mandy Maglian guilty of parricide.

#### The Facts

An Information<sup>[2]</sup> charged the accused as follows:

That on or about the 4th day of January 2000, in the Municipality of Dasmarinas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court[,], accused with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, and set on fire Mary Jay Rios Maglian, his lawfully wedded spouse, who as a result sustained 90% Third Degree Burns on the face and other vital parts of the body that caused her death, to the damage and prejudice of hte heirs of the said Mary Jay Rios Maglian.

During his arraignment, the accused pleaded "not guilty."

The prosecution presented witnesses Lourdes Riosm Norma Saballero, Dr. Ludovino Lagat, Amy Velasquez, and Ramon Oredain. The defense, on the other hand, presented accused Maglian, Atty. Ma. Angelina Barcelo, Atty. Rosemarie PErey-Duque, Police Officer 3 (PO3) Celestino San Jose, and Lourdes Panopio as witnesses.

The facts established during the trial below.

The accused is a businessman engaged in the lending business and the buying and selling of cars and real estate. He and atty. Mary Jay Rios (Mary Jay) were married on January 29, 1999. They had a son, MAtteo Jay.<sup>[3]</sup>

On January 4, 2000, the accused and Mary Jay were having dinner at their home in Dasmariñas, Cavite when they got into an argument. The accused did not want Mary Jay to attend a party, causing them to fight. Incensed, the accused collected the clothes that MArY Joy had given him for Chirstmas and told her he would burn

them all and started pouring kerosene on the clothes. Mary tried to wrestle the can of kerosene from him and, at the same time, warned him not to pour it on her. Despite his wife's plea, the accused still poured gas on her, thus setting both the clothes and his wife on fire.<sup>[4]</sup>

The accused brought Ma Jay to the De la Salle University Medical Center Das Mariñas. After four days, she was transferred by her aunt to the burn unit of the East Avenue Medical Center in Quezon City, where her condition improved. Subsequently, however, the accused transferred her to St. Claire Hospital, which did not have a burn unit. Since her condition deteriorated, Lourdes Rios, Mary Jay's mother, had her transferred to the Philippine General Hospital (PGH) in Manila but she was no longer able to recover. Before she expired, she told her mother what had happened to her, declaring, "*Si Jay Mandy ang nagsunog sa akin.* (Jay Mandy burned me.)" She passed away on February 24, 2000.<sup>[5]</sup>

The accused, in his defense, said the burning incident was completely accidental. He said it was Mary Jay who was being difficult while they were arguing. She threatened to throw away the clothes he had given her. To spite her, he also took the clothes that she had given him and told her he would burn them all. He then got a match and a gallon of kerosene. Mary Jay caught up with him at the dirty kitchen and took the match and kerosene from him. In the process, they both got wet from the spilled kerosene. She got angry at how he was looking at her and screamed, "*Mandy, Mandy, wag yan, wag yan, ako na lang ang sunugin mo.* (Mandy, don't burn that, burn me instead.)"

Accused, trying to avoid further provoking his wife, left his wife and went upstairs to his son. While climbing the stairs, he heard Mary Jay shouting, "*Mandy, Mandy, nasusunog ako.* (Mandy, I'm burning.)" He ran down the steps and saw the blaze had reached the ceiling of the kitchen. He embraced his wife and called out to his mother to help them. He poured water on her when the fire could not be put out and brought her to the living room. He then carried Mary Jay to the car while shouting for help from the neighbors. In the process, he sustained burns on his legs and arms.<sup>[6]</sup>

While Mary Jay was still confined at the East Avenue Medical Center, the accused learned from a certain Judge Tanguanco that using "red medicine" would help heal his wife's burn wounds. The hospital, however, did not allow him to use the "red medicine" on Mary Jay. He thus had his wife transferred to PGH. When there was no space at the hospital, she was transferred to St. Claire Hospital with the help of a certain Judge Espanol. The doctors at St. Claire advised him to stop using the "red medicine" on his wife when her wounds started to get worse and began emitting a foul odor.<sup>[7]</sup>

The accused asserted that his mother-in-law, Lourdes Rios, and their laundrywoman, Norma Saballero, accused him of burning his wife since his wife's family had been angry with him ever since they got married. His mother-in-law and Mary Jay's siblings used to ask money from them and would get angry with him if they did not receive any help.<sup>[8]</sup>

The accused likewise claimed that his late wife made a dying declaration in the presence of PO3 Celestino San Jose and Atty. Rosemarie Perey-Duque. This

allegation was corroborated by PO3 San Jose, who testified that Mary Jay was a friend and he had visited her at East Avenue Medical Center on January 13, 2000. He was there to take Mary Jay's statement upon instructions of Chief Major Bulalacao.<sup>[9]</sup> PO3 San Jose narrated the incident during his direct examination by Atty. Bihasa:

- Q What, if any, was the reply of Atty. [Mary Joy] Rios?  
A She nodded her head.  
Q And after that, what happened next:  
A I told her that I will get her statement and she told me that she could give her statement.  
Q And after Atty. Rios told you that she was capable of giving her statement, what if any transpired?  
A I took her statement, which was in my handwriting.  
Q Her statement was in your handwriting but who uttered those statements?  
A It was Atty. Rios.<sup>[10]</sup>

Atty. Duque testified that the last time she spoke with Mary Jay was on January 13, 2000, when she visited her at the hospital along with PO3 San Jose. The statements of Mary Jay were reduced into writing and Atty. Duque helped in lifting the arm of the patient so that she could sign the document.<sup>[11]</sup>

### **The Ruling of the Trial Court**

The RTC rendered its Decision on May 8, 2006, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds and so it hereby holds that the prosecution had established the guilt of the accused JAY MANDY MAGLIAN y REYES beyond reasonable doubt and so it hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Inasmuch as the civil aspect of this case was prosecuted together with the criminal aspect, the accused is also hereby ordered to indemnify the heirs of the deceased the following amounts of:

- a. Php5 00.000 as actual damages
- b. Php500,000 as moral damages,
- c. Php200,000 as exemplary damages,
- d. Php200,000 as attorney's fees; and
- e. Cost of suit against the accused.

SO ORDERED.<sup>[12]</sup>

### **The Ruling of the Appellate Court**

On appeal, accused-appellant faulted the trial court for not giving credence to the

dying declaration Mary Jay made to her friends who became defense witnesses. He averred that the trial court erred in not admitting the deposition by oral examination of Atty. Ma. Angelina Barcelo which would corroborate the testimonies of the defense witnesses regarding the handwritten dying declaration of Mary Jay. The trial court was also questioned for giving credence to the perjured and biased testimonies of prosecution witnesses Lourdes Rios and Norma Saballero. Lastly, accused-appellant averred that the trial court erroneously disallowed the defense from presenting Dr. Ma. Victoria Briguella, a qualified psychiatrist, who could testify that Mary Jay's mental, psychological, and emotional condition on February 24, 2000 was disoriented and she could not have made a dying declaration on said date.

The CA upheld the ruling of the trial court. The dying declaration made by Mary Jay to her mother Lourdes and laundrywoman Norma had all the essential requisites and could thus be used to convict accused-appellant. It noted that while the testimonies of Lourdes and Norma on the dying declaration had some inconsistencies, these were immaterial and did not affect their credibility. It observed that no ill motive was presented and proved as to why the prosecution's witnesses would make false accusations against accused-appellant.

Hence, we have this appeal.

On December 14, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, represented by the Office of the Solicitor General, manifested that it was adopting its previous arguments.

### **The Issue**

In his Supplemental Brief, accused-appellant raises the following issue:

Whether the guilt of accused-appellant has been established beyond reasonable doubt.

Accused-appellant contends that (1) he never or did not intend to commit so grave a wrong as that committed or so grave an offense as the felony charged against him; and (2) that he voluntarily, and of his own free will, surrendered or yielded to the police or government authorities. He claims that the victim's dying declaration showed that what happened to her was an accident. He avers that this was corroborated by three witnesses. The victim's attending physician, he insists, also testified that he was told by the victim that what happened to her was an accident.

If not acquitted, accused-appellant argues that, in the alternative, his sentence must be reduced due to mitigating circumstances of no intention to commit so grave a wrong and voluntary surrender. He claims he is entitled to the latter since he voluntarily surrendered to the authorities before criminal proceedings were commenced against him. The reduction of his sentence, he contends, must be by at least another degree or to *prision mayor* or lower.

### **The Ruling of the Court**

We affirm accused-appellant's conviction.

### **Dying declaration**

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case."<sup>[13]</sup> It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."<sup>[14]</sup>

The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death."<sup>[15]</sup> The question to be answered is which dying declaration satisfies the aforementioned circumstances, the one made by Mary Jay to Lourdes and Norma, or the one she made before Atty. Duque and PO3 San Jose.

Accused-appellant contends that his late wife's dying declaration as told to the defense witnesses Atty. Duque and PO3 San Jose effectively absolved him from any wrongdoing. However, it is the dying declaration presented by the prosecution that satisfies all the requisites provided in the Rules. In contrast, the dying declaration for the defense did not show that Mary Jay's death at the time of said declaration appeared to be imminent and that she was under a consciousness of impending death.

Moreover, We defer to the factual finding that the witnesses for the prosecution were more credible. Mary Jay's dying declaration to her mother Lourdes and to Norma showed that accused-appellant was the one who set her in flames. Lourdes and the Maglians' laundrywoman Norma both testified that Mary Jay, moments before her actual death, told them that it was accused-appellant who was responsible for burning her. Lourdes and Norma both testified that at the time of Mary Jay's declaration, she was lucid and aware that she was soon going to expire. Furthermore, the so-called dying declaration made by Mary Jay to defense witnesses Atty. Duque and PO3 San Jose suffers from irregularities. The dying declaration allegedly made to Atty. Duque and PO3 San Jose was handwritten by the latter but he did not have it sworn under oath. We reiterate too that it was not clear that it was executed with the knowledge of impending death since the statements were made more than a month before Mary Jay died.

We agree with the trial and appellate courts that Lourdes and Norma were both credible witnesses and had no motive to lie about Mary Jay's dying declaration. The appellate court correctly pointed out that although Lourdes was Mary Jay's mother, this relationship did not automatically discredit Lourdes' testimony. And while accused-appellant alleged that Lourdes as his mother-in-law did not approve of him, he could not give any improper motive for Norma to falsely accuse him. Between the two competing statements of the two sets of witnesses, the one presented by the prosecution should clearly be given more weight as it satisfies the requisites of an admissible dying declaration.

**No intent to commit so grave a wrong**