

## SECOND DIVISION

[ G.R. No. 179035, April 16, 2008 ]

### THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS PAYCANA, JR., APPELLANT.

#### D E C I S I O N

##### TINGA, J.:

Appellant Jesus Paycana Jr. was charged<sup>[1]</sup> with the complex crime of parricide with unintentional abortion before the Regional Trial Court (RTC) of Iriga City, Branch 37. Appellant pleaded not guilty during the arraignment.<sup>[2]</sup> Pre-trial ensued, in which appellant admitted that the victim Lilybeth Balandra-Paycana (Lilybeth) is his legitimate wife.<sup>[3]</sup>

Appellant sought to exculpate himself from the crime by setting up self-defense, claiming that it was his wife who attacked him first. In view of the nature of self-defense, it necessarily follows that appellant admits having killed his seven (7)-month pregnant wife, and in the process put to death their unborn child.

The prosecution presented Tito Balandra (Tito), the father of the victim; Angelina Paycana (Angelina), appellant's eldest daughter who personally witnessed the whole gruesome incident; Barangay Tanod Juan Parañal, Jr.; Dr. Stephen Beltran, who conducted the autopsy; and Santiago Magistrado, Jr., the embalmer who removed the fetus from the deceased's body.

The evidence for the prosecution established that on 26 November 2002, at around 6:30 in the morning, appellant, who worked as a butcher, came home from the slaughter house carrying his tools of trade, a knife, a bolo, and a sharpener.<sup>[4]</sup> His wife was preparing their children for school and was waiting for him to come home from his work. For reasons known to him alone, appellant stabbed his wife 14 times.<sup>[5]</sup> Tito, whose house is at back of appellant's house, heard his daughter shouting for help. When he arrived, he saw his daughter lying prostrate near the door and her feet were trembling. But seeing appellant, who was armed, he stepped back. Angelina told Tito by the window that appellant had held her mother's neck and stabbed her.<sup>[6]</sup>

Appellant claimed that he wrested the weapon from Lilybeth after she stabbed him first. According to him, they had an altercation on the evening of 25 November 2002 because he saw a man coming out from the side of their house and when he confronted his wife about the man, she did not answer. On the following morning, he told her that they should live separately. As appellant got his things and was on his way out of the door, Lilybeth stabbed him. But he succeeded in wresting the knife from Lilybeth. And he stabbed her. He added that he was not aware of the number of times he stabbed his wife because he was then dizzy and lots of blood was

coming out of his wound.<sup>[7]</sup>

The trial court found appellant guilty in a decision dated 14 April 2005.<sup>[8]</sup> The case was automatically appealed to the Court of Appeals pursuant to Rule 122 Section 3(d) of the Rules of Criminal Procedure.<sup>[9]</sup> The appellate court denied appellant's appeal in a decision dated 30 May 2007.<sup>[10]</sup> Appellant filed a notice of appeal dated 14 June 2007 before the Court of Appeals.<sup>[11]</sup>

The Court is not convinced by appellant's assertion that the trial court erred in not appreciating the justifying circumstance of self-defense in his favor.

Self-defense, being essentially a factual matter, is best addressed by the trial court.<sup>[12]</sup> In the absence of any showing that the trial court failed to appreciate facts or circumstances of weight and substance that would have altered its conclusion, the court below, having seen and heard the witnesses during the trial, is in a better position to evaluate their testimonies. No compelling reason, therefore, exists for this Court to disturb the trial court's finding that appellant did not act in self-defense.

Appellant failed to discharge the burden to prove self-defense. An accused who interposes self-defense admits the commission of the act complained of. The burden to establish self-defense is on the accused who must show by strong, clear and convincing evidence that the killing is justified and that, therefore, no criminal liability has attached. The first paragraph of Article 11 of the Revised Penal Code<sup>[13]</sup> requires, in a plea of self-defense, (1) an unlawful aggression on the part of the victim, (2) a reasonable necessity of the means employed by the accused to prevent or repel it, and (3) the lack of sufficient provocation on the part of the person defending himself.<sup>[14]</sup>

Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked.<sup>[15]</sup> Appellant's claim of self-defense was belied by the eyewitness testimony of his own daughter Angelina, which was corroborated by the testimony of his father-in-law Tito and the medical findings. Angelina's testimony was very clear on how her father strangled and stabbed her mother just as she was about to greet him upon arriving home. She begged her father to stop, and even tried to grab her father's hand but to no avail.<sup>[16]</sup> Tito ran to appellant's house as he heard his daughter Lilybeth's screaming for help, and he saw her lying prostrate near the door with her feet trembling. He moved back as he saw appellant armed with a weapon. Angelina told him by the window that appellant had held her mother's neck and stabbed her.<sup>[17]</sup>

Moreover, Dr. Rey Tanchuling, a defense witness who attended to appellant's wound, testified on cross-examination that the injuries suffered by appellant were possibly self-inflicted considering that they were mere superficial wounds.<sup>[18]</sup>

In any event, self-defense on the part of appellant is further negated by the physical evidence in the case. Specifically, the number of wounds, fourteen (14) in all, indicates that appellant's act was no longer an act of self-defense but a determined

effort to kill his victim.<sup>[19]</sup> The victim died of multiple organ failure secondary to multiple stab wounds.<sup>[20]</sup>

The Court agrees with the trial court's observation, thus:

Angelina who is 15 years old will not testify against her father were it not for the fact that she personally saw her father to be the aggressor and stab her mother. Telling her grandfather immediately after the incident that accused stabbed her mother is part of the *res gestae* hence, admissible as evidence. Between the testimony of Angelica who positively identified accused to have initiated the stabbing and continuously stabbed her mother and on the other hand, the testimony of accused that he killed the victim in self-defense, the testimony of the former prevails.<sup>[21]</sup>

The RTC, as affirmed by the Court of Appeals, properly convicted appellant of the complex crime of parricide with unintentional abortion in the killing of his seven (7)-month pregnant wife.

Bearing the penalty of *reclusion perpetua* to death, the crime of parricide<sup>[22]</sup> is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. The key element in parricide is the relationship of the offender with the victim. In the case of parricide of a spouse, the best proof of the relationship between the accused and the deceased would be the marriage certificate. The testimony of the accused of being married to the victim, in itself, may also be taken as an admission against penal interest.<sup>[23]</sup>

As distinguished from infanticide,<sup>[24]</sup> the elements of unintentional abortion<sup>[25]</sup> are as follows: (1) that there is a pregnant woman; (2) that violence is used upon such pregnant woman without intending an abortion; (3) that the violence is intentionally exerted; and (4) that as a result of the violence the fetus dies, either in the womb or after having been expelled therefrom. In the crime of infanticide, it is necessary that the child be born alive and be viable, that is, capable of independent existence.<sup>[26]</sup> However, even if the child who was expelled prematurely and deliberately were alive at birth, the offense is abortion due to the fact that a fetus with an intrauterine life of 6 months is not viable.<sup>[27]</sup> In the present case, the unborn fetus was also killed when the appellant stabbed Lilybeth several times.

The case before us is governed by the first clause of Article 48<sup>[28]</sup> because by a single act, that of stabbing his wife, appellant committed the grave felony of parricide as well as the less grave felony of unintentional abortion. A complex crime is committed when a single act constitutes two or more grave or less grave felonies.

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances. Applying the aforesaid provision of law, the maximum penalty for the most serious crime (parricide) is death. However, the Court of

Appeals properly commuted the penalty of death imposed on the appellant to *reclusion perpetua*, pursuant to Republic Act No. 9346.<sup>[29]</sup>

Civil indemnity in the amount of P50,000.00 (consistent with prevailing jurisprudence) is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of any of the aforementioned crimes (murder, homicide, parricide and rape). Moral and exemplary damages may be separately granted in addition to indemnity. Moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Art. 2217 of the Civil Code, while exemplary damages can be awarded if the crime is committed with one or more aggravating circumstances duly proved. The amounts thereof shall be at the discretion of the courts.<sup>[30]</sup> Hence, the civil indemnity of P50,000.00 awarded by the trial court to the heirs of Lilybeth is in order. They are also entitled to moral damages in the amount of P50,000.00 as awarded by the trial court.<sup>[31]</sup>

In addition to the civil liability and moral damages, the trial court correctly made appellant account for P25,000.00 as exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.<sup>[32]</sup>

WHEREFORE, the appeal is DISMISSED. The Decision of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

*Quisumbing, (Chairperson), Carpio-Morales, Velasco, Jr., and Brion, JJ., concur.*

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<sup>[1]</sup> CA *rollo*, p. 12. The accusatory portion of the information reads:

That on or about the 26<sup>th</sup> day of November, 2002, at about 6:30 in the morning at Sitio Sogod, Sto. Domingo, Nabua, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while armed with a kitchen knife and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab Lilybeth Balandra-Paycana, his legitimate wife, for several times, the latter being seven (7) months pregnant, fatally hitting the different parts of her body, causing her immediate death and abortion, to the damage and prejudice of the decease(d)'s deserving heir.

CONTRARY TO LAW.

<sup>[2]</sup> Record, p. 35.

<sup>[3]</sup> *Id.* at 43-44. See also *id.* at 117, Certificate of Marriage.

<sup>[4]</sup> TSN, 21 January 2004, p. 6.

<sup>[5]</sup> TSN, 10 June 2004, p.5.