

EN BANC

[G.R. No. 130654, July 28, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO BASIN JAVIER, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Before us on automatic review is the Decision^[1] dated April 15, 1997 of the Regional Trial Court of Agoo, La Union, Branch 32,^[2] in Criminal Case No. A-3155, convicting accused-appellant Eduardo Javier of the crime of parricide and sentencing him to suffer the penalty of death and to indemnify the heirs of the victim in the amount of P50,000.00 as moral damages and P21,730.00 as actual expenses.

The Information filed before the trial court which charged accused-appellant with the crime of parricide reads as follows:

"That on or about the 15th day of June 1996, in the Municipality of Santo Tomas, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the intent to and being then armed with a bolo, did then and there wilfully, unlawfully and feloniously attack, assault and use of personal violence, by hacking with the said weapon one FLORENTINA JAVIER Y LACESTE, his legitimate spouse, and as a result of which his said wife suffered fatal injuries which directly caused her death immediately thereafter, to the damage and prejudice of the heirs of the victim.

Contrary to law."^[3]

Upon arraignment, the accused-appellant pleaded not guilty and trial ensued.

The prosecution evidence, consisting of the testimonies of Consolacion Javier Panit and Alma Javier, daughters of the victim and accused-appellant, and SPO1 Rotelio Pacho are detailed as follows:

Accused-appellant Eduardo Javier and the victim Florentina Laceste Javier were legally married on December 18, 1954.^[4] In their forty-one years of marriage, they begotten children. Accused-appellant and Florentina lived at Tubod, Sto. Tomas, La Union with one of their daughters, Alma Javier.^[5]

On June 15, 1996 between two o'clock and three o'clock in the morning, Consolacion Javier Panit, who lives near her parent's house about ten to fifteen meters away, heard her mother, Florentina shouting "Arayatan dac ta papatayen nac ni Tatangyo" (Your father is going to kill me). After she heard her mother scream for help, Consolacion rushed out of her house and met her sister, Alma who, weeping,

told her that their parents were quarrelling. Alma, at the time of the incident was living in her parents' house. Consolacion and Alma then proceeded to their brother Manuel's house, which is located about seventy to eighty meters away from their parents' house. The three then proceeded to their parents' house. Manuel, who entered first, found the lifeless body of his mother and his father, accused-appellant, wounded in the abdomen. Manuel then ordered Consolacion to get a tricycle to bring their father to the hospital. At this point, Manuel informed her sisters that their mother was dead and that their father confessed to him that he killed his wife and thereafter allegedly stabbed himself. Florentina was found dead in their bedroom, drenched in her own blood.^[6]

Accused-appellant was brought to the hospital by Consolacion's husband, Fernando, and her son, Jefferson, while Manuel went out to get help.^[7]

SPO1 Rotelio Pacho, assigned as desk investigator at the Sto. Tomas Police Station in La Union, testified in the investigation he conducted with SPO4 Manuel Zarate and SPO1 Agaton Laroza regarding the incident of June 15, 1996. He stated that he received a call for assistance from the barangay captain of Tugod, Sto. Tomas because accused-appellant allegedly killed his wife. The police authorities then proceeded to accused-appellant's house in Brgy. Tugod, Sto. Tomas, where they saw Florentina lying in the bedroom floor covered with blood. Upon interviewing the victim's children, Pacho testified that Manuel told him that his father confessed to killing his wife. Manuel then surrendered to him the bolo covered with blood which was found in the bedroom. The bolo was allegedly used by accused-appellant in assaulting his wife.^[8] The medical findings indicated that the victim suffered from multiple injuries and her neck was almost cut off from her body.^[9]

Accused-appellant Eduardo Javier, in his testimony, admitted killing his wife in their bedroom with the use of a sharp bolo. He identified the bolo as the same one presented by the prosecution as Exhibit "A" and which he used in wounding himself. Accused-appellant told the court that he killed his wife because he could not sleep for almost a month. He claimed that when the killing took place, his mind went totally blank and he did not know what he was doing.^[10] He claims that he was insane at the time of the incident.

The trial court rejected accused-appellant's defense of insanity and on April 15, 1997 rendered a decision finding him guilty of parricide and sentenced him to suffer the penalty of death. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of all the foregoing consideration, the accused, Eduardo Javier y Basin is hereby sentenced to suffer the penalty of death; to pay the heirs of the victims the amount of P50,000.00 as moral damages for the death of the victim and P21,730.00 as actual expenses; and to pay the cost of the proceedings.

SO ORDERED."^[11]

In this appeal, accused-appellant alleged that the trial court erred in imposing the death penalty, considering the presence of two mitigating circumstances of illness of the offender and passion and obfuscation.^[12] While accused-appellant does not question the decision of the trial court in rejecting his defense of insanity, he argues

that he should be meted a lower penalty because at the time of the incident, he was suffering from loss of sleep for a prolonged period of time, which would have caused him to commit the crime.

He further contends that his suspicion that his wife was having an illicit relationship with another man, aggravated by his illness, goaded him to commit the crime.

The Office of the Solicitor General, on the other hand, argues that accused-appellant cannot claim the mitigating circumstance of illness in the absence of a medical finding to support his claim. Accused-appellant cannot likewise be entitled to the mitigating circumstance of passion and obfuscation in the absence of sufficient evidence.

We find the appeal bereft of merit.

Accused-appellant, during trial, admitted killing his wife, but interposed as defense the exempting circumstance of insanity. However, the trial court rejected this defense of insanity for failure of the defense to prove that accused-appellant was indeed insane at the time of the incident. The defense never presented any medical record of the accused-appellant, nor was a psychiatrist ever presented to validate the defense of insanity. Equally important, the defense, during trial, never alleged the above-claimed mitigating circumstances of illness and passion and obfuscation, thus weakening the case of accused-appellant.

In this appeal, accused-appellant alleged that prior to the incident, he had been suffering from insomnia for around a month, thus leading him to commit an act beyond his control, the killing of his wife, Florentina. The defense went on to cite medical literature on the effects of total and partial sleep loss to support his contentions.^[13]

For the mitigating circumstance of illness of the offender to be appreciated, the law requires the presence of the following requisites: (1) illness must diminish the exercise of the will-power of the offender; and (2) such illness should not deprive the offender of consciousness of his acts.^[14]

Since accused-appellant has already admitted to the killing, it is incumbent upon him to prove the claimed mitigating circumstance of illness. In this case, however, aside from the testimony of the accused that his mind went blank when he killed his wife due to loss of sleep, no medical finding was presented regarding his mental condition at the time of killing. This Court can hardly rely on the bare allegations of accused-appellant, nor on mere presumptions and conjectures. No clear and convincing evidence was shown that accused-appellant was suffering an illness which diminished his exercise of will-power at the time of the killing.

On the other hand, it is clear that accused-appellant was aware of the acts he committed. First, he remembered killing his wife in their bedroom with the use of a bolo, where he mangled her neck twice; he remembered trying to commit suicide, by wounding himself with the same bolo he used in killing his wife; and he remembered being brought to the hospital. Since he remembered the vital circumstances surrounding the ghastly incident, from the time of the killing up to the time he was brought to the hospital, it shows that he was in full control of his