

Let justice be done! Multiple oppressions before the legal system from a case in Argentina

iQue se haga justicia! Opresiones múltiples ante el sistema jurídico a partir de un caso en Argentina

Que a justiça seja feita! Múltiplas opressões perante o sistema legal a partir de um caso na Argentina

Rosalía Reyes^{a 1}; Fabiana Vanini^{b 2}; Jessica Visotsky^{c 3}; Graciela Hernández^{d 4}

1 Independiente, Argentina; 2 Office Judicial Branch of the Province of Buenos Aires, Argentina; 3 National University of the South, Argentina; 4 National University of the South, Argentina

a

b fabivanini12@gmail.com

c jessicavisotsky@yahoo.com.ar

d

Abstract

The paper focuses on the description of an interdisciplinary intervention carried out within the framework of the arrest in 2020 of a woman accused of the murder of her newborn daughter, in a home delivery in 2005. The disciplinary framework of the intervention is the area of legal anthropology, in which it is about thinking about how the legal system should act in order to be able to resolve conflicts in situations of cultural inequalities, both material and symbolic. Those of us who participate belong to the historical / anthropological fields and the law and together we try to address the conflict in search of modifying the criminal situation the protagonist of this story who also participates in this article sharing her testimony. The methodological perspectives that articulate the work are within the universe of ethno-qualitative strategies, in which participant observation and ethnographic interviews are the main input of this cut.

Keywords: women; oppressions; births; patriarchal justice; intersectionality



Resumen

El artículo está centrado en la descripción de una intervención interdisciplinaria realizada en el marco de la detención en 2020 de una mujer acusada del asesinato de su hija recién nacida, en un parto domiciliario en 2005. El encuadre disciplinar de la intervención es área la antropología jurídica, en la cual se trata de pensar cómo debería actuar el sistema jurídico para poder penar en resolver conflictos en situaciones de situaciones de desigualdades culturales, tanto materiales como simbólicas. Quienes participamos pertenecemos a los campos históricos/antropológicos y el derecho y juntas tratamos de abordar el conflicto en busca de modificar la situación penal la protagonista de esta historia que participa también en este artículo compartiendo su testimonio. Las perspectivas metodológicas que articulan el trabajo se encuentran dentro del universo de las estrategias etno-cualitativas, en las cuales la observación participante y las entrevistas etnográficas son el principal insumo de este recorte.

Palabras clave: mujeres; opresiones; partos; justicia patriarcal; interseccionalidad

Resumo

O artigo está focado na descrição de uma intervenção interdisciplinar realizada no contexto da prisão em 2020 de uma mulher acusada do assassinato de sua filha recém-nascida, em um parto domiciliar em 2005. O enquadramento disciplinar da intervenção é a área da antropologia jurídica, em que se trata de pensar como deve agir o sistema jurídico para poder resolver os conflitos em situações de desigualdades culturais, tanto materiais como simbólicas. Aqueles de nós que participamos pertencem ao campo histórico / antropológico e do direito e juntos tentamos enfrentar o conflito em busca de modificar a situação criminal da protagonista desta história que também participa deste artigo ao compartilhar seu depoimento. As perspectivas metodológicas que articulam o trabalho encontram-se no universo das estratégias etnoqualitativas, nas quais a observação participante e as entrevistas etnográficas são o principal insumo deste recorte.

Palavras-chave: mulheres; opressões; nascimentos; justiça patriarcal; interseccionalidade

THE CASE[1]

My name is Rosalía Reyes, I worked in a chicken factory called La Gleba in Argerich. He worked around 14-16 hours a day. She was pregnant, she was already full term. As I was a monotributista I did not have social work, I did not have a genuine salary, with which I hid my pregnancy, I hid from telling them for fear of losing my job since I was the breadwinner of my four children. One night I arrived very tired, I fell asleep, I got up and my baby was born from nothing. I passed out and couldn't save my baby's life because when I woke up my baby was dead without life, so I cut the cord.

They called the police, they arrested me, from there I went through a very long process, they took me to trial, I was

detained, well when I got to the trial date I was scared, I was very afraid that they would give me many years, I was very scared, because I It was a bra, I didn't want my daughters to be left without their mother since they didn't have their father, so I made the decision to go to Buenos Aires. After 15 years I made another life, God always said he gave me back my life, I worked, time passed, I worked, I was blank, I had social work, everything ... After 15 years in Capital the facial cameras grab me and I fall under arrest, where my case was reopened after 14 and a half years ago.

On February 14, 2019, my trial date was raised, we went to trial and they gave me 8 years in prison. It was something very ugly, very horrible for me, to happen after so many years to come back from that situation. I faced it thanks to my advocate, Dr. Vanini, who supported me in everything, the doctor helped me a lot in my cause. Today in March, on 19, 2020 they gave me the possibility of having a house arrest. Today I am at my sister's house in Bahía Blanca, enjoying house arrest from where I speak every day with my daughters, with my granddaughter, but I want to tell them that there is a law that supports women because what they did to me was something very sad for me. I only ask that justice be done, that they help women. God grant that justice is done

LEGAL SUPPORT[2]

From a strictly legal perspective, it is necessary to describe the fact that the Court that sentenced Rosalía Reyes to eight (8) years in prison, considered proven: "... at night, between the 18th and 19th of May 2005, inside the house located at calle España no. 316 of the town of Argerich, Villarino Party, knowingly and with intention, caused the death of a newborn, who was given birth alive and on time, that is, after having been pregnant for approximately nine

months of pregnancy which he kept hidden, giving him death through omisive behaviors due to the lack of provision of the necessary care to avoid his death due to hypovolemic shock due to hemorrhage through the umbilical cord, as recorded in the medical report of fs. 18/22 and, subsequently, the lifeless body of the newborn was introduced in a black nylon bag, burying it during the following day in the courtyard of the aforementioned farm. "

From a simple reading of the factual table, it is possible to appreciate that the behavior reproached by Rosalía Reyes consists of an omission. The sentence does not condemn her named for having killed her newborn daughter through active conduct (for example, mechanical asphyxia or beatings). It does so because it considers that Rosalía killed her daughter "through omissionate behavior due to the lack of provision of the necessary care to prevent her death".

The most important difference between the crimes of "commission by omission" or of "improper omission" and active criminal offenses is that the objective nature of omission requires that, in the face of a dangerous situation, the person who holds a position of guarantor be able to intervene to prevent harm. Another important distinction has to do with subjective typicity and implies that the person forced to act must recognize the dangerous situation that, by the way, does not dominate (Conf. Cecilia Marcela Hopp, "Crimes of commission by omission: the bad mother as a victim invisible", in Criminal Jurisprudence of the Supreme Court of Justice of the Nation, T. 22, p. 173) .-

Rosalía's defense in the oral and public debate focused on the different layers of crime theory and the necessary gender perspective that should be applied to the case. We submitted to the Court that there was no action by virtue of the blackout; that in the face of the dangerous situation, Rosalía had been unable to intervene to prevent death; that she did not intend the distressing result to occur; that to every event there could be a negligent but never willful omission (knowingly and with intention); that the possibility of a state of exculpating necessity be contemplated since the law does not require heroic conduct, that there were extraordinary mitigating circumstances and that the criminal action to

prosecute the crime was prescribed.

Despite the profuse proposals made to the Court from the Theory of Crime, from the Constitution and the Human Rights Treaties, the Court decided to use criteria for the application of criminal law that, under an apparent neutrality, lead to discriminatory treatment of women, based on stereotypes that establish expectations of conduct when prosecuting a woman.

The sentence focused on making moral reproaches linked to idealized standards about what a "good mother" should do instead of attending to the relevant aspects of the theory of crime. The decontextualized perception that the judges had of Rosalía as a "bad mother", as a mother who did not give her life for her newborn daughter, as a single mother who already had 4 children and was pregnant again made up for the evidentiary deficiencies on the elements of the crimes of "commission by omission"

It is necessary at this point to highlight that at the time of the event, Rosalía Reyes was the head of the household, a single mother who raised four minor children, who worked in a chicken refrigerator from 5 am to 9 pm, that her work situation was one of the most precarious since she did not maintain a dependency relationship with her employer that recognized all her labor rights and that lack of protection forced her to hide her pregnancy because, if she was fired, how was she going to feed her children. On the day of delivery, after that long working day, she arrives at her house very tired and lies down (she was in the seventh month of pregnancy). Two hours later, she wakes up with acute pain and her daughter is born in what is called "avalanche delivery". Rosalía faints, when she wakes up with the help of one of her daughters - 12 years old - she cuts the umbilical cord with a knife, begins to bleed, ties her part of the umbilical cord and when she can assist the newborn, already she was dead.

Stereotyped roles impose duties that generate behavioral expectations, the disapproval of which can, as in the case, have criminal consequences.

Rosalía Reyes has been convicted on the basis of prejudice and gender stereotypes, since the belief that women are

mothers by a kind of natural destiny, that there is a maternal instinct and are required to act accordingly, underlies the criminal reproach. The gender stereotype linked to the case is that of a "bad mother" and its correspondence with the expectation of gender, which implies that every good mother has a "maternal instinct".

The absence of consideration of the context of vulnerability that surrounded Rosalía allowed the Court to maintain an expectation that this woman could not fulfill and, therefore, she was sentenced.

The reasoning behind the sentence is that if she had been a good mother, she would have done what was necessary to prevent her newborn daughter from dying and, what was necessary included for the Court, that she should save her daughter at the cost of her own life. That was the only scenario in which she had not been condemned, mainly because she would have died.

This passage of the sentence is eloquent to illustrate what I have been saying:

The defense also questioned the lack of determination of the accusation made, since it considers that all the behaviors that Reyes failed to comply with to avoid the outcome should have been indicated. I understand that this would mean forcing the prosecution to describe a range of acts capable of being included in what logic and experience understand as necessary and indispensable care. In our case there is no doubt that the reproach made to Reyes is clearly not having prevented her daughter from bleeding. The circumstance of having given birth to her fifth child rules out a possible inexperience of Reyes in this regard, at least in basic matters. In her case, she must also reproach herself for not having required medical assistance personally or through her daughters, if the situation had become unmanageable. The woman alleged that after giving birth she went to bed, she delivered the placenta

and fell asleep until 5 in the morning. She could not explain at that time - because in the debate she did not state - the reasons why, without any medical knowledge, she decided to consider her daughter dead, without even trying to provide her with any kind of assistance. And she is still dead, she will bury her daughter in the back of her patio, before leaving her for hours in a bag in the bathroom of the house.

The Court reproaches Rosalía Reyes for the lack of knowledge obtained after many years of study and care practice, simply because she had previously given birth to four children. She recriminates not having sought medical help, forgetting that Reyes gave birth at 11:30 pm with four (4) minors in a town where health centers are far away and without considering that the woman lacked a telephone line to seek help.

It is interesting to highlight what was explained by numerous organizations and groups throughout the national territory that defend and promote Perinatal Human Rights and the rights of women in their sexual and reproductive health in the note of repudiation addressed to the Criminal Court on the occasion of the conviction of Rosalía:

As the facts do not fit with the desired result and what is morally acceptable for a birth, there is condemnation. That by virtue of the evidence produced, it is clearly a social condemnation for a childbirth that occurred in solitude, outside the hospital, without professional assistance, of a woman in a vulnerable situation, maternal alone, supporting a home, in precarious working conditions, which affect basic needs, development and access to full health due to said social context. This sentence is far from being a conviction based on specific technical scientific evidence in the neonatal obstetric area, with arguments based on popular beliefs about the ligation and cutting of the

umbilical cord (note attached in this appeal).

The Inter-American Court of Human Rights has defined in its jurisprudence (“Cotton Field”), the concept of gender stereotype, holding that:

[...] it refers to a preconception of attributes or characteristics possessed or roles that are or should be performed by men and women respectively” and that “the creation and use of stereotypes becomes one of the causes and consequences of gender violence against women.

For its part, the Convention on the Elimination of All Forms of Discrimination against Women also approached a definition of what should be understood by gender stereotypes when it stated:

States Parties must take all appropriate measures to: a) Modify the patterns sociocultural behavior of men and women, with a view to achieving the elimination of prejudices and customary practices and of any other nature that are based on the idea of the inferiority or superiority of either of the sexes or on stereotypical roles of men and women.

The existence of these prejudices and stereotypes influences the way in which institutions react to violence against women. For this reason, international instruments on human rights establish clear guidelines on the importance of eradicating gender bias in institutional practices as a specific measure to prevent gender violence.

Let it be clear that the omission reproached by Rosalía Reyes is closely related to gender stereotypes: the “bad mother” and the “maternal instinct.” Such a circumstance is noted from the moment in which the due conduct is not described in the fact, but the Court held that Reyes had to do

the "obvious", which he already knew, because she is a woman, multiparous and is going through her fifth pregnancy.

The sentence that convicted Rosalía Reyes is under review before the Criminal Cassation Court of the province of Buenos Aires. Recognized organizations of our country that defend human rights have presented themselves as Amicus Curiae: Provincial Commission for Memory, Penal Thought Association and Institute of Comparative Studies of Social and Criminal Sciences accompanying the claim for acquittal for Rosalía, who is fulfilling her conviction in house arrest.

A SOCIO CULTURAL VIEW[3]

The multiple violence that Rosalía Reyes has gone through in her life, the accumulated violence, the intersection of oppressions she has suffered and even her relationship with childbirth, with immediate subsequent upbringing, are largely explained by aspects linked to social and cultural factors.

Rosalía Reyes has been sentenced for her alleged transgression of the maternity mandate, being a breadwinner, a worker, the daughter of a migrant mother from the north of the country, contribute to placing her in a place of subordination by the hegemonic medical system and by justice.

She has lived her entire life in rural contexts, and at the time that happened what led her to jail she was a monotax worker without labor rights, a fact that generated well-founded fears of losing her job. She has been a beaten and abandoned woman with her children from her partners.

During interviews with Rosalía and her sister Andrea Reyes, we were able to get closer to aspects of her life and the day she gave birth when her daughter died in 2005 and because of her actions she was condemned.

About childbirth and the umbilical cord

His mother had seven births, which were in the rural context of Argerich, a rural area of the province of Buenos Aires, some of these births were attended by his father who worked with animals in the context of the Department of Agronomy of the UNS and had experience in calvings. They were witnessed by many. Yet she had never delivered alone. During the hearings, the prosecutor questioned her for not knowing how to tie the umbilical cord, as if being women placed us in a place of having to know everything, even that "She didn't know anything about tying the cord. I am a professional nurse, and I don't know how to do it either". Rosalía, when she saw her dead baby, buried it, she buried everything together, and it is likely that all the births that they witnessed as girls have seen before someone buried the placenta, because in the countryside and among indigenous peoples the placenta was buried.

A family history of home births

The mother of both was from the province of Salta, migrant and surely with knowledge linked to non-hegemonic, peasant or indigenous cultures, knowledge that is put and has been put into play in the context in which they have developed their family life "in the province "As they say in the maternal family to the place where Rosalía's mother lived, Argerich, Province of Buenos Aires and the father was from Santa Fé. Andrea told us that her father has attended the births of her mother and that of Rosalía's first daughter:

Once she attended a birth, that of my mother and hers (Rosalía), that of the oldest child. My father worked at the University of the South, in the livestock and agriculture part he helped the animals to be born and more or less he had the idea. When my sister Rosalía got sick at her house, he helped her, but because she had got sick, and if not, she would die. She surely, she first she tied the baby, cut the cord and then called the ambulance. I was a

girl, I remember that one of my sisters was also born at home, we are seven sisters and my mother just said goodbye to them. But she later called the ambulance.

ABOUT ROSALÍA'S LIFE PROJECT

In recounting the delivery, she told us that she believed her fear was of losing her job. Andrea told us that Rosalía lived alone, that “She rented a little house, she was not at my parents' house. She lived with her girls”, that she was not in a relationship, she told us that the couple's experiences were not good. We asked Rosalía herself in an interview in the Penal Unit, how was her life raising 4 chicks on her own

It was not easy, it was not easy at all because I neglected my family a lot, yes my daughters (his voice is moved and trembles) but on that side I am happy because I did not neglect them for the fuck but I neglected them because unfortunately I had to work and support my daughters and give them an education nothing more (he ends the sentence with his voice loaded with content crying)

I-Sure, and when I tell you what it was like to raise alone, that's what I mean, the effort it was to have to leave early. How did you organize yourself?

A: Yes, my eldest daughter Vanesa always helped me a lot, I talked to her and she always helped me. Later my brother Darío too, he was the one who always took care of them because at that time Vanesa was already going to be a teenager and like I wasn't there all day the way I did, not the role of dad but I was always in my home, he was my right

hand, I called him, my brother. But hey, I sacrificed a lot to my daughter also because to continue working I and give her the food (her voice is heard again very distressed).

- Sure but you did what you could

A: Yes, I did what I could. I tried very hard but good (her voice returns to express the anguish contained).

However, inquiring about why she did not say that she was pregnant, she wondered Andrea

What was she going to say? Big Hell Boy Town... She didn't count because she didn't want to lose her job. One of my sisters knew, she had told her, but she did not tell anything. She knew what baby clothes she was going to have the moment she was born, I had my baby less than a year old, she was going to pass it on to her.

She trusted in the networks of family solidarity that are woven when facing a new birth.

The strategies of resistance to oppression have been masterfully described by James Scott, this English researcher gives an account of the concealment strategies (Scott 2000, 77), as well as the ways of overcoming the euphemisms and stigmas that the state The modern has constructed towards the oppressed and oppressed as subtle forms as well (Scott; 2000: 78). So hiding results in that "big hell" and in the fear of losing your job, a way to protect yourself.

SOCIAL REALITY OF THE CONTEXT IN WHICH HE LIVED AND WORK

The absence of public health policies is a central factor when considering the context in which Rosalía gave birth. About the social reality of Argerich Andrea Reyes told us

What happens is that in Argerich there is nothing, not even a little room, you have to call Médanos, the hospital so that the ambulance can come and then the ambulance takes you to Bahia, so that it can be born. In Médanos there is no midwife or anything.

Regarding the type of precarious work that Rosalía had and even as she worked she told us that she was a monotax, that

She was very responsible, I don't know what she did, I know she was like a manager, when someone was missing she covered... She worked with the chickens, she was in control of everything...

Rosalía herself told us:

It was forced labor where she worked many hours. I entered at 3-3: 40 in the morning until 11: 30-11: 45, as I was in charge of delivering the orders, I had to receive and deliver them when the truck came to the cooperative to take them. Well, a very heavy job, yes, but I always worked many hours at work, but because it was maintenance for my daughters, it was mom and dad and I had to. If there was the monotax and those days I asked for it because I needed it, I felt very tired, I worked a lot, it is not only work, then I would come home and do the housework as best I could but hey, despite

everything, I always fought (her voice trembles from the crying contained with the last words spoken).

Labor outsourcing and the subtle forms of discipline at work have been studied by sociologists recently (Abal Medina, 2014; Fígari; 2011; Basualdo and Morales; 2014). There are subtle ways of disciplining and surviving in a context of job insecurity where the fear of losing a job comes to overcome the simplest daily decisions. Concealment mechanisms are part of these forms of discipline at work.

She told us precisely when we asked her about how she anticipated the delivery, which she estimated would coincide with the 15 days of vacation, "I asked for it," she told us and when we asked her about becoming pregnant and she does not want to tell her coworkers, the reason why it does not tell us precisely:

First I didn't tell it because I was in black, I thought they were going to fire me because they didn't take people who have many children for social work, then for the time they had to give me in that process, which is three months before or three months later Because of that fear, I did not count it, so as not to be left without work, nothing else (her voice trembles again from holding back crying) but if I did light tasks the last time I only received papers, I did everything that is paperwork, nothing more, but as always, I was missing staff helped me. Because the first thing I wanted to leave, finish and get home.

This oppression by working conditions together with the living conditions in the rural context make the citizenship that is exercised weak, as defined by Merklen as "poor citizens" (2005) in relation to the impossibility of carrying out social participation full, real, as Sirvent (1999) helps us to think, which is extremely pertinent to think about the impossibility of the demand for rights, participation and the demand for compliance with social rights.

CLOSING NOTES

Rosalía is a woman who has suffered multiple violence and oppression, has been violated and oppressed multiple times. She has undergone a process of re-victimization, the same State that did not protect her social rights, then prosecutes and criminalizes her.

This case bears enormous similarities with the case analyzed by Bidaseca, Katz, Ballesteros and Jarque de Reyna Maraz (2016) and makes us reflect on the intersectionality of oppressions that run through Rosalía's life (Viveros Vigoya 2016). She has been oppressed within the patriarchal system by the men who abandoned her with their children, being in charge of the upbringing, a patriarchal system that does not make the weight of the law fall on the men who have given rise to the pregnancies, who are fathers. But also neglected by the State, a police State, which appears to judge her and imprison her in a practice of "policing families" according to Donzelot (Donzelot apud Jelin 1998) but health care is not available, of her children, to protect her in the working conditions of many hours of work to which she was exposed. She has also suffered class oppression, she is poor, works many more than 8 hours a day, rented a little house, left the care of the newborns to her sisters and her eldest daughters. Life in rural and semi-rural contexts with so many material deficiencies contributes to the deterioration of the quality of life and upbringing.

In addition to this reality, the knowledge that women previously had in childbirth in rural areas has been lost by women, this knowledge has not been transmitted, however the conditions make these deliveries continue to happen and there is no attention from the health system. health that guarantees immediate attention and care, in the event of an emergency such as occurred.

NOTES

[1] This section was developed by Rosalia Reyes.

[2] This section was developed by Fabiana Vanini.

[3] This section was developed by Jessica Visotsky and Graciela Hernández Importar tabla

REFERENCES

Anzorena, Claudia. 2013. Mendoza: Edit. EDiunc

Aval Medina, Paula. 2014. Buenos Aires: Biblos.

Basualdo, Victoria y Diego Morales. 2014. . Buenos Aires: Siglo XXI.

Bidaseca, Karina 2016. "Cuerpos racializados, opresiones múltiples. Ser mujer, indígena y migrante ante la justicia". En , compilado por Karina Bidaseca. Buenos Aires: Edic. Godot.

Fígari, Claudia. 2011. "Hegemonia empresarial, disciplinamiento en el trabajo: aportes desde y para una formación radical". V, n.. 8: 1-15.

Garrido, Beatriz y Graciela Hernández. 2016. Tucumán: Ed Humanita.

- Jelín, Elizabeth. 1998. . Buenos Aires: Fondo de Cultura Económica.
- Merklen, Denis. 2005. Buenos Aires: Gorla.
- Paredes, Julieta. 2011. . Cochabamba: PNUD. Proyecto de Fortalecimiento Democrático.
- Scott, James. 2017. . México: Erra.
- Sirvent, María Terresa. 2000. . Buenos Aires: Miño y Dávila.
- Velázquez, Susana. 2013. Buenos Aires: Paidós.
- Viveros Vigoya, Mara. 2016. "La interseccionalidad: una aproximación situada a la dominación". 52: 1-17.