

94 Phil. 305

[G.R.Nos. L-5841 and L-5842. January 28, 1954]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN CUARESMA, ERNESTO DOMINGO, FELIPE DOMINGO, ALVARO URMANITA, AND DAMASO DOMINGO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

REYES, J.:

This is an appeal from the judgment rendered by the Court of First Instance of Cagayan in the above-entitled cases convicting the appellants of murder and frustrated homicide. Elevated to the Court of Appeals, the two cases have been certified to us by that court because life imprisonment was imposed in one case and the two cases arose from the same occurrence. With the withdrawal, however, of Ernesto Domingo's appeal, only that of the remaining four appellants is now up for consideration.

It appears that at about midnight of June 17, 1949, the appellants Ernesto Domingo, Damaso Domingo, Felipe Domingo, Alvaro Urmanita, and Jose Cuaresma went to the house of Hilario Salud in barrio Calapangan, Gattaran, Cagayan, and demanded money from him. As he was unable or unwilling to comply with the demand, he was attacked by them with their *bolos*, as was also his son Bernardo Salud, who tried to defend him. Receiving various wounds, Hilario Salud died the following day after making an *ante mortem* statement giving an account of what had happened and naming his assailants. Bernardo Salud also received serious wounds. But he survived, though according to medical opinion he too would have succumbed had his wounds not been treated.

Appellants admitted having been in the house of Hilario Salud in the night in question but denied they were there to rob. According to them

they went there early in the evening to ask for the hand of Hilario's daughter, Paula, who was engaged to the appellant Ernesto Domingo, but on being told that Paula's mother was sick they left at once, except Ernesto, who preferred to remain in order to help the family attend to the sick.

Testifying on what happened that night after his companions had left, Ernesto said that while he and Paula were sitting on a bench holding hands, her brother Bernardo Salud came out of a room, and, seeing him put his arm around her waist, struck him in the temple with a bolo; that, unarmed, he had to take refuge under a table, but there he was attacked by Eugenio, another brother of Paula, who also had a *bolo*; that wresting the *bolo* from Eugenio's hand he fought and chased his adversaries, who now numbered seven with the addition of the deceased and his other sons, who had joined the affray; and that, though wounded, he finally managed to escape by jumping off the back porch.

We are with the trial court in not giving credence to the version of the defense. There seems to be no reason to doubt Paula's testimony that she was in Tuguegarao on the night in question and came to Gattaran only in the afternoon of the following day after learning of her father's death. She also denied being engaged to Ernesto, and the ring which she is alleged to have given him as a token of their engagement could not have been hers because it did not fit any of her fingers and somebody else's name was engraved thereon. And Ernesto's account of his fight with his seven armed adversaries is too improbable to merit belief.

But while the trial court was justified in rejecting the version of the defense, we agree with the Solicitor General that only two of the appellants were clearly proved to have gone up the house that night and to have taken part in the perpetration of the two crimes. This was admitted by Bernardo Salud himself, the victim in the frustrated homicide case. Those two are Ernesto Domingo and Damaso Domingo. We also agree with the Solicitor General that the killing of Hilario Salud only constituted homicide in the absence of clear proof of any

circumstance that would qualify the killing as murder. In the commission of both crimes the aggravating circumstances of dwelling and nighttime were present and should, therefore, be taken into account in fixing the penalty. It results that the appellants Jose Cuaresma, Alvaro Urmanita, and Felipe Domingo should be acquitted; whereas Damaso Domingo should be declared guilty of homicide in G. R. No. L-5841 and of frustrated homicide in G. R. No. L-5842, with the aggravating circumstances already mentioned.

Wherefore, the decision below is modified in the sense that Jose Cuaresma, Alvaro Urmanita, and Felipe Domingo are acquitted, with costs *de officio*, while Damaso Domingo is declared guilty of homicide in G. R. No. L-5841 and of frustrated homicide in G. R. No. L-5842, and taking into account the aggravating circumstances of dwelling and nighttime without any mitigating circumstance to compensate the same, he is sentenced to suffer indeterminate penalties of 10 years and 1 day of *prision mayor* to 17 years, 4 months and 1 day of *reclusion temporal* in the first case, and 4 years, 2 months and 1 day of *prision correctional* to 10 years and 1 day of *prision mayor* in the second, this in addition to the indemnity imposed below, with proportionate costs against him.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Bautista Angelo, JJ., concur.
