

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VICENTE CASAS, DEFENDANT AND APPELLANT.

G.R. No. L-5873. March 31, 1953

Ponente: REYES, J.

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REYES, J.:

Vicente Casas and Dionisio Saclolo were prosecuted for murder in the Court of First Instance of Leyte. Saclolo was acquitted on a reasonable doubt but Casas was found guilty of homicide and sentenced to the corresponding penalty. From this sentence Casas appealed to the Court of Appeals but that court certified the case here on the ground that the crime committed was murder and the penalty imposable could not be less than life imprisonment.

It is a proven fact that at about 7 o'clock in the evening of June 14, 1950, while the now deceased Catalino Tinapay was lying on his back at the edge of the azotea of his house in barrio Villalon, Calubian, Leyte, he was without any warning attacked by two men, one of whom hit him in the thigh or knee with a piece of wood while the other stabbed him in the breast with a knife. A sturdy man, Tinapay managed to get possession of the knife, whereupon his assailants fled. Seriously wounded in the breast just below the right clavicle, Tinapay died as a consequence thereof the following day.

The question is who stabbed the deceased.

We find the answer to this question, first, in the testimony of his widow, Natividad Botero, who said that as she came out to the azotea in answer to her husband's call for help he showed her the knife in his hand, saying: "Here is the knife with which Vicente Stabbed me." When there is the ante-mortem statement of the deceased taken down by a policeman in the presence of a municipal councilor, naming Vicente Casas again as the one who had stabbed him with a knife. And lastly, we have the testimony of Salvador Billato, Casas' friend and co-worker, who accompanied him to the house of the deceased but did not take part in the assault. This witness testified that the day before the assault Vicente Casas received a scolding from the deceased in connection with the hiring of the latter's launch; that early in the evening of the day following Casas met him, and Dionisio Saclolo on the street and asked them to go with him to the house of the deceased to find out, so he said, how brave the deceased really was Casas at the same time handing him a bolo and Saclolo a piece of wood; that, although he was reluctant, he felt compelled to go because Casas threatened him with bodily harm; that upon nearing the house of the deceased, they spotted him on the azotea lying on his back, whereupon Casas stepped upon the trunk of a coconut tree and stabbed the deceased with a knife, while Saclolo at the same time stood on a chair beside Casas and struck the deceased on the thigh with the piece of wood he was carrying; that losing heart because of what he was and fearing that Casas might take him to task for not helping, he threw the bolo under the house of the deceased and ran away.

Testifying in his own defense, the appellant Vicente Casas denied having stabbed the deceased to death. He said that from 6 to 3 o'clock that evening he was in the house of an elder brother drinking tuba with Vicente Kilaton; that hearing from people passing by that the deceased was spitting blood, he "wanted to leave to find out" but was

dissuaded by his brother for fear that something might happen to him, so what he did was to go to sleep, and he did not wake up till the following day.

Appellant's alibi was not convincing. In fact his conduct that night was suspicious. Although he was in a way related to the deceased (his bilas according to him) and heard that the latter was in trouble, he said that he did not go to see him but, on the contrary, he slept the rest of the night. Moreover, his self-serving declaration cannot be allowed to prevail over the ante-mortem statement of the victim corroborated by the impartial testimony of appellant's friend and co worker. Salvador Billato, who, as he himself has admitted, had no grudge against him.

The suggestion that the wound found on the body of the deceased could not have been inflicted with the knife presented in evidence is refuted by the fact that the said knife had a 3-inch blade and the wound was 3 inches deep.

After going over the evidence it is our conclusion that the trial court did not err in finding the appellant guilty. But the crime committed is not merely homicide as found below, but murder, it appearing that the attack was sudden and unexpected and the deceased was lying in a defenseless position. There being neither aggravating nor mitigating circumstance, the penalty that should be imposed is reclusion perpetua.

Wherefore, the judgment below is modified and appellant declared guilty of murder and sentenced to reclusion perpetua with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P6,000.00 and to pay costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur. Jugo, J., voted in favor of this decision.

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