

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EPIFANIO AVILA, DEFENDANT AND APPELLANT.

G. R. No. L-4640. March 23, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The Court of First Instance of Surigao found Epifanio Avila responsible for the violent death of Chinaman Joaquin Yu Kok and declaring him guilty of murder, sentenced him to reclusion perpetua, to indemnify the victim's heirs in the sum of P3,000, and to pay the costs. Epifanio is now appealing from that decision.

After examining the record we find the following facts to have been duly established. In June, 1948, Joaquin Yu Kok was living in the sitio of Cato-ogan, in the municipality of Tago, Surigao, with his two servants Teotimo Vasquez and Julian Marvas. In the morning of June 27, 1948, accompanied by Teotimo and Julian, Yu Kok went to the barrio of Sampinit of the same town to collect a debt of five (5) cavans of palay of Eugenio Avila from the latter's father Cirilo Avila. Cirilo offered to pay the debt with only two cavans. Naturally, the creditor refused and there ensued a hot discussion between the two men, Cirilo claiming that Yu Kok was trying to starve his family. In his anger he said that he felt like slapping Yu Kok and then left in a huff. Upon Yu Kok's insistence in collecting the entire debt, the wife of Cirilo and mother of the debtor Eugenio finally gave five cavans of palay. Throughout the discussion, defendant Epifanio was present and he shared the anger and bitterness of his father and obviously resented the Chinaman's insistence in collecting the five cavans of palay.

The house of Yu Kok's consisted of one bed room, an adjoining room containing a long table possibly used as a dining table and a kitchen. That night the Chinaman slept in the bed room, Teotimo Vasquez slept on the long table with a lighted lamp placed at one end thereof while Julian Marvas went to the house of Emilio Espinosa for a visit. Between 10:30 and 11:00 p.m. the appellant surreptitiously entered the kitchen. The noise made by the chickens there, possibly frightened by his intrusion awakened Yu Kok who forthwith repaired to the kitchen to investigate. There he was met by the appellant who proceeded to shoot at him with a pistol, actually hitting him in the lower abdomen and in the left thigh. Yu Kok turned back and ran towards his room but appellant evidently continued firing at him, wounding him in the buttocks and in the right hip. The Chinaman to escape from his assailant, after reaching his room, jumped out of the window and lay prostrate and disabled on the ground. Teotimo who was sleeping on the long table was awakened by the gunshots. He rose to a sitting position and saw the appellant at the foot of the table and in front of the lighted lamp, staring at him. Almost immediately the appellant also fired at him and hit him in the left arm. Thereafter, the defendant ran to the kitchen and escaped through one of the windows thereof. Teotimo, paralyzed with fear and bleeding could not leave the table. He heard his master Yu Kok asking for help from below the house, saying that he had been shot by Epifanio.

About the same time Julian returning home from the house of Espinosa, and at a distance of about fifty yards heard the firing. He quickened his steps towards the house and he saw several persons moving away from it. He trained his flashlight on the group and he recognized Epifanio and his father Cirilo, with a third person between them whom he could not recognize. The trio fled toward the river. Then attracted by the calls for help from Yu

Kok, Julian ran to him and upon inquiring what had happened Yu Kok told him that he had been shot by the appellant. With the help of neighbors who had answered the calls for help, Julian took his master up to the house and then hurried to notify the barrio lieutenant. Someone was sent to the poblacion of Tago to notify the authorities and Chief of Police Isidro Pilapil accompanied by several of his policemen hurried to the sitio of Cato-ogan where he arrived early the next morning, Pilapil questioned the Chinaman who informed him that he had been shot by Epifanio. The Chief of Police reduced his statements to writing and because Yu Kok was too weak to sign, he merely thumbmarked the document marked Exhibit "D". The Chief of Police immediately ordered his policemen to arrest Epifanio. Yu Kok was taken in a boat to the poblacion and there his wounds were examined by Dr. Valerio Montesclaros. On asking the patient how his wounds were caused Yu Kok said that he had been shot by Epifanio. Later Epifanio was brought face to face with the patient and in the presence of Chief of Police Pilapil and Dr. Montesclaros Yu Kok pointed to the appellant as his assailant.

In view of the overwhelming and conclusive evidence against appellant, we find it unnecessary to discuss his defense of alibi aside from the fact that the evidence presented to support the same is very weak and rather unreliable. The trial judge who observed the witnesses while testifying during the hearing said that he was inclined to reject the testimony of the witnesses for the defense and accept that of the prosecution.

When Yu Kok was calling to Teotimo Vasquez for help he said that he had been shot by appellant. Again, when Julian Marvas immediately after the shooting heard his master's call for help, and hastened to his side, he was told by Yu Kok that he had been attacked and shot by Epifanio. These spontaneous declarations made before the declarant had had time to think and to make up a story may well be considered as part of the *res gestae* and therefore admissible as evidence. Because of the nature of the wounds and loss of blood, the Chinaman was in a critical condition and must have realized that he was going to die. In fact, despite the medical assistance rendered by Dr. Montesclaros Yu Kok died at about 11:00 the following morning. His statements made to the Chief of Police in his house in Cato-ogan and to Dr. Montesclaros in the poblacion the following morning and his pointing to the appellant when brought before him, as his assailant may also be regarded as dying declarations also admissible as evidence. All this evidence added to the testimony of Teotimo Vasquez who was awakened by the shots and who actually saw the appellant in the room as he stood at the foot of the table, in front of the lighted lamp, and the testimony of Julian Marvas who with the aid of his flashlight saw the appellant flee from the premises establish beyond all doubt the guilt of the accused.

We agree with the trial court that the shooting of the deceased when just awakened from his sleep and fully unprepared for the attack, was attended with treachery. There was also the aggravating circumstance of dwelling, the attack having been made in the house of the victim. But as the trial court said this aggravating circumstance may well be compensated by the mitigating circumstance of passion and obfuscation.

Finding no reversible error in the decision appealed from, with the exception of the amount of indemnity to the heirs of the deceased, which is hereby increased to six thousand pesos (P6,000.00), the same is hereby affirmed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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