

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEONORA TELLEDO AND BUENAVENTURA TIMBREZA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1778. February 23, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The Court of First Instance of Abra found the defendants Leonora Talledo and Buenaventura Timbreza guilty of murder and sentenced them both to reclusion perpetua, to indemnify, jointly and severally, the heirs of Gregorio Preza in the amount of P2,000 with the accessories of the law and to pay the costs. To reverse the judgment of conviction, the two accused have brought the case here on appeal.

On July 9, 1946, at about 8:30 p.m., Gregorio Preza and Adriano Billen on their way to attend a meeting in the house of the barrio lieutenant of Quimalaba, Dolores, Abra, stopped at the house of Juan Timbreza. Before reaching said house Billan in passing by the house of appellant Leonora, was requested by her to ask Gregorio to come to her house because she wanted to see him. When informed of this desire of Leonora, Gregorio left the house of Juan Timbreza and repaired to Leonora's abode. Upon entering her door he was shot in the stomach by a man who was hiding behind the panel of the door. Gregorio immediately unsheathed the bolo he was carrying and attacked his assailant, hitting him four or five times. His assailant fled from the house; so did Leonora. Gregorio then shouted for help, in response to which, Billen came. He found Gregorio still in the house of Leonora. He asked Billen to help him because according to him Leonora had him shot, at the same time expressing the opinion that his assailant was "if not Alejandro Talledo, Venancio Talledo; if not, the one who was bolloed by him." (testimony of Billen) From the house of Leonora, Gregorio with the help of Billen was able to walk to and go up the house of his mother-in-law about 150 meters away, where the Justice of the Peace took from him a written statement (Exh. F) with its translation (Exh. F-1) at about midnight. Four hours later, that is to say, at 4 o'clock the following morning he died of his gunshot wound.

In his statement (Exh. F), Gregorio told the Justice of the Peace that he supposed that it was Venancio Talledo who shot him but that to be sure, his attacker may be identified by the bolo wounds inflicted on him by Gregorio. He further stated that he maintained amorous relations with Leonora who called him to her house that night; that upon meeting her at the door of her house, she pleaded with him, asking that he pity her and that he should comply with their agreement; that it was then that he was shot from behind the door, after which he attacked his assailant with his bolo.

Acting upon the information contained in this written statement, as well as that given by Billen, the police contacted Venancio Talledo but finding that he bore no wounds, they continued their search until they found the appellant Buenaventura Timbreza who had fresh bolo wounds on his head, arms, and hands and who readily admitted that the wounds were inflicted by Gregorio. He was arrested and during his confinement and investigation, he made written statements (Exhs. H and I) ratified before the Justice of the Peace of Dolores in

which he admitted having fired the shot that killed Gregorio in pursuance of Instructions given to him by Leonora who even gave him the gun (paltik) and who promised him that he would not in any way be implicated in the case; and that she promised to pay him for shooting Gregorio.

When questioned by the police, Leonora made an elaborate statement which she even ratified before the Justice of the Peace, to the effect that on the night in question, while she was sleeping, the deceased came up to her house, kissed her, seized her hands and pulled her up to her feet and took her to the door where he tried to abuse her; that she wanted to cry out for help but that Gregorio threatened her with his gun; that finding that it was impossible to physically resist the intruder, she adopted another strategy and spoke to him in a gentle and conciliatory manner, caressed him and took hold of his hand that was holding the revolver and succeeded in maneuvering said hand as well as the gun until the end of the barrel pointed to Gregorio's body at which instant, she pressed the trigger and shot him. She further stated that Gregorio had been courting her for about six months and that she rejected his advances because he was a married man.

At the trial however, Leonora claiming that the contents of her statement were false and had merely been taught her by the Chief of Police, told a different story, namely, that the deceased came up the house and tried to rape her; that she shouted for help and evidently one person came to her aid; that not long after her cry for help, she heard a noise at her door and Gregorio evidently hearing the same noise, got up from her bed and went to the door, and that soon thereafter she heard the shot that wounded Gregorio. Then she jumped down from the house and ran to the house of her uncle Quintin Talledo.

On the witness stand, Timbreza abandoning the story told by him to the police as contained in his affidavits (Exhs. H and I), even claiming that he signed said affidavits to avoid suffering and further pain when the police pressed his wounds, told the court something else, evidently to fit into the mental picture of the event given by Leonora at the trial. He said that hearing the shouts for help of Leonora, he went up her house unarmed; that at the door he was immediately attacked by Gregorio with a bolo; that he retreated until the two men reached the kitchen porch (batalan) where Gregorio pressed his bolo attack; that during this unequal struggle, Timbreza saw something gleaming, fall from the waist of Gregorio; that he stopped in his efforts at defense, stopped and picked up the object which happened to be a paltik and held it in his hand; and that when Gregorio struck another bolo blow, his hand was hit causing the gun which he was holding to explode or fire.

We agree with the Solicitor General that this story is quite fantastic and is incredible. We are satisfied that the version given by Timbreza to the police as contained in his affidavits is the correct one; and that the trial court committed no error in accepting said affidavits as competent evidence, having been made voluntarily by the affiant. As to Leonora's story told in court, we equally reject it as did the trial court as not true. People do not usually go up other's houses at about 8:30 in the evening to rape women inmates therein, especially, in a neighborhood where the houses are near each other, and much more when there are other people in said houses, as was true in this case, because Leonora's mother-in-law was lying down near her that night. There were houses near that of Leonora, and those of her brother and of her uncle were quite near, both within calling distance, but strange to say, despite her alleged desperate cries for help, neither one of them responded.

Counsel for the appellant questions the propriety of the admission of the statement of Gregorio (Exh. "F" and its translation Exh. "F-1"), claiming that there is no proof that at the time of making the statement, Gregorio believed that he was going to die, this, because when asked by the Justice of the Peace whether or not he believed that he was going to die, he answered: "May be, Judge." Examining the original statement (Exh. "F"), we find that the phrase used by Gregorio in his native dialect was "cas la casta". Said phrase may be translated into "may be" as was done in Exh. F, But it may equally mean "so it seems" or "most probably" or "I believe so". Considering the fact that Gregorio was being questioned, apparently by a superior in the social scale, and a Government official at

that, we may regard his answer "cas la casta" as a positive belief and assurance but expressed modestly, mildly and courteously by a humble barrio resident to a Judicial officer. We therefore find as did the trial court that at the time Gregorio made his statement, he was conscious of his impending death. Moreover, the fact that Gregorio died four hours later, shows that his wound was not only fatal but that he must have been in a critical condition at the time of making the statement as further testified to by the Justice of the Peace who described the physical condition and appearance of Gregorio at the time as he was slowly bleeding to death due to the apparently unchecked flow of blood from his wound. The doctor told the court that Gregorio died of hemorrhage. Three pellets had plowed thru the stomach, spleen and the large and small intestines.

Furthermore, even without this dying declaration, we have the spontaneous statement made by Gregorio to Billen, as the latter came to his aid in response to his cry for help, describing the person who shot him as one who must have sustained several bolo wounds and implicating Leonora as the person who had him shot. Said statement is admissible as part of the *res gestae*.

Considering all the evidence in the case, together with the circumstances surrounding the same, we are satisfied that Gregorio a married man and Leonora had been maintaining amorous relations; that possibly Leonora became dissatisfied with her disadvantageous and precarious situation or that Gregorio did not live up to a promise or agreement, vital to her interests and so she induced and employed her co-defendant Timbreza to shoot him when he came up to her house in response to her summons. Both appellants are clearly guilty of murder, Leonora as principal by induction and Timbreza as principal by actual participation, the killing having been committed with the qualifying circumstance of treachery.

Some members of the tribunal believe that because of the alleged existence of some aggravating circumstances, such as premeditation, consideration of a price, reward or promise, and the use of craft, the penalty of death should be meted out to the appellants. Other members however, are of the opinion that the evidence as to the existence of such alleged aggravating circumstances is not strong, much less conclusive. For instance, the alleged planning of the killing and the promised reward described in the affidavit of Timbreza even if all true, cannot be considered against his co-defendant Leonora for the reason that an extra-judicial admission or confession is admissible only against the one making it. Neither may the supposed aggravating circumstance of price or reward be considered against Leonora for the reason that it was not she who committed the crime in consideration of said price or reward. Besides, these aggravating circumstances with the exception of that of premeditation were not alleged in the information, and were not mentioned or discussed in the decision appealed from, neither were they considered by the Office of the Solicitor General for purposes of increasing the penalty imposed by the trial court. All that the Solicitor General asks for, is the confirmation of said decision. Furthermore, considering the case as a whole, some Justices believe that the appellants will be sufficiently punished with the imposition of the penalty of reclusion perpetua. This, aside from the fact that because of lack of sufficient votes, the extreme penalty of death cannot here be imposed.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs.

Moran, C. J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

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