

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
OLEGARIO YADAON (ALIAS GARION), DEFENDANT AND APPELLANT.***G.R. No. L-1562. November 26, 1948*

Ponente: TUASON, J.

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Anastacio Hichon was killed with a pointed, cutting instrument. He sustained eleven wounds, one of which was fatal a "punctured wound on the abdominal region causing the intestines to come out." The other wounds were in the head, arms and hands. Defendant- appellant's defense is that Hichon's injuries were caused by Hichon's own bolo in the course of a struggle with him for its possession.

The evidence for the prosecution was furnished by Magdaleno Hilvano, his wife Segunda Bacungan, and his step-daughter Asuncion Tañala. Also, the deceased made a dying declaration.

In substance, the witnesses testified that on June 16, 1942, in barrio Guintarcan, municipality of Villareal, Samar, where they had evacuated, Anastacio Hichon was hired by and worked for them. Having been over-taken by night and rain, Hichon slept in their shack, a one-room affair. Maria Yadaon, Segunda Bacungan's niece and defendant's mother, was staying with Magdaleno Hilvano and his family and slept in that shack, too, on the night of the crime. All of them (Hilvano and his family, Hichon and defendant's mother) slept on the floor, Hichon near the door, leaving an oil lamp burning.

About midnight, Asuncion Tañala and Magdaleno Hilvano were aroused by a voice threatening to kill every-one in the house; it was the defendant's voice. When they opened their eyes the light was out, and Magdaleno saw the accused going down and asking Hichon if he was already dead. Segunda was awakened by her husband and heard defendant's voice coming from the seashore; he was shouting.

The three witnesses, not knowing exactly what happened, fled from the house. They borrowed matches, returned, lighted the lamp, saw Anastacio Hichon bleeding, his intestines out. Hichon named the accused as his assailant.

The deceased's dying declaration, made shortly before he expired at noon the next day, recites that the declarant was awakened when the defendant asked him, "Are you Tasio?" that this question was quickly followed by a thrust in his abdomen; that he recognized the accused by the light.

Defendant's and his mother's version of the killing is that both of them slept with the Hilvano family in the latter's shack. At that time defendant was awoken from his sleep by his mother's scream asking for help. Opening his eyes, he saw Hichon lying down beside and embracing her. He and Hichon stood up, Hichon unsheathed his bolo and struck at him hitting him in the knee. He and Hichon grappled with each other during which Hichon was wounded with his own weapon.

Reduced to its essentials, the question is, Who was in the house and who was the intruder? The particulars about the wounding and the struggle are absorbed by this question and are inconsequential except in one minor respect. If the deceased was the trespasser, justification for defendant to kill him may be conceded. If it was the defendant,

then the charge of attempted rape against the deceased and the plea of justification, the basis of defendant's argument, can have no factual or legal validity, no matter how the wounds were inflicted. The details of the alleged struggle could at the most affect the qualification of the crime; that is, whether the killing was homicide or murder.

The trial court gave unqualified credence to the testimony of the witnesses for the prosecution. Leaving aside their manner and demeanor which only the trial court could appreciate, by reason of which its findings are accorded a high respect, these witnesses relationship to the parties and other facts revealed by the record support the court's conclusion. While defendant's mother is a close relative of the witnesses and a member of their household, the deceased was only a hired hand and was at the most Hilvano's godson. All things being equal, their natural leaning would be toward the accused and his mother. Only a strong sense of obligation to tell nothing but the truth could have impelled them to give evidence against their own kin and son of their housemate in favor of a hired worker.

The multitude of the wounds, many of them serious, inflicted on the deceased, with the accused emerging unscathed except for an alleged injury in the knee, recoils at the defendant's and his mother's story of the happening. The number and nature of those wounds corroborate the direct evidence that the offended party was caught unaware by the suddenness of the assault, lying down and helpless.

As to the motive; the insinuation that the deceased made an attempt to rape Maria Yadaon and that he had been courting her suggests jealousy of his mother as the defendant's reason for his rash act. The influence of liquor may have added impetus to his decision. He find indication of intoxication in his behaviour; in his threat to kill everyone in the house, which included his mother, and in the fact that even after he consummated hie purpose, when he was out in the beach, he continued making threats in a loud voice.

Treachery characterized the crime. Even if the deceased was already awake when the aggression commenced, and even if there was light, it is nevertheless true that Hichon was down on his back, still drowsy, and unarmed. He was unaware of the defendant's intention; the blows were delivered of a sudden and without warning. This was the essence of the offended party's dying statement. The accused thus employed means and methods which tended directly and specifically to insure his criminal objective without risk to himself arising from the defense which the offended party might make.

However, the evidence is insufficient to establish evident premeditation. It fails to show that the accused meditated and reflected on his purpose to commit the crime sufficiently long to permit the formation of a deliberate determination. (U.S. vs. Bahatan, 3 Phil. 695.)

The appellant has been sentenced to reclusion perpetua, with the accessories of law, to indemnify the heirs of the deceased in the sum of P2,000, and to pay the costs. This sentence is in accordance with law and the facts. It should be and it is hereby affirmed, with costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon. Briones, and Montemayor, JJ., concur.

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