

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONSTANTE ROSAL Y SERRANO, DEFENDANT-APPELLANT.

G.R. No. L-5355. August 31, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Defendant Constanter Rosal is appealing from the decision of the Court of First Instance of Manila finding him guilty of parricide and sentencing him to reclusion perpetua with the accessory penalties provided by law, to indemnify the heirs of the deceased Fortunata Diaz in the amount of P2,000.00 and to pay the costs. Because of the nature of the penalty imposed, the appeal came directly to this Tribunal.

Appellant Constanter Rosal and Fortunata Diaz were married in 1949. In November, 1951, they were living in a small house in Sampaloc, Manila. It seems that this house was of two stories because Filemon Diaz, brother of Fortunata, was occupying a room on the ground floor. On November 5, 1951, at about 5:00 o'clock in the morning, Rosal with a knife commonly known as balisong, stabbed his wife in the front base of the neck producing a fatal wound which caused her death - a wound which a medical officer of the Police Department describes as follows:

"Wound, stab, anterior base, neck, upper right chest cavity, severing completely innominate artery, and alomos completely lower portion, trachea." (Exhibit A-1.)

That Rosal inflicted the above-described wound which caused the death of his wife, there is no question, because upon arraignment on the charge of parricide, he pleaded guilty but reserved the right to prove mitigating circumstances including that of incomplete self-defense.

The story told by appellant is as follows: that at about midnight of the day in question he and his wife were lying down side by side in the sala of their house; that as a precaution against robbers and burglars, his wife provided herself with an iron bar which she placed near her, while he had a knife - balisong - which he placed under his pillow; that his attention was called to the noise or sound of seeds or small stones falling on the floor as though thrown thru the window by someone from outside and that the house was shaking as if someone were rocking it; that four hours later he was awakened by the same noise and the same shaking of the house and he again asked his wife what it all meant, but instead of giving him an answer and apparently annoyed by his query she seized the iron bar and assaulted him with it; that he was able to parry the blow and was even able to wrest the iron bar from her and in a moment of obfuscation he stabbed her with his balisong; that thereafter he asked for the police and when the policeman arrived he surrendered to said peace officer. Under this theory, he now claims incomplete self-defense.

His story was rejected by the lower court and upon a review of the evidence we readily agree with the lower court. We also agree with said court that the testimony of the prosecution witness, Emiliana Garcia, of what happened that early morning is the unvarnished truth. She testified that she was asked by the deceased Fortunata Diaz to come and stay in the house to help in the household chores; that on the night in question she slept in the same sala

close to the couple, her mat only about one foot from that of the spouses; that all through the night she did not notice any extraordinary noise or sound or the shaking of the house; that before going to bed appellant provided his wife with an iron bar while he kept a balisong ostensibly as a precaution against robbers; that he even offered Emiliana another iron bar with which to battle any night intruder; that at five o'clock the following morning, she got up and went to the kitchen to prepare breakfast leaving the couple still in bed and presumably still asleep; that not long thereafter she heard a cry "Ah! Ah! Ah!" as by one in pain coming from the sala; that she ran to the sala lifted the mosquito net and found Fortunata Diaz lying down with arms extended and blood gushing from her neck; that she instinctively shouted for help and rushed to the door calling out to Filemon Garcia who was renting a room downstairs but appellant who at the time was standing outside the mosquito net near the head of his wife, still holding the balisong, pursued her to the door, grabbed her and forcing her down to the floor and pointing the blade of his balisong at her chest, demanded that she tell him the secret affair which Fortunata had. From all this and from the very story of Rosal, the inference is that appellant was jealous of his wife and that any noise or unusual happening real or imagined, he took as a signal made to his wife by a lover.

We find that there was no aggression or assault upon appellant by his wife; there was absolutely no sign or sound of any struggle or of any outcry to support appellant's story that his wife attacked him with an iron bar, that he struggled with her and could take possession of the iron bar; and that we have reason to conclude that appellant prompted by jealousy stabbed his wife as she was lying down, perhaps, even asleep, and that was why before she died she was not able to emit any shout or outcry outside of one single agonizing exclamation of "Ah!". If we consider the stabbing as done with treachery, said aggravating circumstance may be compensated by any of the two mitigating circumstances, namely: his plea of guilty and his voluntary surrender.

Finding the appealed decision in accordance with the evidence and the law, with the exception of the amount of indemnity which is hereby increased to P6,000.00, the same is hereby affirmed with costs against the appellant.

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

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