

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ABELARDO FORMIGONES, DEFENDANT AND APPELLANT.***G.R. No. L-3246. November 29, 1950*

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the decision of the Court of First Instance of Camarines Sur finding the appellant guilty of parricide and sentencing him to reclusion perpetua, to Indemnify the heirs of the deceased in the amount of P2,000, and to pay the costs. The following facts are not disputed.

In the month of November, 1946, the defendant Abelardo Formigones was living on his farm in Bahao, Libmanan, municipality of Sipocot, Camarines Sur, with his wife, Julia Agricola, and his five children. From there they went to live in the house of his half brother, Zacarias Formigones, in the barrio of Binahian of the same municipality of Sipocot, to find employment as harvesters of palay. After about a month's stay or rather on December 28, 1946, late in the afternoon, Julia Agricola was sitting at the head of the stairs of the house. The accused, without any previous quarrel or provocation whatsoever, took his bolo from the wall of the house and stabbed his wife, Julia, in the back, the blade penetrating the right lung and causing a severe hemorrhage resulting in her death not long thereafter. The blow sent Julia toppling down the stairs to the ground, immediately followed by her husband Abelardo who, taking her up in his arms, carried her up the house, laid her on the floor of the living room and then lay down beside her. In this position he was found by the people who came in response to the shouts for help made by his eldest daughter, Irene Formigones, who witnessed and testified to the stabbing of her mother by her father.

Investigated by the Constabulary, defendant Abelardo signed a written statement, Exhibit D, wherein he admitted that he killed his wife. The motive was admittedly that of jealousy because according to his statement he used to have quarrels with his wife for the reason that he often saw her in the company of his brother Zacarias; that he suspected that the two were maintaining illicit relations because he noticed that his wife had become indifferent to him (defendant).

During the preliminary investigation conducted by the justice of the peace of Sipocot, the accused pleaded guilty, as shown by Exhibit S. At the trial of the case in the Court of First Instance, the defendant entered a plea of not guilty, but did not testify. His counsel presented the testimony of two guards of the provincial jail where Abelardo was confined to the effect that his conduct there was rather strange and that he behaved like an insane person; that sometimes he would remove his clothes and go stark naked in the presence of his fellow prisoners; that at times he would remain silent and indifferent to his surroundings; that he would refuse to take a bath and wash his clothes until forced by the prison authorities; and that sometimes he would sing in chorus with his fellow prisoners, or even alone by himself without being asked; and that once when the door of his cell was open, he suddenly darted from inside into the prison compound apparently in an attempt to regain his liberty.

The appeal is based merely on the theory that the appellant is an imbecile and therefore exempt from criminal

liability under Article 12 of the Revised Penal Code. The trial court rejected this same theory and we are inclined to agree with the lower court. According to the very witness of the defendant, Dr. Francisco Gomez, who examined him, it was his opinion that Abelardo was suffering only from feeble mindedness and not imbecility and that he could distinguish right from wrong.

In order that a person could be regarded as an imbecile within the meaning of Article 12 of the Revised Penal Code so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime. The provisions of article 12 of the Revised Penal Code are copied/and based on paragraph 1, Article 8, of the old Penal Code of Spain. Consequently, the decisions of the Supreme Court of Spain interpreting and applying said provisions are pertinent and applicable. We quote Judge Guillermo Guevara on his Commentaries on the Revised Penal Code, Vbh Edition, pages 42 to 43:

"The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment;[46] that there be a complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.[49]

"The Supreme Court of Spain likewise held that deaf-muteness cannot be equalled to imbecility or insanity,

"The allegation of insanity or imbecility must be clearly proved. Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved."

As to the strange behaviour of the accused during his confinement, assuming that it was not feigned to simulate insanity, it may be attributed either to his being feeble minded or eccentric, or to a morbid mental condition produced by remorse at having killed his wife. From the case of *U. S. vs. Vaquilar*, (27 Phil. 88), we quote the following syllabus:

"Testimony of eye-witnesses to a parricide, which goes no further than to indicate that the accused was moved by a wayward or hysterical burst of anger or passion, and other testimony to the effect that, while in confinement awaiting trial, defendant acted absent-mindedly at times, is not sufficient to establish the defense of insanity. The conduct of the defendant while in confinement appears to have been due to a morbid mental condition produced by remorse."

After a careful study of the record, we are convinced that the appellant is an imbecile. According to the evidence, during his marriage of about 16 years, he has not done anything or conducted himself in anyway so as to warrant an opinion that he was or is an imbecile. He regularly and dutifully cultivated his farm, raised five children, and supported his family and even maintained in school his children of school age, with the fruits of his work. Occasionally, as a side line he made copra. And a man who could feel the pangs of jealousy and take violent measures to the extent of killing his wife whom he suspected of being unfaithful to him, in the belief that in doing so he was vindicating his honor, could hardly be regarded as an imbecile. Whether or not his suspicions were justified, is of little or no import. The fact is that he believed her faithless.

But to show that his feeling of jealousy had some color of justification and was not a mere product of hallucination and aberrations of a disordered mind as that of an imbecile or a lunatic, there is evidence to the following effect. In addition to the observations made by appellant in his written statement Exhibit D, it is said

that when he and his wife first went to live in the house of his half brother, Zacarias Formigones, the latter was living with his grandmother, and his house was vacant.. However, after the family of Abelardo was settled in the house, Zacarias not only frequented said house but also used to sleep there nights. All this may have aroused and even partly confirmed the suspicions of Abelardo, at least to his way of thinking.

The appellant has all the sympathies of the Court. He seems to be one of those unfortunate beings, simple and even feeble minded, whose faculties have not been fully developed. His action in picking up the body of his wife after she fell down to the ground, dead, taking her upstairs, laying her on the floor, and lying beside her for hours, shows his feeling of remorse at having killed his loved one though he thought that she had betrayed him. Although he did not exactly surrender to the authorities, still he made no effort to flee and compel the police to hunt him down and arrest him. In his written statement, he readily admitted that he killed his wife, and at the trial he made no effort to deny or repudiate said written statement, thus saving the government all the trouble and expense of catching him, and insuring his conviction.

Although the deceased was struck in the back, we are not prepared to find that the aggravating circumstance of treachery attended the commission of the crime. It seems that the prosecution was not intent on proving it. At least said aggravating circumstance was not alleged in the complaint either in the justice of the peace court or in the Court of First Instance. We are inclined to give him the benefit of the doubt and we therefore decline to find the existence of this aggravating circumstance. On the other hand, the fact that the accused is feeble minded warrants the finding in his favor of the mitigating circumstance provided for in either par. 8 or par. 9 of Article 13 of the Revised Penal Code, namely, that the accused is "suffering some physical defect which thus restricts his means of action, defense or communication with his fellow beings", or such illness "as would diminish the exercise of his will power". To this we may add the mitigating circumstance in paragraph 6 of the same article,—that of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation. The accused evidently killed his wife in a fit of jealousy.

With the presence of two mitigating circumstances without any aggravating circumstances to offset them, at first we thought of the possible applicability of the provisions of article 64, paragraph 5 of the Revised Penal Code for the purpose of imposing the penalty next lower to that prescribed by Art. 246 for parricide, which is reclusion perpetua to death. It will be observed however, that article 64 refers to the application of penalties which contain three periods whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, which is not true in the present case where the penalty applicable for parricide is composed only of two indivisible penalties. On the other hand, article 63 of the same Code refers to the application of indivisible penalties whether it be a single divisible penalty, or two indivisible penalties like that of reclusion perpetua to death. It is present case.

Paragraph 2, rule 3 of said Art. 63 provides that when the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. Interpreting a similar legal provision the Supreme Court in the case of U. S. vs. Guevara, 10 Phil. 37, involving the crime of parricide, in applying Art. 80, paragraph 2 (rule 3 of the old Penal Code) which corresponds to Art. 63, paragraph 2 (rule 3 of the present Revised Penal Code), thru Chief Justice Arellano said the following:

"And even though this court should take into consideration the presence of two mitigating circumstances of a qualifying nature, which it can not afford to overlook, without any aggravating one, the penalty could not be reduced to the next lower to that imposed by law, because, according to a ruling of the court of Spain, article 80 above-mentioned does not contain a precept similar to that contained in rule 5 of article 81 (now rule 5, Art. 64 of the Rev. Penal Code). (Decision of September 30, 1879.)

"Yet, in view of the excessive penalty imposed, the strict application of which is inevitable and which, under

the law, must be sustained, this court now resorts to the discretionary power conferred by paragraph 2 of article 2 of the Penal Code; and

"Therefore, we affirm the judgment appealed from with costs, and hereby order that a proper petition be filed with the executive branch of the Government in order that the latter, if it be deemed proper in the exercise of the prerogative vested in it by the sovereign power, may reduce the penalty to that of the next lower."

Then, in the case of *People vs. Castañeda*, (60 Phil. 604), another parricide case, the Supreme Court in affirming the judgment of conviction sentencing defendant to reclusion perpetua, said that notwithstanding the numerous mitigating circumstances found to exist, inasmuch as the penalty for parricide as fixed by Art. 246 of the Revised Penal Code is composed of two indivisible penalties, namely, reclusion perpetua, to death, paragraph 3 of Art. 63 of the said Code must be applied. The Court further observed:

"We are likewise convinced that appellant did not have that malice nor has exhibited such moral turpitude as requires life imprisonment, and therefore under the provisions of article 5 of the Revised Penal Code, we respectfully invite the attention of the Chief Executive to the case with a view to executive clemency after appellant has served an appreciable amount of confinement."

In conclusion, we find the appellant guilty of parricide and we hereby affirm the judgment"of the lower court with the modification that the appellant will be credited with one-half of any preventive imprisonment he has undergone. Appellant will pay costs.

Following the attitude adopted and the action taken by this same court in the two cases above cited, and believing that the appellant is entitled to a lighter penalty, this case should be brought to the attention of the Chief Executive who, in his discretion may reduce the penalty to that next lower to reclusion perpetua to death or otherwise apply executive clemency in the manner he sees fit.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Tuason, Reyes, and Jugo, JJ., concur.

[46] Decision of Supreme Court of Spain of November 21, 1891; 47 Jur. Crim., 413.

[49] Decision of Supreme Court of Spain of April 20, 1911; 86 Jur. Crim., 94, 97.

PADILLA, J.:

I concur in the result.

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