

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEONARDO DOSAL, DEFENDANT AND APPELLANT.

G. R. Nos. L-4215-16. April 17, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In the Court of First Instance of Samar Leonardo Dosal was accused of frustrated homicide (criminal case No. 2109 [now L-4215], and of murder (criminal case No. 2110 [now L-4216])). After trial, he was found guilty in both cases and sentenced in the first to an indeterminate penalty of from two (2) years and four (4) months of prision correccional to eight (8) years and one (1) day of prision mayor; and to reclusion perpetua and to pay indemnity of P2,000 to the heirs of the deceased Benito Fernandez, in the second. These cases are now here on appeal brought by Dosal.

We have carefully examined the record of these cases, including the transcript of the stenographic notes of the testimonies of the witnesses for both parties and we agree with the trial court that the following facts have been duly established. Prior to June 16, 1950, Purificacion Dosal then about fifteen years old was living with her elder sister Cresencia Dosal and the latter's husband Gregorio Gososo in the barrio of Bagacay, Daram, Samar. On June 16th of that year Purificacion went to live with her elder brother Leonardo Dosal, the defendant herein in the house of their aunt Maxima Dacuno in Cabac, Daram, Samar, telling her brother that she had been abused by her brother-in-law Gregorio Gososo. Three days after, on the occasion of the barrio fiesta of Cabac, Gososo went to the house of Maxima. Appellant Dosal asked him why he had abused Purificacion and upon his failure or refusal to give an explanation Dosal punched him in the face. Gososo did not retaliate.

On July 4th, 1950, Maxima went to the house of Gososo in Bagacay because an inmate of the house had died. There she met Benito Fernandez, uncle of Gososo who apparently being informed of the aggression suffered by his nephew at the hands of Dosal, asked her where Dosal was because should he meet him he (Fernandez) would beat him up. The following morning Maxima told her nephew Dosal that Fernandez was on his trail with no good intentions and so warned him not to attend the funeral at Bagacay and to keep away from Fernandez so as to avoid trouble, specially since Fernandez had the reputation in the community as a cruel man, hard on his enemies. After receiving the information and warning, Dosal went to his brother-in-law Gabriel Dural (Dosal) and told him about the threat made by Fernandez. Defendant Dosal said that should Fernandez ever punish him, he would in turn stab Fernandez. Gabriel advised his brother-in-law Leonardo Dosal not to take the matter seriously and to go home.

Despite the warning and advice given by his aunt Maxima and his uncle Gabriel, Leonardo went to Bagacay anyway that same day. In the afternoon at about 5:00 he walked along the street in the direction of the house of Felisa Palanas where he knew Benito Fernandez was. As he neared said house Fernandez who was up in it happened to go downstairs and walked along the street in the opposite direction to that taken by Dosal. As the two men met not far from the house, Dosal suddenly and without any warning pulled out the bolo Exhibit A from under his shirt and with full strength thrust it into the left side of the body of Fernandez, the blade completely penetrating and going through the body. Fernandez, dumfounded, unarmed and unprepared, turned around and ran

toward the house of Felisa. Dosal chased him and overtaking him struck him in the back with the same bolo upon which Fernandez fell to the ground face downward, dead. The incident naturally caused a commotion in the community. Gregorio Mia, a duly appointed rural policeman and wearing a badge was then in the house of Beatriz Villamor. Hearing the women shouting that Benito Fernandez had been killed by Dosal, with a club he hurried to the scene of the killing and saw Dosal going toward a culvert, carrying the bolo (Exhibit A) stained with blood. He approached him and said that he was a justicia or autoridad meaning that he was an agent of a person in authority and demanded that Dosal shouted that he recognized no authority because that afternoon he was a suicide and with this he rushed upon Mia with a thrust of his bolo. The blade passed under the left armpit of the rural policeman who presumably to secure and imprison the weapon passed his left arm to his side but Dosal jerked and pulled his bolo free thereby wounding Mia in the anterior part of the arm just above the elbow. The policeman closed in upon his assailant encircling the latter's right arm and body, but with his (Dosal's) right hand holding the bolo still free, Dosal wielded the weapon and further wounded Mia on the left hip and on the back. Mia shifted his position to the back of his aggressor dropping his club and embracing him with both arms. About this time Igmidio Apostol, another rural policeman wearing a badge and carrying a club, also attracted by the commotion approached Dosal and ordered him to drop his bolo. Instead of complying, Dosal made a thrust at him and in retreating to avoid the blow Apostol lost his balance and fell backward. Quickly getting on his feet, Apostol with his club struck the hand of Dosal holding the bolo as a result of which the bolo dropped to the ground. Through loss of blood and exhaustion Mia collapsed and fell to the ground ;and Dosal ran away. Apostol picked up the bolo and chased him but was unable to catch up with him. Thereafter, Dosal went to the Constrabulary and surrendered himself.

There is no doubt that the sudden attack made upon Fernandez without any warning was accompanied by treachery thereby qualifying the killing as murder. The trial court found that there was evident premeditation. To this we also agree. From the morning of that day, July 5th, appellant conceived the idea of attacking the deceased. For this purpose he made the necessary preparations. He had one whole day to do this and late in the afternoon at about 5:00, with the bolo concealed under his shirt, he went in search of Fernandez, going toward the very house of Felisa Palanas where he knew he could find his victim. This aggravating circumstance of evident premeditation is compensated by the mitigating circumstance of surrender to the authorities.

As to the wounding of Gregorio Mia, we agree with the Solicitor General that it was an assault upon an agent of a person in authority. Of course, Mia as a rural policeman was not provided with a uniform because he received no pay. But he was duly appointed by the Mayor of the town and was provided with a badge, Exhibit C. Not only this, but he told Dosal that he represented justice and authority so that appellant knew that he was dealing with an agent of a person in authority. From the answer of Dosal to the demand for his surrender and that of his weapon when he said that he recognized no authority because he was a suicide, we can gather the appellant's attitude at the time, namely, that after killing Fernandez he was desperate and perhaps wanted to kill himself and so the authorities meant nothing to him.

The evidence for the prosecution is so conclusive in our opinion that we find it unnecessary to discuss the story of the defense. Moreover, the determination of these cases hinges in great measure upon the credibility of the witnesses. The trial court which had the opportunity of observing them while on the witness stand said in its decision that it found no reason for not believing the testimonies of the witnesses for the Government, especially since two of those witnesses were relatives of the accused; and it rejected the defense theory of self-defense, especially since the cane, Exhibit 6, with which Fernandez was supposed to have chastized and struck Dosal was not produced when the case was being investigated by the authorities prior to the trial in the Court of First Instance.

We modify the ruling of the trial court on the crime committed against Gregorio Mia as simple frustrated homicide. It should be frustrated homicide with assault upon an agent of a person in authority and therefore punishable with the penalty corresponding the frustrated homicide to be imposed in its maximum degree, namely, prision mayor in its maximum degree.

In determining the penalty next lower in degree for the purpose of applying the law on indeterminate sentence, while some of the justices believe that said penalty immediately lower should be prision mayor in its medium degree, the majority equally hold that following the doctrine laid down in the case of *People vs. Gonzales* (73 Phil., 549), the penalty next lower in degree to prision mayor in its maximum degree is and should be prision correccional in its maximum degree. The penalty in criminal case No. 2109 (now L-4215) should therefore be not less than four (4) years and nine (9) months and eleven (11) days of prision correccional and not more than ten (10) years, eight (8) months and one (1) day of prision mayor. The indemnity to the heirs of the deceased Benito Fernandez should be increased to P6,000. With these modifications, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

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