

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
MAXIMO DIVA AND CESARÍA DIVA, DEFENDANTS-APPELLANTS.***G.R. No. L-22946. April 29, 1968*

Ponente: ANGELES, J.

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Maximo Diva and Cesaría Diva, husband and wife, were charged with murder of the person of Ananias Bano, under an information alleging that on June 3, 1962, the said accused with intent to kill, conspiring and mutually helping one another, with evident premeditation and treachery, and taking advantage of superior strength, attacked the said Ananias Bano with bolo weapons inflicting eight wounds on the victim, two of which were fatal which caused his death.

The aggression took place at the junction of the provincial road and of a trail leading to the house of the accused in barrio Santiago, San Francisco, Cebu, on the afternoon of June 3, 1962.

The evidence for the prosecution shows that prior to the incident, the deceased Ananias Bano was a resident of barrio Himinsolan, about four kilometers to the adjoining barrió of Santiago, both of the municipality of San Francisco, Cebu. The deceased married Alejandra Diva Aclon, the daughter of Teodora Diva de Aclon who is a sister of Raymundo Diva, appellant Maximo's father. The deceased during his marriage life, resided in said barrio of Himinsolan until Alejandra died in 1958.

In 1961, the deceased took Justa Señor as his common-law wife. He used to visit the land of his deceased wife which adjoins the land of appellant, Maximo's father, about 150 meters to the house of the accused spouses. During said year 1961, as adjoining landowners, a boundary dispute arose between the deceased and appellant Maximo who was then the caretaker of his father's land, which dispute was eventually brought to court and which was still pending in the Court of First Instance of Cebu at the time the incident in question happened.

In September, 1961, after the case had been filed in court, the deceased went to barrio Santiago to attend the wedding of a relative. On his return and upon reaching the same place where the incident in question occurred, the deceased was ambushed by appellant Maximo Diva and his younger brother who were both armed with bolos, but nothing serious happened because of the timely intervention of other persons who were then around. From then on until the date of the incident in question, no other unusual event happened between the deceased and appellant Maximo Diva who showed no belligerence towards the deceased whenever they saw each other in Himinsolan and in Santiago thereafter.

The prosecution evidence further shows that in March, 1962, the deceased got ill of 'El Tor' and became well due to timely medical assistance. The succeeding month of April, his wife Justa Señor also fell seriously ill on the occasion of her delivery which endangered her life. She likewise got well due to proper medical assistance at the Southern Islands Hospital where she was confined for sixteen days. To offer thanksgiving to the Lord and to the patron saint of barrio Santiago, the deceased and his wife made a pilgrimage on June 3, 1962 to the chapel of Santiago, passing by the road which was some 150 meters from the house of the accused, without any untoward

incident. On their return, the deceased and his wife took the same route, and upon reaching the place of the incident in question, the deceased was suddenly rushed upon by the accused spouses. Maximo Diva was armed with a bolo while Cesaria Diva with a bolo and a 'santalab', a sort of a scythe used for cutting grass. The deceased retreated to avoid the hacking blows of Maximo Diva, but while he was defending himself against the blows of Maximo Diva, his wife sneaked behind the deceased and delivered a bolo-blow on the back of the latter. The deceased continued to retreat while Maximo Diva continued to deliver and inflict blows on him. Already weak, and while thus retreating, the deceased picked up a piece of wood and with it, hit the bolo held by Cesaria causing her to drop the bolo on the ground. While picking the bolo, Maximo Diva delivered another blow on the right face of the deceased who from then on stopped retreating and stood his ground, and exchanged blow for blow with the former who received wounds on the face, hands and arms. Meanwhile, Cesaria Diva ran away. Weak and bleeding, the deceased was left by the roadside by Maximo Diva when two persons, Rosalio Dagatan and Aproniano Talingting, together with Justa Serio, were approaching the scene of the fight. The deceased turned over the bolo to his wife with instruction to deliver it to the authorities. Rosalio Dagatan and Aproniano Talingting helped and led the deceased towards the barrio. The deceased expired at the steps of the stairs of the house of Andres Icoy, a school teacher of Santiago.

As shown by the medical certificate issued by Dr. Edilberto Olitres who autopsied the cadaver, the victim suffered the following injuries:

“1.

Wound at the right lower jaw, 3 inches long, 3/4 inches wide and 1/2 inch deep.

2.

Wound near the side of the right angle of the mouth 1 inch long, 1/8 inch wide and 1/2 inch deep.

3.

Wound about the right clavicle, near the base of the neck 1-1/2 inches long, 1 inch wide and 2 inches deep.

4.

Wound at right side of the chest 1-2/3 inches from the median line, 4 inches long, 2 inches wide and penetrating into the chest cavity with a small part of the lung out through the wound.

5.

Wound at the side of the upper part of right forearm 2 inches long, 2/3 inch wide and 1/3 inch deep.

6.

Wound at the medial side of the left arm 2 inches long, 1 inch wide, and 1/4 inch deep.

7.

Wound at the outer side of the left scapular region 3-1/4 inches long, 1/4 inch wide and 1/4 inch deep.

8.

Wound at the anterior of lower part of the thigh 1/4 inch long, 1/16 inch wide, and 1/4 inch deep. The wounds are fatal specially wounds number 3 and 4. He died of hemorrhage and the destruction of internal organs like the lung and big blood vessels.

The evidence further reveals that the accused disappeared after the incident. He did not take the trouble of surrendering to the barrio lieutenant Rosalio Diva, the uncle of Maximo Diva, and a resident of the accused's immediate neighborhood. The following day, the chief of police of San Francisco was informed that Maximo Diva had surrendered to the police authorities of the next town of Poro.

On the other hand, Maximo Diva admits having killed the deceased but claims he acted in self-defense. Cesaría Diva claims that she did not participate in the fight between her husband and the deceased.

The theory of the defense is Maximo Diva and Cesaría Diva were working in the coconut plantation of their father in the afternoon of June 3, 1962, when Ananias Bano introduced himself surreptitiously in the coconut plantation and attacked Maximo Diva from behind. So Maximo Diva had to defend himself. The fight started in the coconut plantation about five meters to the provincial road and lasted for about fifteen minutes. Maximo Diva received nine wounds in the different parts of his body, although only six were listed by Dr. Olitres in his medical certificate, Exhibit 1.

The defense further claims that Bano used, during the fight, his own bolo which was long, sharp pointed and double bladed. This bolo, however, has not been presented in court. After the fight, Maximo Diva in his desire to surrender to the authorities and to have his injuries treated, left in a baroto with his wife for San Francisco, Cebu, and because of low tide, he changed his course and proceeded to Poro, Cebu, where the government physician, Dr. Olitres resides. Maximo Diva arrived in Poro at the early morning of the next day and immediately surrendered to the authorities of Poro after his injuries had been treated by Dr. Olitres.

On the other hand, Cesaría Diva claims that while the fight between her husband and the deceased was going on, she was all the time shouting for help but succor did not come.

As shown by the medical certificate issued by Dr. Olitres, the same doctor who autopsied the cadaver of the victim, Maximo Diva suffered the following injuries:

"1.

Wound incised, at the upper part of the right deltoid, slanting anteriorly, 2-1/2 inches long, 1-1/4 inches wide, and 2/3 deep.

2.

Wound, incised, at the lower part of the right deltoid, horizontal, 2-2/3 inches long, 1-1/3 inches wide and 1 inch deep.

3.

Wound, incised, at the right face, slanting medially, 2-1/2 inches long, 1/5 inch wide and 1/3 inch deep.

4.

Wound, incised at the left parietal, near the median line, 1-1/8 inch long, 1/8 inch wide and 1/3 inch deep.

5.

Wound at the right ring finger, 1-1/2 inches from the tip, cutting part of the bone.

6.

Wound, incised at the lower part of the left arm, 1 inch from the tip of the elbow joint, 1-2/3 inches long, 1/4 inch wide and 1/2 inch deep. These lesions may heal in 15 days unless complication of any kind may happen.”

After trial, the accused were found guilty of the offense as charged and sentenced to reclusion perpetua, to indemnify the heirs of Ananias Bano in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused appealed from the decision.

After several petitions for extension of time to file a brief, which were granted, the Solicitor General failed to file the same, and the case was submitted for decision without the Appellee's brief.

In the brief of the appellants, the following assignments of error are made:

I. In finding that evident premeditation qualified the offense.

II. In not giving the accused Maximo Diva the benefit of the mitigating circumstance of voluntary surrender.

III. In finding the presumption of guilt from flight.

IV. In holding that conspiracy exists.

V. In finding that the deceased was ambushed.

VI. In holding that the accused were the aggressors.

VII. In holding that once the deceased got the bolo, Exhibit B, he proceeded to attack with it the accused Maximo Diva.

VIII. In not holding that the prosecution was guilty of wilfull suppression of evidence.

IX. In not holding that the prosecution had committed a gross irregularity in the handling and management of exhibits, especially Exhibit B and the piece of wood.

X. In giving weight and credit to the alleged res gestae.

XI. In holding that the motive of the killing was a land case.

XII. In not holding that the strength of the deceased was vastly superior to that of the accused Maximo Diva, thus impliedly rejecting the latter's theory of self-defense.

XIII. In giving weight and credit to the testimony of the prosecution witnesses Cristina Dagatan, Rosalio Dagatan and Justa Señor.

XIV. In giving weight and credit to the testimony of the prosecution witnesses for their serious contradictions among themselves.

XV. In holding that Cesaría Diva took part in the fight.

XVI. In not making a specific finding on the wound in the right part of the chest of Ananias Bano.

In the process of the discussion of the errors, it is deemed appropriate to consider first of all the XVth error about the participation of Cesaría Diva in the crime for a clear understanding and determination of the issues respecting their individual criminal liability.

An analysis of the testimony of Justa Señor, common-law wife of the deceased, and of Rosalio Dagatan reveals that their identical affirmation that while the deceased was retreating from the blows of Maximo Diva, Cesaría Diva sneaked behind the deceased and hacked him at the back, is not worthy of belief, because Cristina Dagatan, another witness for the prosecution, who claims to have witnessed the fight from the beginning, clearly and positively declared that Justa Señor and Rosalio Dagatan arrived at the place of the incident after the struggle. Thus, on page 15 of the stenographic transcript (Cavalida), Cristina Dagatan said:

“I observed on him (deceased) that he was very weak as a result of the wound he received and not long after that, his wife arrived and Ananias Bano placed on the road the bolo which he was able to get hold from Cesaría Diva, and after that, his wife called for Rosalio Dagatan and Aproniano Talingting.”

It is clear, therefore, that both witnesses, Justa Señor and Rosalio Dagatan, made statements of fact not founded on their personal observation but on hearsay information. Admittedly, Cesaría Diva was on her six or seven months pregnancy at the time of the incident, and in her condition then obtaining, it is rather doubtful that she would take such active part, as narrated by the witnesses for the prosecution, in the struggle between two giants who fought for no less than fifteen minutes armed with mortal weapons, without exposing herself to being hit by the blows of one of them, nay, of the deceased, had she approached them and mingled in the fight. We are persuaded, that upon the evidence, the participation of Cesaría Diva in the aggression of the victim is of doubtful veracity. It is more reasonable to believe her testimony that she has been crying and calling for help during all the time the struggle was going on but that no help came.

Resuming the discussion of the assignments of error in seriatim, We find that the first error is well taken. The finding of the trial court —

“The evidence reveals that until the incident occurred (June 3, 1962) nor did Maximo Diva show any belligerence towards Ananias Bano whenever they saw each other in Himinsolan and Santiago”

(The prior incident was that which happened in September, 1961, narrated hereinabove), clearly shows the lack of evident premeditation on the part of the accused. To properly appreciate the circumstance of evident premeditation, it is necessary to establish with proof, as clear as the proof of the crime itself, that (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect (People vs. Leaño, 36 Of. Gaz. No. 53, p. 1120). None of the foregoing requisities are present in the case at bar.

The circumstance of treachery has been ruled out by the trial court. It said — “The allegation of treachery is not conclusively proven by the prosecution. Although the deceased was suddenly attacked, but the deceased was able

to retreat to avoid being hit by the hacking blows. So that he was only hit when he was already in the act of defending himself against the attack of the accused."

The second and third errors are likewise well taken. After the incident, Maximo Diva left the scene thereof, went to the municipality of Poro, a neighboring town, where Dr. Olitres lived to have his wounds treated by the said doctor, and after the treatment of his wounds, he surrendered to the chief of police of the said town. The trial court considered this act of Maximo Diva as flight, and, therefore, indicative of guilt.

The law does not require that the perpetrator of an offense to be entitled to the mitigating circumstance of voluntary surrender must give himself up to the authorities in the municipality where the offense was committed. All that the law requires is for the offender to surrender to the authorities to save the government the trouble and expense of looking for him in order to arrest him. Appellant Maximo Diva surrendered to the authorities the day following the incident. He did not wait for the authorities to arrest him. Thus, an accused who presented himself in the municipal building five days after the commission of the crime to post the bond for his temporary liberty was credited with the mitigating circumstance of voluntary surrender (*People vs. Yecla*, 68 Phil. 740). Likewise, an accused was held entitled to the mitigating circumstance of voluntary surrender where it appeared that he posted the bond for his provisional liberty eighteen days after the commission of the crime and fourteen and sixteen days, respectively, after the first and second warrants for his arrest were issued, the court declaring that 'the fact that the warrant for his arrest had already been issued is no bar to the consideration of his mitigating circumstance because the law does not require that the surrender be prior to the order of arrest' (*People vs. Valera, et al.*, L-15662, Aug. 30, 1962). By parity of reasoning, therefore, appellant Maximo Diva's voluntary surrender to the chief of police of the municipality of Poro should be considered to mitigate his criminal liability because the law does not require him to surrender to the authorities of the municipality of San Francisco where the offense was committed.

The contention under the fourth error that conspiracy was not established, and under the fifteenth error that Cesaria Diva took no part in the fight, are also well taken, considering that, as found earlier herein, Cesaria Diva did not take part in the commission of the crime, and, therefore, conspiracy did not exist.

The fifth, sixth, seventh, eighth and twelfth errors deal with the self-defense theory of the appellants which the trial court rejected as factually unfounded.

The contention, that Maximo Diva was attacked from behind by the deceased while the former and his wife were working in the coconut plantation was properly rejected by the trial court. Indeed, the evidence of record shows that Maximo Diva laid in wait behind a clump of 'iring-iring' shrubs beside the provisional road armed with a bolo, without perhaps the knowledge of his wife of his purpose, and suddenly attacked the deceased. Cristina Dagatan, grandaunt of Maximo Diva, so declared. Having admitted the killing, it was incumbent upon him to prove by positive evidence or with convincing credibility his claim of self-defense. A primordial requisite for self-defense is unlawful aggression. This appellant Maximo Diva failed to prove. It is true that he and his wife testified in support of his claim of self-defense, the trial court, however, rejected their version of the incident and gave more faith and credit to the testimony of the prosecution witnesses to the effect that the assault on the deceased was unprovoked. Since credibility of witnesses is within the special competence of the trial court to discern, in view of its observation of the witnesses as they testified, this Court may not reverse the trial court's conclusion on this matter, there being nothing in the records which impels it to doubt or reject what the trial court found credible. The trial court said: "On the other hand, from the evidence of the accused, we could glean that the wounds he sustained which were allegedly inflicted by the deceased treacherously from behind, were not serious, in fact, they were curable within fifteen days only. If we were to believe the version of the accused, his injuries would have been fatal or serious considering that the deceased armed with a sharp pointed double bladed bolo, as

claimed by the defense, was a more robust man and taller than Maximo Diva. On the contrary, of the wounds inflicted on the deceased, two were fatal wounds. So that the court is inclined to believe that the injuries sustained by the deceased and the accused were inflicted under the circumstances, as testified to by the prosecution witnesses.

"It may not be amiss to mention, as testified to by the son of the accused, that there were many persons around at that time, some of them were at the windows of their houses, looking down, curious to see the incident, yet no one of them intervened in that incident, nor was anyone of them presented in court to testify for the accused. Only the accused themselves, Maximo Diva and Cesaria Diva, and their son Ulyses Diva who testified for the defense. Accused Maximo Diva claims that he has no enemies in his own barrio. The son testified that there were many volleyball players who witnessed the incident, some underneath his house and some under the coconut trees, and yet, as the court has stated above, not even one of them testified to corroborate the testimonies of the accused and their son. On the contrary, Maximo's aunt Cristina Dagatan and Rosalio Dagatan came out to testify for the deceased who came from another barrio."

In the ninth and tenth errors, appellants claim that the prosecution had wilfully suppressed evidence and committed gross irregularity in the handling and management of Exhibit B (bolo) and the piece of wood which the deceased used in the fight. It is the thesis of the defense that the deceased used sharp pointed and double bladed bolo in the fight and that the prosecution wilfully suppressed this evidence; that the bolo, Exhibit B, was in fact the one used by the appellant Maximo Diva in the fight but that the prosecution presented it as the bolo which the deceased retrieved from the appellant Cesaría Diva and which he later on used to defend himself with; and that the piece of wood which the deceased used to strike the bolo held by the appellant Cesaría Diva, reason for which the latter lost hold of the bolo, Exhibit B, was likewise wilfully suppressed by the prosecution.

The trial court did not commit any one of the above errors imputed by the defense. To prove that the deceased used a sharp pointed and double bladed bolo in the fight, appellant Maximo Diva presented, in addition to his own testimony, witnesses who allegedly saw said bolo in the possession of the deceased wherever he went before the incident and that he even took pride in showing and exhibiting it to those witnesses. But not one of these witnesses, however, testified to the fact that the deceased used the same bolo during the fight in question. Not only that. The defense failed to prove that the prosecution in fact had said bolo in its possession at the time of the hearing but that it wilfully refused to present it in evidence. The same is true with the piece of wood which the deceased used in hitting the bolo held by Cesaría Diva, who as a result thereof, released said bolo, Exhibit B, and which bolo the deceased picked up to defend himself with. There is also no evidence presented to show that the prosecution was in possession of said piece of wood but had deliberately suppressed it. What the evidence shows is that a piece of wood was in fact used by the deceased in the manner testified to by the prosecution witnesses, but the record is silent as to whether the same was recovered and presented to the authorities after the incident. The prosecution cannot, therefore, be accused of wilfully suppressing it. Indeed, it could not have suppressed something which it did not have in its possession.

Anent the bolo, Exhibit B, appellants point out some alleged discrepancies in the manner it was surrendered to the police authorities. Capital is made of the fact that prosecution witness Damiano Rocacurva, chief of police of San Francisco, Cebu, testified both in the direct and cross-examination that the bolo, Exhibit B, was surrendered to him in his office by Rosalio Diva, barrio lieutenant of San Francisco, and Pablo Bano, brother of the deceased (TSN pp. 60, 90, July 11, 1963), whereas, Pablo Diva testified that he alone surrendered the bolo to the chief of police. It is also insisted that Maximo Diva's testimony that he saw the barrio councilor alone surrender the bolo to the chief of police, and in view of the conflicting versions of the chief of police and barrio lieutenant on the matter, it "places the proceedings of the surrender of the instrument under dubious and suspicious circumstances."

(p. 19, appellants' brief)

The alleged discrepancy pointed out does not prove that the prosecution wilfully suppressed evidence or that it committed "a gross irregularity in the handling and management of Exhibit B." If at all, the alleged discrepancy goes into the credibility of the witnesses. But whoever surrendered the bolo, Exhibit B, to the chief of police, is of no moment. The fact remains that it was surrendered to the chief of police.

In the tenth error, appellants claim that the trial court erred in giving weight and credit to the alleged *res gestae* of the deceased. The trial court did not commit this error.

It was established that before he expired or just after the incident, the deceased told his wife "Help me because I am going to die from these wounds I sustained" and "If I will expire before the arrival of the chief of police and the doctor, please notify my mother and brothers and sisters, and tell them that it was the husband and wife who hacked me." (TSN, p. 33, July 10, 1963.)

The deceased made the statement immediately after appellant Maximo Diva left him and as soon as his wife and two other persons arrived at the scene of the crime and while he was still under the stress of nervous excitement, if not almost at the point of death. In fact, the same statement was uttered by the deceased a few minutes before he expired. His statement, therefore, may be considered as a part of the *res gestae* and, as such, is admissible in evidence. The victim's statement immediately after receiving the wounds naming the accused as the author of the aggression is legal evidence as part of the *res gestae* (*People vs. Quimson*, 62 Phil. 162).

Under the eleventh error, appellants dispute the conclusion of the trial court that "the motive of the killing of Ananias Bano by the accused Maximo Diva was a land case." It is contended that the civil case could not be considered as the motive of the killing because the appellants have no interest therein, Ray mundo Diva, father of appellant Maximo Diva, being the plaintiff in said case, and granting that said appellant Maximo Diva is interested in the case as son of the plaintiff therein, the same will not be a sufficient ground for him to ambush, attack and kill Ananias Bano.

The question of what motive is sufficient to impel one to commit a particular crime is always relative, and no fixed norm of conduct can be said to be decisive of every imaginable case. (*People vs. Figueroa*, 82 Phil. 559) In a murder case, the desire of the accused to collect the Value of P3,000.00 of the victim's life insurance policy of which he (accused) was the one paying the premium and the sole beneficiary, was held to be sufficient motive for the killing (*People vs. Orzamo, et al.*, L-17773, May 19, 1966). And in an arson case, the desire of the accused to profit by his insurance policy was likewise considered to be a sufficient motive for the accused to commit the arson (*People vs. Lao Wan Sing*, L-16379, Dec. 17, 1966). But there is authority to the effect that motive, as distinguished from criminal intent, is not an essential element of a crime, and, hence, need not be proven for purposes of conviction, the same being a mere matter of procedure (*People vs. Caggauan*, 94 Phil. 118; *People vs. Ramponit*, 62 Phil. 248). It is also true, of course, that in some cases it is absolutely necessary to establish a particular motive as a matter of substance because it forms an essential element of the offense, and not merely to meet the procedural requirement of proof beyond reasonable doubt, such as, in the cases of libel or slander, and malicious mischief, for in those cases, the onus of proving malice lies on the plaintiff who must bring home to the defendant the existence of malice as the true motive of the conduct. (Art. 354, Revised Penal Code; *U.S. vs. Bustos*, 37 Phil., 731; *People vs. Gerales*, 4 Phil. 218) Be that as it may, it is well asserted as a procedural rule that "in many criminal cases, one of the most important aids in completing the proof of the commission of the crime by the accused, is the introduction of evidence disclosing the motive which tempted the mind to indulge in the criminal act; and in nearly every case wherein the law places the penalty to be imposed in the discretion of the courts within certain limits, it will be found that a knowledge of the motive which actuated a guilty person is one

of the greatest services in the exercise of this discretion.” (U.S. vs. Carlos, 15 Phil. 47.) It is, however, a settled rule that "motive is unessential to conviction in murder cases when there is no doubt as to the identity of the culprit, or where the offender has admitted the deed, and failure of the prosecution to establish motive is completely inconsequential. (People vs. Villalba, L-17243, Aug. 23, 1966; People vs. Serdenia, L-18032, April 30, 1966.)

In the present case, the identity of the appellant Maximo Diva as the author of the killing is not disputed. In fact, he admitted having killed the deceased Ananias Bano. Hence, his motive in committing the act complained of becomes irrelevant to his conviction thereof and the failure of the prosecution to establish what motivated him to commit the crime is of no moment. Consequently, the finding of the trial court that the motive of appellant Maximo Diva in committing the offense was a land case, is a harmless error, if at all, and does not affect the correctness of its decision finding him guilty of murder.

The thirteenth and fourteenth errors have to do with the credibility of the witnesses for the prosecution. Appellants claim that the prosecution witnesses are not credible, and, therefore, the trial court erred in giving weight to their testimony.

There is no reason to disturb the findings and conclusion of the trial court relative to the credibility of the witnesses for the prosecution. Said findings and conclusions are entitled to full respect and will not be disturbed unless some fact of value had been misconstrued or overlooked by the trial court. And to authorize the appellate court to disturb the findings of the trial court, it must have adequate justification to deviate from such findings. Appellants had not satisfactorily shown that the trial court overlooked certain facts of substance and value which, if considered, would suffice to reverse or change its findings and conclusions. This is specially so if the rule is considered that the trustworthiness of witnesses and merit of the defense of the accused are within the peculiar domain of the trial court, and that in case of doubt, its findings should prevail because it is backed by its superior advantage in ascertaining the truth or falsity of the disputed facts.

As a final error, appellants claim as reversible the failure of the trial court to make a specific finding on the wound in the right part of the chest of deceased Ananias Bano. It is argued that while the prosecution attempted to prove that; the same was inflicted by appellant Cesaría Diva with a thrust of her bolo, the wound could have been produced by a hacking blow delivered by appellant Maximo Diva. Appellants further claim that a special holding on this particular wound is important because a finding that it was inflicted by Maximo Diva would be favorable to the claim of Cesaría Diva that she did not participate in the fight.

To the foregoing contention, suffice it to say that there is no need to discuss the same in view of the finding, stated hereinabove, that Cesaría Diva did not take part in the commission of the crime.

Upon the above-mentioned considerations, the decision is modified in the sense that Cesaría Diva is acquitted of the offense charge on reasonable doubt, with proportionate costs de oficio, and her immediate release from detention is hereby ordered; and Maximo Diva is found guilty of homicide, with the benefit of the mitigating circumstance of voluntary surrender, and considering the imposable penalty and the application of the Indeterminate Sentence Law, said Maximo Diva is sentenced to suffer imprisonment of 10 years of prision mayor to 12 years and 1 day of reclusion temporal, to be credited with one-half (1/2) of the preventive imprisonment, to indemnify the heirs of Ananias Bano in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties of the law, and to pay a proportionate costs; as thus modified, the decision is affirmed in all other respects.

Reyes, J.B.L., (Acting CJ.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Fernando, JJ., concur.

Judgment modified,

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