

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NICOLAS JAURIGUE AND AVELINA JAURIGUE, DEFENDANTS,
AVELINA JAURIGUE, DEFENDANT-APPELLANT.**

G.R. No. L-384. February 21, 1946

Ponente: DE JOYA,J.

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DE JOYA,J.:

Nicolas Jaurigue and Avelina Jaurigue were prosecuted in the Court of First Instance of Tayabas, for the crime of murder, of which Nicolas Jaurigue was acquitted, but defendant Avelina Jaurigue was found guilty of homicide and sentenced to an Indeterminate penalty ranging from seven years, four months and one day of prison mayor to thirteen years, nine months and eleven days of recluson temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased, Amado Capiña, in the sum of P2,000, and to pay one-half of the costs. She was also credited with one-half of the period of preventive imprisonment suffered by her.

From said judgment of conviction, defendant Avelina Jaurigue appealed to the Court of Appeals for Southern Luzon, and in her brief filed therein on June 10, 1944, claimed -

"(1)That the lower court erred in not holding that said appellant had acted in the legitimate defense of her honor and that she should be completely absolved of all criminal responsibility;

"(2) That the lower court erred in not finding in her favor the additional mitigating circumstances that (a) she did not have the intention to commit so grave a wrong as that actually committed, and that (b) she voluntarily surrendered to the agents of the authorities; and

"(3) That the trial court erred in holding that the commission of the alleged offense was attended by the aggravating circumstance of having been committed in a sacred place."

The evidence adduced by the parties, at the trial in the court below, has sufficiently established the following facts:

That both the defendant and appellant Avelina Jaurigue and the deceased Amado Capiña lived in the barrio of Sta. Isabel, city of San Pablo, province of Laguna; that for sometime prior to the stabbing of the deceased by defendant and appellant, in the evening of September 20, 1942, the former had been courting the latter in vain, and that on one occasion, about one month before that fatal night, Amado Capiña snatched a handkerchief belonging to her, bearing her nickname "Aveling", while It was being washed by her cousin, Josefa Tapay.

On September 13, 1942, while Avelina was feeding a dog under her house, Amado approached her and spoke to her of his love, which she flatly refused, and he thereupon suddenly embraced and kissed her and touched her breasts, on account of which Avelina, a resolute and quick-tempered girl, slapped Amado, gave him fist blows and kicked him. She kept the matter to herself, until the following morning when she informed her mother about it. Since then, she armed herself with a long fan knife, whenever she went out, evidently for self-protection.

On September 15, 1942, about midnight, Amado climbed up the house of defendant-appellant, and surreptitiously entered the room where she was sleeping. He felt her forehead, evidently with the intention of abusing her. She immediately screamed for help, which awakened her parents and brought them to her side. Amado came out from where he had hidden under a bed in Avelina's room and kissed the hand of Nicolas Jaurigue, her father, asking for forgiveness; and when Avelina's mother made an attempt to beat Amado, her husband prevented her from doing so, stating that Amado probably did not realize what he was doing, Nicolas Jaurigue sent for the barrio lieutenant, Casimiro Lozada, and for Amado's parents, the following morning. Amado's parents came to the house of Nicolas Jaurigue and apologized for the misconduct of their son; and as Nicolas Jaurigue was then angry, he told them to end the conversation, as he might not be able to control himself.

In the morning of September 20, 1942, Avelina received information that Amado had been falsely boasting in the neighborhood of having taken liberties with her person and that she had even asked him to elope with her and that if he should not marry her, she would take poison; and that Avelina again received information of Amado's bragging at about 5 o'clock in the afternoon of that same day.

At about 8 o'clock in the evening of the same day, September 20, 1942, Nicolas Jaurigue went to the chapel of the Seventh Day Adventists of which he was the treasurer, in their barrio, just across the provincial road from his house, to attend religious services, and sat on the front bench facing the altar with the other officials of the organization and the barrio lieutenant, Casimiro Lozada. Inside the chapel it was quite bright as there were electric lights.

Defendant and appellant Avelina Jaurigue entered the chapel shortly after the arrival of her father, also for the purpose of attending religious services, and sat on the bench next to the last one nearest the door. Amado Capiña was seated on the other side of the chapel. Upon observing the presence of Avelina Jaurigue, Amado Capiña went to the bench on which Avelina was sitting and sat by her right side, and, without saying a word, Amado, with the greatest of impudence, placed his hand on the upper part of her right thigh. On observing this highly improper and offensive conduct of Amado Capiña, Avelina Jaurigue, conscious of her personal dignity and honor, pulled out with her right hand the fan knife marked Exhibit B, which she had in a pocket of her dress, with the intention of punishing Amado's offending hand. Amado seized Avelina's right hand, but she quickly grabbed the knife with her left hand and stabbed Amado once at the base of the left side of the neck, inflicting upon him a wound about (4½ inches deep, which was necessarily mortal. Nicolas Jaurigue, who was seated on one of the front benches, saw Amado bleeding and staggering towards the altar, and upon seeing his daughter still holding the bloody knife, he approached her and asked; "Why did you do that", and answering him, Avelina said: "Father, I could not endure anymore." Amado Capiña died from the wound a few minutes later. Barrio lieutenant Casimiro Lozada, who was also in the same chapel, approached Avelina and asked her why she did that, and Avelina surrendered herself saying; "Kayo na po ang bahala sa akin," meanings "I hope you will take care of me," or more correctly, "I place myself at your disposal." Fearing that Amado's relatives might retaliate, barrio lieutenant Lozada advised Nicolas Jaurigue and herein defendant and appellant to go home immediately, to close their doors and windows and not to admit anybody into the house, unless accompanied by him. That father and daughter went home and locked themselves up, following instructions of the barrio lieutenant, and waited for the arrival of the municipal authorities; and when three policemen arrived in their house, at about 10 o'clock that night, and questioned them about the incident, defendant-appellant immediately surrendered the knife marked as Exhibit B, and informed said policemen briefly of what had actually happened in the chapel and of the previous acts and conduct of the deceased, as already stated above, and went with said policemen to the police headquarters, where her written statements were taken, and which were presented as a part of the evidence for the prosecution.

The high conception, of womanhood that our people possess, however humble they may be, is universal. It has

been entertained and has existed in all civilized communities.

A beautiful woman is said to be a jewel; a good woman, a treasure; and that a virtuous woman represents the only true nobility. And they are the future wives and mothers of the land* Such are the reasons why, in the defense of their honor, when brutally attacked, women are permitted to make use of all reasonable means available within their reach, under the circumstances. Criminologists and courts of justice have entertained and upheld this view.

On the other hand, it is the duty of every man to protect and show loyalty to womanhood, as in the days of chivalry. There is a country where women freely go out unescorted and, like the beautiful roses in their public gardens, they always receive the protection of all. That country is Switzerland.

In the language of Viada, aside from the right to life on which rests the legitimate defense of our own person, we have the right to property acquired by us, and the right to honor which is not the least prized of our patrimony (1 Viada, *Codigo Penal*, 5th ed, pp. 172, 173).

The attempt to rape a woman constitutes an unlawful aggression sufficient to put her in a state of legitimate defense, inasmuch as a woman's honor cannot but be esteemed as a right as precious, if not more, than her very existence; and it is evident that a woman who thus imperiled, wounds, nay kills the offender, should be afforded exemption from criminal liability, since such killing cannot be considered a crime from the moment it became the only means left for her to protect her honor from so great an outrage (1 Viada, *Codigo Penal*, 5th ed., p. 301; *People vs. Luague and Alcansare*, 62 Phil., 504).

As long as there is actual danger of being raped, a woman is justified in killing her aggressor, in the defense of her honor. Thus, where the deceased grabbed the defendant in a dark night at about 9 o'clock, in an isolated barrio trail, holding her firmly from behind, without warning and without revealing his identity, and, in the struggle that followed, touched her private parts, and that she was unable to free herself by means of her strength alone, she was considered justified in making use of a pocket knife in repelling what she believed to be an attack upon her honor, and which ended in his death, since she had no other means of defending herself, and consequently exempt from all criminal liability (*People vs. De la Cruz*, 61 Phil., 344).

And a woman, in defense of her honor, was perfectly justified in inflicting wounds on her assailant with a bolo which she happened to be carrying at the time, even though her cry for assistance might have been heard by people nearby, when the deceased tried to assault her in a dark and isolated place, while she was going from her house to a certain tienda, for the purpose of making purchases (*United States vs. Santa Ana and Ramos*, 22 Phil., 249).

In the case, however, in which a sleeping woman was awakened at night by someone touching her arm, and, believing that some person was attempting to abuse her, she asked who the intruder was and receiving no reply, attacked and killed the said person with a pocket knife, it was held that, notwithstanding the woman's belief in the supposed attempt, it was not sufficient provocation or aggression to justify her completely in using a deadly weapon. Although she actually believed it to be the beginning of an attempt against her, she was not completely warranted in making such a deadly assault, as the injured person, who turned out to be her own brother-in-law returning home with his wife, did not do any other act which could be considered as an attempt against her honor (*United States vs. Apego*, 23 Phil., 391).

In the instant case, if defendant and appellant had killed Amado Capiña, when the latter climbed up her house late at night on September 15, 1942, and surreptitiously entered her bedroom, undoubtedly for the purpose of raping her, as indicated by his previous acts and conduct, instead of merely shouting for help, she would have been perfectly justified in killing him, as shown by the authorities cited above.

According to the facts established by the evidence and found by the learned trial court in this case, when the deceased sat by the side of defendant and appellant on the same bench, near the door of the barrio chapel and placed his hand on the upper portion of her right thigh, without her consent, the said chapel was lighted with electric lights, and there were already several people, about ten of them, inside the chapel, including her own father and the barrio lieutenant and other dignitaries of the organization; and under the circumstances, there was and there could be no possibility of her being raped. And when she gave Amado Capiña a thrust at the base of the left side of his neck, inflicting upon him a mortal wound 4½ inches deep, causing his death a few moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.

But the fact that defendant and appellant immediately and voluntarily and unconditionally surrendered to the Barrio lieutenant in said chapel, admitting having stabbed the deceased, immediately after the incident, and agreed to go to her house shortly thereafter and to remain there subject to the order of the said barrio lieutenant, an agent of the authorities (*United States vs. Fortaleza*, 12 Phil., 472); and the further fact that she had acted in the immediate vindication of a grave offense committed against her a few moments before, and upon such provocation as to produce passion and obfuscation, or temporary loss of reason and self-control, should be considered as mitigating circumstances in her favor (*People vs. Parana*, 64 Phil., 331; *People vs. Sakam*, 61 Phil., 27; *United States vs. Arribas*, 1 Phil., 86).

Defendant and appellant further claims that she had not intended to kill the deceased but merely wanted to punish his offending hand with her knife, as shown by the fact that she inflicted upon him only one single wound. And this is another mitigating circumstance which should be considered in her favor (*United States vs. Brobst*, 14 Phil., 310; *United States vs. Diaz*, 15 Phil., 123).

The claim of the prosecution, sustained by the learned trial court, that the offense was committed by the defendant and appellant, with the aggravating circumstance that the killing was done in a place dedicated to religious worship cannot be legally sustained; as there is no evidence to show that the defendant and appellant had murder in her heart when she entered the chapel that fatal night. Avelina is not a criminal by nature. She happened to kill under the greatest provocation. She is a God-fearing young woman, typical of our country girls, who still possess the consolation of religious hope in a world where so many others have hopelessly lost the faith of their elders and now drifting away they know not where.

The questions raised in the second and third assignments of error appear, therefore, to be well taken; and so is the first assignment of error to a certain degree.

In the mind of the court, there is not the least doubt that, in stabbing to death the deceased Amado Capiña, in the manner and form and under the circumstances above indicated, the defendant and appellant committed the crime of homicide, with no aggravating circumstance whatsoever, but with at least three mitigating circumstances of a qualified character to be considered in her favor; and, in accordance with the provisions of article 69 of the Revised Penal Code, she is entitled to a reduction by one or two degrees in the penalty to be imposed upon her. And considering the circumstances of the instant case, the defendant and appellant should be accorded the most liberal consideration possible under the law (*United States vs. Apego*, 23 Phil. 391; *United States vs. Rivera*, 41 Phil., 472; *People vs. Mercado*, 43 Phil., 950).

The law prescribes the penalty of reclusion temporal for the crime of homicide; and if it should be reduced by two degrees, the penalty to be imposed in the instant case is that of prision correccional; and pursuant to the provisions of section 1 of Act No. 4103 of the Philippine Legislature, known as the Indeterminate Sentence Law, herein defendant and appellant should be sentenced to an Indeterminate penalty ranging from *arresto mayor* in its

medium degree, to prison correccional in its medium degree. Consequently, with the modification of the judgment appealed from, defendant and appellant Avelina Jaurigue is hereby sentenced to an indeterminate penalty ranging from two months and one day of arresto mayor, as minimum, to two years, four months, and one day of prison correccional, as maximum, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased Amado Capiña, in the sum of P2,000. pesos, and to suffer the corresponding subsidiary imprisonment, not to exceed $[1/3]$ of the principal penalty, in case of insolvency, and to pay the costs. Defendant and appellant should also be given the benefit of $\frac{1}{2}$ of her preventive imprisonment, and the knife marked Exhibit B ordered confiscated. So ordered.

Ozaete, Perfecto, and Bengzon, JJ., concur

CONCURRING

HILADO, J.:

In past dissenting and concurring opinions my view regarding the validity or nullity of judicial proceedings in the Japanese-sponsored courts which functioned in the Philippines during the Japanese occupation has been consistent, I am not abandoning it. But in deference to the majority who sustain the opposite view, and because no party litigant herein has raised the question, I have taken: part in the consideration of this case on the merits. And, voting on the merits, I concur in the foregoing decision penned by Mr. Justice De Joya.

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