

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN JUMAUAN ALIAS JUANCHO JUMAUAN, DEFENDANT AND APPELLANT.

G.R. No. L-5746. November 29, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a conviction for murder.

We gather from the evidence that the murdered man, Antonio Parreño, was the owner and driver of a passenger truck plying between the barribs of Caduhaan and Sicaba in the municipality of Cadiz, Negros Occidental. In one of the trips of the truck in the morning of September 27, 1951, a woman passenger who had placed her bundle of rattan under the driver's seat forgot to pick it up when she got off, and informed that another passenger, the herein appellant, had taken the rattan with him upon getting off at Sicaba, Parreño had himself accompanied by his conductor, Ricaredo Mateo, and his helper, Julie Dorilac, to appellant's house in that barrio after the last trip of the truck in the evening of that day. On the way to appellant's house, Parreño and his companions met Manuel Olvido, lessee of the coconut grove through which they had to pass, who, on learning where they were going, loaned them his flashlight as the night was dark. Upon arrival at appellant's house, Parreño called and he was told to come up. This he did, leaving his two companions downstairs. Once inside the house, Parreño asked appellant, in the presence of the latter's wife, why he took the bundle of rattan when it was not his. Appellant protested that the rattan belonged to him, and when Parreño admonished him to return what was not his, he raised his voice and said: "If I would not return that rattan, then what?" Parreño replied that it was up to appellant and then stood up and started to leave. But as soon as he had crossed the door and stepped into the balcony, appellant, who had followed him unnoticed, snatched a bolo from the rafter of the house and struck him with it in the back of the neck. Parreño staggered and reeled and, just as he was about to fall, appellant gave him another blow, hitting him in the face. At this juncture, Parreño's two companions, who, from where they stood, saw through the open door what was going on upstairs because the house was lighted and its floor was only waist-high from the ground, ran away, shouting for help, and one of them reported the incident to the barrio lieutenant.

People who heard the cries for help trooped to the scene of the crime and found in appellant's house the dead body of Parreño lying across the door, the upper part in the dining room and feet on the balcony. But appellant and his family were already gone.

Postmortem examination of the cadaver disclosed that Parreño had received 13 wounds of which the one on the back of the neck was mortal.

The defense would make it appear that Parreño was the aggressor and that appellant merely acted in self-defense. But appellant did not take the witness stand, and while his wife declared that it was the deceased who hit first, her testimony did not account for the wounds received by the latter. She said that after an exchange of words, the deceased hit appellant's face with a flashlight whereupon appellant fell and was kicked and beaten by the

deceased; that as no one would stop the fight she went downstairs and cried for help and when she came back to the house she found her husband's adversary already dead. Actually then she not see how the deceased came to be wounded.

After going over the evidence, we find no reason for disturbing the pronouncement below that appellant is guilty of murder. There is no question that he killed the deceased and the killing was qualified by treachery because the first blow, which was mortal, was delivered quite suddenly while the victim had his back toward his assailant and not knowing that he would be attacked. The killing not being denied, it was for appellant to prove that he acted in self-defense. But appellant did not testify, and his wife's testimony does not account for the wounds received by the deceased. If it is true, as she said, that her husband fell upon being struck with a flashlight by the deceased and was apparently already at the latter's mercy, then how is it that appellant was able to arm himself with a bolo and inflict thirteen wounds, upon the deceased? Injuries were indeed found upon appellant's body about four days after the crime. But no one testified how those injuries" were actually sustained.

We agree that the testimony of appellant's wife was erroneously ordered stricken out on the ground that it was given without the consent of the husband, it appearing that it was the defense itself that put her on the witness stand. But then the trial court also stated in its decision that, even if the wife's testimony were allowed to remain in the record, the same was anyway discredited by the testimony of Manuel Olvido and Sgt. Sergio Escares to the effect that the flashlight which the deceased was carrying on the night in question was afterwards found intact at the scene of the crime with no traces that it had been struck against a solid object such as a human face. We think it is sufficiently clear that the fatal attack was motivated by the fact that appellant felt humiliated or embarrassed when the deceased practically accused, him of theft in the presence of his family.

We, however, agree with both the defense and the Solicitor General that the trial court should not have taken into account the aggravating circumstance of cruelty for, although the deceased received thirteen wounds in all, there is no showing that appellant deliberately and inhumanly increased the suffering of the deceased. (People vs. Dayug, 49 Phil., 423; People vs. Aguinaldo, 55 Phil., 610.)

In view of the foregoing, the conviction for murder is affirmed, but the judgment below is modified as to the penalty by eliminating the aggravating circumstance of cruelty so that, with the mitigating circumstance of voluntary surrender not offset by any aggravating circumstance, the penalty prescribed by law for the crime committed should be imposed in its minimum degree. Pursuant to the Indeterminate Sentence Law, appellant is therefore sentenced to an indeterminate penalty of 12 years of prision mayor to 17 years, 4 months and 1 day of reclusion temporal. With this modification, the judgment below is affirmed with costs against the appellant.

Paras, C. J., Bengzon, Padilla, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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