

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. EUSEBIO FAJARDO, DEFENDANT AND APPELLANT.

G. R. No. L-5369. March 23, 1953

Ponente: TUASON, J.

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TUASON, J.:

The appellant, Eusebio Fajardo, was prosecuted in the Court of First Instance of Bulacan for murder but was found guilty of homicide only and given the maximum penalty for the latter offense. The appeal was taken, to the Court of Appeals but was certified to the Supreme Court on the findings that the killing was qualified by treachery and therefore murder and aggravated by the circumstance of nighttime with no mitigating circumstance to offset it.

Leoncia Pañganiban, the murdered man's daughter and lone eye-witness to the crime, gave the material evidence for the prosecution which in substance was as follows:

About three a.m. on January 1, 1945, Leoncia Pañganiban came down the house in answer to a call for help from her father, Lucio Pañganiban. In the yard she came upon her father and the accused face to face exchanging these remarks. The accused told Lucio: "You must come along because the Huks want you," and Lucio replied: "I can not go with you even if you kill me in the presence of my daughter." All of a sudden six men appeared and the accused ordered them to bind the now deceased, which they started to do. To stop them she embraced and clung to her father, but upon Fajardo's order they forcibly separated her from her parent. After she and her father were set apart, the latter clutched his arms around a pole in an effort to resist, but it was not for long: Lucio Pañganiban was easily removed from the pole; and when this was done Fajardo told his companions to beat the offended party, and they obeyed. The beating over, and with Pañganiban being held by two of Fajardo's confederates, he was shot down by the defendant with a pistol even as one of the other assailants, Rosendo Manala, fired at the witness hitting her in the cheek.

Leoncia named the accused, whose home was in her barrio, and four of the men who helped him. She said that these four had frequented and used to eat in her father's house during the Japanese occupation and that there was moonlight on the night of the killing. She did not know the names of the two others although she did know them by sight, she testified.

The trial Judge believed the Government witness. On all accounts we think her testimony is unassailable, indeed.

Leoncia Pañganiban's incrimination of the defendant is put in question by reason of the fact, admitted by her, that she did not tell on him to the authorities until October 1948. In this connection she explained that she was afraid to complain and that her brother himself advised her to keep quiet. The trial Judge was satisfied by this explanation, saying that it was a matter of public knowledge that from 1945 to 1948, conditions of peace and order and individual security in remote barrios of Central Luzon left much to be desired. His Honor took notice specially of the fact that kidnapping and murders of peaceful residents in those years were rampant in the Central Luzon province. With her own harrowing experience to remember, Leoncia ought to have known better than brave

the grave perils of falling out of the graces of the Huks.

The appellant stated that he was at home on the night in question attending to his father who was suffering from lung disease. He put on the stand Feliciano Calderon, a quack doctor, who corroborated him on the older Fajardo's illness and on the defendant's testimony that Calderon was summoned twice to give injections to the patient. Granting this testimony to be correct, it was far from being airtight. The fact that Fajardo was able to go out twice to get medical help for his father was itself the best evidence that the latter's illness was not an insurmountable obstacle to his (Fajardo's) going out to kidnap or liquidate a man who lived in the same barrio.

Unnecessary though it may be to go into the motives for the crime, in the face of Leoncia Pañaniban's positive and convincing identification of the appellant, it may not be amiss to refer to this witness' evidence that Fajardo was a Huk and that the Huks suspected his father of being a spy for, or collaborating with, the USAFFE whom the Huks disliked and regarded as their enemy as well as the Japanese invaders.

We concur with the Solicitor General that the crime committed was murder and not homicide, as the trial court found. With six companions most if not all whom were armed with deadly weapons like himself, against one man and a young daughter who had nothing but their bare hands to repel the assault, it may truly be said that Fajardo employed means, methods and forms which directly and specifically tended to insure the execution of his criminal designs with little or no risk to himself; and with the aggravating circumstance of nighttime and no mitigating circumstance to compensate it, the proper penalty for the appellant's crime should be death. However, there is no sufficient vote needed for the application of the extreme punishment with the result that the next lower penalty must be imposed.

We find the defendant guilty of murder, and he is hereby sentenced to reclusion perpetua, with the accessories of law, to indemnify the heirs of the deceased in the sum of P6,000 and to pay the costs of both instances.

Paras, Feria, Pablo, Bengzon, Padilla, Reyes, Jugo and Labrador, JJ., concur.

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