

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. CAMILO CALACALA, DEFENDANT AND APPELLANT.

G. R. No. L-18348. May 31, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Court of First Instance of Pangasinan found appellant Camilo Calacala guilty of murder, qualified by treachery, aggravated by evident premeditation and mitigated by voluntary surrender. He was sentenced to reclusion perpetua and its accessory penalties, and ordered to indemnify the heirs of his victim, Domingo Corpuz, in the amount of P6,000.00.

The killing is admitted. Domingo Corpuz died from massive internal hemorrhage and shock due to several stab wounds received in the chest, back and abdomen, and in the arms and right shoulder. The autopsy revealed that the heart, lungs and liver had been lacerated.

The evidence has established the following facts beyond reasonable doubt: In the evening of December 22, 1959 a Christmas dance was held in barrio Balincannaway, Rosales, Pangasinan. Among those in attendance were Domingo Corpuz and his "compadre," herein appellant, who was at the time the barrio lieutenant. A dance number was announced by Domingo to be one in which the "tatang-agers" were included. He took a partner for himself, but she asked to be excused before the music ended because "they did not dance well together." Feeling slighted, Domingo became angry. In a loud voice he complained that he should not have been thus embarrassed, being one of the barrio elders, and said that since the proper Christmas spirit was lacking "the dance should be discontinued." Appellant thereupon approached him, placed a hand in his shoulder and tried to placate him by minimizing the matter. Domingo continued to grumble for sometime, but finally appeared to calm down. The two of them then started to leave the dance hall. Before they could go out, however, Domingo rushed back, upset the gifts which were piled on a table and started to destroy the Christmas tree and the other festive decorations. Appellant again tried to pacify him, reminding him that his behaviour was driving the guests away, but Domingo was not to be appeased. Appellant then went to the microphone and asked the guests to remain. Evidently determined to break up the celebration, Domingo grabbed the microphone from him and pushed him aside. Appellant fell and, recovering himself, drew a pen knife and repeatedly stabbed the other man. Domingo turned to flee and was stabbed twice more in the back. He did succeed in running, but was later found lifeless some distance away from the dance hall. Appellant surrendered immediately to the authorities.

The prosecution tried to prove treachery and premeditation thru the testimony of Pablo Corpuz, a first cousin of the victim and the only alleged eyewitness presented for that purpose. He said that Domingo was already peacefully going out of the dance hall with Calacala when the latter, without warning, started stabbing him. Domingo fell backwards as a result, protesting all the time that he was not going to fight, but appellant continued the assault. Domingo was able to rise and run but received two more blows from behind.

Full credence cannot be given to the testimony of Pedro Corpuz. It is strange that of the many people present he

alone a close relative of the deceased should be presented as eyewitness to the stabbing. Equally without explanation is why appellant should attack the victim after he had already calmed down and in fact was docile enough to allow himself to be led outside the dance hall. And if the killing had been planned beforehand, as the prosecution maintains, it is difficult to account for the fact that appellant did not wait until he and the deceased were out aide, where there were no people present to witness the stabbing.

The defense, on its part, claims that appellant used a knife because the deceased drew a gun on him after pushing him away from the microphone. But the evidence on this point is far from satisfactory. Immediately after the incident a policeman by the name of Macario Belo conducted a search of the scene and its vicinity with the aid of the electric lights and portable lamps. The investigation lasted almost an hour, and yet no gun was found. The gun which was presented as evidence at the trial was allegedly discovered by a certain Marcelino Olivo beneath the roots of a tamarind tree not far from the dance hall, a little before seven o'clock in the morning after the dance. The ownership of that gun, however, has not been definitely traced to the deceased. The only link the defense was able to show is thru the testimony of Aurelio Estabillo, who said that before the stabbing occurred Domingo Corpuz called him outside the dance hall to show him a pistol and to offer his aid if Aurelio should need anything, whatever that meant. Such link is much too tenuous, for Estabillo could not positively say that the gun presented in evidence was the same one that had been shown to him. As it was, according to the policeman to whom the gun was delivered and the police man who had custody thereof afterwards, the same was rusty and unserviceable.

Subjectively, the theory of self defense is on the face of it unbelievable. The gun, appellant said, was already drawn and aimed at him when he took out the knife from his pocket. Surely there must have been plenty of time for the deceased to fire before the first knife blow was struck. The defense claims that the heel of one of the two or three cartridges inside the chamber bore a dent as if it had been struck with the firing pin. Assuming it to be so, and the bullet was a dud, the deceased could have squeezed the trigger once or twice more. This he did not do, nor did he even use the gun as a bludgeon with which to hit at his opponent. For if he had done so appellant would have received at least a bruise. But none was shown by the evidence. Finally, if there was a gun and appellant had acted in self defense he would have no declared to the police authorities to whom he surrendered instead of refusing, as he did, to make any statement.

Our conclusion is that the act committed by appellant was neither premeditated nor treacherous, and therefore is not murder but simple homicide, with the mitigating circumstance of voluntary surrender. On the other hand, we do not consider the acts of the deceased immediately preceding the killing as sufficient provocation on his part.

The judgment appealed from is modified by reducing the penalty imposed by the lower court to an indeterminate sentence ranging from eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and affirmed in all other respects, with costs.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Bengzon, J. P. and Zaldivar, JJ., concur.

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