

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DELFIN TORRECAMPO, ET AL., DEFENDANTS. DELFIN
TORRECAMPO, DEFENDANT AND APPELLANT.**

G.R. No. L-5161. September 07, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Before the Court of First Instance of Samar, DELFIN TORRECAMPO and ALFREDO MENDEZ were jointly charged with murder for the killing of IGNACIO BALLONICO. After trial, Alfredo Mendez was acquitted for insufficiency of evidence. His co-defendant Delfin Torrecampo was found guilty of murder and sentenced to life imprisonment with the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000.00, and to pay 1/2 of the costs. Torrecampo is appealing from that decision. The amended information on which the defendants were tried reads as follows:

"That on or about the 9th day of March, 1950, at Bo. Makiwalo, municipality of Mondragon, province of Samar, Philippines, and within the jurisdiction of this Hon. Court, the above-named accused with intent to kill, and with evident premeditation and treachery, conspiring together and confederating and helping one another did then and there wilfully, unlawfully and feloniously attack, assault and wound one Ignacio Ballonico, with a knife which the accused Delfin Torrecampo had conveniently provided himself for the purpose while accused Alfredo Mendez was poised and in the act of preventing the said victim from offering resistance, thereby inflicting one mortal wound upon the person of said Ignacio Ballonico at the lower right abdominal cavity which wound caused his instantaneous death."

The trial court found Torrecampo guilty as charged, but as already stated, sentenced him only to life imprisonment which is the medium of the penalty prescribed for the crime of murder despite the allegation of the aggravating circumstance of either treachery or premeditation.

The following facts have been duly established. In the evening of March 8, 1950, Federico de Guia entertained friends in his house on the occasion of the novena held there in connection with the death of his mother. Drinking tuba was indulged in by the visitors and in the course thereof, there ensued a quarrel which degenerated into a fight between Delfin Torrecampo and Ignacio Ballonico, resulting in the latter boxing the former and striking him on the back with a piece of wood. Torrecampo presumably to avoid further punishment because Ballonico was bigger and taller than himself, jumped out of the window but from below he warned his assailant to beware for someday he was going to kill him.

The following afternoon Ballonico accompanied by his wife Consorcia repaired to the house of Manuel de Guia for the purpose of buying a carabao to be slaughtered in connection with the novenario in the house of Federico de Guia. After ascertaining the price of the carabao which Manuel said was available for sale, and as the couple was about to return home, Torrecampo suddenly approached Ballonico from behind and as the latter turned around, struck him in the right lower part of the abdomen with a knife, inflicting a mortal wound which the President of the Sanitary Division described as -

"Wound, stab, rt. iliac region, 2" long x 3/4" wide. Evisceration (of intestines, small) w/ gangrene. Wound, punctured, (S) intestines, small, w/ peritonitis Hemorrhage, acute, secondary. Shock."

and from which Ballonico died the following day.

There is no doubt as to the infliction of the mortal wound by appellant Torrecampo. He does not deny it. He, however, claims that he acted in self-defense. As to the alleged participation of Alfredo Mendez, the court found that he was not present on the occasion of the stabbing, much less participated in it. The theory of appellant Torrecampo is that when on the afternoon of March 9th, he approached the house of Manuel de Guia, he found Ballonico and his wife in the yard talking to De Guia who was at the window of his house; that Consorcia began to reproach him, accusing him of spreading the rumor that he was engaged to her sister LUCERING; that when he denied the charge, she began assaulting him inflicting blows on his face, and that her husband Ballonico immediately joined in the assault, striking him with a piece of bamboo on the back with such force that the bamboo broke; that he (Torrecampo) stepped forward to avoid other blows and when he turned around he saw Ballonico with a knife in his hand which knife Ballonico actually swung at him, and that to defend himself he brought but his own knife and stabbed Ballonico in the abdomen.

After a careful study of the evidence, we agree with the trial court in its rejection of the story of Torrecampo. We find that appellant approached Ballonico from behind and as the latter turned around to go home unaware of the presence of the appellant, the latter suddenly stabbed him in the abdomen. There is evidence to the effect that though caught unawares Ballonico instinctively stepped aside to avoid the aggression; but his attempt at escape was blocked by Alfredo Mendez. It is also said that immediately before the assault, Alfredo Mendez was heard to say: "If you want fight, fight; if hit, hit". However, the trial court as already said acquitted Mendez on insufficiency of evidence.

The killing was qualified by treachery thus raising it to the category of murder. Although the information alleges the aggravating circumstance of premeditation, as pointed out by the Solicitor General, there is no valid ground for holding that it attended the commission of the crime. The grudge engendered by the fight between Torrecampo and Ballonico in the house of Federico de Guia the night before, in which Torrecampo was at the losing end, may well and logically be considered as the motive behind the killing. But although he warned Ballonico that he would someday kill him, there is no evidence that he really meant to kill the deceased, and that from that moment he planned and reflected on killing his assailant, and in pursuance of said plan he followed the deceased to the yard of Manuel de Guia the following day. For all we know, it may well have been a chance meeting but that when he saw the deceased that afternoon his resentment of the previous evening flared anew and he decided right then and there to attack his victim.

We agree with the Solicitor General that the mitigating circumstance of voluntary surrender should be accorded appellant. It was proved that the following day he surrendered himself to a policeman in the town of Mondragon. The penalty corresponding to the crime of murder should therefore, be imposed in its minimum degree, namely, reclusion temporal in its maximum degree. Applying the law on indeterminate sentence, the penalty should be not less than twelve (12) years of prison mayor and not more than seventeen (17) years, four (4) months and one (1) day of reclusion temporal. The indemnity should also be increased to P6,000.00. With these modifications, the decision appealed from is hereby affirmed, with costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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