

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PAULINO BELARMINO, DEFENDANT-APPELLANT.***G.R. No. L-4429. April 18, 1952*

Ponente: MONTEMAYOR, J.

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Paulino Belarmino is appealing from a decision of the Court of First Instance of Camarines Sur, finding him guilty of parricide for killing his wife Eusebia Pavia, and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased in the amount of P6,000, and to pay the costs.

The facts in the case are few and simple. Defendant Paulino Belarmino and Eusebia Pavia were married before the Justice of the Peace of Naga, Camarines Sur shortly before the Pacific War, around 1940 or 1941. They have four children. They lived in Guinobatan, Albay, the town of the wife until 1948 when Paulino moved his family to kilometer 6, Conception Grande, Naga, in the house of his father. On the morning of May 25, 1950, his wife Eusebia died a violent death. An autopsy conducted by Dr. Villafuerte showed a lacerated horizontal wound in the occipital region about three inches long and a half centimeter deep, contusions on the back of the neck, right side, and on the forehead, left side, and upon opening the skull, it was found that the base of said skull was fractured and there had been profuse hemorrhage, all of which according to the doctor must have produced instantaneous death.

The theory of the defense is that Eusebia while picking fruit from a nanka tree, lost her balance and fell down striking her head against a stump under the tree. In support of this theory, appellant says that he immediately notified the barrio lieutenant who came to investigate. This theory of the defense however readily gives way to the theory of the prosecution which clearly shows that appellant Paulino killed his wife with a wooden club, in the course of a quarrel between man and wife. As soon as the authorities were notified of the death of Eusebia, they went to investigate the place where she was supposed to have fallen from the tree. They found that the tree was only three and a half meters high and there was absolutely no sign of any fruit having been picked from it. The stump against which Eusebia's head was said to have struck, was not there and its absence if it had really been under the tree was not explained. On the contrary, the ground under the tree was found to be soft and covered with grass so that even if Eusebia had fallen from the tree, she could not have suffered the mortal wound and fracture that produced her death. On the other hand, under the tree they found a wooden club, Exhibit "C", smeared with blood. All of this led the authorities to suspect that the death of Eusebia was not accidental. Paulino was placed under arrest and was questioned and in the course of the investigation, he made statements wherein he admitted that in a fit of anger and jealousy he struck his wife with the club, Exhibit "C". These statements were reduced to writing, in the form of an affidavit, Exhibit "D", and although it is written in English, Municipal Judge Vicente S. Tuason explained its contents in the dialect of appellant after which he asked him if said contents were true and upon being assured that they were true, Paulino was allowed to thumbmark it.

During the trial, Paulino repudiating his affidavit (Exhibit D) on the ground that it was obtained through intimidation and torture, stuck to his original theory that his wife fell from the nanka tree. The trial court rejected

this theory of accidental death and accepted the affidavit (Exhibit D), giving no credence whatsoever to the claim of force, intimidation and torture supposed to have been employed to obtain it. We have examined the record and we agree with the trial court that the statements contained in the affidavit were given freely and voluntarily, and that the killing of Eusebia by appellant and the reason therefor are correctly described in said affidavit. As the trial court correctly stated, the claim of force and intimidation were flatly denied by the police authorities who conducted the investigation, and Municipal Judge Tuason assured the court that appellant swore to and thumbmarked Exhibit "D" freely and voluntarily, without any undue influence and that contrary to the claim of Paulino that he thumbmarked his affidavit because a policeman who was beside him prodded him to do so, Judge Tuason said that in order to remove all possible undue influence upon the affiant he excluded everybody from the room. Besides, when arraigned before the Municipal Court of Naga, appellant Paulino pleaded guilty.

The motive behind the killing is adequately and in detail explained in the affidavit. As already stated, since they were married in 1941 Paulino and Eusebia lived in Guinobatan, Albay. Sometime in 1948, Paulino one day surprised his wife with one Domingo Pama under suspicious circumstances as she was sitting on his lap. Not long thereafter, this indiscretion of his wife was repeated, and he became convinced that the two had been maintaining illicit relations. However, upon her promise not to do it again, he forgave her but to keep her away from temptation, he transferred their residence to Naga. However, according to him, it would seem that she did not live up to her promise for on May 22, 1950, while he was in Pili, Camarines Sur, he happened to see his wife in an ALATCO bus. Unaware that she had left the house to make a trip, he approached and asked her why she was away from home and she turned pale. He became suspicious and grabbed her ticket from her pocket and found that it was a round trip ticket to Guinobatan, Albay. He concluded that she had gone to Guinobatan to be with her old paramour. Because they were in a public place, he refrained from reproaching her. About three days later, on the occasion when she was about to go to Naga to sell some vegetables, the old question came up, namely, her indiscretion or infidelity. Added to this, she may have also reminded him of his unfaithfulness because according to the evidence he was maintaining a mistress and was neglecting his family. The fact is that in the course of the discussion or quarrel she told him that since they could not live peacefully and happily together, they might as well separate from each other and perhaps in a taunting manner, she added that he might as well kill her. Because of all this, he suddenly flared up and perhaps remembering her past indiscretions, including one occasion when she went to Manila without his knowledge, he became obfuscated and seizing the club, Exhibit "C", he struck her on the back of the head and the neck causing her death.

The trial court found that the killing was attended with the mitigating circumstance of passion and obfuscation. We give appellant credit for this mitigating circumstance although for the imposition of the penalty of reclusion perpetua it is not necessary because under the provisions of the Penal Code when a crime, like parricide, is penalized with two indivisible penalties, reclusion perpetua to death, the lesser penalty should be imposed even when there is no mitigating circumstance. However, the presence of said mitigating circumstance which we accord appellant may be relevant and important in case of the exercise of executive clemency in the course of appellant's service of his prison sentence.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, and Bautista, Angelo, JJ., concur.

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