

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MORO SABILUL, DEFENDANT AND APPELLANT.

G. R. No. L-5520. July 31, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the defendant from a decision of the Court of First Instance of Zamboanga dated December 10, 1951, the dispositive part of which reads as follows:

"In view thereof, the Court finding the accused guilty by his own voluntary confession on the crime of 'Murder' as alleged in the information filed by the City Attorney of the City of Basilan, hereby ratifies and again sentences him, to suffer the penalty of not less than six (6) years and one (1) day nor more than eight (8) years of prision mayor, to pay the heirs of the deceased Moro Lario an indemnity in the amount of Two Thousand Pesos (P2,000.00); with the accessory penalties as prescribed by law; and to pay the costs of these proceedings."

The following statement of the case contained in the Solicitor General's brief, sufficiently describes the proceedings below, the antecedents of the present appeal:

"On November 11, 1949, the City Fiscal of Basilan City filed an information for murder qualified by treachery and evident premeditation in the Court of First Instance of Zamboanga against the accused Moro Sabilul (p. 15, rec.) Before the hearing of the case on November 24, 1949, counsel for the accused manifested to the court that his client would plead guilty to the charge and prayed that the defendant be sentenced to destierro because the murder was committed while the deceased Lario was in the act of committing sexual intercourse with his (appellant's) wife Mora Mislayan (p. 2, t. s. n. Set I.) The Fiscal argued that the deceased was murdered in cold blood while taking a bath in the creek and that there was evidence to show that previous to the killing, appellant's wife who divorced with the former according to moro custom, had illicit relations with the deceased (pp. 4-5, t. s. n., Set II.) On the basis of these manifestations and without any evidence, the judge found the appellant guilty of murder and in open court sentenced him accordingly (pp. 7-8, t. s. n., Set I.) From this judgment, the accused, through counsel, appealed to this Honorable Court, which on June 21, 1951 promulgated its decision reversing the judgment of the lower court on the ground that, as contended by the Solicitor General, 'there must have been misunderstanding as to the entry of the plea of guilty by the accused'; that the entry of the plea of guilty 'was conditioned on the penalty provided for in art. No. 247 of the Revised Penal Code'. The dispositive portion of said decision reads:

" 'Setting aside the decision appealed from and acting upon the recommendation of the Solicitor General, it is hereby ordered that the case be returned to the trial court for new trial. It is suggested that the observations made in this decision be noted by the trial court and counsel for the appellant so that the irregularity in the proceedings had before and the errors and misunderstanding attending be not repeated.' (People vs. Moro Sabilul, SC-G. R. No. L-3765, June 21, 1951).

"Pursuant to the above decision, the lower court set the case for hearing on November 7, 1951 for the reception of evidence. The court, having in mind appellant's admission of the killing, his conditional plea of guilty, and

the manifestation of his counsel that the accused need not be arraigned, asked the defense to present its evidence first reserving to the prosecution the right to introduce rebuttal evidence (p. 2, t. s. n., Set I). Without objection, the defense entered and proceeded to present its proofs, after which the prosecution followed. On the evidence thus presented, the trial court found appellant guilty of murder and, applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu sentenced him to suffer an indeterminate penalty, ranging from 6 years and 1 day to 8 years of prision mayor, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased Moro Lario in the sum of P2,000, and to pay the cost (pp. 93-94, rec.)."

It is obvious that the trial court again labored under a misconception of the appellant's plea of guilty. When we set aside its original decision and ordered a new trial, we expressed our agreement "with the Solicitor General that there must have been misunderstanding as to the entry of the plea of guilty by the accused." So much was our apprehension about the irregularity and the series of errors in the original trial below that we went to the extent of quoting from the decision in *U. S. vs. Jamad*, (37 Phil., 105), the following passages:

"Having in mind the danger of the entry of improvident pleas of 'guilty' in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.

"The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.

* * * * *

"But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of 'guilty' with full knowledge of meaning and consequences of the act."

Notwithstanding our observation, however, the lower court in the second trial proceeded on the assumption that the appellant pleaded guilty to the information for murder and merely ordered that "the defense will present and adduce evidence to the effect that the accused, in committing the crime of murder, was compelled by the fact that he surprised his spouse in the act of committing sexual intercourse with the deceased Moro Lario." This very manifestation in the appealed decision clearly indicates that the plea of guilty was conditioned upon the allegation that the killing was done when the appellant surprised his wife in the act of sexual intercourse with the deceased Moro Lario. In our first decision we already pointed out that "an accused may not enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him." We are therefore constrained to hold that the appellant in this case must be considered as having entered a plea of not guilty.

The appellant testified that in the afternoon of September 14, 1949, he was plowing in the vicinity of his house and, feeling thirsty, he asked his wife, Mora Mislavan, for some water. The latter proceeded towards the creek, but no sooner had she arrived at the place than the appellant heard a noise. This caused the appellant to rush to the scene where he found Moro Lario wrestling with and on top of Mora Mislavan who was shouting "don't, don't". Whereupon, picking up a pira (a Yakan bladed weapon) which he noticed nearby, the appellant slashed Moro Lario on the right side of the face. The latter attempted to flee, but he was overtaken and slashed a few more times by the appellant, after which Moro Lario fell and died. The appellant presented himself to the police authorities, with the weapon he used. The testimony of the appellant is in the main corroborated by Mora Mislavan, and their joint testimony was not contradicted by any direct evidence for the prosecution.

The appellant and his wife also testified that they were married and remained so at the time of the killing. The

rebuttal evidence for the prosecution does not tend positively to disprove appellant's allegations, and reliance is placed mainly on speculative inferences to the effect that the deceased Moro Lario could not actually have had sexual intercourse with, much less raped, appellant's wife who was at the time wearing Yakan tight pants from the ankle to the knee similar to military breeches, and was 25 years of age, healthy and strong. It is similarly claimed that, if the appellant killed Moro Lario after the latter had been overtaken by the appellant about one hundred meters away from the place where the alleged sexual intercourse was accomplished, it is surprising that no trace of blood was found between the two points. Apart from the fact appearing in the record that the scene was found wet and muddy, thereby showing that on the night of the day in question, it must have rained hard, the conjectures invoked by the prosecution cannot overcome the force and effect of the direct testimony of the appellant and his wife. In the same way, the insinuation that the appellant and his wife had admitted before the fiscal that they were divorced simply because, after the deceased Moro Lario was once caught in appellant's house near Mora Mislayan, both the latter and Moro Lario were fined in the sum of fifty pesos by Moro Imam Ilul, an indication of divorce, cannot prevail over the positive admission of the spouses in open court that they had not been divorced,—not to mention the fact that there is evidence indicating that the fines were not paid and the spouses never lived apart.

Upon the foregoing facts the writer of this decision is for the appellant's acquittal, since he is entitled to the justifying circumstance of having killed Moro Lario in defense of the person and rights of his wife under article 11, paragraph 2, of the Revised Penal Code. There was unlawful aggression on the part of the deceased Moro Lario, because he was forcibly abusing appellant's wife, and no provocation whatsoever originated from the appellant or Mora Mislayan. Upon the other hand, the means employed by the appellant in repelling the attack of Moro Lario may be considered reasonable, because on the spur of the moment he could not have utilized any other weapon than the pira belonging to the deceased which was then lying nearby. It would be unnatural for a man found in appellant's situation to have stood by and merely used his bare hands. In the case of *U. S. vs. Padilla*, 34 Phil., 641, this court held that the bolo was a rational means and that the defendant therein was exempt from all responsibility in seriously wounding the man who intended to lie by force with the defendant's wife; and the result of said case would undoubtedly have been the same if the man died as a consequence of the injury.

However, the majority are of the opinion and so hold—and this conformable to the theory of appellant's counsel—that, all things considered, the appellant had killed Moro Lario in actual adultery with appellant's wife because she had consented and should therefore be sentenced to destierro under article 247 of the Revised Penal Code. In the main it is argued that, if appellant's wife was really forced by Moro Lario, she would not have run away upon appellant's arrival.

Wherefore, modifying the appealed judgment, the appellant is found guilty under article 247 of the Revised Penal Code and sentenced to destierro for 2 years, 4 months and 1 day. The appellant shall not enter within a radius of twenty-five kilometers from the City of Basilan during said period. So ordered.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

DISSENTING

TUASON, J.,

With all due respects, it is submitted that this Court goes out of its way in completely exonerating the appellant, showering upon him liberality neither sued for nor anticipated by him. In the long process of two trials and two appeals counsel for defendant has never pleaded for acquittal. His effort has been concentrated on securing for the

defendant the light sentence of banishment, on the theory that he caught the deceased in flagrante adulterio with Mislavan, appellant's wife. More, counsel obliquely suggests that if the theory of adultery were not acceptable, appellant might be convicted of homicide.

The Court now absolves the appellant from all liability, holding that the deceased raped Mislavan and was justly slain, with the implication that defense counsel did not know what he was talking or doing.

Counsel was no fool judging by his conduct of the defense in both trials and his presentation of the case on both appeals, in the first of which he was successful. Intelligent and well grounded in the law, we are not to suppose that he did not examine his client and Mislavan and study other angles of the case, and having done so, that he would be satisfied with anything less than acquittal if he were convinced that the accused had acted in defense of his wife's honor, as this Court says he did.

With this observation, let us see what the defendant did and said, personally or through counsel, in his appearances and briefs.

On the cause being called for trial for the first time, counsel informed the court that his client would plead guilty and would only "pray that the accused be given the 'destierro' penalty as provided in the Revised Penal Code." He told the court that the defendant had killed the deceased "while in the act of committing sexual intercourse with his (defendant's) wife."

The provincial fiscal vigorously objected and said that the defendant was formerly married to Mislavan but not now; that Lario, the deceased, had kept illicit relations with this woman by reason of which her husband had divorced her; that months later the accused met Lario in a creek and, taking advantage of Lario's unpreparedness, slew him; that there was no remarriage. After somewhat prolonged discussion the court ordered the information read to the defendant, and after the arraignment Sabilul responded "Guilty, Your Honor." The court, however, could not believe from the manifestations of counsel that the slaying occurred in the manner alleged and condemned the defendant to imprisonment for murder. That was the sentence which was later set aside in the first appeal.

At the new trial the same defense counsel, according to the court, "manifested and agreed that there is no need of the accused being arraigned again as he already entered the plea of 'guilty,' only the defense will present and adduce evidence to the effect that the accused * * * surprised his spouse in the act of committing sexual intercourse with the deceased Moro Lario * * *." And after the prosecution, which was the last to present evidence, had rested, counsel reiterated his plea that the accused be sentenced to destierro. He argued that "the killing took place at the instant when the wife was overtaken by the husband committing sexual intercourse with a paramour." He added that "this part (evidence on sexual intercourse with the woman's consent) has never been destroyed by the prosecution."

In this Court, on appeal, counsel has pursued the same line of argument and maintained the same proposition.

He goes so far as to refute, indirectly, the testimony that the deceased ravished Mislavan, as the latter and her husband tried to prove. He admitted that the woman might have "cooperated a little." "A Filipino woman,-he says-even if she were a lowly Yokan would not openly admit in public that she surrendered her body to another, especially if she had to admit the embarrassing fact before her husband in court." The seeming hint in this argument is that in private and out of her husband's presence Mislavan would have a different story to tell.

No one outside of the appellant and his wife could tell exactly what happened. There was no other eyewitness. Much therefore has to be left to conjectures. Unfortunately for the defendant, conjectures may be indulged in this case, for, having admitted the slaying, he assumed the burden of showing beyond reasonable doubt that the killing

was justified or excused.

Defendant's and his wife's version of the alleged rape and of the slaying is so highly contradictory and improbable as to merit little or no credence, as the trial court found.

Mislayan said in substance: Her husband who was plowing requested her to get him some water to drink. She went to a stream about 40 brazas away and there came upon Lario washing his undershirt. As she was "dipping my bamboo tube in the creek," Lario embraced her, held her pants (of the tight variety) to pull them down, and she shouted "Don't, Don't." Lario overcame her resistance and while he was lying with her, the accused appeared, picked up Lario's pira (bladed instrument) which Lario had left on the ground, and hacked Lario in the face as the latter lifted his head. Then she "twisted" her body "and ran away from the place."

On his part, Sabilul, the defendant, said in substance: He was plowing and, feeling thirsty, asked his wife to get some water. Shortly afterward he heard noise and he ran to the creek, where he found Lario on top of his wife. He spotted a pira near their heads, picked it up, and hacked Lario on the right side of his face when the deceased looked up. Lario's wound "traversed (the head), including the nose." His wife wiggled to one side and ran home. Lario ran away, too, and he (defendant) chased him. He caught up with Lario about 30 brazas from the creek and slashed him three times more.

Investigation by the authorities conducted the next day revealed that from the spot where Mislayan was alleged to have been attacked to the spot where Lario's body was found, there was a distance of about 100 meters; that between the two points there were two fences each of which was about 1½ meters high; that there was no trace of blood anywhere except near Lario's body where there was plenty; that the deceased sustained nine bolo wounds, one of which, in the face, was fatal.

The preceding evidence for the prosecution, the veracity of which is beyond question, belies the defendant's and his wife's tale that the deceased ravished Mislayan (or as counsel would have it, lay with her with her consent) on the bank of the creek. It has not been explained how with at least one fatal wound which nearly chopped off his head Lario could have been able to run 100 meters and hurdle two high fences to boot without being overtaken by a man who was unscathed. Nor has it been explained, except through speculation, why there was no blood anywhere except in the ricefield where Lario dropped dead. It is said that heavy rains could have washed away the blood near the creek and along the supposed route of pursuit. Rains did not obliterate the blood beside the corpse, where, according to defendant, he inflicted only three—and lighter—wounds. The fact is there is no proof that it did rain between the time of the killing and the day of the inquest. The presence of water near Lario's body from which the inference is made that there had been a downpour, is no indication that it had rained, for water is ever present in rice paddies.

There was no bloodstain on Mislayans apparels, either. She explained that she "twisted" her body and ran away; but she and her husband also said positively that she was under Lario when the latter was hacked in the head or face. We need not point out that from deep wounds one of which nearly cut the head into two parts copious blood must have gushed.

Moreover, was the deceased so beastly as to assault a married woman in broad daylight and within a shouting distance from her husband whom he could hardly have failed to see plowing? And if the deceased could not overcome his bestial urge, would he have left his pira beyond his reach and where others could grab and use it against him as the defendant says he did?

Many other things could be cited to show vital inconsistencies and incongruities in defendant's evidence and between that evidence and undisputed or admitted facts. Casual reading of this evidence instantly engenders the

conviction that the accused and his wife perjured themselves. Surely this kind of evidence should not by any standard be made the foundation for an acquittal for taking human life on grounds of justification.

One point very worthy of consideration in connection with the alleged rape is the fact that Mislavan ran home immediately after her husband slashed Lario's face or head. Mislavan's explanation for escaping—that she could not stand the sight of blood—is far from convincing. It would seem to be more logical to suppose that she feared her husband's wrath, feared meeting with the same fate as Lario's whom counsel calls her paramour. If it had been only blood which she dreaded she could have covered her face, or looked the other way, or, if need be, stayed behind one of the trees or shrubs of which there were many at the place, instead of leaving her husband who had come, according to her, in response to her screams for help.

There is even room for doubt that there was carnal knowledge between Lario and Mislavan by mutual consent. Besides the absence of bloodstains from Mislavan's clothes, the spot, as already seen, was only about 40 brazas from where her husband was at work and by its name—watering place—could have been frequented by other people.

But why did Mislavan run home if she had not committed any act of infidelity? And why did the accused kill Lario without provocation?

The deceased had alienated Mislavan's affection and broken defendant's home. The killing at bar occurred not long after the couple was reunited following five months' separation caused by Lario's and Mislavan's misconduct. Inasmuch as the truth of these illicit relations is denied, I will take the pain to point to some of the specific statements of the accused and Mislavan themselves.

At the preliminary investigation before the city attorney of Basilan, Mislavan declared that Lario came up to her house one night to ask for buyo. She said that if her husband did not tell the city attorney about Lario's visit it was because "he may not know about this because he was asleep." She said in the same breath, when asked if she did not inform her husband the next day, that, "that very night I woke up my husband * * * and told him that Lario was there lying beside me", upon which "he (Lario) ran away." Asked again if there had been trouble between her, her husband and Lario, she replied, "Yes, sir, because that very night, that is why I woke up my husband because Lario attempted to force me, and so we went to the wife of Datu Unday, Mora Apay, the next day, to settle up the matter wherein Lario was sentenced to pay a fine and I was also fined P50." She admitted that she paid her fine to her husband's relatives and that "since that night my husband and I (were) divorced" although "after six months we lived again together." She said that Lario paid his fine to her husband's relatives, too. She declared that to fine a married woman who has sinned against her husband is in accordance with Moro customs. She stated that her separation from her husband was sanctioned by Inam (priest) Ilul, Inam Batangan and her uncle Arabain. After their reconciliation, however, her fine was returned to her "as a sign of remarriage."

When the defendant was recalled by the city attorney he confirmed that Lario came to his house one night. He stated that he had forgotten to tell the city attorney about this before. He confirmed the payment of fines by Lario and his wife and said that he consented to his wife's paying the fine because "she would not tell me the reason." Like his wife the defendant complained that "Lario was telling the people that he was in love with my wife"; that "Lario was boasting around that he had illicit relations with my wife." He said he had been separated from his wife five months.

Testimony to the effect that there was some sort of Moro trial for adultery, that fines were imposed and paid, that there was separation or divorce and reunion is plentiful in the transcript of the evidence taken at the trial in the court below. This evidence is in many parts contradictory and confused, but the contradictions only go to show the untrustworthiness of the defendant's and his wife's oaths. At any rate, amid the conflicting testimonies the fact

that the accused and his wife had been separated on account of Lario stands out clearly. And it is not in accord with logic and the rules, of evidence to pick out favorable portions of self-serving and incoherent testimonies and regard them as "tending" to establish the declarant's case.

To summarize, the court and the solicitor general were right, in my humble judgment, in discounting all possibility of rape. Even adultery is to be seriously doubted. It was not strange that Mislayan should, even though she were not doing anything wrong, run away when she saw her husband pounce upon the deceased. The likely case was that when the defendant saw Lario at the creek, perhaps talking with his wife, he chased the deceased up to the rice paddies where he caught up with Lario and slew him. This is a surmise, it will be objected, but it is a reasonable one, and in the face of defendant's very unsatisfactory explanation, the Court can resort to surmises. Let it be pointed out again that the defense had the onus probandi.

Where, in my opinion, the defendant's attorney is right and the court below erred is in the qualification of the killing as murder. It was incumbent on the prosecution to show the qualifying circumstances of this crime. I agree with counsel that none of the prescribed circumstances has been established, and that "the most that the Court can impose is the penalty for Homicide."

In fairness to the trial Judge, I do not think that this Court's censure of his handling of the case is well deserved. The Judge did not disregard this Court's decision which set aside the first decision of the court a quo and ordered a new trial." This Court did not specify the procedure which the Court below was to follow. By citing U. S. vs. Jamad (37 Phil., 305), and not giving specific instruction, this Court led the trial Judge to believe that he was only to take "such additional evidence (as) should be sufficient to sustain a judgment of conviction independently of the plea of guilty."

In any event, from the statement in the present appealed decision, which I have quoted, it is evident that the defendant's attorney not only agreed, with but suggested the mode of trial adopted. This statement is disputed, but the judge's statement "has so much weight that in case of discrepancy * * * the word of the judge prevails." People vs. Cariaga, 64 Phil. 390; U. S. vs. Dineros, 18 Phil., 566.

What is more, the point is very trivial. Aside from the fact that "it is settled that the order in which proof is received is largely within the discretion of the trial court (26 R. C. L. 103), and the fact that the procedure being criticized was not objected to, to say the least, there is no showing that the substantial rights of the appellant have been impaired.

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