

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE VILLARUEL, DEFENDANT-APPELLANT.***G.R. No. L-3545. December 29, 1950*

Ponente: REYES, J.

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This is an appeal from a judgment of the Court of First Instance of Cebu convicting Jose Villaruel of murder for the killing of Nu Chiang Yu alias Conchita and sentencing him to an indeterminate penalty. The case has been certified to us by the Court of Appeals on the ground that the penalty imposable is death.

It is undisputed that in the evening of December 19, 1947, while Conchita was in her room in her house in the poblacion of Madridejos, Bantayan island, province of Cebu, she was assaulted, beaten, and seriously injured as a result of which she died the following morning. The only question is the identity of the assailant.

Testifying for the prosecution, Albina Espino, Conchita's maid, declared that after taking supper that night she and her mistress retired to their respective rooms, which were adjacent to each other. They were then alone in the house for Conchita's husband, Chia Check, was away. At about 9 o'clock p.m. Albina heard the sound of a blow coming from the room of her mistress. She called her mistress but received no answer. Instead, she only heard groans. Suspecting foul play, she cried for help but got no response. Getting up from bed she saw the accused Jose Villaruel, who, having apparently come out of her mistress room, as now opening the door of the room wherein salt was stored. Very much frightened, Albina took to her heels jumped over the fence and sought aid at the market place. There she met three policemen to whom she reported what had happened, telling them that Villaruel had robbed them and assaulted her mistress. The policemen followed her to the house and there found Conchita with a broken forehead but still alive, though she could no longer move or talk. Beside her was a piece of wood introduced in evidence as Exhibit B. Albina immediately called a doctor, but despite his ministrations Conchita died the following morning. It would also appear from Albina's testimony that although the doors of the house were closed, the intruder could have gotten in through the back-door, which was in bad condition.

According to the doctor who treated the deceased, the cause of death was fracture of the frontal bone, brain concussion, and internal hemorrhage. He said that the fracture could have been produced by a blow with the piece of wood Exhibit B.

The accused tried to prove an alibi. Though admitting having been to the poblacion of Madridejos in the afternoon of the day of the crime, he declared with the corroboration of his brother and mother-in-law that late in the afternoon of that day he left with them for Bantayan, which was about 15 kilometers away, and from there proceeded to the barrio of Sunko 5 kilometers farther, and that after a drinking spree in his mother-in-law's house, he went to bed at about 10 o'clock in the evening and did not get up until the following morning.

The case hinges on the credibility of the witnesses. The defense questions the veracity of the prosecution witness Albina Espino on the ground that her story is inherently improbable. But we find nothing really incredible in what she narrated, and her trustworthiness as a witness has been especially mentioned by the trial judge, who took note

of her conduct on the stand and her manner of testifying. Moreover, it does not appear that she had any grudge against the accused.

There can be no doubt as to Albina's identification of the accused for there was light in the house that night and she could have had no difficulty in recognizing him because she had known him for some time and had seen him in town in the afternoon of that day. His must have been to her a familiar face for he had been buying cigarettes in her master's store and even his nickname—Dokdok—was known to her. That she actually recognized him when she saw him open the door to the salt-bin after leaving the room of the deceased may also be inferred from the fact that she readily named him as the assailant when, after fleeing from the house, she met the policemen in the market. Even the vice-mayor, who, as a witness for the defense, testified that he learned of the crime on the day following and made an investigation, had to admit that Albina did inform him that the accused was the author thereof. Albina's identification of the accused is not weakened by a statement in the report of Pvt. Ladislao Bacolod, of the Philippine Constabulary, made 4 days after the crime, to the effect that Conchita had been murdered by "unknown persons." Though a witness for the defense, Bacolod explained that he included that statement in his report because at that time the murderer was still at large. Moreover, the report also names the accused and his brother as the suspects.

With nothing to support it except the testimony of close relatives and weakened as it is by the testimony of defendant's own nephew who claims to have seen him near the house of the deceased at 7 o'clock on the night of the crime, defendant's alibi is not convincing. It can not prevail over Albina's positive identification of the accused as the person who came out of her mistress' room that night.

While proof of motive is not essential to conviction where the commission of the crime is clearly established, still it may be mentioned that in Bacolod's report, which was presented as evidence for the defense, it is recorded that the "murderer" had taken P380 from the trunk and P60 from the store.

After going over the evidence, we are satisfied that appellant's identity as the author of Conchita's death has been sufficiently established. Defendant cannot, however, be convicted of murder, for though the information alleges premeditation and treachery, those qualifying circumstances have not been proved. All that can be deduced from the evidence is that the deceased died as a result of injuries inflicted with a piece of wood. But no one actually saw the details of the assault and there is nothing to indicate that it was perpetrated with premeditation and alevosia. Defendant might conceivably be guilty of robbery with homicide. But no robbery is alleged in the information. At most then defendant could be convicted only of homicide aggravated by the circumstances of dwelling and nighttime with no mitigation.

Wherefore, the judgment appealed from is modified and the appellant declared guilty of homicide and sentenced to an indeterminate penalty of from 12 years of prison mayor to 20 years of reclusion temporal, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P6,000, and to pay—costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Jugo, JJ., concur.

**MORAN, C.J.,:**

Mr. Justice Paras and Mr. Justice Feria voted as is ordered in this decision.

Judgment modified.

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