

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MOISES ACOSTA, DEFENDANT AND APPELLANT.

G.R. No. L-1803. July 05, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

On December 20, 1944, at about 8 o'clock in the evening, in barrio Lantag, Tagudin, Ilocos Sur, Petra Aguilan, an old woman about sixty years of age, was in the kitchen of her house with her two sons, Florencio and Narciso Lacasandile, and the latter's wife, Segunda Somera. They had barely finished supper and there was some argument as to whether some fish should have been eaten that evening or kept for breakfast the following morning. Appellant Moises Acosta, who was stationed in a "garita" some distance away as a huko guard of the guerrilla forces and who was drunk, heard the argument and proceeded there to investigate. Upon arriving at the foot of the stairs of Petra Aguilan's house, he demanded—"Who are complaining here, otherwise I will kill." Whereupon, Petra Aguilan replied—"No one is complaining," and proceeded to descend the stairs which consisted only of two steps. As she went down, appellant Acosta met her and immediately stabbed her in the abdomen below the left breast with a bolo he was carrying. Upon being wounded, Petra Aguilan rushed to a nearby house where a Dr. Gerardo Espejo was residing.

Meanwhile, Narciso Lacasandile who saw the stabbing of his mother, hurried down from the kitchen, disarmed appellant, placed the bolo under a bet (papag), and hastened to help his mother who was being brought back by Doctor Espejo. Petra Aguilan was laid down on her "papag" and while Doctor Espejo was attending to her, Narciso grabbed a piece of bamboo and hit appellant on the back. Narciso was immediately subdued by the others who were present. Meanwhile, Doctor Espejo was questioning Petra Aguilan as to the identity of her assailant and she answered that Moises Acosta was the one who stabbed her. When appellant Acosta, who remained in the room but was moving about restlessly, heard her statement, he denied having stabbed her and claimed that it was her own son Narciso who did the stabbing. Petra Aguilan did not make any reply and she died very shortly thereafter. Death was due to hemorrhage and shock according to Doctor Espejo in the medical certificate issued by him and in his testimony during the trial.

These facts have been clearly and indubitably established by the testimonies of the prosecution witnesses. They are Dr. Gerardo Espejo, who brought the wounded woman back to her house and who questioned her before she died as to the identity of her assailant; Narciso Lacasandile, who saw the stabbing from the kitchen, who disarmed appellant Acosta and who was at his mother's bedside when she identified appellant and when she died; and, Segunda Somera, wife of Narciso, who also witnessed the crime from the kitchen and who was with her mother-in-law until she died. The testimonies of these witnesses with regard to the dying declaration of Petra Aguilan are supported by the testimonies of appellant Acosta himself and of a defense witness, Melchor Espiritu, who testified that the statement of the dying woman which he wrote down was: "There is no other else who stabbed me except Moises; he hurt me with a bolo."

The evidence for the defense consists only of the testimony of Melchor Espiritu which supports the prosecution's

evidence of the dying declaration, and the testimony of appellant Acosta himself. Appellant alleges that he went to the house of Petra Aguilan to stop the quarrel; that he was met by Narciso who tried to grab his bolo to use it against his brother Florencio, and that in the ensuing struggle for the bolo, the old woman accidentally received a bolo thrust. This version does not ring true and is belied by the dying declaration of the victim as fully corroborated by eye-witnesses to the tragedy.

One of the errors ascribed by the appellant to the appealed decision is the admission of Exhibit C intended to establish appellant's arrests and convictions for various offenses in the past. It is rightly argued by appellant that under Rule 123, section 15, prosecution cannot initially attack the moral character of the accused, unless the same is put in issue by him. The lower court's error, however, is immaterial for even without Exhibit C the evidence of appellant's guilt is beyond reasonable doubt.

The lower court found appellant guilty of murder with the qualifying circumstance of abuse of superior strength which does not appear to be alleged in the information. Neither may that circumstance be regarded as aggravating, no advantage having been taken actually by appellant of his superior strength to accomplish his criminal purpose.

The felony committed is homicide with the mitigating circumstance of intoxication offset by the aggravating circumstance of disrespect of age and sex.

For all the foregoing, the judgment of the lower court is modified and appellant Moises Acosta is hereby sentenced to suffer an indeterminate penalty of 10 years of prision mayor to 17 years of reclusion temporal, with the accessories of the law; to indemnify the heirs of the deceased Petra Aguilan in the sum of P2,000; and to pay the costs. It is so ordered.

Ozaeta, Feria, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

DISSENTING

PARAS, J.:

I believe the facts to be, as contended by the appellant, that in the evening of December 20, 1944, the appellant went to the house of Petra Aguilan upon hearing a rather loud quarrel taking place therein; that upon seeing Narciso and Florencio Lacasandile (sons of Petra), exchange words, the appellant, in his capacity as a homeguard, tried to make a peace move, whereupon Narciso, after rebuking the appellant for his intervention, snatched the bolo from the waist of the appellant and thereafter threatened to use it against his brother Florencio. It was to avoid this contingency that the appellant thereupon proceeded to recover the weapon from Narciso who, however, offered resistance. In the course of the struggle between the appellant and Narciso, Petra Aguilan approached with a view to pacifying Narciso and, unluckily for her, she had so come within a striking distance of the two that she was hit by the bolo which was still in the hand of Narciso. That blow caused Petra's death, for which the appellant should of course not be held responsible.

The theory of the defense is more logical under the following features of the case: (1) There is absolutely no hint in the record that the appellant had any motive for killing Petra Aguilan. Upon the other hand, it is undisputed that there was a quarrel, and it is not improbable that Narciso was in angry mood when the appellant came in. It is true that the appellant is alleged to have been drunk, but it has not been shown that he was in such a condition as not to

have known what he was doing. On the contrary, there are indications that his mind was clear. (2) It is pretended that Narciso saw the appellant abruptly stab Petra, and yet it is admitted that Narciso thereafter merely disarmed the appellant and put the bolo under a bamboo bed, and that it was only when Narciso heard his mother incriminate the appellant that Narciso grabbed a piece of bamboo and hit the appellant in the back. If the latter fact is true, we cannot believe that Narciso actually saw the alleged stabbing, for the simple reason that he would have taken some retaliatory measures right after his mother was attacked without cause, and should not have waited until his mother pointed to the appellant as the author of the assault. At any rate, if Narciso was really an eyewitness, he would naturally have followed a more revengeful course than merely disarming the appellant and putting his bolo under the bamboo bed. (3) It is not denied that the appellant calmly remained in the premises, and when he heard Petra Aguilan accused him, he promptly denied the same and stated that it was hereson who did it. Appellant's behavior is quite inconsistent with a guilty conscience. (4) It is surprising that Florencio Lacasandile, admittedly in the house on the occasion in question, was not presented as a witness for the prosecution. The explanation is probably that he was an active participant in quarrel, particularly as against Narciso.

In view of the above considerations, I vote for the acquittal of the accused Molises Acosta.

BENGZON, J.:

I concur in the above dissent.

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