

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GERARDO CORNEL, DEFENDANT AND APPELLANT.***G.R. No. L-204. May 16, 1947*

Ponente: PARAS, J.

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This is an appeal from a judgment of the Court of First Instance of Albay sentencing the defendant, for the crime of homicide, to an indeterminate prison term ranging from 8 years and 1 day of prison mayor to 14 years, 8 months and 1 day of reclusion temporal, with corresponding accessory penalties, to indemnify the heirs of the deceased, Fabian Burac, in the sum of P2,000, and to pay the costs.

The first feature of appellant's case as presented by his counsel de oficio, refers to the alleged inadequacy of the evidence for the prosecution establishing appellant's identity. Trinidad Coral, however, personally saw (1) the appellant suddenly assault her deceased husband (Fabian Burac) with a bolo as the latter was descending the stairs of his house in the barrio of San Miguel, municipality of Tabaco, Province of Albay, at about 6 o'clock in the afternoon of June 8, 1945; (2) after Fabian Burac (then wounded in the forehead) fell, the appellant throw a stone which hit Fabian's right clavicle, and (3) the appellant thereafter fled in the direction of his house. The positive testimony of Trinidad was given full credit by the trial court, and the latter's advantage of observing and hearing the witness should not be disregarded particularly where, as in this case, Trinidad knew the appellant well and the latter merely relies on the conjecture that Trinidad might have made a mistake in identifying her husband's assailant, considering the time of the attack. Apart, therefore, from the testimony of another witness for the Government (Caspara Bendicio) to the effect that when she asked Fabian not long after the incident in question as to what had happened, Fabian replied that he had been boloed by the appellant, which testimony (alleged by the appellant to be inadmissible) was accepted by the trial court under the rule of *res gestae*, there is sufficient proof regarding appellant's identity. Moreover, it should be remembered that the appellant was prosecuted, though only for physical injuries, even before Fabian's death which occurred several days after June 8, 1945.

Under the third assignment of error, counsel for the appellant adopts the view that the wound on Fabian's forehead, described by Dr. Mariano Cruel, a government witness, as "an incised vertical wound extending from a little above the middle of the eyebrows down to the lower root of the nose," and cutting "the frontal and the nasal bones also," was produced not by a bolo or any long, sharp-cutting weapon but by an irregular and hard object with a sharp edge such as a heavy piece of stone with one or more sharp edges which, when thrown forcibly from a distance, will necessarily produce, a small apparently "incised" wound and render the victim unconscious. This contention may be tenable in forensic medicine, but it is still conjectural and cannot be accepted where a criminal assault is proved through an eyewitness.

Contrary to appellant's pretension, the death of Fabian Burac is established by the testimony of his wife and mother-in-law. The certificate of the civil registrar of Tabaco dated August 3, 1945, to the effect that the matter had not been registered in his office, merely shows that no report was made up to the date mentioned, but it cannot conclusively negative the fact of Fabian's death.

We have no doubt that Fabian Burac died, as certified by Dr. Mariano Cruel, "of tetanus secondary to the infected wound." When Fabian last reported for treatment on June 15, 1945, Dr. Cruel already noticed Fabian's rigid muscles and slight lock-jaw, and this is the very reason why he prescribed anti-tetanic serum, which, not being then available in the place, was never actually administered on the patient. Appellant's surmise that Fabian might not have died of tetanus, because there are other diseases sometimes exhibiting symptoms of tetanus, cannot prevail against the conclusion of Dr. Cruel who in fact treated Fabian's wound and saw the manifestations of tetanus. The appellant must of course be held responsible for the natural consequences of his unlawful act. (People vs. Borbano, 76 Phil., 702.)

Appellant's defense of alibi—that between 5 p. m. of June 8, 1945 and the morning of June 9, 1945, he was in Tabaco, Albay,—may be worth inquiring into, if Trinidad Coral (already found to be truthful) was not an eyewitness to appellant's criminal attack. The motive for the offense is undoubtedly supplied by circumstance that Fabian once arrested and threatened the appellant during the Japanese occupation.

The appealed judgment is hereby affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Bengzon, Hontiveros, and Tuason, JJ., concur.

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