

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELIAS OYCO, DEFENDANT AND APPELLANT.

G.R. No. L-13815. September 26, 1960

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Elias Oyco was charged before the Court of First Instance of Negros Occidental with the crime of murder, in an information worded as follows:

"That about 7:00 o'clock in the morning of April 6, 1957, at sitio Binitinan, municipality of Murcia, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, armed with a bolo which he was then provided, with intent to kill and with evident premeditation and treachery did, then and there, willfully, unlawfully and feloniously, attack, assault and wound Esmundo Macabibi, a blind man, inflicting upon the latter wounds and injuries which produced his instantaneous death."

After trial, the court rendered judgment finding the accused guilty of murder, qualified by premeditation and aggravated by treachery:

"POR TANTO, el Juzgado declara el acusado Elias Oyco, culpable fuera de toda duda racional del delito de asesinato alegado en la querella, y habiendo concurrido la circunstancia modificativa de alevosia, le condena a sufrir la pena de reclusión perpetua, con las accesorias de la ley, y a indemnizar a los herederos del occiso Esmundo Macabibi en la suma de P6,000.00. El acusado pagara las costas del juicio."

Not agreeable to the sentence imposed upon him, Oyco appealed, urging that the lower court erred in not appreciating in his favor the mitigating circumstance of voluntary surrender and in taking into account the aggravating circumstance of evident premeditation.

The evidence on record is conclusive that at about 8:00 o'clock in the morning of April 6, 1957, in the house of Cesar Bacaro in sitio Binitinan, municipality of Murcia, Negros Occidental, while Carmelita Bacaro, Florenia Abenido and Esmundo Macabibi, a totally blind man, were preparing to go to town, accused Elias Oyco arrived, carrying a sheathed bolo around his waist. Oyco then confronted Esmundo, who was sitting on the second step of the three-step staircase of the house, and bluntly told him, "Esmundo it is good you are here. It is your hour," Esmundo was then heard to have counseled, "Eling, let us arrange the matter amicably because this is a small matter." Accused evidently did not heed Esmundo's plea for he countered, "You (referring to Esmundo) are a fool and a blind man", and immediately struck Esmundo on the forehead with his bolo. Esmundo fell, and Carmelita Bacaro, the victim's half-sister, rushed to help him, but she retreated when defendant threatened to attack her also. The assailant fled and surrendered himself and the fatal weapon to Restituto Bibaoco, the barrio vice-lieutenant, who, in turn, delivered him to the proper authorities.

Esmundo Macabibi was brought to the Negros Occidental

Provincial Hospital where he died. The medical certificate issued by Dr. Rodolfo Escalona shows that the cause of

death was due to a-

"wound, incised, 6 inches long, between 11 and 2 inches deep, transverse, forehead, fracturing skull (frantal region) with brain tissues coming out thru the fracture area" (Exhibit "A"),

sustained by the deceased.

Motive for the killing was attributed to a misunderstanding between the accused and the deceased regarding their business which occurred on April 4, 1957.

With the foregoing facts attested to by the eye-witnesses to the actual slaying, Carmelita Bacaro and Florenia Abenido, and by the testimony of Restituto Bibaoco, the barrio vice-lieutenant to whom the culprit later surrendered after the boloing incident, and that of the physician, Dr. Rodolfo Escalona, who certified to the cause of death, the lower court, in our opinion, correctly discredited the incredible theory of the defense¹ that the fatal bolo blow was delivered by the victim's half-brother, Cesar Bacaro (who was not even at the scene of the incident according to the prosecution's evidence), when the deceased, a blind man, in an effort to stop the appellant, unfortunately placed himself between the accused and Cesar at the precise time when the latter was about to strike appellant; and that, as he (accused) successfully side-stepped the blow, Cesar instead hit his blind half-brother. Since the victim was unarmed and totally blind in both eyes, the killing was qualified by treachery; the appellant caused the death without risk to himself arising from the defense that the offended party might make. Upon the other hand, It is_ not clearly shown that the accused clung to the idea of killing Macabibi for a period long enough to allow him to reflect on the consequences of his intended act, as is required in order that evident premeditation can be held to exist.

The penalty prescribed for murder is, under Art. 248 of the Revised Penal Code, reclusion temporal in its maximum period to death. Taking into account the mitigating circumstance of voluntary surrender (Art. 13, No. 7, R. P. C), which the lower court failed to consider, and there being no aggravating circumstance to offset it (since evident premeditation was not proved), the penalty should be imposed in its minimum period (Art. 64, No. 2, R. P. C.) or reclusion temporal in its maximum period.

Applying the Indeterminate Sentence Law, this Court modifies the judgment appealed from and hereby sentences appellant Elias Oyco to undergo imprisonment for a period ranging from twelve (12) years of prision mayor, as minimum, to eighteen (18) years, four (4) months and one (1) day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law. The indemnity adjudged by the lower court is correct and is, therefore, affirmed. No costs in this instance.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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