

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IGNACIO MERCADO, DEFENDANT-APPELLANT.

*G.R. No. L-30298. March 30, 1971*

Ponente: CONCEPCION, C.J.

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### CONCEPCION, C.J.:

Together with Nemesio Bulahan - who is still at large - defendant Ignacio Mercado is charged with the crime of murder. It is alleged in the information:

"That on or about the 26th day of May, 1965, in the Barrio of Bulakin, Municipality of Dolores, Province of Quezon, Philippines, and within the jurisdiction of this Hon. Court, the said accused, Ignacio Mercado together with Nemesio Bulahan who is still at large, with intent to kill and with evident premeditation and treachery, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously attack, assault and stab with a blunt instrument one Escolastica Amparo, thereby inflicting upon the latter mortal stab wounds in the different parts of her body which caused the instantaneous death of the said Escolastica Amparo.

"That in the commission of the above described crime, the following aggravating circumstances were present:

"1. that the offense was committed at night time;

"2. that it was committed in an uninhabited place;

"3. taking advantage of their superior strength and

"4. that the act was committed with insult or in disregard of the respect due the offended party on account of her sex."

After due trial, under a plea of not guilty, the Court of First Instance of Quezon convicted Mercado of the crime charged, and sentenced him to life imprisonment, with the accessory penal-ties prescribed by law, to indemnify the heirs of the deceased Escolastica Amparo in the sum of P6,000, without subsidiary imprisonment, in view of the nature of the principal penalty, and to pay the costs. Hence, this appeal by Mercado.

It is not disputed that early in the morning of May 27, 1965, the dead body of Escolastica Amparo, about 42 years of age, was found a few meters from the road, in the barrio of Bulakin, municipality of Dolores, province of Quezon. The necropsy report of Dr. Myrna C. Montilla, the local health officer who examined the body of the deceased, contained the following findings:

"1. Post mortem rigidity at the neck and lower and upper limbs. Both upper limbs were flexed at elbows.

"2. Incised wound antero-lateral aspect of the neck. Measuring 8 inches long, 1 inch deep. The following structures were cut namely the great vessels of the neck, jugular veins and arteries, the trachea and esophagus.

"3. Stab wound 1 inch just above the left nipple measuring 1 inch long and 1 inch deep.

- "4. Stab wound along the left sternal line at the level of the 9th rib an inch long and 2 inches deep.
- "5. Stab-wound along the left anterior axillary line at the level of 10th intercostal space 1 inch long and 2 inches deep.
- "6. Lacerated wound along the left posterior axillary line at the level of 10th intercostal space 2 inches long and 2 inches deep.
- "7. Stab wound below the right nipple 1 inch long and 1 inch deep.
- "8. Lacerated wound below the left elbow 2 inches long and 1 inch deep.
- "9. Lacerated wound at the thenar aspect of left hand an inch long 1 inch deep.
- "10. Lacerated wound right four fingers (1st to the 4th) 1/2 cm. long 1/2 cm. deep, at the level of second phalanx.
- "11. Stab wound epigastric region 3/4 inch long and 6 inches deep, the opening having chan cut edges and directed inward it penetrated the anterior wall of the abdomen and the stomach.
- "12. Lacerated wound at the region of the left knee 1/2 inch long and 1/2 inch deep.
- "13. Lacerated wound 2 inches below the left knee 1/2 inch long and 1 inch deep.
- "14. Lacerated wound 1/2 inch long and 1/2 inch deep region of the left scapula.
- "15. Lacerated wound below the left scapula 1/2 inch long and 1/2 inch deep.
- "16. Stab wound at the popliteal region 1/2 inch long and 1/2 inch deep.
- "17. Internal examination findings - admits 2 fingers with whitish mucoid discharges no lacerations uterus and adnixa normal."

Dr. Montilla testified that Escolastica Amparo had died about nine (9) hours before her autopsy, which took place on May 27, 1965, at about 8:00 a.m.; that the nature and position of her wounds indicated that she had fought, in self-defense, her assailant or assailants; and that her death was due to hemorrhage owing to multiple stab wounds.

The main witness for the prosecution was Jose Pamarez, a 43-year old herb healer or "herbolario". He testified that in the afternoon of May 26, 1965, his nephew, Porfirio Rodriguez, went to his house, at San Vicente, San Pablo City, and asked him to treat his child who was sick. Rodriguez and Pamarez left San Vicente, at about 6:00 p.m., and arrived at the house of Rodriguez, in the barrio of Bulakin, Dolores, Quezon, around 8:00 p.m. After examining the sick child, Pamarez went out of the house and gathered some herbs in a coconut plantation nearby and then applied the herbs to the child. Thereafter, Rodriguez and Pamarez chatted until 11:00 p.m., when he (Pamarez) left the house and headed for that of his brother-in-law, to spend the night therein. Along the way, he heard somebody calling for help. Focusing his flashlight at the place from which the call had come, he saw Escolastica Amparo, about three (3) fathoms away, embraced by appellant Ignacio Mercado and one Nemesio Bulahan. Having noticed that Mercado had a sharp-bladed weapon in his right hand and held with his left hand the right hand of Escolastica Amparo, whose breast was bleeding, he yelled at them, "Bitiwan ninyo yan". Thereupon, Bulahan bade appellant to go after the man with the flashlight, referring evidently to Pamarez, who, accordingly, ran away, for fear of being stabbed by appellant, and proceeded to his brother-in-law's house, where he slept. As he left Bulakin the next morning to return to San Pablo City, he learned that Escolastica Amparo had been found dead.

The only evidence for the defense consisted of the testimony of Mercado, who denied having committed the acts charged and asserted that he was in his house in Bulakin, Dolores, Quezon, together with his parents and children, during the whole evening of May 26, 1965.

The lower court did not believe this testimony, and, rely-ing upon that of Pamarez, rendered the aforementioned judgment of conviction. Hence, this appeal in which appellant maintains that the lower court erred in giving credence to the testimony of Pamarez, despite the contradictions allegedly found therein and the fact that he did not report to the authorities, until a little over a month after the occurrence, what he had allegedly witnessed in the evening of May 26, 1965.

Appellant maintains that, on July 2, 1965, Pamarez told the Chief of Police of Dolores that he (Pamarez) "was in Dolores, Quezon, in the house of Porfirio Rodriguez in order to pay the said. Porfirio Rodriguez a call 'Nagugumusta' which translated in English (is) 'asking how they are'," whereas on the witness stand, Pamarez claimed to have been "fetched by Porfirio Rodriguez x x x for the purpose of curing the child of the latter as he is an herbolario." The first statement imputed by appellant to Pamarez is inaccurate. Pamarez did not say that he had gone to the house of Porfirio Rodriguez "in order" to inquire how he was. The Chief of Police having asked him where he was in the evening of May 26, 1965, Pamarez answered that he was in the house of Rodriguez "nangungumusta", which means that they engaged in conversation on how they were getting along. This, in fact, is what he stated, on the witness stand, he did after applying some medicinal herbs to the sick child of Rodriguez, who had fetched him earlier from his house at San Pablo City, in order that he may treat said child.

Appellant further alleges that, in his direct examination, Pamarez claimed to have heard the call for help, "Saklolohan mo ako," whereas, on cross-examination, the words used were, "Ako'y saklolohan ninyo," and prior thereto, or on July 2, 1965, when the Chief of Police investigated him, the words he (Pamarez) quoted were, "Ako ay sakluluhan". We do not find any contradiction in the foregoing, since the three expressions have the same connotation - "Help!" Moreover, the phrase "Saklolohan mo ako" was used, not by Pamarez, but by the prosecutor, in the course of his direct examination of Pamarez. Then, again, minor variations, and even discrepancies, in the testimony of witnesses - particularly unenlightened and simple country folks like Pamarez, a mere herb healer - are often indicative of their good faith and veracity.[1]

It is true it took Pamarez a little over a month to reveal to the authorities in Dolores, Quezon, what he saw in the evening of the occurrence. We should, however, bear in mind that he is a resident of San Pablo, Laguna; that he knew how ruthless appellant and Bulahan could be; that, in the evening of May 26, 1965, he heard Bulahan tell appellant to go after him; that Bulahan and appellant had not been apprehended as yet; and that up to now Bulahan is still at large. Being understandably fearful that the culprits may turn their ire at him, it is not strange that Pamarez was somewhat apprehensive about reporting to the authorities, until his friend, Andres Eranzo - to whom he had confided his predicament - advised him, sometime later, that he could do so.

What really is of vital importance in this case, is the admitted fact that Pamarez had, for many years, known Escolastica Amparo, Nemesio Bulahan and appellant herein, so that Pamarez could not possibly be mistaken as to the persons he had seen in Bulakin, Dolores, Quezon, in the evening of May 26, 1965, and that he had no motive whatsoever to falsely incriminate appellant and Bulahan. In the language of *U.S. v. Pajarillo*,[2] which was reiterated in *People v. De Otero*,[3] "the absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit."

Needless to say, the alibi set up by appellant, based upon his uncorroborated testimony, cannot prevail over the testimony of Pamarez who was positive as regards appellant's presence at the scene of the occurrence. On the

contrary, since his house, where he allegedly spent the evening of May 26, 1965, is barely 200 meters away from said place, it would have been a simple matter for him to return to his house immediately after the assassination of Escolastica Amparo.

Appellant would have us believe that late in June, 1965, Patrolman Melchor Loreto, a member of the local police force, interrogated him concerning the whereabouts of Bulahan, and later warned him that he would be implicated should he persist in refusing to reveal where Bulahan was, because the prosecution already had several witnesses, one of them Jose Pamarez, and that the latter had "possibly" been paid to testify as he did. This was, however, not merely a speculation on the part of appellant, but, also, an implied admission that he could not justifiably attribute the testimony of Pamarez to any improper motive. Indeed, appellant acknowledged the fact that there was no ill-feeling between him and Pamarez, and that he (appellant) did not know whether he (Pamarez) had been paid or not. Neither did he even try to explain why anybody should be interested in falsely accusing him of a crime as grave as that charged in this case, to the point of paying a witness therefor.

Under the circumstances, We find no plausible reason to disturb the findings of fact of His Honor, the trial Judge, who had an opportunity, denied to us, to observe the behavior of the witnesses in the course of their testimony and was, accordingly, in a better position to gauge their veracity.

We agree, therefore, with the lower court that the guilt of herein appellant, Ignacio Mercado, has been established beyond reasonable doubt. Owing to the abuse of superior strength with which the assailants of Escolastica Amparo had acted, the crime committed is that of murder. The disregard of the respect due to her on account of her sex may be considered absorbed by the abuse of superior strength. Although the crime was committed at night-time, the record does not sufficiently show that her assailants had sought it purposely or taken advantage of it. And, there being no modifying circumstance to affect the corresponding criminal responsibility, the penalty prescribed by law for said offense was properly imposed by the trial court in its medium period.

WHEREFORE, except as to the indemnity, which should be increased from P6,000 to P12,000,[1] the decision appealed from should be, as it is hereby, affirmed in all other respects, with costs against appellant Ignacio Mercado.

### **IT IS SO ORDERED.**

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] People v. De Otero, 51 Phil. 201, 208-209; People v. Quimbo, 49 Phil. 94, 99.

[2] 19 Phil. 288, 314.

[3] Supra, at p. 208.

[1] People v. Pantoja, L-18793, October 11, 1968.

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