

KHAW DY AND CO CHIAN (ALIAS SONIA), PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-14822. September 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Charged with murder, and convicted by the Court of First Instance of Rizal of the crime of homicide, petitioner Khaw Dy was sentenced, as principal, to an indeterminate penalty ranging from 8 years and 1 day of prison mayor to 14 years, 8 months and 1 day of reclusion temporal to indemnify the heirs of Ang Go Pia, in the sum of P4,000.00 and, subsidiarily in the sum of P2,000.00, in the event of insolvency of Co Chian, alias Sonia, whereas the latter was sentenced, as an accomplice, to an indeterminate penalty ranging from 2 years, 4 months and 1 day of prison correccional to 8 years and 1 day of prison mayor, to indemnify the heirs of Ang Go Pia in the sum of P2,000.00 and, subsidiarily, in case of insolvency of Khaw Dy, in the sum of P4,000.00, in addition to each paying the costs proportionally. On appeal, the Court of Appeals found both guilty of homicide as principals and sentenced each to an indeterminate penalty ranging from 8 years and 1 day of prison mayor to 14 years, 8 months and 1 day of reclusion temporal, to indemnify jointly and severally the heirs of Ang Go Pia in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportional part of the costs. The case is now before us on petition for review by certiorari filed by Khaw Dy and Co Chian.

It is not disputed that Ang Go Pia died on August 25, 1955, in consequence of the following stab wounds inflicted upon him by Khaw Dy, in the public market of Malabon, province of Rizal, two (2) days before, to wit:

"(1) Incised wound, 11.5 cm., sutured, back, left, just medial to the posterior axillary fold, running downwards;

"(2) Stab wounds: 6.3 cm., sutured, lateral aspect, chest, left, cut, extremities sharp, running downwards and medially, directed slightly upwards and anteriorly, non-penetrating, involving only the underlying tissue with an approximate depth of 2.5 cm.;

"(3) 2.7 cm., sutured, antero-lateral aspect, lower chest, left level of 8th rib, 12.0 cm. from the anterior median line, edges clean cut, medial extremity sharp, lateral extremity contused, running medially and almost horizontally, directed medially inwards, slightly upwards, penetrating the left thoracic cavity by cutting completely the cartilaginous portion of the 8th rib, then thru and thru the left diaphragm in the abdominal cavity, involving the pancreas;

"(4) 2.4 cm., sutured lateral aspect, buttocks, left, along the mid-axillary line 7.5 cm. below the pelvic brim, edges clean cut, extremities sharp, running upwards and anteriorly, directed medially, slightly upwards and medially, involving the underlying tissues, with an approximate depth of 7.0 cm."

The appeal hinges on the circumstances surrounding the occurrence. Two (2) witnesses, namely, Domingo Santos and Teodoro Estrella, whose presence in the market was not denied by the prosecution, testified substantially as follows: After a brief conversation with Ang Go Pia, appellant Co Chian, alias Sonia, who operated a stall in said

market, struck him with a balance, which Ang parried with his arms. As Sonia and Ang grappled with each other, Khaw Dy, a relative and employee of Sonia, darted from her aforementioned stall and boxed Ang, who exchanged fist blows with him. Soon thereafter, Khaw Dy ran to said stall and then returned with an open knife, whereupon Ang took to his heels, pursued by the petitioners. Upon reaching the fish section of the market, the floor of which was muddy, Ang slipped to a kneeling position. Thereupon Sonia held him by the hair, as Khaw Dy stabbed him on the back. This notwithstanding, Ang managed to get up and tried to run, but he tripped on the elevated floor of the adjoining section of the market. Once again, Sonia held him by the hair and Khaw Dy stabbed him several times. At this juncture, witness Estrella wrested the knife from Khaw Dy. As Sonia tried to grab it, Estrella pushed her and brought the weapon to the police station.

The theory of the defense is this: In the morning of the occurrence, Ang demanded payment of P40.00, alleging that it was the balance of the price of some merchandise purchased by her from his brother. Sonia denied being indebted in said amount and stated that the same represented a discount given to her by Ang's brother. Visibly, irked, Ang replied that if she went with him to a hotel, her account could be considered settled. Enraged by this proposition Sonia got her balance and struck Ang with it. However, Ang took hold of the balance, pulled it, thereby dragging Sonia across a low table, and then hit her hands, thus compelling her to release the balance. Then Khaw Dy approached Ang and tried to pacify him, but Ang struck him with the balance on the forehead. Immediately thereafter, Ang attacked Sonia with a knife, but she parried the thrust with her right hand, and was wounded) thereon. As she stepped aside and began to weep, Ang tried to stab Khaw Dy, who seized Ang's left hand which held the weapon, and in the struggle for its possession, Ang was wounded. After gaining possession of the knife, Khaw Dy stepped back, and, noticing that Ang was bleeding, he (Khaw Dy) laid the instrument upon a table and surrendered to the police.

In support of this pretense, the defense introduced the testimony of Marcial Borja and Quintin Santos, in addition to that of petitioners herein, but the Court of Appeals found said testimony unworthy of credence, and accepted the version of the prosecution, as the Court of First Instance did. Dealing as it does with the facts of the case, particularly the veracity and weight of the testimonial evidence therein introduced, said finding made by the Court of Appeals is beyond our power to review.

Under the facts thus proven, both petitioners are clearly guilty of homicide, as principals. Their simultaneous act in pursuing Ang, and the manner in which Sonia cooperated with Khaw Dy, not only when he stabbed Ang for the first time, but, also, when, being thus aware of Khaw Dy's homicidal intent, she held Ang by the hair, after his abortive attempt to escape, thus enabling Khaw Dy to further inflict other injuries upon him. In short, petitioners' behaviour leaves no room for doubt on their unity of action and purpose, thus establishing the existence of conspiracy justifying the conclusion that both are guilty as principals (People vs. Timbol, G.R. No. 47471-47473, August 4, 1944; People vs. Macabuhay, 83 Phil., 464; 46 Off. Gaz., [11] 5469; People vs. Mahlong, 92 Phil., 883; and People vs. Monadi, L-3370- 3371, September 27, 1955). Considering, however, that there had been provocation on the part of the deceased, the penalty for homicide should be imposed in its minimum period.

Modified as to the penalty, which is hereby reduced to a minimum of six (6) years and one (1) day of prison mayor and a maximum of (12) years and one (1) day of reclusion temporal, the decision of the Court of Appeals is affirmed in all other respects, with costs against petitioners Khaw Dy and Co Chian, alias Sonia. It is so ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Reyes, J. B, L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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