

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EMILIANO DAYRIT, DEFENDANT AND APPELLANT.

G.R. No. L-14388. May 20, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Emiliano Dayrit is appealing the decision of the Court of First Instance of the City of Baguio, Second Judicial District, finding him guilty of homicide and sentencing him to not less than six (6) years and one (1) day of prison mayor and not more than twelve (12) years and one (1) day of reclusion temporal, to indemnify the heirs of the deceased Napoleon Ananayo in the amount of P6,000.00, and to pay the costs. The appeal was originally taken to the Court of Appeals, but the latter in its resolution of August 26, 1958, believing that it involved only a question of law, certified the appeal to us.

The facts in this case as found by the trial court and reproduced by the Court of Appeals in its resolution are the following:

"The situs of this crime is the vicinity of the gasoline stations located at one end of the Burnham Park, City of Baguio. On Harrison Road, the accused and his wife were selling cigarettes at about 8:00 PM. Four men approached them, one of them was Napoleon Ananayo, and bought cigarettes. A subdued conversation took place, between the accused and Ananayo when suddenly the accused drew a 'balisong' knife and stabbed Ananayo in the neck. When his companions saw this, they chased the accused, who took refuge in the Imperial Hotel, where the police found him. At the investigation, both accused as well as his wife made statements, Exhibits 'G' and 'F', respectively, which substantially give the motive for the killing. This was that the offended party was under the influence of liquor and tried to buy cigarettes from the wife of the accused. When she gave the price, he felt it too expensive and in his anger, pushed her to the ground. The accused came to her rescue and the altercation took place. Substantially, this Court believes that the wife of the accused was pushed by Ananayo and that an altercation ensued during which the accused drew his knife and stabbed Ananayo and the burden of proof is upon him to prove self-defense. His testimony and that of his witnesses on this score is not satisfactory for there are contradictions. Thus while his wife and witness Emiliano Espiritu testified that he boxed Ananayo who tried to hit him with a bottle, the accused insisted it was a companion of the deceased who had a knife whom he boxed. While the accused and his wife insisted that the knife was hidden in the box of cigarettes, the accused in his statement admitted that he 'drew' his knife, indicating he had it on his person.

"The mitigating circumstance of provocation has been proven. Voluntary surrender has not been proven."

To the above findings may be added the fact that the crime was committed on April 13, 1955.

In his appeal, Dayrit does not deny his guilt; neither does he question the judgment of conviction rendered by the trial court. In his preliminary remarks in his brief, his counsel says the following:

"Defendant-appellant does not dispute the finding on his guilt and consequent liability therefor. Hence, it is wished to be honestly well understood that, this appeal before the Honorable Court, is not tended to obtain an exculpatory judgment; rather, but serve a plea for diminution of the penalty imposed by the Honorable Court

below." (Appellant's Brief, pp. 1-2).

His only contention is that the trial court in addition to the mitigating circumstance of lack of provocation, should have also considered in his favor, that he did not intend to commit so grave a wrong as that actually committed. But considering that the balisong knife used by him in attacking and wounding the deceased was deadly, we agree with the Solicitor General that under the doctrine laid down in the cases of *People vs. Reyes*, 61 Phil., 341, and *People vs. Datu Baguinda*, (CA) 44 Off. Gaz., 2287, appellant's contention is untenable.

However, we have carefully examined the record, particularly, appellant's testimony and that of the policeman who either arrested or took him under custody at the Imperial Hotel, and we are willing to accord said appellant the mitigating circumstance of voluntary surrender. The reason behind this mitigating circumstance is that it shows the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or because he wishes to save them the trouble and expense necessarily incurred in his search and capture. (*People vs. Sakam*, 61 Phil., 27).

In the case of *People vs. Torrecampo, et al.*, G. R. No. L-4161, September 7, 1953, this mitigating circumstance of voluntary surrender was granted to the accused after proving that he surrendered himself to a policeman, not on the day of the commission of the crime, but the day following.

In the case of *People vs. Yecla, et al.*, 68 Phil., 740, the accused therein presented himself at the municipal building five days after the commission of the crime and two days after the issuance of the warrant for his arrest, and he was likewise given the benefit of this mitigating circumstance.

And, in the case of *People vs. Babiera*, 45 Off. Gaz., (Sup. 5) 311, wherein the accused and a companion carried his victim to a hospital for treatment and there he was disarmed and arrested by the police, in spite of that arrest, he was still given the benefit of the mitigating circumstance of voluntary surrender.

In the present case, appellant declared during the trial without refutation that the reason he fled to the Imperial Hotel was for security purposes as there were no policemen around, implying that if there had been peace officers available, he would have surrendered himself to them, perhaps, not only to save the Government the expense and trouble of looking for and arresting him, but also for his own protection. Once in the Imperial Hotel, he dropped his balisong knife at the door of said hotel and when the policemen came to investigate the incident, he readily admitted ownership of the knife and then voluntarily went with the policemen to the City Jail. At the Imperial Hotel, he was hiding, not from the police authorities, but from the companions of the deceased who pursued him to that place but could not get to him for the door of the hotel was closed after appellant had entered it. The following day, he was investigated by the Fiscal. No warrant of arrest was ever issued against him. Under the circumstances, we believe and hold that the appellant is entitled to this additional mitigating circumstance of voluntary surrender.

There being two mitigating circumstances, without any aggravating circumstance, under the provisions of Article 64, paragraph 5, of the Revised Penal Code, the penalty to be imposed should be one degree lower to the penalty of reclusion temporal prescribed for the crime of homicide, namely, prision mayor.

In view of the foregoing, modifying the appealed decision, the appellant is hereby sentenced to not less than two (2) years, eleven (11) months, and eleven (11) days of prision correccional and not more than eight (8) years, eight (8) months, and one (1) day of prision mayor. In all other respects, the decision under appeal is affirmed. No pronouncements as to costs in this instance.

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

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