

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUFELINO ZAPATA AND FERNANDICO TUBADEZA, DEFENDANTS AND APPELLANTS.

G.R. No. 11074. February 27, 1960

Ponente: ENDENCIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11074/>

ENDENCIA, J.:

Appeal from the decision of the Court of First Instance of Abra convicting Rufelino Zapata and Fernandico Tubadeza of the crime of murder, as principal and accomplice, respectively, and sentencing the former to reclusion perpetua, and the latter to an indeterminate penalty of from 6 years, 1 month and 11 days of prison mayor, as minimum, to 12 years, 5 months and 11 days of reclusion temporal, as maximum, both to indemnify the heirs of the deceased in the sum of P6,000.

It appears from the evidence on record that on the evening of February 15, 1951, at about eight o'clock, while Fausta Tubadeza, a sexagenarian, was cutting firewood near her house at the barrio of Camcamiring, municipality of Dolores, Abra, appellants Rufelino Zapata and Fernandico Tubadeza approached her, and Zapata, after telling her "You are the old woman who bewitched my wife," repeatedly beat her with a piece of wood about 2½ feet long and 8 inches in diameter, on different parts of her body, while Fernandico Tubadeza dragged her by the arms. Her husband Mariano Bondame, also a sexagenarian, attracted by the noise outside their house, looked out of the window and saw his wife being dragged by Fernandico Tubadeza and clubbed by Rufelino Zapata. Mariano Bondame immediately set to go down to help his wife, but Zapata met him at the stairs and threatened him bodily harm should he intervene. Bondame helplessly saw his wife being beaten and dragged towards the direction of the house of councilor Simeon Tubadeza. Bondame then went to the house of Estanislao Elvena to ask for help and followed appellants to the house of councilor Tubadeza, where he saw his wife already sprawled on the yard uttering, "I am going to die now," so he approached and embraced her. Fausta then told her husband she had been maltreated and that some of her teeth were broken. The evidence further shows that Fausta was taken to the house of councilor Tubadeza, who told appellant Zapata and one Florencio Pilor to go to Fausta's house, and upon their return they brought a bottle of wine and a bottle of oil and told the councilor, "Here are the ingredients for witchcraft that we took from her house." The councilor then wrote on a piece of paper (Exhibit A) a statement that Fausta practiced witchcraft on Zapata's wife and had the same thumbmarked by Fausta. Likewise Bondame was forced to sign it. Fausta died that same evening at the house of councilor Tubadeza.

Dr. Paterno Millare who made a post-mortem examination of Fausta's body, found that the cause of her death was:

"Fracture, compound, complicating, Rib 5th, postero-lateral portion, right; Hemorrhage, internal, acute; Wound, lacerated, lung, right; and Contusion, multiple and ecchymosis, abrasion evulsion, teeth, upper incisor, canine, jaw, left, and etc."

Appellant Fernandico Tubadeza submitted a defense of alibi, attempting to show that on the night of February 15,

1951, he was in Bantay, Ilocos Sur, in the house of the parents of his wife; while Rufelino Zapata offered the following defense: That on the night in question, his wife Carolina Mercurio was seriously ill; that in view of the barking of dogs and whining of pigs in his yard, he went down and saw Fausta Tubadeza, who had a reputation in their barrio of being a witch, run away; that while he was phasing her, she fell face down; that when he overtook her, she confessed that she had bewitched his wife, whereupon Zapata took her to the house of councilor Simeon Tubadeza; that the latter, being a near relative of Fausta and ashamed of her admission of having practiced witchcraft, kicked her a number of times in her right side; that councilor Tubadeza then ordered appellant Zapata to fetch her husband Mariano Bondame, and when Bondame arrived and knew of his wife's admission, he became angry and also kicked her a number of times on the right side, below the armpit; and that councilor Tubadeza then wrote affidavit Exhibit A whereby Fausta assumed responsibility should Zapata's wife die.

By and large, the issue in this appeal is credibility of witnesses.

Referring to the alibi put up by Fernandico Tubadeza, we give it little or no evidence at all not only because this kind of defense can be fittingly conceived and conveniently adjusted to suit any time and place ad libitum but that his witnesses are all his relatives. On the other hand, prosecution witnesses Salvador Turqueza, Relito Claro and Mariano Bondame positively identified and pointed him as the one who dragged the deceased while his co-defendant Rufelino Zapata clubbed her.

Appellant Zapata's defense that the deceased died from the hands of Simeon Tubadeza, Florendo Pilor and her own husband Mariano Bondame, who all kicked her, is likewise unworthy of belief. Although it is true that, originally, Simeon Tubadeza and Florendo Pilor were included as defendants in the complaint filed before the justice of the peace, upon reinvestigation of the case, however, the same was dismissed as against them for lack of evidence and the fiscal had to exclude them from the information. Besides, Mariano Bondame was not among those originally indicted. It is hard to believe that Mariano Bondame, the aged husband of the deceased, would ever attempt to harm his wife, let alone kick her several times in the presence of many people, just for the flimsy reason of having admitted that she was a witch. On the contrary, Bondame positively testified that he tried in vain to rescue his wife from the hands of appellants when he saw her being beaten up, only to be confronted by Zapata at the stairs and threatened with bodily harm.

Zapata further contends that prosecution witnesses Salvador Turqueza and Relito Claro who testified having seen him beat the deceased on the back and on the nape, did not tell the truth because Dr. Millare contradicted them by saying that he did not find any ecchymosis, discoloration or laceration at the back and nape. We do not, however find any inconsistency between the two versions, rather they complement each other, for while these eye witnesses said that they saw appellant Zapata beat the deceased on the back, Dr. Millare, in his post-mortem examination found:

"External: The body is cold and in rigor mortis. The height is about 4 ft. and 8 inches. The weight is about 100 pounds more or less. There is presence of contusions and abrasions with ecchymosis on the left face and with avulsion of the teeth, upper incisor and canine, left upper jaw. Presence of a compound complicating fracture of the 5th rib at the right postero-lateral portion of the chest wall. Presence of contusions on the anterior portions of the legs and thighs.

"Internal: On opening the chest wall, there is a fracture, compound, complicating, of the 5th rib, right, postero-lateral portion of the chest; with wound, lacerated on the right lung and internal hemorrhage of the right-lung. There is approximately 150 cc of unclotted blood on the right chest cavity. Heart and left lung are apparently normal"

which evidently shows that the deceased was beaten mercilessly not only on the head but also on different parts of the body as shown by the avulsion of the teeth, abrasions and ecchymosis on the left face, the compound fracture

of the 5th rib, on the postero-lateral portion. These two eyewitnesses could not be expected to tell the exact spots where the blows had landed, considering that it was nighttime and those fleeting moments cannot be recalled with exact precision. At all events, both witnesses are agreed that it was appellant Zapata who clubbed the deceased.

The Solicitor-General points out that Fernandico Tubadeza should not be held merely as an accomplice as found by the lower court but as coprincipal, because

"It is to be observed that while it may be true as the trial court has stated, that 'there is no showing in what manner Fernandico took part in the torture, so much so that the evidence discloses that only the accused' Rufelino Zapata was provided with a club,' yet the established facts that (a) Fernandico accompanied Zapata in going to the house of the deceased; (b) he held both hands of the deceased while Zapata was hitting her and (c) he pulled the deceased by the hands while Zapata continued clubbing her clearly show the existence of concert of design between the two. At any rate, even grunting that there existed no previous understanding between the two appellants, yet it may be implied from the acts of Fernandico, as stated above, that they had the same unity of purpose in the execution of the act (People vs. Ging Sam, et al., 94 Phil, 139; People vs. Binasing, et al., 98 Phil., 902).

We agree with the Solicitor-General.

We likewise agree with his observation that evident premeditation is not present in this case, but that abuse of superior strength should be taken in its stead as the qualifying circumstance for murder, considering that the deceased was a frail and undersized woman sexagenarian.

As to the aggravating circumstances of disregard of sex and age and nocturnity alleged in the information, we find that while the evidence fails to show that nighttime was purposely sought by appellants to commit the crime, it positively demonstrates that they disregarded the age and sex of the deceased, it appearing that she was a frail woman of 65, weighing only around 100 pounds and only 4 feet and 8 inches in height, while Zapata and Tubadeza were 32 and 27 years of age, respectively, when the crime was committed.

On the other hand, we believe that appellants are entitled to the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, as it was evident that they merely wanted to denounce her as a witch before councilor Tubadeza when she was beaten and dragged to the councilor's house, but that she received a beating more than she could take, for which she died that same evening. In addition, the mitigating circumstance of obfuscation should be appreciated in their favor, as we so held in U. S. vs. Macalintal, 2 Phil., 448, and People vs. Balneg, et al., 79 Phil., 805, for it clearly appears that appellants committed the crime in the belief that the deceased had cast a spell of witchcraft upon the wife of Zapata which caused her serious illness.

Considering that there are two mitigating circumstances as against one aggravating in the case, appellants are entitled to the minimum penalty prescribed by Art. 248 of the Revised Penal Code which is reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the penalty that should be imposed is 10 years and 1 day of prision mayor as minimum, and 17 years, 4 months and 1 day of reclusion temporal as maximum.

With the above modifications, the decision appealed from is affirmed in all other respects.

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

Padilla, J., took no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.