

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUGENIO ATIG, PABLO ATIG, AND VICENTE ATIG, DEFENDANTS AND APPELLANTS.*G.R. No. 11633. February 21, 1917*

Ponente: TRENT, J.

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This appeal brings up for review the judgment of the Court of First Instance of the Province of Misamis, condemning each of the defendants, Eugenio Atig, Pablo Atig, and Vicente Atig, to cadena perpetua, to jointly and severally indemnify the heirs of the deceased Ambrosio Macalisang in the sum of P500 and the heirs of the deceased Nicolas Bacang in the sum of P500, and to the payment of the costs of the cause for the crime of murder. Eugenio Atig withdrew his appeal and the judgment as to him is final.

Counsel de officio urges that the trial court erred (1) in finding Pablo Atig and Vicente Atig guilty of the crime of murder and (2) in not giving due weight to the evidence presented by the defendants. Pablo Atig is the father of Eugenio and Vicente. Florentina Atig, the daughter of Pablo, was the mistress of Cirilo Sangag. Maria Balignot was the mistress of Eugenio Atig. About 7 p. m. on May 11, 1915, Ambrosio Macalisang and Nicolas Bacang went to the house of Eugenio Atig in the barrio of Caluya, municipality of Baliangao, Province of Misamis, where the latter was living with his mistress Maria. Within a very short time thereafter Ambrosio and Nicolas were killed in Eugenio's house. On being informed of the death of these two men, Potenciano Maghalem, justice of the peace, went to the house, arriving there on the following morning, for the purpose of making an investigation. Eugenio Atig was present, but Pablo and Vicente were absent when the justice of the peace arrived, and Eugenio told the justice of the peace that the two deceased had been fighting and struggling with each other. The justice of the peace examined the bodies of Ambrosio and Nicolas and found upon the body of the former the following wounds: Five upon the left arm, ranging from 6 centimeters deep and 4 1/2 centimeters long to 3 centimeters deep and 8 centimeters long; six on the head, ranging from 5 1/2 centimeters deep and 7 centimeters long to 4 1/2 centimeters deep and 5 1/2 centimeters long; one in the cerebellum 3 1/2 centimeters deep and 8 centimeters long; 3 on the right shoulder, ranging from 8 centimeters deep and 5 centimeters long to 9 centimeters deep and 6 centimeters long; one on the shoulder blade 9 centimeters deep and 4 centimeters long, penetrating the lungs; one on the spinal column 5 centimeters deep and 4 centimeters long; and one on the left side 4 centimeters deep and 4 centimeters long. On the body of Nicolas Bacang: One wound in the abdomen 16 centimeters deep and 2 1/2 long; three on the spinal column each 2 centimeters deep and 4 centimeters long; and one in the palm of the left hand 1/2 centimeter deep and 6 centimeters long.

The bolo marked Exhibit A was found by the justice of the peace wrapped in a mat covered with fresh blood, hidden in the wall of the house. The bolo (Exhibit B), which was also covered with fresh blood, was found lying on the floor. The dagger (Exhibit C), likewise covered with blood, was found near the two bodies. The piece of twisted wire (Exhibit D) was also found in the house. The justice of the peace then examined Eugenio Atig and found that his shirt and trousers had blood stains on them, but he had no wounds whatever. He did not examine Pablo and Vicente because they had already changed their clothes. Neither of the defendants gave any explanation

to the justice of the peace why the two deceased had been fighting. The justice of the peace later examined Maria Balignot and found a very slight wound on her left side.

Maximo Bugsangit testified that about 7 p. m. on May 11, while he was sleeping in his house, one Berino, his brother-in-law, came and awoke him, saying, "Maximo, you go there, because Ambrosio is being attacked by several persons;" that he went immediately to the house of Eugenio Atig and found the door closed; that he called and asked those in the house if they had no light and that they replied that they had not; that he then told them to build a fire; that after the fire was built, he saw Pablo, Vicente, Eugenio, and the mistress of Eugenio standing in the house; that he asked about the trouble and received the reply that Ambrosio and Nicolas had fought over some tuba; that both Vicente and Eugenio had bolos in their hands, which were covered with blood; that both Ambrosio and Nicolas were then dead; and that he had never heard of any trouble between either of the deceased and the defendants.

Maria Inot, mother of Ambrosio Macalisang, testified that at about 6.30 p. m. on May 11, shortly after supper, Ambrosio told her that he was going to give Nicolas Bacang 60 cents; that shortly after Ambrosio left the house, she heard someone crying for help; that as she recognized the voice to be that of her son Ambrosio and that as her husband's name was mentioned, she immediately ran to the house of Eugenio Atig and found both Ambrosio and Nicolas dead; that she then said: "Eugenio, for God's sake, what did my son do to you that you killed him?;" that she returned and informed her husband of what had taken place and then went on and notified the authorities; that before she left Eugenio's house she saw that he had in his hands the bolo marked Exhibit A; and that Pablo Atig had in his hands the bolo marked Exhibit B. This witness further testified that her son Ambrosio did not carry any weapon whatever when he went to Eugenio's house; that they killed her son because Eugenio Atig was jealous of him; that Eugenio's mother warned her on April 5 to keep Ambrosio away from Eugenio's house; that about May 30 she went to Pablo Atig's house and heard one Cosme say to Pablo: "Why don't you go to Cagayan, as Eugenio is there already?;" that Pablo replied, saying: "And for that reason I am requesting your advice as to what we are going to do. We are waiting for your advice, because we are much worried over the matter, for we are afraid that Marcelo Sangag might tell the authorities about it, and the three of us would have to suffer the consequences, because we are the three men who killed Ambrosio and Nicolas;" and that immediately after Pablo Atig made these statements to Cosme, Pablo's wife scolded him and told him he had better "shut up."

Severino Macalisang, 14 years old, brother of Ambrosio the deceased, testified that his brother Ambrosio started with him to the house of Eugenio Atig at about 7 p. m. on May 11, 1915, as Ambrosio wanted to give Nicolas Bacang 50 cents; that when they arrived at the house of Pablo Atig he (the witness) remained there with Pablo Atig, who then asked him where they were going and he replied that Ambrosio was going to the house of Eugenio Atig; that immediately thereafter he and one Cirilo Sangag laid down on a mat and that Pablo and Vicente Atig then left the house, both carrying their bolos with them; that after a while he heard someone crying for help, mentioning the names of father Tiago and mother Maria, saying: "Come and help, because they are attacking me with bolos;" that when Cirilo heard these calls, he (Cirilo) left for the house of Eugenio, being armed with a bolo and a stick; that he (the witness) went toward his own house to notify his mother; that he met his mother on the way and informed her of the cries which he had heard coming from the house of Eugenio; and that when his mother returned to the house she said to her husband: "Our son is dead."

Eusebia Macalisang testified that on April 20, 1915, she met Ambrosio Macalisang and Paulina Ogsuc; that Ambrosio borrowed her handkerchief; that she met him again on May 3d and then asked Ambrosio for her handkerchief; that Ambrosio replied, saying that he had given the handkerchief, together with three rings, to Maria Balignot, the querida of Eugenio Atig; that she asked Ambrosio why he had given the handkerchief to Maria, as Maria already had a querido; that Ambrosio replied that it was true that Maria had a querido, but they

were not married; that Ambrosio also said that Maria had told him that it was possible for her to leave her querido and live with him (Ambrosio) ; and that on June 11, 1915, she found her handkerchief in the possession of Maria Balignot.

Cirilo Sangag, being called by the court, testified that Florentina Atig, daughter of Pablo Atig, was his mistress; that he was in the house of Pablo Atig on the night when Ambrosio and Nicolas were killed; that while there he heard Eugenio Atig calling: "Come and help, because they are fighting with weapons;" that he then went to the house of Eugenio and on arriving there he found that Ambrosio was dead and that Nicolas was dying; that Nicolas said: "Please help me; hold my wound;" that after putting a bandage over Nicolas' wound, he went to the barrio and notified the lieutenant; that he and the lieutenant returned to Eugenio's house and the only persons who were then there were Eugenio, Maria, Nicolas, and Ambrosio; that he, Pablo, and Vicente went to Eugenio's house together; that he did not see Pablo and Vicente carry any weapons at that time; that when he returned to Eugenio's house with the lieutenant, he noticed that the deceased Ambrosio was holding a dagger in his hand; that Nicolas, who was then dead, had a bolo in his hand; and that it is true that he testified before the fiscal that he was lying down in the house of Pablo Atig when he heard the cries for help and saw Pablo and Vicente leave the house with bolos and clubs, but that his testimony before the justice of the peace was not true.

Sotero Dionisio, a lieutenant of the Constabulary, testified that on one occasion, when he was inspecting the jail, Eugenio Atig told him that neither Pablo nor Vicente Atig had anything to do with the killing of the two men; that he killed Ambrosio because Ambrosio stabbed his mistress with a bolo; that he (the witness) examined Maria Balignot and saw a small scar behind her left waist. Guillerma Look, first witness for the defense and wife of Pablo Atig, testified that Pablo and Vicente never left the house until after they heard cries for help coming from the house of Eugenio Atig; that she did not tell the justice of the peace that she had warned Maria Inot on April 5 to keep Ambrosio away from Eugenio's house; that she did not sign any statement before the justice of the peace; and that she could not understand the words which were used by the person calling for help.

Maria Balignot, mistress of Eugenio Atig, testified that about 7 p. m. on May 11, 1915, Ambrosio Macalisang came to their house, entered without saying good evening, and immediately started quarreling with Nicolas Bacang, saying: "Nicolas, why don't you give me tuba?" "My mother is not a broken earthen pot," Nicolas replied: "What tuba am I to give you when I have no license?" Then Ambrosio said: "Even if you have a lot of tuba I am not going to ask tuba from you again, because this will be the end of our lives." That she asked them not fight in her house; that Ambrosio then stabbed Nicolas and chased and stabbed her; that when she was stabbed she cried out: "Eugenio! Come, because I have been wounded;" that Ambrosio had the dagger (Exhibit C), Nicolas had the bolo (Exhibit B), and that the bolo (Exhibit A) belonged to Eugenio; that these were the only persons in the house; that she did not know why there was blood on Exhibit A; that Ambrosio killed Nicolas, but she did not know who killed Ambrosio; that her testimony before the justice of the peace was not true; that she was stating the truth in the Court of First Instance; that both men were dead when Pablo and Vicente arrived at their house; that she was wounded on the left side just below the ribs by being stabbed by Ambrosio; that Ambrosio did not give her a handkerchief and some rings; that she was outside of the house when she was wounded; that she and Eugenio jumped out of the house through the window; that she was already wounded when she jumped-out; that Nicolas and Ambrosio killed each other; and that she made the statements contained in Exhibit I before the justice of the peace.

Eugenio Atig testified that Nicolas Bacang was his partner in the business of selling fish; that on the night of May 11, 1915, Nicolas came to his house on business; that later Ambrosio came in and asked Nicolas for tuba; that Nicolas replied that he had no tuba; that Ambrosio immediately stabbed Nicolas with a dagger and then attacked Maria Balignot; that he (the witness) then struck Ambrosio with a bolo; that when his father and brother arrived

both men were already dead; that he did not know how many times Ambrosio struck Nicolas because his wife (mistress) was dying and he had to attend to her; that his mistress did not go downstairs because she fainted; that she was unable to go downstairs because she was dying; that he struck Ambrosio in the back because the latter was chasing his (the witness') mistress; that Ambrosio stabbed Nicolas only twice; that Nicolas did not inflict any wounds on Ambrosio; that Nicolas did not draw his bolo; that he the witness inflicted all the wounds on Ambrosio's body; that neither he nor his mistress went out of the house; and that he did not get any wounds or marks during the fight.

Pablo Atig testified that on the night in question he heard a woman in Eugenio's house calling for help; that when he arrived there both the men were dead; that Cirilo Sangag was not in his (the witness') house when he heard the woman's cries; and that when he and Vicente arrived at Eugenio's house the trouble was all over.

Vicente Atig testified that on the night of May 11 he heard cries coming from the house of Eugenio; that when he arrived at Eugenio's house, both Ambrosio and Nicolas were dead; and that Cirilo Sangag was in their house (the house of Pablo Atig) at the time he heard the cries. Potenciano Maghalem, justice of the peace, on being recalled, testified that Maria Balignot signed the document, Exhibit A, in the presence of himself, Lieutenant Dionisio, and Maria Villanueva; that he wrote out the document in Spanish and read it to Maria in Visayan and that Maria signed it with her cross; that Exhibit I is also a statement made by Maria Balignot in the case against Eugenio Atig; and that Exhibits G, H, I, J, and K were made in the same manner.

Eugenio Atig, on being recalled, stated that he made the statements contained in Exhibit J before the justice of the peace. Pablo Atig admitted that he made the statements contained in Exhibit M before the justice of the peace. Exhibits G, H, I, J, K, L, and M were admitted in evidence without objection.

In Exhibit H, which is an affidavit duly executed before the justice of the peace, Cirilo Sangag stated that while he was in the house of Pablo Atig about 6 p. m. on May 11, he heard cries coming from the house of Eugenio Atig; that he went to Eugenio's house and shortly thereafter Pablo Atig and his son Vicente arrived; and that Pablo had a club and Vicente a bolo. In Exhibit G, which is also an affidavit duly executed before a justice of the peace, Cirilo Sangag stated that when he heard the cries coming from Eugenio's house he was lying on a mat with Severino and at that moment Pablo Atig and his son Vicente, armed with a club and a bolo, left the house; that shortly thereafter he went to the house of Eugenio and on arriving there he saw Pablo Atig and Nicolas Bacang fighting, and saw Vicente Atig behind Nicolas; that he entered the house and took hold of Pablo Atig in order to stop the fight; and that soon thereafter he turned Pablo loose and assisted Nicolas, who was then wounded. Exhibits I and J are affidavits made by Maria Balignot on the 14th of May and the 2d of June, 1915. In the first Maria stated that the two deceased fought because Ambrosio asked Nicolas for tuba. In Exhibit J Maria, after stating that the two deceased fought over tuba, said that as soon as the fight started Pablo and Vicente Atig entered the house and struck Ambrosio and Nicolas with bolos. In Exhibit K, Guillerma Look stated that on April 5, 1915, she had a talk with Maria Inot; that she warned Maria to talk with Ambrosio and advise him not to go to the house of Eugenio Atig, when Eugenio was absent, because Eugenio was jealous; and that she also talked with Ambrosio and advised him not to go to Eugenio's house on account of this jealousy.

That Pablo Atig and Vicente Atig took part in the killing of Ambrosio Macalisang and Nicolas Bacang there can be no doubt. When Maximo Bugsangit arrived at the house of Eugenio Atig, both Pablo and Vicente Atig were in the house, with bolos in their hands. Pablo Atig, with a bolo in his hand, was in the house when Maria Inot arrived. Severino Macalisang saw Pablo Atig and Vicente Atig leave their house armed with bolos just a few minutes before he heard cries coming from Eugenio's house. The contention that Ambrosio killed Nicolas as a result of a quarrel over tuba is entirely without foundation. The two deceased were friends and had never had any trouble with each other. When Ambrosio went to Eugenio's house he was unarmed, and three wounds on Nicolas'

spinal column is inconsistent with such a contention. Furthermore, the testimony of Maria Balignot with reference to the alleged quarrel between the two deceased is unreliable. She testified that she was outside of the house when she was wounded and that both she and Eugenio jumped out of the house through a window, while Eugenio testified that neither he nor his mistress Maria went out of the house. Maria also testified that her testimony before the justice of the peace and in Exhibit J, wherein she stated in Exhibit J that as soon as the fight started Pablo and Vicente entered the house and struck Ambrosio and Nicolas with bolos, was not true. Eugenio was jealous of Ambrosio. Eugenio's mother warned Ambrosio's mother to keep Ambrosio away from Eugenio's house. Ambrosio had been trying to get Eugenio's mistress to leave Eugenio and live with him.

The result is that the guilt of both Vicente and Pablo Atig has been, as we have indicated, established beyond a reasonable doubt. The trial court qualified the crime as that of murder, there being present in the opinion of the court, the qualifying circumstance of *alevosia*. This finding rests upon the nature and location of various wounds upon the bodies of the two deceased. We think this was error. The existence of such a circumstance must be established beyond a reasonable doubt. While it is true that each of the deceased had a number of wounds on the back part of their bodies, yet the wounds on other parts of their bodies show that those could have been inflicted from the front. The record fails to show that the defendants employed means, methods or forms in the killing of the two deceased which tended directly and specially to insure the execution of the crime without risk to themselves arising from any defense which the deceased might have made. The crime must, therefore, be qualified as that of homicide and not murder. There being present no extenuating or aggravating circumstance, the penalty should be imposed in its medium degree.

For the foregoing reason the judgment appealed from is modified by substituting fourteen years eight months and one day of reclusion temporal in lieu of *cadena perpetua*.

The appellants are further sentenced to the accessory penalties provided by law, to jointly and severally pay the indemnities stated, and to the payment of their respective portions of the costs of the cause. So ordered.

Torres, Carson, Moreland, and Araullo, JJ., concur.

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