

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTOR ORTENCIO, DEFENDANT AND APPELLANT.

G.R. No. 13427. July 28, 1918

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By virtue of an information filed by the provincial fiscal on June 4, 1917, in the Court of First Instance of Capiz, Victor Ortencio was accused of the crime of parricide. Judgment was rendered on November 1, of the same year, whereby the accused was sentenced to cadena perpetua, with the accessory penalty of indemnifying the heirs of the deceased in the sum of P500, he being accredited with one-half of the time suffered in preventive imprisonment. The accused appealed from this judgment.

On the morning of May 9, 1917, while the spouses Victor Ortencio and Catalina Villaranda were in the house of Natalio Ortencio (uncle of the husband) situated in the barrio of Aranguel, municipality of Pilar, Capiz, the accused urged his wife to return with him to their house not very far off in the same barrio, but as the latter insistently refused to do so, saying that they would go when the said Natalio should come, the husband in reply asked her why they should have to wait for the return of his uncle, and as the wife Villaranda insisted in her refusal, the accused by reason of this, clutched the neck of his wife with one hand, and with the other he struck her on the head with a pestle used for hulling rice, which the injured party's mother, Eugenia Dolorota, could not prevent, and although finally she did succeed in wresting the pestle away from him, the accused snatched another which was under a bench in the house and with it he continued to strike his wife. When Dolorota again tried to take away the pestle, she not only failed but instead received a blow on her forehead, so that, because of her fear, she took to her heels, abandoning the house, where she left her daughter Villaranda lying motionless on the floor. Such was the story related by Eugenia Dolorota, the mother of the deceased and the only ocular witness to all that happened.

Against the testimony of this witness, the accused under oath admitted his guilt for having killed his wife on the morning of the said 9th day of May. He alleged that on the night of the previous day, the 8th, he and his wife slept in their own house, and that between 8 and 9 the next morning he left his wife there and went to work; that inasmuch as when he returned home at about 11.30 o'clock of the same morning he did not find his wife in the house, he went down to look for her, and found her in the house of his uncle, Natalio Ortencio, where he caught them in the act of committing adultery; that he then took a piece of wood from the kitchen, but in striking at Natalio, the latter succeeded in avoiding the blow and in jumping from the window of the house, so that the blow fell upon the head of his wife. The accused affirms that he gave only one blow with the stick, which caused the death of his wife.

The preliminary examination is clearly deficient, for the investigation was made in a mechanical way, omitting the explanation of facts conducive more or less to show the guilt of the accused, or the truth of his defense and of his allegations. The accused asserts that he and his wife spent the night in their own house which is entirely a different one from that of his uncle Natalio Ortencio where the deceased died and her corpse was found; that his mother-in-law did not live in the house of Natalio Ortencio, but in that of his sister-in-law, an elder sister of his wife. But his mother-in-law, Eugenia Dolorota, affirms without contradiction that she witnessed the assault in the house of Natalio. Why the witness was there on the morning when the crime was committed was inquired into. In

his sworn testimony, Natalio Ortencio affirms that he and his wife left their house very early in the morning, while the other inmates of the house were still asleep, and it was not asked who the said inmates were whom he left asleep in the house when he left for his work.

If Natalio Ortencio had refused to affirm that the accused and his wife were in his house, he should have been asked at what time they arrived there and for what purpose, and Natalio's wife, whose name does not even appear in the records of this case, should likewise have been asked.

From the incomplete investigation carried on in this case, it appears that the accused, because of a trifling motive and perhaps impelled by a more or less founded jealousy, caused the violent death of his lawful wife. His defense of having surprised his wife flagrantly committing adultery with his uncle Natalio Ortencio cannot be accepted, inasmuch as, if it be true that his mother-in-law Dolorota was in the uncle's house there is no ground to believe that such an act of conjugal infidelity could have been committed in plain daylight, in a small house and before witnesses; furthermore, if the accused in attacking his uncle did not do anything more than a strike at him with the rice-hulling pestle, a blow which his wife received on the head, it has not been explained why, when the body of the offended party was examined by the sanitary inspector, the latter found thereon five contused wounds on the head and another on the right rib, all being of a serious nature and of doubtful consequences, as stated in the certificate found in the record (p. 17).

The number of injuries found by the sanitary inspector on the body of the offended party renders incredible the assurances of the accused that he had given the supposed paramour only one blow, a blow which, failing to hit the latter, struck the head of his (the accused's) wife. Besides the testimony of the only ocular witness gives the lie to the accused in all his allegations, and corroborates the presumption that the victim was repeatedly assaulted with the pestle, as shown by the various wounds on her body.

It is therefore fully proved in this case that Catalina Villaranda received from her husband, the accused, various wounds on her head and on the right side of her body, all of them being of so serious a character as to result in her death on the fourth day, which violent death bears the characteristics of the crime of parricide, provided for and penalized in article 402 of the Penal Code, there not being present in the case any justification whatever of the facts alleged by the accused in his defense.

In the commission of such a heinous crime, there should be taken into account the existence of the extenuating circumstance provided for in the seventh paragraph of article 9, and in article 11, as amended by Act No. 2142, inasmuch as the accused is an uneducated and uncultured person, and the conduct of his wife, in refusing to return to their home with the object of awaiting his return at the place where Natalio Ortencio was, excited and kindled the jealousy which the accused was harboring against his uncle—and such circumstances extenuate his guilt, there being no aggravating circumstance to counteract the effect of these extenuating ones; so that the accused is liable for the lesser of the two indivisible penalties fixed by law for this crime, in accordance with the 3d rule of article 80 of the Penal Code.

In the judgment appealed from it was declared that in the penalty of cadena perpetua imposed upon the accused, the latter should be credited with one-half of the time during which he had undergone preventive imprisonment; and inasmuch as Act No. 2557, enacted February 1, 1916, in providing for the allowance in all classes of penalty of one-half of the time undergone by the accused in preventive imprisonment, does not make any distinction between temporal and perpetual penalties wherein one-half of the time suffered in preventive imprisonment is to be computed by way of allowance, and because, in accordance with the last paragraph of Rule 2 of article 88 of the Penal Code, the duration of the penalty of cadena perpetua is to be computed at thirty years this court accepts the computation of the judge as being more favorable to the accused.

In view of all these facts, the judgment appealed from is affirmed, provided, however, that the accused is further sentenced to the 2d and 3d accessory penalties of article 54 of the Penal Code, and in case the accused obtain pardon from the principal penalty, he shall nevertheless suffer perpetual absolute disqualification and be subjected to the surveillance of the authorities during the remainder of his life, if these accessory penalties are not remitted in his pardon from the principal one; to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs of both instances. One-half of the time suffered by the accused in preventive imprisonment should be computed as an allowance in his penalty. So ordered.

Johnson, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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