

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CATALINO MERCED AND APOLONIA PATRON, DEFENDANTS AND APPELLANTS.*G.R. No. 14170. November 23, 1918*

Ponente: TORRES, J.

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Before the Court of First Instance of Oriental Negros the defendants Catalino Merced and Apolonia Patron were charged by the provincial fiscal with the crime of homicide, and after the trial of this cause judgment was rendered on April 29th of the present year whereby Catalino Merced was sentenced to fourteen years, eight months and one day of reclusion temporal, with allowance of one-half of the time of preventive imprisonment suffered, to the accessory penalties, and to pay, jointly and severally with the other defendant, an indemnity of P1,000 to the heirs of the deceased, and also one-half of the costs; and Apolonia Patron, to eight years and one day of prision mayor, to the accessory penalties, to pay the heirs of Pantaleon Arabe, jointly and severally with the other defendant, the same amount of indemnity fixed for the latter, and to the payment of the other one-half of the costs. From this judgment defendants' counsel appealed.

On the night of March 4th of the present year, Catalino Merced went to the house of Teodora Sarasin, situated in the barrio of Palimpinon of the town of Luzuriaga, and, at the invitation of the mistress of the house, sat down to supper with her; a short while afterwards Apolonia Patron also arrived, and, fetching some morisqueta or cooked rice from her house nearby, likewise sat down to supper with the two other persons above-mentioned. After supper Merced and Patron successively went down from the house, and the former, upon his return to it and with the permission of its owner, went into the main room thereof to rest. Apolonia Patron, who returned to the house a short while afterwards, did likewise, and they both met in said room to lie down to sleep there. Thereupon, the mistress of the house, Teodora Sarasin, went to bed with her children, and while asleep was awakened by the noise caused by a struggle waged in the aforementioned room. Just at that moment Sarasin heard Apolonia say to her (the latter's) husband that she (Apolonia) was wounded, and heard the husband reply to her, saying: "That is what you got." On account of these happenings, and out of fear, the owner of the house left it, passing through the kitchen, and on her return a few moments afterwards to get her children, she found Pantaleon Arabe, the husband of Apolonia Patron, stretched out on the mat on which she had been sleeping; he was bloody and was pressing in his stomach. This witness now found the light which had previously been put out lit inside the house. When, several hours afterwards, the justice of the peace proceeded with the investigation of the crime, he found Arabe's body on the river bank, near the house of the deceased. Such was the testimony of Teodora Sarasin.

Upon the examination of Filomena Ago, the defendant Merced's sister-in-law, she testified as follows: On the morning of March 2, 1918, two days prior to the crime, Apolonia Patron went to witness' house and complained that her husband Pantaleon Arabe had quarreled with her because he suspected that she was maintaining relation with Catalino Merced, her brother-in-law. Witness Filomena replied to her, saying that, in order to avoid such quarreling, she ought not to have any dealings with Merced. This advice angered the defendant Patron and, at about 4 o'clock in the afternoon-of that same day, she again went to Ago's house; she had a dagger (Exhibit B) in

her hand and showed a disposition to quarrel with witness. Several days afterwards witness found this same dagger on the floor of Patron's house, near the bed on which the defendant Merced lay down on the night of the 4th of March of this year when he returned to the said house in which he was living as a brother of witness' husband. When Merced was questioned as to where he had been wounded, he replied that it was in the house of Teodora Sarasin, and then witness learned of the occurrence, for it was told to her while Sarasin was in witness' store. Ago had seen the dagger, Exhibit B, bathed in blood, and it was the same one that Apolonia Patron was carrying two days before when she became angry in witness' house.

The health officer who examined Pantaleon Arabe's corpse testified that, as he had stated in his certificate Exhibit A, the corpse bore a serious wound between two ribs of the left side; that this wound ran obliquely from the left part of the shoulder toward the right diaphragm and had been inflicted with a double-edged dagger.

The defendant Catalino Merced pleaded not guilty. He testified that while he was resting, in company with Apolonia Patron, in the house of Teodora Sarasin, where he and Apolonia had eaten their supper at Sarasin's invitation, Pantaleon Arabe entered the place and, after telling the defendant to prepare himself because he, Arabe, was going to kill him, put out the light and gave him several blows with the bolo, Exhibit B, with which he was provided, inflicting three wounds in his right leg and one in his right arm; that these wounds were inflicted while witness was lying on the floor of the house, wherefore he arose to defend himself and a struggle ensued between them during which he succeeded in snatching from Arabe's belt the dagger, Exhibit B, and with it wounded Arabe in the back, as a result of which wound, he, Arabe, died. The defendant Apolonia Patron, who also pleaded not guilty, did not testify at the trial.

The facts related above certainly constitute the crime of homicide comprised within article 404 of the Penal Code. The record does not show that the violent death of Pantaleon Arabe, as the result of one single serious and mortal wound in the left side of his back, was attended by any of the qualifying circumstances enumerated in article 503 of said code, for, at the time of the struggle, no disinterested eye-witness was present aside from the two defendants and the owner of the house, which latter person, awakened by the fight waged between the deceased and his assailant within the main room of the house, was unable to see and witness what occurred, on account of there being no light in the house, and learned that one of the fighters was Pantaleon Arabe only because, on returning to her house, which she had left through fear, to get her children, she found the deceased, covered with blood, lying stretched out on the bed where she had laiti, and, from the presence of the deceased in her house, she deduced the conclusion that the fight had been between the deceased and the defendant Merced. Furthermore, with respect to the qualification of the crime, it may be held to have been proven, there being no proof to the contrary, that the crime committed was only that of homicide, for the reason that the mortal wound which caused Arabe's death was a consequence of the struggle engaged in by the latter and the defendant Merced.

Aside from the fact that there is no proof in support of the statement made by the defendant Merced to the effect that when Pantaleon Arabe entered the house in question, he told the defendant to prepare himself for he, Arabe, was going to kill him, and that immediately thereafter Arabe put out the light and assaulted him with the weapon which he was carrying, on which account he claims it became necessary for him, in self-defense, to wound Arabe with the dagger which he succeeded in snatching from the latter's belt, this plea is unsustainable, because it is not true and because, even though it were true and even if the deceased did succeed in entering the room in which the defendants Merced and Patron were lying, and did immediately thereupon assault Merced, giving him several blows with the bolo which he, Arabe, carried, that assault was natural and lawful, for the reason that it was made by a deceived and offended husband in order to defend his honor and rights by punishing the offender of his honor, and if he had killed his wife and the other defendant, he would have exercised a lawful right and such acts would have fallen within the sanction of article 423 of the Penal Code, and not of the article thereof which

penalizes the crime of homicide.

Despite the testimony given by the defendant, it is unquestionable that Apolonia Patron, the wife of the deceased, was that night in the room in which Catalino Merced was lying; in fact he finally admitted that, on account of the illicit relations between himself and this woman, they were in the habit of keeping trysts and meeting each other on other occasions, and that, on the night in question, he was in the house where the crime was committed, in company with his codefendant Patron, for, during the struggle, the owner of the house Teodora Sarasin heard Patron say to her (Patron's) husband, the deceased, that she herself was wounded.

The defendant Merced well knew that, by maintaining unlawful relations with Apolonia Patron, a married woman, he was performing an unlawful and criminal act and exposed himself to the vengeance of the offended husband, and that, by the defendants' meeting each other in the living room of said house, which was near the house in which the offended husband was living, he was running the danger of the latter's surprising them there, as* in fact it did occur.

As regards the participation which the unfaithful Wife may have had in the killing of her husband, for she was present during the struggle that ensued between the deceased and her codefendant, the record does not disclose conclusive proof that she cooperated with, or aided, Catalino Merced when he assaulted her husband and inflicted upon him the single mortal wound that produced his death, for the defendant Catalino Merced himself confessed that he inflicted this wound upon the deceased with the dagger which he succeeded in taking from the latter's belt.

It was not proven who was the real owner of the dagger, Exhibit B, and, notwithstanding the defendant Merced's testimony, there is no circumstantial evidence in the record to show that the weapon belonged to the deceased.

The witness Filomena Ago, a sister-in-law of Catalino Merced, testified that several days before the crime she had seen this dagger in the hands of Apolonia Patron, and that on the night of the crime, upon the defendant Merced's return to her house where he was living, she saw blood on his clothes, and noticed that he left the dagger on the floor beside his bed, wherefore she picked it up and it was afterwards handed to the justice of the peace.

Notwithstanding the testimony just alluded to, it cannot be affirmed that the dagger belonged to the defendant Patron, because, for the very reason that the defendant Merced admitted and confessed that he seriously wounded the deceased with this dagger, it is to be presumed that Merced was its owner, and that he carried it with him when he went to the house of the crime in agreement with his codefendant Patron; besides, there is no proof that the latter carried the dagger that night, and therefore it cannot be asserted that the unfaithful wife furnished the weapon with which her codefendant Catalino Merced inflicted upon her husband a serious wound followed by his death. For these reasons it must be concluded that the record does not show any proof, circumstantial or other, that Apolonia Patron was at least an accomplice in the commission of the punishable act of which her husband was the victim. The acquittal of this defendant is all the more proper in that the complaint did not charge her with having taken any part as an accomplice in the commission of the crime.

For the foregoing reasons, and no generic extenuating or aggravating circumstance having attended the execution of the crime, and the first error assigned to the judgment appealed from being held to have been refuted, said judgment should be, as it hereby is, affirmed, in so far as it concerns Catalino Merced, with the proviso, however, that he shall pay P1,000 to the heirs of the deceased, and one-half of the costs of both instances; and the judgment appealed from is reversed in respect to Apolonia Patron, who should be, and hereby is, absolved from this cause. The other one-half of the costs of botty instances shall be borne de offido. So ordered.

Arellano, C. J., Johnson, Street, Malcolm, and Avanceña, JJ., concur.

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