

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MORO GUSTAHAM, DEFENDANT AND APPELLANT.

G.R. No. 22747. February 02, 1925

Ponente: STATEMENT May 31, 1924, the following information was filed against the defendant in the Court of First Instance of Sulu: "That on or about the 23d day of April, 1924, in the sitio of Tina, municipal district of Panamao, Province of Sulu, Philippine Islands, the accused above named did willfully, unlawfully and feloniously, with intent to kill Moro Ramli, attack and assault the aforesaid Moro Ramli with a barong, on an occasion when the latter was unprepared and had his back toward the accused, thereby inflicting two serious wounds upon the back of the aforesaid Ramli, as a result of which said Moro Ramli died soon after the aggression. "Contrary to law and within the jurisdiction of this court." The trial court found the defendant guilty of the crime charged and sentenced him to imprisonment for twenty years, with the corresponding accessory penalties, to indemnify the heirs of the deceased Ramli in the sum of P1,000, or in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. The defendant appeals, assigning the following errors: "I. One accused cannot be found guilty of the crime of murder upon an information which does not allege any of the qualifying circumstances of the offense, such as treachery (alevosia) and deliberate premeditation (premeditacion conocida), and the lower court erred in so finding. "II. The lower court erred in holding: (a) That the herein offense was committed with the qualifying circumstance of treachery (alevosia); (b) that there was present the aggravating circumstance of deliberate premeditation (premeditacion conocida); (c) that the act was committed by the use of arms prohibited by the regulations, and in considering such an aggravating circumstance. "III. The lower court erred in giving credit to the testimony of Mora Lala. "IV. The lower court erred in finding the defendant guilty of murder, beyond a reasonable doubt, and in not holding that he acted in defense of his person and rights, and was exempt from criminal liability. "V. The lower court erred in not approving the bail executed by the appellant and his sureties, thereby releasing him from custody after his conviction and appeal." JOHNS, J.

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"III. The lower court erred in giving credit to the testimony of Mora Lala.

"IV. The lower court erred in finding the defendant guilty of murder, beyond a reasonable doubt, and in not holding that he acted in defense of his person and rights, and was exempt from criminal liability.

"V. The lower court erred in not approving the bail executed by the appellant and his sureties, thereby releasing him from custody after his conviction and appeal."

JOHNS, J.:

It is vigorously contended that the information does not allege that the crime was committed with *alevosia*. It is true that the information does, not specifically allege that the crime was committed with *alevosia*, but it does allege that the crime was committed feloniously with intent to kill; that it was committed with a *barong* while the deceased was unprepared and had his back turned toward the accused. The language used is clear and explicit, and is equivalent to an allegation that the crime was committed with *alevosia*. It is next contended that the court erred in finding that the crime was committed with deliberate premeditation. That is largely a question of fact. According to the testimony of the defendant, the crime was committed in self-defense.

Mora Lala, a sister-in-law of the defendant, and who was the only eye-witness, testified positively that after entering the house and sitting for a while on a trunk at one end of the house, and without saying a word, the defendant attacked Moro Ramli from behind with a *barong*, and that at the time of the attack, Moro Ramli was engaged in making false teeth.

Assuming this testimony to be true, it clearly shows that the attack was both deliberate and premeditated.

The trial court who saw and heard the witnesses testify found as a fact that it was, and based its findings upon the testimony of Mora Lala, and the evidence supports the finding.

All of the remaining assigned errors involved the guilt or innocence of the defendant. It is contended that the deceased was of a notorious character, and that at various times he had annoyed and even insulted the wife of the defendant, and that he had even threatened his life. All of such matters are questions of fact. The motive for the crime is found in the following testimony of the defendant:

"I struck the second cut on the same wound inflicted by the first, but at the time when he fell to the ground.

"A. I hated him because he had told my wife that he was going to kill me.

"Q. What is the object of Moro Ramli, the reason why he wanted to kill you?—A. He wanted to marry my wife and then take her to the mountain and engage in brigandage.

"Q. And it was only after you learned from your wife of Ramli's threats that you began to carry a *barong*, is that it?—A. That is why I carried the *barong*, because Ramli threatened me, and he also carried a *barong* and lances.

"Q. How many days before the event were you informed by your wife of that threat?—A. One day."

The defendant admitted that he did not have permission to carry the *barong* about his person.

The physical facts and the nature of the wounds inflicted on the deceased flatly contradict the testimony of the

defendant that he was acting in self-defense. The two wounds inflicted by him upon the back of the deceased extended from arm-joint to arm-joint, and both wounds were two inches deep, and one of them was inflicted by the defendant, according to his own testimony, after the deceased fell on the floor.

It is hard to conceive how anyone acting in self-defense could inflict a wound on the back of his antagonist two inches deep extending from arm-joint to arm-joint. It is also unreasonable to believe that a defendant could inflict a like wound upon his antagonist, acting in self-defense, after the latter had fallen to the floor.

Appellant's counsel have presented a very able and adroit brief, but in the final analysis, the undisputed, stubborn fact remains that the defendant inflicted the fatal wounds upon the back of the deceased. It may be true that he was angered and aroused at the attentions and insults which were paid by the deceased to the defendant's wife, and that under the Moro law and customs, he was more or less justified in what he did. Even so, it is not a legal defense to the commission of the crime in the manner in which it was committed. It may also be true that under the facts shown in the record, the defendant should have been admitted to bail pending his appeal, but that is now a moot question.

The lower court found that the defendant should indemnify the heirs of the deceased in the sum of P1,000, for which he should suffer subsidiary imprisonment in case of insolvency. Under the provisions of article 51 of the Penal Code, the portion of the sentence to the effect that the defendant should suffer subsidiary imprisonment in case of insolvency was error, and to that extent, the judgment of the lower court will be modified, and in all other respects affirmed, with costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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