

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANDRES ANCASAN, DEFENDANT AND APPELLANT.

G.R. No. 28620. February 24, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

Andres Ancasan and Domingo Bancailan were charged with the crime of homicide upon the following information:

"That on or about the 3d day of May, 1927, in the municipality of Baganga, Province of Davao, Philippine Islands, and within the jurisdiction of the Court of First Instance of that province, the said accused conspiring together and acting in accord, voluntarily, illegally, and criminally, attacked Eugenio Felizardo with a club causing him a wound in the occipital region, as a consequence of which said Eugenio Felizardo died."

It appears from the evidence that on May 3d, 1927, a celebration of the last day of novenario took place in the house of one Faustino Lancian in the municipality of Baganga, Province of Davao. A number of persons were present, among them Andres (Mandaya), Venancio Lancian, Domingo Bancailan, the accused Andres Ancasan, and the now deceased Eugenio Felizardo. After supper, Domingo Bancailan and Eugenio Felizardo undertook to sing a duet, but as Felizardo sang in a higher pitch than Bancailan, the latter became very angry and tried to throw Felizardo down on the floor. His efforts did not meet with success and he himself fell down with Felizardo on top of him. While the two men were lying in that position, the accused, a friend of Bancailan, struck Felizardo on the back of the head with a heavy cudgel, causing a wound which became infected with tetanus and led to the death of Felizardo a few days later.

The trial court found the defendant Ancasan guilty as charged in the complaint and sentenced him to suffer twelve years and one day of reclusion temporal, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P500, and to pay one-half of the costs. The defendant Domingo Bancailan was acquitted with the costs de oficio. Ancasan appealed to this court, and his counsel makes two assignments of error: (1) That the trial court erred in believing the testimony of the witnesses for the prosecution and declaring the appellant guilty of the crime charged in the information and (2) that the court erred in taking into consideration the testimony of the wife of the deceased as to statements made shortly before his death.

The first assignment of error is entirely without merit; there is nothing unreasonable in the testimony of the witnesses for the prosecution, and we see no reason to doubt their veracity. Under the second assignment of error, counsel argues that the statements made by the deceased to his wife very shortly before his death could not be regarded as a dying declaration inasmuch as the deceased did not directly state that he at that time believed that death was impending. A sufficient answer to this contention is that it is not necessary to the validity or admissibility of a dying declaration that the declarant expressly state that he has lost all hope of recovery; it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the time the declaration was made, the declarant did not expect to survive the injury from which he actually died (*U. S. vs. Schneider*, 21 D. C., 381; *People vs. Chan Lin Wat*, 50 Phil., 182).

The uncontradicted testimony of the widow of the deceased is to the effect that in one of his conscious moments he told her that Andres Ancasan had inflicted the wound from which he was suffering; that he at the same time enjoined her to take care of their children; and that he immediately thereafter again lost consciousness and died within an hour. In our opinion, the surrounding circumstances and the reference to the children clearly show that the deceased had lost hope of recovery at the time the declaration was made and his statement was therefore admissible in evidence as a dying declaration.

The deceased was struck from behind and the aggravating circumstance of treachery therefore existed, but it is also evident from the record that the defendant was intoxicated and that he probably did not intend to kill the deceased. These two extenuating circumstances more than offset aforesaid aggravating circumstance and brings the penalty down to the minimum degree of reclusion temporal, the penalty imposed by the court below.

The appealed judgment is affirmed with the costs against the appellant. So ordered.

Johnson, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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