

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PAULINO FLORES AND EMETERIO MUNAR, DEFENDANTS AND APPELLANTS.

G.R. No. 28753. December 20, 1928

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellants Paulino Flores and Emeterio Munar were sentenced for the crime of homicide, committed upon the person of Gertrudis Paas, Paulino Flores to sixteen years reclusion temporal and Emeterio Munar to fourteen years, eight months and one day reclusion temporal, both with the accessories of the law, to indemnify jointly and severally the heirs of the deceased in the sum of P1,000 and to pay the costs.

Between 7 and 8 o'clock in the evening of July 19, 1926, on the road of the barrio of Catbangan, San Fernando, the body of the deceased Gertrudis Paas was found near the house of Agustin Gortiza. When Doctor Querol went to the place the deceased was still alive, and after examining her body he found that the left forearm had been completely severed, besides various other wounds, a cut on the left elbow which separated the posterior half of the elbow; another in the inferior and posterior half of the supraclavicular region and inferior anterior half of the nape of the neck in a transversal direction, 3 inches long, 1 1/2 inches wide and a depth which reached the spinal column, partly involving it; another wound in the right molar region 2 inches long, 1/2 inch wide whose depth reached the bone cavity of the region; another incision on the right side of the chest 3 inches long, 1/2 inch wide and of a depth that reached the ribs in the anterior part of the thorax; another incision on the left side of the chest 3 1/2 inches long, 1/2 inch wide to a depth that reached the ribs. According to this physician, the first three were serious. On the same night the deceased was taken to the municipal building, where Lieutenant Olivas immediately inquired into the details of the aggression as to the motive thereof, and he continued making this investigation in the said municipal building the following day, making note of his statements in rough draft, a clean copy of which was made on the machine later and read to the deceased, who stated that it was correct. Finally, the deceased took an oath as to the truth of these declarations before the provincial fiscal, placing her finger mark thereon. Four days later the deceased died as a result of a hemorrhage due to the severing of the arteries involved in the first three wounds.

According to this statement of the deceased, while she was coming from the market to her house on that night, she met Paulino Flores who told her that he would take revenge on her for the faults of her husband Pascual Galves and immediately struck her on the neck with a bolo; that Emeterio Munar also wounded her on the right side of her chest; that she fought against her aggressors, who continued attacking her, completely severing her left forearm and inflicting other wounds on her; that the cause of the aggression was a dispute between Paulino Flores and her husband on that night.

As Paulino Flores was also wounded on that night, Lieutenant Olivas went to interview him as to what had happened, he having stated that he had been assaulted and attacked by the deceased. In view of this declaration of

Paulino Flores, on the 21st of the same month Lieutenant Olivas again interviewed the deceased, asking if she had assaulted and attacked Paulino Flores. The deceased then made another declaration which was also put in writing in which she stated that it was not true that she had assaulted and attacked Paulino Flores and that she had no bolo with her that night, because she came from the market and that Paulino Flores and Emeterio Munar were the ones who attacked her with a bolo.

After having examined the evidence we find that these declarations made by the deceased are in the nature of ante mortem declarations. When the deceased made them she was in a serious condition and believed that she was going to die.

Agustin Gortiza, in front of whose house the incident took place, when testifying as a witness for the prosecution, said, that on that night he heard Paulino Flores ask: "Who are you?" and the deceased replied, "It is I"; that he opened the window and saw Paulino Flores and Emeterio Munar; that he saw Paulino Flores attack the deceased with a bolo; that as he was sick and did not want to witness anything disagreeable, he closed the window and went to bed; that a short time after he heard the deceased say that she was dying. As will be seen, this testimony positively corroborates the ante mortem declaration of the deceased in regard to the attack of which she was the victim at the hands of Paulino Flores, and is likewise corroborated, although in an indirect manner, in regard to Emeterio Munar. The fact that this witness did not see Emeterio Munar also attack the deceased, is not proof that said Munar did not attack her, taking into consideration that the witness, after seeing the attack of Flores, left the window.

That Paulino Flores took part in the assault is confirmed by the deceased's ante-mortem declaration, and by the testimony of Agustin Gortiza; and that Emeterio Munar took part, is confirmed by the deceased's ante-mortem declaration and, in a way, by Gortiza's testimony. There is no doubt that both Flores and Munar inflicted on the deceased the serious wounds which the deceased received and which produced her death. According to the deceased, Flores struck her one blow, which severed her left forearm, and, as according to the deceased herself, Emeterio Munar also attacked her, it must be the latter who inflicted the other two serious wounds. There is still another circumstance. Lieutenant Olivas found a bloodstained bolo at the place of the crime (Exhibit D). According to the witnesses for the defense, this bolo, Exhibit D, was not found in that place, but was taken from Emeterio Munar's house. If we are to believe Lieutenant Olivas' testimony, and there is no reason for doubting it, to the effect that this bolo was found in the place where the crime was committed, the testimony of the witnesses for the defense that this bolo belongs to Emeterio Munar, is another circumstance against said Munar. Besides, this appellant presented no evidence in his defense.

We do not find Paulino Flores' allegation that he acted in self-defense to be proven. According to this appellant, it was the deceased who assaulted and attacked him, and that in defending himself from this attack, he succeeded in wrestling the bolo from the deceased, and that as the latter tried to regain possession of the weapon, he brandished it in order to prevent her from approaching, and thus he came to wound her. Appellant Paulino Flores did in fact receive two wounds on the left temple, the first of which took forty-three days to heal, and the second fifteen days, and another wound on the back of the left hand which healed in ten days. If the deceased really was the aggressor, it is strange that the wounds received by Paulino Flores, two of which are almost in the same place, were not more serious. We rather believe that as the deceased fought her aggressors Paulino must have inflicted upon himself during this fight, with his own weapon, the wounds that he received. Besides, the deceased, in her ante mortem declaration, absolutely denied having been the aggressor or that she carried a bolo.

The motive for this aggression was undoubtedly the trouble which the appellants had had a few moments previous with the husband of the deceased on whose person, as they have intimated, they desired to take revenge.

The acts above set forth constitute the crime of homicide, penalized by article 404 of the Penal Code. The Attorney-General's contention in this instance that the aggravating circumstance of abuse of superior strength should be considered present in the commission of the crime, is well grounded, taking into account that there were two appellants and that the deceased was a woman.

Wherefore, in accordance with the Attorney-General's recommendation, the judgment appealed from is modified, and Paulino Flores is sentenced to twenty years reclusion temporal, and Emeterio Munar to seventeen years, four months and one day reclusion temporal, with the accessories of law, and the judgment is affirmed in all other respects. So ordered.

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

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