

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DELFIN PARCASIO ET AL., DEFENDANTS. DELFIN PARCASIO, APPELLANT.

G.R. No. 29147. November 21, 1928

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The Court of First Instance of Leyte convicted the appellant, Delfin Parcasio, of homicide committed on the person of Romualdo Bitangjol, and sentenced him to seventeen years, four months and one day reclusion temporal, with the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay one-fourth of the costs.

On the night of August 27, 1927, the appellant visited a certain young woman by the name of Antonina Ojida at her house in the municipality of Abuyog, Province of Leyte, and while there Romualdo Bitangjol, the deceased, also came in. Appellant asked Antonina Ojida to sing, but she replied that he begin for she did not know how to sing. Whereupon Bitangjol laughed and the appellant went away telling them to wait. The deceased having observed this attitude of the appellant, he, too, went downstairs, remarking, in turn, "There seems to be something wrong." A few moments afterwards the two met in the cockpit in which the deceased's body was found later.

On the following day Ulpiano Fernandez, a Constabulary soldier, found an anonymous letter (Exhibit C), on the threshold of his house which stated that the person responsible for Romualdo's death was the herein appellant and that he had thrown away the dagger used near a malobago tree in the vicinity of the cockpit. In fact a blood-stained dagger (Exhibit B), bearing the initials D. P. on the handle, was found at the place indicated.

Leon Ojida testified that on that night he saw the appellant strike the deceased with a dagger near the cockpit. He went up and separated them. When Romualdo found himself wounded he ran away and the appellant did likewise. But the latter first warned Ojida to tell no one what he had seen. This witness recognized Exhibit B as the dagger used by the appellant in attacking the deceased, and the same one which the appellant usually carried. Cleto Abejar, another witness, testified that on the same night he, too, saw Leon Ojida coming from the cockpit with the appellant behind him.

The defense tried to prove that it was one Serapio de Paz who attacked the deceased, introducing for this purpose, the witnesses Matias Dorsa and Teodora Montejo, who stated that they saw Serapio de Paz attack the deceased. But it appears that when these witnesses were called before the justice of the peace and before the municipal chief of police during the investigation conducted on the day following the incident, they declared that they knew nothing whatever of what had happened. These witnesses deserve no credit and the trial court in not believing their testimony committed no error.

The trial court imposed upon the appellant the maximum penalty prescribed for homicide, taking into account the aggravating circumstance No. 24 of article 10 of the Penal Code, considering the dagger used in the aggression as a prohibited arm. We agree with the Attorney-General that such circumstance was not present and hence that the

medium penalty prescribed by law should be imposed. A dagger is not per se a prohibited arm and becomes so only when carried about concealed (Act No. 1780). It does not appear that the appellant concealed the dagger he had before the aggression. On the other hand, since the mere carrying about of a concealed dagger is in itself a crime especially punished by Act No. 1780, such circumstance cannot be considered for the purpose of increasing the penalty of another crime, in the commission of which it was present. (Art. 78, Penal Code.)

Wherefore, it being understood that the appellant is sentenced to fourteen years, eight months and one day of reclusion temporal, the judgment appealed from is hereby affirmed with the costs. So ordered.

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

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