

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESCOLASTICA ESLIRA, DEFENDANT AND APPELLANT.

G.R. No. 29167. August 08, 1928

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Leyte finding the appellant, Escolastica Eslira, guilty of the offense of homicide and sentencing her to undergo imprisonment for seventeen years, four months, and one day, reclusion temporal, with the accessory penalties prescribed by law, and requiring her to indemnify the parents of Jesus Oquiño, the deceased, in the sum of P1,000 and to pay the costs.

At the time of the offense which gave rise to this prosecution the appellant, Escolastica Eslira, was a girl of the age of 18 or 19 years and a resident of the municipality of Tacloban, in the Province of Leyte. She appears to have been born in Barugo, but several years ago a cousin, Agatona Eslira, who was married to Alejo Oquiño, brought Escolastica to Tacloban where she lived for several years in the home of Agatona and Alejo. While thus living in the household of Oquiño, Escolastica was accustomed to take care of Jesus Oquiño, an infant son of the married pair. As the girl grew to maturity the relations between her and Oquiño's family became strained, and she ceased to live with them. Near the end of the year 1926, or shortly thereafter, Escolastica presented herself at the home of the Oquiño and used insulting expressions which gave rise to a petty prosecution against her for slander (*injurias*). In connection with this case she says that Alejo Oquiño had laid hands upon her and threatened her with harm. As a consequence of this incident the girl appears to have become greatly incensed at Oquiño.

At the hour of about 4.30 p. m. on January 22, 1927, the small boy, Jesus Oquiño, was playing with other children at a place about 50 meters from the home of his parents. While he was thus engaged Escolastica approached and, without provocation from the child, seized him by the armpits and threw him forcibly to the ground about 5 or 6 feet away. She then took the boy by the back of the neck and lower part of the body and threw him again to the ground. At this moment a neighbor, Primo Abilar, was passing; and he, seeing the assault thus committed on the child, intervened for its protection. Escolastica again struck at the child but was prevented by Abilar from doing any further harm.

When the child was first thrown to the ground his head appears to have struck against the root of a tree, and a small gash was cut on the forehead. The crown of his scalp was also lacerated. When Abilar stepped in between Escolastica and the child, he asked her why she had thrown the boy down. She replied venomously that, if it had not been for him, she would have killed the child. Five days later the little fellow died, and this prosecution for homicide resulted. The proof does not throw any light upon the condition of the boy during the five days intervening between the injuries thus inflicted upon him and his death, but it is shown that he was sickly, and after his death an autopsy was performed by the health officer, Dr. Marciano Carreon, who found that at the time of its death the child was in an advanced state of acute tuberculosis, with complications. A certificate of death was

accordingly made out showing that death resulted from generalized miliary tuberculosis. The doctor stated that, when this autopsy was performed, he found that the cut in the child's forehead had been healed before its death, but the top of the scalp still exhibited signs of laceration.

In testifying as a witness for the prosecution Doctor Carreon stated that in performing the autopsy he examined the internal organs of the child, namely, the heart, lungs, intestines, liver, and the kidneys, and he found that the child had suffered, as already stated, from generalized miliary tuberculosis and that the bronchial region, as also the lymphatic mesenteric glands, were affected. He found nothing to indicate that the physical injuries above-mentioned had affected the internal organs of the boy, but he admitted, in response to leading questions from the fiscal, that blows of the kind described might have the effect of accelerating the death of a tuberculous patient.

Upon the foregoing facts we are of the opinion that the death of Jesus Oquiño resulted primarily and principally from tuberculosis; and we are unable to say beyond a reasonable doubt that the mistreatment to which he was subjected by the appellant five days before his death accelerated said death or materially contributed thereto. The most that can be said is that the proof raises a grave suspicion in the mind that the injuries inflicted upon the child, coupled with the resulting nervous shock may have hastened death. Doctor Carreon admitted as much, but we note that he did not go further and state it as his professional opinion that the physical injuries had so contributed to the death. A conviction for homicide, or indeed for any crime, cannot be based on mere conjecture, however strong. The proof must be such that guilt may be accepted by the rational mind as proved to a moral certainty and beyond a reasonable doubt. In this case the proof does not attain to the required certainty.

In its principal features the case is not distinguishable from *United States vs. Embate* (3 Phil., 640), where a child who had been seriously ill for three weeks with fever was mistreated by the accused and died one or two days later. The attending doctor in that case stated that the bruises to which the child had been subjected could not in themselves have caused the death of the child but might have contributed to accelerate the fatal result of the illness from which it was suffering. It was held that a conviction for homicide could not stand.

From what has been said it results that, in the present case, the conviction of the appellant for homicide cannot be sustained. But she will be sentenced to the maximum penalty imposable for a misdemeanor under No. 1 of article 588 of the Penal Code.

The judgment is therefore reversed and the appellant absolved from the offense of homicide, with costs of prosecution for the homicide de oficio. And instead of said conviction, she is hereby sentenced to imprisonment for fifteen days, *arresto menor*, with the costs appropriate to a prosecution for a misdemeanor. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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