

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISIDORO PARAO AND VALENTIN PARAO, DEFENDANTS. ISIDORO PARAO, APPELLANT.

G.R. No. 29542. February 01, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Isidoro Parao appeals to this court from the judgment of the Court of. First Instance of Surigao in which he was found guilty of the crime of homicide, and without taking into consideration any circumstance modifying the criminal liability, sentenced him to fourteen years, eight months and one day reclusion temporal, with the accessories of the law, to Indemnify the deceased's family in the sum of P1,000, and to pay the proportional part of the costs of the action.

The appellant prays for the reversal of the judgment appealed from, and his acquittal for the following reasons: (1) That the crime has prescribed; (2) that his guilt has not been proven beyond a reasonable doubt.

As to the first ground for the appeal, the facts are as follows :

According to the information and the evidence adduced in support thereof, the crime charged was committed on the afternoon of June 19, 1911, and Lucia Lasang, mistress of the deceased Julian Picato, immediately reported the occurrence to the municipal authorities of Gigaquit, Province of Surigao, denouncing, Valentin and Isidoro Parao as the ones responsible for the said deceased's violent death. Inasmuch as the justice of the peace of said municipality was absent, the municipal president of said municipality began the preliminary investigation, and on June 21, 1911, issued the proper warrant of arrest for the apprehension of the presumed felons. Having been informed on July 22, 1911, by the policemen whom he had charged with the execution of said warrant of arrest that the presumed felons Isidoro and Valentin Parao had fled from the municipality of Gigaquit and gone to the municipality of Dapa of the same Province of Surigao, the said municipal president immediately informed the provincial governor of it, and requested him to send a platoon of Constabulary soldiers to capture said defendants. The warrant of arrest was sent to the provincial Constabulary headquarters for execution, where the names of the accused were placed on the list of persons ordered to be captured. Notwithstanding the efforts of said organization to capture the aforesaid accused, Isidoro Parao only was captured in the month of July 1927, the complaint having been filed on June 29, 1927.

The appellant contends that the crime of which he was convicted has prescribed, more than fifteen years having elapsed since its commission without any judicial proceeding being taken against him, in accordance with the provision of article 131 of the Penal Code.

Section 7 of Act No. 2041 provides that in case the justice of the peace or the auxiliary justice of the peace are temporarily absent from the municipality the municipal president is empowered to conduct the preliminary investigation, whenever it cannot be deferred without prejudice to the interests of justice, and to accept a bail bond for the provisional liberty of the defendant. Although the law does not definitely state that the municipal president

may in such a case order the apprehension of the presumed felon, this power is implied in that of admitting a bail bond for his provisional liberty, since the furnishing of a bail bond for provisional liberty presupposes the privation of said liberty, and in order that a person charged with the commission of a crime may be deprived of his liberty, it is necessary that he be placed under arrest, with or without a warrant.

Now then, are the first steps taken by the municipal president of Gigaquit a part of the judicial proceeding?

In every criminal proceeding there are three stages; the investigation of the commission of the crime and the author thereof, and the latter's apprehension; the preliminary investigation; and the final trial. The preliminary investigation or examination is a judicial function. The first steps taken by the municipal president of Gigaquit directed towards the investigation of the crime and the apprehension of the criminals, partakes of the nature of a judicial proceeding as required by article 131 of the aforementioned Penal Code.

Judicial proceedings having been taken against the accused and his arrest having been ordered, which was not carried into effect on account of his default, that is, because he had absented himself from his residence, hiding in the Province of Leyte, the crime has not prescribed.

With respect to the second ground of appeal, the evidence conclusively proves the following facts:

At about 3 o'clock in the afternoon of June 17, 1911, while Julian Picato was seated at a table in the kitchen of his house used also as a dining room, in company with his mistress Lucia Lasang and the latter's sister, Basilisa Lasang, and one Bernardina, eating, the Parao brothers, Valentin and Isidoro arrived and greeted them from below. Julian Picato invited them up, and asked them what they wished. The visitors answered: "It is you we want." Valentin Parao, who carried a club, advanced towards Julian Picato and gave him a blow on the head, followed by Isidoro Parao, who stabbed him with a pocket-knife in the abdomen, from which the intestines protruded. When Lucia Lasang saw how Julian Picato was attacked, she immediately left the house and reported the incident to the municipal authorities. Julian Picato, after receiving the blows, got up from his seat but was unable to remain on his feet and fell to the ground on his side, dying instantly as a result of his wounds. When his assaulters saw him fall they fled. Upon raising the body the following morning, a wound in the head and another in the abdomen were discovered. When Isidoro Parao was captured on July 12, 1927, he made a sworn statement before the justice of the peace of Surigao, wherein he states that on the day of the crime, Julian Picato had him called in order to speak about a certain parcel of land which the latter had detained; that on seeing him, Julian Picato invited him to fight, attacking him with a pocket-knife; that he dodged the blow and succeeded in wresting away the weapon, with which he wounded his assailant.

The defendant, testifying in his own behalf, stated that on the day of the crime he had gone to visit his brother Valentin Parao in the latter's house in the sitio of Cambaliti, municipality of Gigaquit, Province of Surigao, and found him eating in company with Moseo Hallazgo, his brother's brother-in-law; while speaking to his brother he noticed that the latter was enraged because he had learned that Julian Picato had compelled his said brother-in-law to kneel down before him; that later, Valentin left carrying a bolo with him going toward Julian Picato's house; suspecting nothing out of the way he went after his brother, and on arriving near the stairs of Picato's house he met Lucia Lasang who was shouting: "Help us, because Julian Picato is dead." That he went up to the house and found Julian Picato already dead and his brother Valentin with a penknife in his hand; that he wanted to take it from him but Valentin, instead of letting go of the knife turned on him wounding him on the index finger of the right hand, and on both forearms; that since then he has not seen his brother and fearing he would be used as a witness against him, fled from the place.

The trial judge did not give any credit to this statement of the defendant-appellant, exculpating himself and incriminating his brother. Neither can we give it any credit for it is a direct contradiction of the sworn statement

made by him before the justice of the peace of Surigao upon being captured by the Constabulary on July 12, 1927. There is no question' that he was present in the deceased's house on the day and at the hour of the crime. And, if we cannot believe him when he asserts that it was his brother Valentin who attacked Julian Picato with a knife and caused his death, and that he acted in self-defense, we are forced to believe the statement of the witnesses for the prosecution that he and his brother Valentin were the assailants of the deceased in the manner and with the weapons, as testified by them. The fact that he fled and remained in hiding for a period of over fifteen years immediately following the incident,—for we cannot accept his explanation that he did it in order to avoid being compelled to testify against his brother,—shows that he was conscious of his guilt, for an innocent person does not, except in case of persecution, either flee or hide himself.

The evidence adduced at the trial establishes beyond all reasonable doubt that the defendant is guilty of the crime of homicide, committed by having attacked the deceased Julian Picato with a penknife, inflicting a wound on his abdomen through which his intestines protruded, causing his instant death.

The trial court did not consider any circumstance modifying the criminal liability, but we believe that the fact that the defendants were invited upstairs upon saying "good afternoon" is not sufficient to strip the commission of the crime of the aggravating circumstance of dwelling, for the greeting which preceded the entrance of the defendant and his brother into the deceased's house, was nothing more than a ruse so the latter might not suspect the object of their visit, and that they might more easily and surely be able to commit their crime by not giving said deceased any time to arm himself. But this aggravating circumstance is offset, however, by the special extenuating circumstance of lack of education, since it appears of record that the defendant-appellant is a simple farmer.

By virtue whereof, the judgment appealed from is affirmed as to the qualification of the crime and the penalty, with costs against the appellant. So ordered.

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

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