

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DANIEL RIVERA, DEFENDANT AND APPELLANT.*G.R. No. 30840. August 10, 1929*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Camarines Sur, finding the appellant, Daniel Rivera, guilty of the offense of homicide and sentencing him to undergo imprisonment for seventeen years, four months and one day, reclusion temporal, with the accessory penalties prescribed by law, and requiring him to indemnify the heirs of the deceased, one Pedro Namoro, in the amount of P1,000, as well as to pay the costs of prosecution.

In the late afternoon of June 10, 1928, Pedro Namoro, resident of the municipality of Calabanga, Province of Camarines Sur, was riding a carabao along a road in that municipality, while the animal was drawing a sled laden with bananas and sweet potatoes. His wife, Juana, and a daughter were proceeding afoot along the road about 100 meters ahead. As they went along the voice of Pedro was heard in song, but when they reached the place called Binauanan, they ceased to hear the voice of Pedro and, after waiting a moment for him to catch up, without result, they retraced their steps a short distance and found Pedro lying on the ground groaning with pain. Juana asked him what had happened and he replied that Daniel, the Tagalog, had struck him on the neck. She knelt beside him and attempted to raise his head, but the injured man told her not to move him because he felt he was dying. In a few moments a stranger appeared and Juana asked his assistance in removing Pedro, but the man excused himself pretending to be in a hurry, and directed her to repair to a house nearby, belonging to Santiago Aquine. The ungenerous stranger thereupon departed, and Juana obtained help from Aquine. Upon the arrival of the latter upon the scene the injured man told him not to move him as he felt he was dying. Aquine then asked what had happened and Pedro replied that Daniel, the Tagalog, had struck him, as a result of which he had fallen from the carabao. The injured man was presently removed to the house of Aquine but was no longer able to speak and died around midnight of the following day, June 11, 1928.

The appellant in this case is identified as the person to whom Pedro referred as Daniel, the Tagalog; and that he is the individual who committed the homicide is fully established by proof additional to the dying declaration of the deceased. Thus, the witness Tomas Cuevas testified that between 6 and 7 o'clock on the evening in question he was on the road near the spot where the assault was committed, and that he there saw a man on a carabao coming towards him. At this moment Daniel Rivera struck said person on the neck, as a result of which the latter fell from the carabao. This witness stated that he was so scared that he fled from the spot immediately and saw nothing more of the incident

The witness Martin Malate testified that while he was walking towards Calabanga between 6 and 7 o'clock on the night in question, and near the place where the homicide was committed, he met Daniel Rivera running towards him from the opposite direction. As Rivera approached he almost fell and dropped something, whereupon the witness lighted a match and recognized the individual as this defendant. After the accused left the witness picked

up the object which the defendant had dropped and it proved to be a cane. The same cane is identified as one that was in the hands of the appellant at 5 o'clock in the afternoon of the day when the homicide occurred. It is also shown that at this time the appellant was looking for the deceased and appeared angry and excited. According to the testimony of the physician who examined the body of the deceased, death resulted from a dislocation of the cervical vertebrae in the neck of the deceased, caused by a blow.

The testimony, in our opinion, leaves no reason to doubt that the appellant is the guilty agent and that the crime was committed by striking the deceased on the neck with the cane mentioned. The proof for the defense suggests that the death of the deceased resulted from his fall from the carabao and that the fatal wound was caused by his neck striking the sled.

As the proof does not reveal the exact manner in which the assault was committed, nor the antecedents of the crime, it would be unsafe to assert that any aggravating circumstance, such as treachery or premeditation, was present. The case is therefore one of simple homicide; and in accordance with the recommendation of the Attorney-General, the penalty imposed by the trial judge must be reduced to fourteen years, eight months and one day, reclusion temporal, with the appropriate accessory penalties.

It being understood, therefore, that the period of imprisonment is so modified, the judgment is affirmed, with costs against the appellant. So ordered.

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

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