

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAGUIA DE TAGA, DEFENDANT AND APPELLANT.

G.R. No. 31251. August 06, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The appellant was sentenced by the Court of First Instance of Cagayan to ten years and one day prison mayor, the accessory penalties and the costs, for the crime of frustrated murder,

His appeal rests upon several points of error assigned by counsel de oficio defending him in this court. It is a proven and undisputed fact that the old woman Rafaela Alombro was treacherously assaulted and four times wounded in the early morning of February 9, 1927.

There is a question here as to the identity of the assailant. While the prosecution points to the appellant herein, the latter denies it, and names another, one Maguia de Bonong.

The defense bases its contention upon the fact that on the night before the crime, the appellant took shelter in a cave together with some companions, and while they were all gathered around a fire preparing rice, Maguia de Bonong appeared upon the scene tired out, carrying a bolo in his hand, and saying to them: "Begin eating now, for I am in a hurry to leave and collect or get a bundle from somewhere on the pier," and went on board Kalaw de Taga's raft (page 39, t. s. n., 2d piece) ; that later on, when the barrio lieutenant stopped Maguia de Bonong and his companions at the Battung Pier and questioned them concerning the blood found on Maguia de Bonong's bolo, the latter at first said that it came from his sore, and when he was afterwards asked the same question by the chief of police, he replied that the blood was that of a fish called candule (pages 39 and 40, t. s. n. 2d piece), repeating this latter answer when examined in the injured party's house on that particular. The defense likewise alleges—and this is one of the points upon which its appeal rests—that among the Kalingas (both the appellant and Maguia de Bonong are such) there is a custom that when a man's wife dies, he cannot trim his hair, that is, leave off mourning, until he has wounded somebody; and that at the time of the crime, Maguia de Bonong was a widower and his hair reached his beard, and that after the occurrence he had his hair cut.

The prosecution contends that the appellant was the assailant of the offended party, in view of the following facts: The injured party identified the appellant as her assailant, both when the agents of authority took several Kalingas to her house some hours after the occurrence (pages 12, 60, and 61, t. s. n., 2d piece) and later on in another house to which the injured party had been removed (pages 61 and 62, do.), and before the Court of First Instance when, being presided over by the trial judge, it went over to the municipality of Tuao, where the incident occurred, and held court in the place where the injured party was; and the latter, in open court and during the examination, again recognized and identified the herein appellant Maguia de Taga as her assailant. This is how the incident appears in the record:

"CATOLICO. In this case we are concerned with the identification of the defendant, and I ask that when the defendant comes into this room within the declarant's view, he do so together with other Kalingas, in order to

avoid indicating the only Kalinga present, who is the defendant, and thus suggesting the identification.

"FISCAL. No objection.

"COURT. Granted.

* * * * *

"COURT. The court hereby makes it of record that in view of the serious condition of the injured party, Rafaela Alombro, the said court held court in the municipality of Tuao, having obtained special permission from the Secretary of Justice, and there proceeded with the present case. Owing to the principal witness Rafaela Alombro's former statements, the provincial fiscal prayed the court to permit the witness to identify the assailant if she could, there being presented to her at once, four male Kalingas apparently of the same age. The court granted the request and four Kalingas went together to the side of the hammock on which the witness was stretched out upon the municipal grounds, and seated themselves on the ground; and after the witness had looked at the faces of the four Kalingas, she pointed to one of them as her assailant, and it turned out to be the herein defendant, Maguia de Taga."

The other facts upon which the prosecution relies in maintaining that the appellant has been sufficiently identified as the one who committed the crime, are: That between the house where the crime was committed and the cave where the appellant and his companions, as well as Maguia de Bonong and his companions, took refuge, there were found footprints into which the herein appellant Maguia de Taga's feet "fitted exactly" to use the words of Constabulary Lieutenant Maaset (page 11, t. s. n., 2d piece) ; and that there is evidence of record to show that on the night in question, he had borrowed Maguia de Bonong's bolo and gone away with it, and that he did not return to the cave until the following morning.

With respect to the facts alleged by the defense, it 'is not sufficiently proved that Maguia de Bonong arrived at the cave tired, and with a bolo in his hand. The proven fact that there was blood upon the bolo of said Maguia de Bonong, does not necessarily mean that said weapon was stained with blood in the hands of said individual, especially when the latter had testified that on the night of the crime the defendant had said bolo in his possession. Even supposing that Maguia de Bonong did give different explanations of how his bolo came to be stained with blood, it does not necessarily mean that such inconsistency bespeaks guilt, inasmuch as it may be due to actual ignorance of the manner in which his bolo came to bloodstained, and he attempted to explain it from time to time as the diverse possible ways of bloodiness occurred to him. At any event, even supposing Maguia de Bonong guilty because his bolo was used by the appellant, the former's guilt does not of necessity exclude the appellant's guilt. The case contains nothing which made it absolutely impossible for Maguia de Bonong to have had an understanding with the appellant herein for the execution of the act prosecuted herein.

This last consideration also weakens the importance of the fact that Maguia de Bonong had his hair cut after the crime, following the custom of Kalinga widowers, inasmuch as he may have had an understanding with Maguia de Taga with respect to the crime under consideration and may have thought that he could thus fulfill the condition precedent to a hair cut set by the aforementioned traditional custom.

We think that the facts alleged by the defense are insufficient to destroy or even weaken the conviction of the appellant's guilt,, produced by the evidence for the prosecution.

The identification and recognition of the defendant as her assailant, made by the offended party on different occasions and under circumstances which insured the spontaneity of such identification, made not only out of court, but also during the trial of this case, in the presence of the judge who passed upon it, cannot be ignored, and, to our mind, constitutes sufficient proof that the defendant committed the crime prosecuted herein.

But the data of the case do not sufficiently show that the defendant had the intention of killing. In fact, the wounds he inflicted on the injured party were healed in two months. We believe that the crime is that designated as serious physical injuries, under article 416, No. 4 of the Penal Code. Paragraph 2 of said No. 4, is here applied, because there was treachery in the commission of the crime. The aggravating circumstances of the sex and age of the injured party as well as those of dwelling place and nighttime must also be taken into account. For these reasons, the proper penalty is prision correctional in its minimum and medium degrees.

We do not find sufficient merit in the errors assigned and diligently set forth by counsel de oficio in his brief.

By virtue of these considerations, and even taking section 106 of the Administrative Code of Mindanao and Sulu, into account, the judgment appealed from is hereby modified, the appellant is hereby sentenced to four years and two months of prision correctional, the accessory penalties of article 61 of the Penal Code, and the costs of both instances. So ordered.

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

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