

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GUARDIANO MARQUEZ, DEFENDANT AND APPELLANT.

G.R.No. 31268. July 31, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is a case of parricide which the trial court considered sufficiently proven against the herein appellant, who was sentenced, in consequence, to life imprisonment, the accessories of law, and a P1,000 indemnity to the heirs of the deceased, with costs. The defendant admits, that he killed his wife, Oliva Sumampong; but he alleges that he caught her in the act of adultery, and so took her life.

This allegation of the defendant does not agree with his statements before the justice of the peace during the preliminary investigation. According to both Exhibit B and the testimony of the justice of the peace who conducted said investigation, the defendant had been fishing on the night of the crime * * * "and when he came back at midnight, the house was closed; he knocked at the door but his wife did not awake, so he knocked again, but still she slept on; then he went to the part of the house where his wife usually slept, and knocked on the wall; she awoke then and opened the door; and when he went up, there was a man who jumped out of the window, and when he asked his wife why there was a man inside the house, she answered that there was no man, but as he insisted that there had been one, and that he had jumped out of the window, and as his wife would not tell the truth, for that reason alone he killed her." (P. 13, t. s. n.)

In order that the defendant might be entitled to the benefits of article 423 of the Penal Code, it was necessary for him to prove that he surprised his wife in the act of committing adultery.

No other inference can be made from the wording of said article.

"Any husband who, having surprised his wife in the act of adultery, shall kill her or her paramour in the act," etc. (Art. 423. Penal Code.)

Once the appellant had admitted that it was he who killed his wife, it was incumbent upon him to completely prove his defense, which is, that he found her in the act of adultery. The testimony he gave during the hearing of this case in the trial court, noticeably weakened by his statements before the justice of the peace, cannot be considered sufficient proof of the justification he alleges, and so the fact remains that he took his wife's life without having proven sufficient justification.

Nevertheless, it was established at the trial that on the occasion of the crime, the defendant saw an unknown person jump out of the window of his house, and that the appellant's wife begged for his pardon on her knees. The first of these facts, under the circumstances, warrants the conclusion that the defendant believed his wife to be unfaithful, and was overcome by passion and obfuscation. The second fact leads us to believe that the wife could not have been wholly unaware of the unknown person's presence in her house on that night, inasmuch as she

considered herself guilty and begged her husband's pardon, which is an undisputed fact in these proceedings. To our mind, such conduct on the part of his wife, thus inferred from the proceedings, constitutes a sufficient provocation, which must be considered as a mitigating circumstance in favor of the defendant.

We find no merit in the assignments of error made by the defense, and we conclude that the crime of parricide committed by the herein appellant is not justified in these proceedings.

But we consider the two mitigating circumstances of immediate provocation, and passion and obfuscation (article 9, paragraphs 4 and 7, Penal Code) to have been established. And by virtue of these two circumstances, following rule 5 of article 81 of the Penal Code, as amended by Act No. 2298, and as there was no aggravating circumstance, the penalty next lower to that prescribed by law shall be imposed.

The penalty fixed by law for the crime of parricide is life imprisonment to death, and the penalty next below it in this case is cadena temporal, inasmuch as the penalty fixed by law is composed of two indivisible penalties (rule 2, article 75, Penal Code).

Taking into account the details of the case, and the character of the mitigating circumstances present in the act prosecuted, and availing ourselves of the discretion granted us by law in cases like the present one (rule 5, article 81, Penal Code) we declare that the penalty to be imposed upon the appellant is twelve years and one day cadena temporal.

Wherefore, with the provision that the defendant is sentenced to the personal penalty of twelve years and one day cadena temporal instead of life imprisonment as held by *Ong Chiongchi vs. Judge of 1st Ins. of Oriental Negros* the court below, the judgment appealed from is hereby affirmed in all other respects, with the costs of both instances against the appellant. So ordered.

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

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