

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN N. GIMENA, DEFENDANT AND APPELLANT.

G. R. No. 33877. February 06, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant Juan N. Gimena is charged with the crime of parricide. It appears from the evidence that on the morning of April 9, 1930, in the municipality of Ronda, Province of Cebu, the defendant helped his father-in-law, Gregorio Diana, in cleaning bamboo. After having finished the cleaning he went home and upon arriving there he found his wife Crispina Diana and a child 2 weeks of age sleeping together on the floor. Shortly afterwards Gregorio Diana heard his daughter, the defendant's wife, cry for help. He went to the defendant's house which was close to his own and there found the defendant attacking Crispina with a bolo. With the assistance of Teodulo Gimena, a brother of the defendant, Gregorio succeeded in disarming the defendant and tied him to a post of the house. The matter was then reported to the authorities and the justice of the peace, the chief of police, a sanitary inspector and a policeman appeared on the scene. The justice of the peace asked the defendant why he had attacked his wife and received the answer that it was because she had given the sum of P2.70 to one Apolinar Sereno whom he, the defendant, suspected of illicit relations with the wife. A few hours later on the same day Crispina Diana died and the examination subsequently made disclosed ten wounds in different parts of her body.

After trial the court below found the defendant guilty of parricide and considering in his favor the mitigating circumstances of obfuscation and lack of instruction, sentenced him to suffer fourteen years and eight months and one day of cadena temporal with the accessory penalties prescribed by law and to pay the costs. From this judgment the defendant appealed.

The appellant's argument in his favor is that he was in a state of somnambulism when he attacked his wife. We do not think that this theory can serve as a defense in the present case. By order of the trial court the defendant was placed under observation for some time by Dr. Luis B. Gomez, but the doctor apparently did not discover any somnambulism on the part of the defendant. A defense of that character must be proven and such proof is lacking in this case.

"The defense that the offense charged was committed by the accused during the prevalence of or in a state of somnambulism has been recognized; but the latest holding of courts is to the effect that it does not constitute a defense other than that embraced in a plea of insanity." (Wharton's Criminal Law, vol. 1, p. 574.)

We can find no error in the decision of the court below and the appealed judgment is therefore affirmed with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romiuldez, and Villa-Real, JJ., concur.

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