

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SEVERA JACA AND PROCESO RASALAN, DEFENDANTS. PROCESO RASALAN, APPELLANT.

G. R. No. 34866. August 18, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The information describes the offense in question as follows:

"That on or about the 4th day of November, 1930, in the municipality of Tayabas, Province of Tayabas, and within the jurisdiction of this court, the above-named accused, Severa Jaca and Proceso Rasalan, aiding and abetting each other for the purpose of concealing the dishonor of said

Severa Jaca, did willfully, unlawfully and feloniously put to death the child which she had given birth to, before it was 3 days old."

A separate hearing was requested and granted after the first witness for the prosecution, Dominador Santiano, had testified; but the other witnesses for the prosecution, Aufea Zabella, Tomas Jaca, Agapita Navaja, Luis Arraya, and Ubaldo Potenciano, testified against Severa Jaca in the presence of the appellant Proceso Rasalan and his counsel, and were cross-examined by the latter. Jose Velez Martinez was presented as witness against the appellant Rasalan. Having heard the case, the Court of First Instance of Tayabas acquitted Severa Jaca, but convicted Proceso Rasalan of the crime charged and sentenced him to life imprisonment, the accessories of the law, to indemnify the heirs of the deceased, in the sum of P1,000, and one-half the costs. Proceso Rasalan appealed from this sentence, making the following assignments of error:

- In basing the judgment upon the testimony of the witnesses for the prosecution, namely Aurea Zabella, Agapita Navaja, and Tomas Jaca.
- In finding the appellant guilty beyond a reasonable doubt.
- In admitting as evidence against the appellant, Exhibit C of the prosecution, being the defendant's alleged confession.
- In sentencing the accused."

There is no dispute about the fact that Severa Jaca's new-born babe died a violent death; this has been sufficiently proved. The evidence for the prosecution points to Proceso Rasalan as the offender; but Margarita Jaca, the latter's wife, affirms that it was Aurea Zabella, the midwife who attended Severa Jaca in her delivery, who caused the death of the child.

This accusation of Margarita Jaca against Aurea Zabella is not supported by the evidence of record. The appellant himself does not blame Aurea for the death of the infant, for he assured in his testimony that he had only heard the child cry once, and when Aurea Zabella, who was assisting the woman in labor, went to attend to the babe, she

found it already dead (pages 145, 146, t. s. n.). Furthermore, there is nothing in the record to show what motive Aurea Zabella might have had to take the life of that unfortunate new-born babe.

Rejecting, then, this incrimination of Aurea Zabella as unlikely and unproved, let us see if there is sufficient evidence to support the judgment of the trial court convicting Proceso Rasalan of the infanticide.

Two eyewitnesses, Aurea Zabella and Agapita Navaja, both of them related to the appellant, the first by consanguinity and the second by affinity, testify that Proceso Rasalan wrapped up the baby in a cloth which asphyxiated it—resulting in its death. Tomas Jaca, the appellant's father-in-law, testified that when the latter handed to him the corpse of the newly-born child in order that he might secretly throw it into the river, the accused revealed to him that he, Proceso Rasalan, had killed it in order to conceal the dishonor of Severa Jaca, which cast a reflection upon them, for Severa was the witness Tomas' daughter, and the defendant's sister-in-law. The defendant questions the veracity of these three witnesses, especially of the two last, Agapita Navaja and Tomas Jaca, alleging that they had a grievance against him and his family. The grievance mentioned is not, to our mind, sufficient to make the witnesses tell a falsehood in accusing their own relative of so serious crime.

In addition to this evidence, there is the plain, clear, and evident proof of the appellant's own admission contained in Exhibit C, assailed on the ground that the defendant signed it under pressure of the Constabulary Lieutenant Santiano and the justice of the peace Velez Martinez, without knowing its contents. That the accused signed said exhibit knowingly and willingly has been satisfactorily proven by the testimony of said justice of the peace, whose veracity there is in the record no reason to doubt.

That the infant really died, through asphyxiation, is amply shown by the testimony of Doctor Potenciano, who examined the exhumed corpse, thus corroborating the other witnesses for the prosecution.

As it has been established in the record that the crime charged was committed, and that the defendant committed it; that, inasmuch as he is not an ascendant of the dead child, he has incurred, according to the law (art. 409, par. 3, Penal Code) the penalty for murder and is guilty of this crime (U. S. vs. Aquino and Casipit, 34 Phil., 813). Wherefore, the judgment appealed from is affirmed, with the exception of the indemnity, which a majority of this court is of opinion, should not be adjudicated, in view of the facts proved.

Nevertheless, the writer of this opinion, with whom Chief Justice Avancena and Associate Justice Imperial concur, voted for an indemnity of P500 to the heir or heirs entitled thereto according to law.

Wherefore, in accordance with the majority vote on the elimination of the indemnity, which is accordingly omitted from the decision appealed from, the latter is hereby affirmed with the costs of both instances against the appellant. So ordered.

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

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