

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TAMBAROSO (ALIAS ONSO), DEFENDANT AND APPELLANT.

G.R. No. 35866. March 23, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The information charged the herein appellant with the crime of parricide; but the court a quo, considering that the evidence tending to show that the defendant and the deceased Igong were legally married was insufficient, and that there was sufficient evidence showing that Igong was killed by the defendant without justification, found him guilty of the crime of homicide, and sentenced him to fourteen years and eight months of reclusion temporal, P500 indemnity and costs, deducting one-half of the preventive imprisonment theretofore served.

The principal evidence of the prosecution consists in the testimony given by Banting, a child of the deceased, who declared he witnessed the act, and of the defendant's extra judicial confession, marked Exhibit A. Witness Tadog, a brother of the deceased, corroborates Banting with reference to Exhibit A. In addition, witness Zacarias Billora and justice of the peace Gaudencio Abordo, testified affirmatively with regard to the defendant's authorship and signature of this document.

Besides the defendant's own testimony, the defence presented the witnesses Bangat and Tulang to testify that Igong died a natural, and not a violent, death.

The trial court credited the evidence of the prosecution, and not that of the defence. The record furnishes no ground for setting aside this conclusion which is supported by the evidence.

We also find the consideration of the defendant's lack of education as a mitigating circumstance justified, and hence hold that the penalty imposed by the court below is in accordance with law.

The trial judge acted in accordance with law in not qualifying the crime as parricide, where there is not sufficient evidence to show that the defendant and his victim were legally married. The legality of the marriage is essential to this crime, as conspicuously appears from the text of the law (article 402, the Penal Code then in force) which, in mentioning father, mother, or child, includes illegitimate ones, but not so with regard to the spouses.

There being no error in the judgment appealed from, it is hereby affirmed, with costs against the appellant. So ordered.

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

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