

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELICIANO EMBALIDO, DEFENDANT AND APPELLANT.

G.R. No. 37374. March 18, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The appellant in this case was charged with the crime of murder. He admits having killed, Felix Cabiguin, but claims that he surprised his wife and the deceased while they were engaged in criminal conversation. The lower court found him guilty of the crime of murder and, appreciating in his favor the mitigating circumstances of illiteracy and voluntary surrender to the authorities, sentenced him to seventeen years, four months and one day of cadena temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased in the sum of P500, and to pay the costs. From this judgment the accused appealed to this court and now contends that he should have been sentenced in accordance with article 247 of the Revised Penal Code, which reads as follows:

"Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro."

We have carefully considered the evidence presented in this case, and we are of the opinion that the lower court erred in finding the appellant guilty of the crime of murder. The mere fact that the deceased had wounds in the back, does not necessarily show that the appellant attacked him from behind, giving the deceased no chance to defend himself, so as to bring the offense within the definition of the crime of murder. The case is one of homicide.

In cases of homicide, the prosecution is required to prove two facts, namely: (1) That death of the deceased; and (2) that he was killed by the accused. Once these facts are established beyond a reasonable doubt, conviction is warranted. Matters of defense, mitigation, excuse, or justification must appear by a preponderance of evidence. An examination of the evidence of record does not justify the conclusion that the appellant surprised his wife and the deceased while they were engaged in criminal conversation. The case, therefore, does not come within the purview of article 247 of the Revised Penal Code.

The appellant is adjudged guilty of the crime of homicide, and appreciating in his favor the mitigating circumstances of illiteracy and of voluntary surrender to the authorities, he is hereby sentenced to six years and one day of prision mayor, with the understanding that service of this sentence shall begin after the appellant will have served the sentence imposed upon him for the crime of parricide in case G. R. No. 37379, People vs. Embalido.[1] Appellant is also sentenced to indemnify the heirs of the deceased in the sum of P500, and to pay the costs.

Modified as above indicated, the judgment appealed from is affirmed. So ordered.

Avanceña, C. J., Street, Ostrand, and Butte, JJ., concur.

[1] See next case.

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