

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GABRIEL PAMAN, DEFENDANT AND APPELLANT.

G.R. No. 38183. October 27, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Bohol, convicting the appellant of the crime of murder upon the following information:

"Que en o hacia el dia 12 de julio, 1932, en el Municipio de Sikatuna, Provincia de Bohol, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el referido acusado Gabriel Paman con el proposito deliberado de dar muerte a uno llamado Faustino Piquit voluntaria, ilegal y criminalmente acometio y agredio con su bolo a dicho Piquit sin darle oportunidad de defenderse, infiriendole varias heridas graves que causaron la muerte instantanea del mencionado Faustino Piquit."

The appellant was condemned to eighteen years, ten months and fifteen days of reclusion temporal and required to pay P1,000 as indemnity to the heirs of the deceased.

The appellant makes the following assignments of error:

"1. El Juzgado inferior erro al hallar como hecho probado que concurren las circunstancias de premeditacion y alevosia en el acto de herir y dar muerte a Faustino Piquit el acusado apelante Gabriel Paman.

"2. El Juzgado a quo erro al hallar como hecho probado que el acusado apelante Gabriel Paman era quien hizo la primera agresion ilegítima contra Faustino Piquit, el occiso, y al no hallar como un hecho probado que Faustino Piquit era quien hizo la primera agresion ilegítima contra el acusado segun las mismas pruebas de la acusacion (n. t., p. 18, lins. 17-23; p. 20, lins. 24-28; p. 21, lins. 1-4).

"3. El Juzgado inferior erro al declarar que la lucha entre el acusado Gabriel Paman y Faustino Piquit no esta probada.

"4. El Juzgado a quo erro al no hallar como hecho probado que el acusado Gabriel Paman al dar muerte a Faustino Piquit obro en legitima defensa propia.

"5. El Juzgado inferior erro al hallar al acusado Gabriel Paman culpable del delito de asesinato, y al condenarle a la pena de dieciocho años, diez meses, y quince dias de reclusion temporal, con las accesorias prescritas por la ley, a indemnizar a la familia del occiso Faustino Piquit en la suma de mil pesos y con las costas."

It appears from the testimony of Ponciano Toledo, who has been municipal president of Sikatuna for nine consecutive years, that the deceased Faustino Piquit was a man of violent temper, a disturber of the peace and a camorrista y atropellador. He had been trying to seduce Gregoria, the wife of the accused, since September, 1931, when the accused was absent in the United States. He visited her repeatedly but she repelled his advances and threatened to denounce him to her husband if he continued. After the return of the accused from the United States, Faustino continued to harass Gregoria with his advances. During the months of March and April 1932, he threw

stones at the house of the accused for the purpose of irritating him to the point where he would come out and fight. On a later occasion, Faustino offered Gregoria two kinds of poison that she might kill her husband. On her refusal to accept it, he threatened to kill her and her husband and her parents. In June 1932, Faustino passed by the house of Gregoria and threw her a letter which is translated as follows:

"Why do you not agree with my plan to poison Gabriel? Do you want that I will poison your aged parents? I am not afraid of any of you. I will burn you all. I will not cease stoning if you will not agree with my plan to poison Gabriel so that we will live together. Do not be afraid to poison your husband because I will take care of you. Had you received the thing I had given you, your husband would have been dead already. I am not afraid of your people.

"That is all.

(Sgd.) "Tinoy"

Gregoria showed and read this letter to her husband.

On the 8th of July 1932, about 3 in the afternoon, Faustino told his friend Donato Illorimo that he was going to desert his wife and he did not know where he would end, either in the cemetery or in prison. The same afternoon, he passed the house of Gregoria and called her. The accused answered instead of his wife. Whereupon Faustino became angry and insulted the accused, threatening to kill him in a few days.

There is evidence in the record that Faustino had seduced two other married women and bullied their husbands into silence and submission.

With this background, we approach the fight that took place between the accused and Faustino on the 12th of July 1932. On that date, Faustino and one Antonio Dieson were playing billiards in a pool-hall when the accused entered the same. The accused testified that Faustino struck the first blow with the billiard cue. Dieson testified that the accused first struck Faustino in the left side with his bolo whereupon he, the witness Dieson, immediately took to flight and saw nothing more of the fight. The keeper of the pool-hall, Dionisio Dahunog, did not see the first blow but saw the subsequent fight which, according to him, continued for some ten minutes. In the course of the fight, Faustino received at the hands of the accused a second stab in the left side which pierced the abdomen of Faustino and caused him to fall. He died immediately thereafter as a result of said wound.

We have carefully studied the entire record in this case and have come to the conclusion that the accused was the aggressor but that alevosia (treachery) is not established by the evidence beyond reasonable doubt. We concur also with the Solicitor-General that there is no convincing evidence of premeditation *conocida*. In the absence of these qualifying circumstances, the offense was homicide not murder. The evidence, in our opinion, also establishes the following mitigating circumstances in favor of the accused: First (article 13, paragraph 4, Revised Penal Code), immediate provocation or threats on the part of the deceased; and, second (article 13, paragraph 5, Revised Penal Code), that the act was committed in the immediate vindication of a grave offense to the accused and to his wife.

The penalty prescribed for homicide under article 249 is reclusion temporal which, in this case by reason of the two mitigating circumstances aforesaid and the provisions of article 64, paragraph 5, is reduced to prision mayor.

The appellant is hereby sentenced to six years and one day of prision mayor, and as thus modified, the judgment of the court below is affirmed with costs *de oficio*.

Street, Villa-Real, Abad Santos, and Vickers, JJ., concur.

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