

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARTIN NOYNAY AND BUENAVENTURA RUIZ, DEFENDANTS. BUENAVENTURA RUIZ, APPELLANT.

G.R. No. 38715. September 15, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

Martin Noynay and Buenaventura Ruiz were charged in the Court of First Instance of Cebu with the crime of asesinato, committed as follows:

"Que en o hacia el 28 de agosto de 1932, en el Municipio de Medellin, Provincia de Cebu, Islas Filipinas, los referidos acusados, concertando entre si y ayudandose mutuamente provistos de armas mortiferas punzo cortantes, con premeditacion conocida y alevosia, voluntaria, ilegal y criminalmente atacaron y agredieron a Silvestre Arriesgado, infiriendole lesiones en diferentes partes del cuerpo que produjeron la muerte instantanea del mencionado Silvestre Arriesgado."

After hearing the evidence, Judge Fortunato Borromeo Veloso found the defendants guilty of homicide with the presence of the mitigating circumstances of No. 4 and No. 6 of article 13 of the Revised Penal Code, and sentenced each of them to suffer eight years and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P500, and to pay the costs.

The defendant Buenaventura Ruiz appealed to this court, and his attorney de oficio makes the following assignments of error:

"I. El Juzgado inferior erro al no declarar que las pruebas de la acusacion no establecen fuera de toda duda racional la culpabilidad del acusado Buenaventura Ruiz.

"II. El Tribunal de origen tambien erro al no declarar que la preponderancia de las pruebas, al menos, esta en favor del acusado Buenaventura Ruiz, y que, por tanto, si no se ha demostrado concluyentemente la inocencia de este por la naturaleza de las pruebas obrantes en autos, debe ser absuelto siquiera por duda racional.

"III. Finalmente erro al no absolver libremente al acusado ahora apelante Buenaventura Ruiz."

The facts of the case are as follows:

A carabao belonging to Martin Noynay was destroying sugar cane planted by the deceased Silvestre Arriesgado. The deceased caught the carabao and took it to the house of Martin Noynay. The deceased was accompanied by his son, Jose, who was 9 years old. When they reached the house of Martin Noynay, they found him and the appellant Buenaventura Ruiz. The deceased told Noynay that his carabao had destroyed the sugar cane and that he had to pay the damages. Noynay replied that he did not have to pay anything because his carabao was tied. The deceased then told Noynay that if he did not wish to pay, he would take the carabao to the lieutenant of the barrio, and started to do so. Thereupon Noynay grabbed a spear from the azotea of his house, and he and Buenaventura Ruiz pursued the deceased. The deceased began to run, but he was overtaken under a tree about 82 meters from

the house of Martin Noynay. Jose Arriesgado ran and hid behind some clumps of maguey, and from there he saw Martin Noynay stab the deceased in the shoulder with a spear. The deceased picked up a stone and threw it at Noynay, striking him in the forehead. Noynay stabbed the deceased in the side with the spear. The appellant Buenaventura Ruiz then said "let us finish him", and stabbed the deceased twice in the breast with a dagger. The defendants ran away, Martin Noynay going towards his house, and the appellant towards the provincial road. Jose Arriesgado then went to the place where his father had fallen, and a few moments later the wounded man died.

Rosa Malinao, the wife of the deceased, after being told by her daughter Maria that the defendants were pursuing the deceased, ran towards the scene of the crime and saw the defendants running away. She then went to the place where her husband had been killed, and found there her son Jose, who was crying. When she asked him who had killed his father, he replied that Martin Noynay and Buenaventura Ruiz had killed him; and when asked why they had attacked his father, he replied that it was because the deceased had taken the carabao to Martin Noynay and demanded payment for the sugar cane the carabao had destroyed.

The appellant Buenaventura Ruiz set up as his defense an alibi, alleging that when the deceased was killed he, the appellant, was in a cockpit 7 kilometers away.

The evidence was carefully considered by the trial judge. It leaves no doubt in our minds as to the guilt of the appellant. We not only have the testimony of Jose Arriesgado as to the direct participation of the appellant in the crime, and the testimony of the wife of the deceased that she saw the appellant as well as his coaccused running away from the scene of the crime, but also the fact that the corpse of Silvestre Arriesgado showed that he had been wounded with two different kinds of instruments.

Feliciano Pepito testified that at noon on the day in question he met the appellant going towards the house of Noynay. It should be recalled here that the appellant and Noynay were related by marriage. Agripina de la Rama saw the appellant about noon going from the scene of the crime towards the provincial road. This testimony completely refutes the contention of the appellant that he was in the cockpit from 10 o'clock in the morning until 3 in the afternoon, and destroys his alibi.

The trial judge found that the defendants were entitled to the benefit of two mitigating circumstances, provocation on the part of the deceased and the obfuscation of the accused. The evidence does not warrant a finding that sufficient provocation or threat on the part of the offended party immediately preceded the act of the defendants. The action of the deceased in taking the carabao to Noynay and demanding payment for the sugar cane destroyed, and in taking the carabao to the lieutenant of the barrio when Noynay refused to pay was perfectly legal and proper and constituted no reasonable cause for provocation as to Noynay and certainly none at all as far as the appellant was concerned. The finding that the defendants acted upon an impulse so powerful as naturally to have produced passion or obfuscation was likewise not justified by the evidence of record. The deceased, as we have said, was clearly within his rights in what he did. The defendants, without any rational cause for provocation, pursued the deceased and deliberately killed him. In order to be entitled to this mitigating circumstance, it must appear that the obfuscation of the accused arose from lawful sentiments. "The fact that an offense was committed in an uncontrollable burst of passion (*con arrebató y obcecación*) should not be taken into consideration as an extenuating circumstance unless it appears that it was provoked by prior unjust or improper acts." (*U. S. vs. Taylor*, 6 Phil., 162.)

For the foregoing reasons, the defendant Buenaventura Ruiz is sentenced to suffer fourteen years, eight months, and one day of reclusion temporal, instead of the prison sentence imposed by the lower court. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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