

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONIO YABUT, DEFENDANT AND APPELLANT.

G.R. No. 39085. September 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 Manila, convicting the appellant of the crime of murder and assessing the death penalty.

The appellant, Yabut, was charged in the Court of First Instance of Manila with the crime of murder upon the following information:

"That on or about the 1st day of August, 1932, in the City of Manila, Philippine Islands, the accused Antonio Yabut, then a prisoner serving sentence in the Bilibid Prison, in said city, did then and there, with intent to kill, wilfully, unlawfully, feloniously and treacherously, assault, beat and use personal violence upon one Sabas Aseo, another prisoner also serving sentence in Bilibid, by then and there hitting the said Sabas Aseo suddenly and unexpectedly from behind with a wooden club, without any just cause, thereby fracturing the skull of said Sabas Aseo and inflicting upon him various other physical injuries on different parts of the body which caused the death of the latter about twenty-four (24) hours thereafter.

"That at the time of the commission of this offense, the said Antonio Yabut was a recidivist, he having previously been convicted twice of the crime of homicide and once of serious physical injuries, by virtue of final sentences rendered by competent tribunals."

Upon arraignment, the accused plead not guilty. The court below made the following findings of fact which, from an independent examination of the entire testimony, we are convinced, are supported by the evidence beyond reason able doubt:

"La brigada de presos, conocida como Brigada 8-A Carcel, el 1.º de agosto de 1932, estaba compuesta de unos 150 o mas penados, de largas condenas, al mando del preso Jose Villafuerte, como Chief Squad Leader, y del preso Vicente Santos, como su auxiliar. Formaban parte de esta brigada el occiso Sabas Aseo, o Asayo, el acusado Antonio Yabut y los presos llamados Apolonio Saulo, Isaías Carreon, Melecio Castro, Mateo Bailon y los moros Taladie y Hasan.

"Entre siete y media y ocho de la noche de la fecha de autos, estando ya cerrado el pabellon de la brigada, pues se aproximaba la hora del descanso y silencio dentro de la prision, mientras el jefe bastonero Villafuerte se hallaba sentado sobre su mesa dentro de la brigada, vio al preso Carreon cerca de el, y en aquel instante el acusado Yabut, dirigiendose a Carreon, le dijo que, si no cobraba a uno que le debia, el (Yabut) le abofetearfa. El jefe bastonero Villafuerte trato de imponer silencio y dijo a los que hablaban que se apaciguaran; pero, entre tanto, el preso Carreon se encaro con el otro preso Saulo cobrandole dos cajetillas de cigarrillos de diez cintimos cada una que le debia. Saulo contesto que ya le pagaria, pero Carreon, por toda contes- tation, pego en la cara a Saulo y este quedo desvanecido. En vista de esto, el jefe bastonero se dirigio a su cama para sacar la porra que estaba autorizado a Hevar. Simultaneamente Villafuerte vio que el preso Yabut pegaba con un palo

(Exhibit C) al otro preso Sabas Aseo, o Asayo, primeramente en la nuca y despues en la cabeza, mientras estaba de espaldas el agredido Sabas, quien, al recibir el golpe en la nuca, se inclino hacia delante, como si se agachara, y en ese momento el acusado Yabut dio un paso hacia delante y con el palo de madera que portaba dio otro golpe en la cabeza a Sabas Aseo, quien cayo al suelo.

"El jefe bastonero Villafuerte se acerco al agresor Yabut para desarmarle, pero este le dijo: 'No te acerques; de otro modo, moriras.' No obstante la actitud amenazadora de Yabut, Villafuerte se acerco y Yabut quiso darle un golpe que iba dirigido a la cabeza, pero Villafuerte lo pudo desviar con la porra que llevaba. Los dos lucharon y llegaron a abrazarse hasta que se le deslizo a Villafuerte la porra que llevaba. Continuaron luchando ambos y el acusado Yabut llego a soltar el palo Exhibit C con que acometia a Villafuerte y habia malherido al preso Sabas Aseo. Despues de aquello, Yabut consiguio zafarse de Villafuerte y se dirigio al otro extremo de la brigada, escondiendose dentro del baño y alli fue cogido inmediatamente despues del suceso por el preso Proceso Carandang, que desempeñaba el cargo de sargento de los policias de la prision."

We reject, as unworthy of belief, the testimony of Yabut that it was Villafuerte, not he, who gave the fatal blow to the deceased Aseo. The testimonies of Santiago Estrada, resident physician of the Bureau of Prisons and Dr. Pablo Anzures of the Medico Legal Department of the University of the Philippines, clearly establish that the death of Aseo was caused by subdural and cerebral hemorrhages following the fracture of the skull resulting from the blow on the head of Aseo. They further confirm the testimony of the four eyewitnesses that the deceased was struck from behind.

On appeal to this court, the appellant advances the following assignments of error:

- "1. The lower court erred in applying article 160 of the Revised Penal Code.
- "2. The lower court erred in holding that the evidence of the defense are contradictory and not corroborated.
- "3. The lower court erred in holding that the crime of murder was established by appreciating the qualifying circumstance of alevosia.
- "4. The lower court erred in finding the accused guilty of the crime of murder beyond reasonable doubt."

In connection with the first assignment of error, we quote article 160 of the Revised Penal Code, in the Spanish text, which is decisive:

"Comision de un nuevo delito durante el tiempo de la condena por otro anterior—Pena.—Los que cometieren algun delito despues de haber sido condenados por sentencia firme no empezada a cumplir, o durante el tiempo de su condena, seran castigados con la pena señalada por la ley para el nuevo delito, en su grado maximo, sin perjuicio de lo dispuesto en la regla 5.^a del articulo 62.

"El penado comprendido en este articulo si no fuere un delincuente habitual sera indultado a los setenta años, si hubiere ya cumplido la condena primitiva o cuando llegare a cumplirla despues de la edad sobredicha, a no ser que por su conducta o por otras circunstancias no fuere digno de la gracia."

The English translation of article 160 is as follows:

"Commission of another crime during service of penalty imposed for another previous offense—Penalty.—Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

"Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such

clemency."

The appellant places much stress upon the word "another" appearing in the English translation of the headnote of article 160 and would have us accept his deduction from the headnote that article 160 is applicable only when the new crime which is committed by a person already serving sentence is different from the crime for which he is serving sentence. Inasmuch as the appellant was serving sentence for the crime of homicide, the appellant contends the court below erred in applying article 160 in the present case which was a prosecution for murder (involving homicide). While we do not concede that the appellant is warranted in drawing the deduction mentioned from the English translation of the caption of article 160, it is clear that no such deduction could be drawn from the Spanish caption. Apart from this, however, there is no warrant whatever for such a deduction (and we do not understand the appellant to assert it) from the text itself of article 160. The language is plain and unambiguous. There is not the slightest intimation in the text of article 160 that said article applies only in cases where the new offense is different in character from the former offense for which the defendant is serving the penalty.

It is familiar law that when the text itself of a statute or a treaty is clear and unambiguous, there is neither necessity nor propriety in resorting to the preamble or headings or epigraphs of a section for interpretation of the text, especially where such epigraphs or headings of sections are mere catchwords or reference aids indicating the general nature of the text that follows. (Cf. *In re Estate of Johnson*, 39 Phil., 156, 166.) A mere glance at the titles to the articles of the Revised Penal Code will reveal that they were not intended by the Legislature to be used as anything more than catchwords conveniently suggesting in a general way the subject matter of each article. Being nothing more than a convenient index to the contents of the articles of the Code, they cannot in any event have the effect of modifying or limiting the unambiguous words of the text. Secondary aids may be consulted to remove, not to create doubt.

The remaining assignments of error relate to the evidence. We have come to the conclusion, after a thorough examination of the record, that the findings of the court below are amply sustained by the evidence, except upon the fact of the existence of treachery (*alevosia*). As some members of the court entertain a reasonable doubt that the existence of treachery (*alevosia*) was established, it results that the penalty assessed by the court below must be modified. We find the defendant guilty of homicide and, applying article 249 of the Revised Penal Code in connection with article 160 of the same, we sentence the defendant-appellant to the maximum degree of reclusion temporal, that is to say, to twenty years of confinement and to indemnify the heirs of the deceased Sabas Aseo (alias Sabas Asayo), in the sum of P1,000. Costs de oficio.

Avanceña, C. J., Street, Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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