

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BONIFACIO ACOPIO, DEFENDANT AND APPELLANT.

G.R. No. 39415. October 17, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant-appellant was charged in the justice of the peace court of the municipality of Misamis, Province of Occidental Misamis, with the crime of homicide, committed by wilfully and unlawfully assaulting and attacking Vicente Miro with a rattan cane and a bolo on February 13, 1933 with the purpose to kill him and without any justifiable motive, thereby inflicting upon him two wounds, one under the left knee and the other on the left wrist, which caused the death of the said Vicente Miro. The defendant pleaded guilty to said charge in the justice of the peace court on February 14, 1933. The provincial fiscal filed an information against the defendant for homicide in the Court of First Instance of Occidental Misamis, but before the beginning of the trial it was substituted by an amended information charging the defendant with the crime of murder as follows:

"Que en o hacia el 13 de febrero de 1933, en el Municipio de Misamis, Provincia de Misamis Occidental, I. F., y dentro de la jurisdiccion de este Juzgado, el referido acusado, voluntaria, ilegal y criminalmente, con alevosia y premeditacion conocida agredio a Vicente Miro con un bolo y un baston de que estaba armado causandole a este una herida en la region poditea izquierda, otra en la region radiometacarpiano izquierda, otra en la region del carpo derecho, otra en la region occipital y una contusion en la frente, interesando vasos importantes de las regiones y a consecuencia de ellas dicho Vicente Miro murio."

The defendant was tried on a plea of not guilty to this amended information, and not on the original information for homicide quoted in the brief of the Solicitor-General.

After hearing the evidence Judge F. Borromeo Veloso found the defendant guilty of the crime of murder, and taking into consideration his lack of instruction sentenced him to suffer seventeen years, four months, and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

Defendant's attorney de oficio makes de following assignments of error:

"1. The trial court erred in finding the deceased was killed treacherously and, therefore, in convicting the accused of the crime of murder.

"2. The trial court erred in not finding the accused guilty only of simple homicide in which the element of an incomplete self-defense was present, together with the mitigating circumstances of (1) lack of instruction, (2) lack of intention to commit so grave a wrong as the one committed, (3) fear of grave danger to himself, (4) illness which diminished the exercise by him of his will power without depriving him of the consciousness of his act, and (5) voluntary surrender and voluntary confession of guilty to the authorities."

It appears from the evidence that on February 11, 1933 the defendant entered the house of Crispina Miro and embraced her against her will. She complained to her uncle, Vicente Miro, who rebuked the defendant. Two days later the defendant went to the house of Vicente Miro and inquired for him. Vicente Miro's wife informed the

defendant that her husband was not at home. The defendant waited in the yard. When Vicente Miro arrived he asked the defendant what he came for, whereupon the defendant immediately struck Vicente Miro with the cane that he, the defendant, was carrying, and then ran away. The deceased entered his house, and after he had rested for half an hour he went out to get his carabao. He was followed by his wife and his 12-year old son. As the deceased was passing through a coconut grove, the accused stepped from behind a coconut tree and struck him with a bolo, cutting the tendon on the back of the left knee, which caused the deceased to drop down. The accused then inflicted on him two other wounds, one on the left wrist and the other above the medulla oblongata. Both the wound on the leg and that on the wrist were mortal.

The defendant then turned on the wife and son of the deceased and pursued them with his bolo.

When the incident was investigated by Lieutenant Aguila of the Constabulary, the defendant maintained that he had wounded the deceased in self-defense with the latter's own bolo, Exhibit C; but Tranquilino Miro, the son of the deceased, said that defendant's statement was untrue, and that the defendant had killed the deceased with a much larger bolo. Defendant's house was then searched, and the bolo, Exhibit A, was found therein. There were stains of coagulated blood on this bolo which had been rubbed over with mud. The small bolo, Exhibit C, which the deceased had been carrying when he was killed, was found to be freshly stained with blood, but in the kitchen of defendant's house a chicken that had just been killed was found, and this fact doubtless explains the fresh stains on the small bolo.

The testimony of Vicente Miro's wife and son, Valentina Muscato and Tranquilino Muscato or Miro, is straightforward and convincing and leaves no doubt as to the guilt of the accused. The trial judge found defendant's witness, Macario Saloma, unworthy of credit, and a reading of the testimony of defendant's father, Bernardino Acopio, convinces us that he was trying to conceal the truth.

The fact that the defendant stepped from behind a coconut tree, where he had been concealing himself, and struck the deceased from behind without warning constitutes *alevosia* and qualifies the crime as murder.

It appears that the defendant is unable to read and write, and the trial judge properly considered defendant's lack of instruction as a mitigating circumstance. The claim of appellant's attorney to other mitigating circumstances is not sustained by the record. The defendant did not voluntarily surrender himself to the authorities or their agents, nor did he plead guilty to the information for murder on which he was tried. He pleaded guilty in the justice of the peace court to the charge of homicide. The contentions of defendant's attorney that the defendant did not intend to commit so grave a wrong as that committed, that he acted out of fear of great danger to himself, and that he was suffering from an illness which diminished the exercise by him of his will power without depriving him of the consciousness of his act are entirely without merit.

As to the aggravating circumstance of premeditation, we are of the opinion that it is not satisfactorily proved.

The decision appealed from is therefore affirmed, with the costs against the appellant.

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

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