

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIA BONKIA, DEFENDANT AND APPELLANT.*G. R. No. 40173. April 02, 1934*

Ponente: DIAZ, J.

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In or about the month of December, 1932, the herein appellant named Sia Bonkia or Sia Boon Kee was charged with murder in the Court of First Instance of Oriental Misamis, but after due trial he was found guilty only of homicide, not murder, and consequently sentenced to twelve years and one day of reclusion temporal with the corresponding accessory penalties, the mitigating circumstance of lack of intention to cause so grave a wrong as that committed having been taken into consideration in his favor, and to indemnify the heirs of the deceased Ang Wan, alias Diana, in the sum of P1,000, with the costs of the proceedings. He appealed from the said sentence assigning nine alleged errors as committed by the trial court, all of which tend to raise the same question, to wit: whether or not he should have been acquitted of all criminal liability for the death of the said Ang Wan.

There is no doubt of the fact, because the defense itself admits it, that Ang Wan, alias Diana, a girl ten or eleven years of age, died in an automobile on her way from the appellant's house, where she was employed as a servant, to the provincial hospital to receive the necessary treatment in order to revive her from the state of collapse and extreme debility in which she was found by a doctor a few hours before. Death must have taken place between 10 and 10.30 o'clock on the night of December 4, 1932, at which time she was removed from the appellant's house. Dr. Jose F. Marfori, who visited said girl some hours before her death, testified that it must have been about 6 o'clock in the afternoon of the said day when he saw the girl who was then almost speechless, motionless and in so serious a condition that her pulse was hardly perceptible, a condition which was very apparent from the extreme pallor of her face. Both before and after her death, contusions and welts were found not only on the arms, face, buttock, back and feet but also on different parts of her body. Exhibit H-I gives a slight idea of the said marks of violence.

The prosecution, by means of its witnesses and other evidence, and particularly by the testimony of Dionisia Cervantes and that of Drs. Jose F. Marfori, Joaquin A. Sanchez and Ramon Santos, tried to show that the said girl's death was due to maltreatment and severe punishment which the herein appellant inflicted upon her because on the morning of December 4, 1932, she had hurt his two small children by pinching one on the nose and pricking the other on one of the cheekbones with a phonograph needle, whereupon the said appellant horsewhipped her and later hung her from a pulley fastened to the ceiling of his room, by means of a rope tied to her wrists, which were crossed at her back, without stopping to consider her apparent state of ill health. The defense, on the other hand, tried to establish that the death of the aforesaid girl Ang Wan, alias Diana, was not due to the maltreatment and punishment inflicted upon her by the appellant on the date in question, but to a fall which she had in the bathroom at about 4 or 5 o'clock that afternoon, hitting her head on the floor or against the wall, which were made of cement, which fall, in addition to the fact that she was then suffering from acute nephritis and chronic bronchopneumonia, caused her collapse from which she never recovered.

In view not only of the marks of violence found on the said girl's body but also of the appellant's own admissions to Dr. Marfori, whom he had called to treat the girl at about 6 o'clock in the afternoon of the said day; to the Provincial Commander of the Constabulary at Cagayan, Oriental Misamis; and to the justice of the peace of the said capital, all of whom went to the appellant's house on the night in question, having been informed of the crime, it may be concluded that at 10 o'clock in the morning of the day in question, the appellant had flogged the said deceased about 40 or 50 times and later, between 1.30 and 2 o'clock in the afternoon, hung her by means of a rope from a pulley which he had in his room.

Drs. Ramon Santos and Joaquin A. Sanchez, the physicians who performed the autopsy on the body of the deceased, expressed the opinion that the girl's death was due to collapse from the maltreatment she had received a few moments or hours before her death; and at the suggestion of Dr. Jesus A. Nolasco, who was among those present at the autopsy, specimens of the lungs and kidneys of the deceased were preserved and personally brought by him to the Bureau of Science of this city for histological and pathological examination. Inasmuch as the analysis of the said specimens disclosed that the deceased, in life, had suffered from acute nephritis and chronic bronchopneumonia, the appellant is now fully determined to show that the collapse which resulted in the girl's death was due to the said two diseases, in addition to the fall which she had when she slipped in the bathroom of his house. All the physicians who testified for the prosecution as well as those who testified for the defense, agree in that the death of the deceased was due to collapse, but they differ with regard to the cause of said collapse. Those for the prosecution maintained that such collapse was due to the maltreatment to which the deceased had been subjected, while those for the defense, in turn, maintained that it was due to her bronchopneumonia and acute nephritis.

The contention of the defense that the fall of the deceased, when she slipped in the bathroom, gave her a shock which also contributed to the said collapse or to hasten her death, is only based on mere inferences because, from the mere fact of the fall, it assumes that the said deceased really hit her head against a wall or on the floor of the bathroom, when the evidence does not show that such a thing ever happened. On the contrary, Dionisia Cervantes, the appellant's servant, who is not a Chinese as are the said appellant and his witness Shua Giok who later turned out also to be the appellant's niece, convinces this court by her affirmation that the deceased, after her wrists had been untied by the appellant and had been laid in bed on account of extreme debility which later overcame her, making some efforts, succeeded in getting up to go to the bathroom to respond to the call of nature, but upon arriving there, she fell not because she slipped or stumbled on any object but because her strength failed her and on that account she could no more arise and again had to be carried to bed by Shua Giok, otherwise known as Nana.

The defense tried to destroy the testimony of said Dionisia Cervantes by calling Nana and the nurse Valentina T. Gatchalian to the witness stand. This court, however, finds the testimony of the said witnesses to be partial and therefore their veracity doubtful, particularly for the following reasons: Shua Giok, according to her own testimony, is the appellant's niece and that fact tends to show that she is naturally interested in defending him; Valentina T. Gatchalian talked from memory when she stated that between 3 and 5 o'clock in the afternoon of December 4, 1932, she had seen Dionisia Cervantes accompanied by the appellant's wife and children in front of the puericulture center building of Cagayan, capital of Oriental Misamis, and later, near the bridge of the said capital, because notwithstanding the lapse of several months from that date to that on which she testified, and notwithstanding the fact that she had not noted it down on any memorandum or in a book, she still remembered said facts in all their details; Valentina T. Gatchalian stated that, aside from the said date of December 4, 1932, she could not accurately remember any other date on which she had seen the appellant's wife or the said witness Dionisia Cervantes; Valentina T. Gatchalian, as nurse, was in attendance every time the appellant's wife gave birth and furthermore she now and then has been taking care of the children of the said spouses, and although she

stated that she never received payment from them, such circumstances disclose the fact that there existed between her and the spouses a relation of sincere friendship which naturally influenced her in favor of the appellant; Dionisia Cervantes is a Filipina who, like the deceased Diana, served as a housegirl in the appellant's house on the day in question as well as on that in which she testified as witness in this case; Dionisia Cervantes had no motive to testify against her master and it would be unnatural for her to distort facts to his prejudice when she felt nothing but gratitude towards him because he had her in his service and was feeding her; Shua Giok testified that she did not carry Ang Wan or Diana after helping her to her feet at the bathroom, but her testimony in this sense deserves no credit on the ground that the fall of the deceased was due precisely to the fact that she was extremely weak, which fact, in addition to the testimony of Dionisia Cervantes, proves that after the deceased had fallen, it was impossible for her to stand up, much less walk to her bed even if aided by Shua Giok, as the latter claims, because after she had been taken down and untied from the pulley from which the appellant had hung her, she became so weak that it was necessary to lay her down on the appellant's own bed; and Dionisia Cervantes categorically affirmed that Shua Giok went to the aid of the deceased only after the latter had fallen inside the bathroom without having seen how the fall occurred because, according to the said witness, she was the only person in the house when the deceased entered there.

What has been said heretofore, in addition to the fact that before she was maltreated by the appellant, the deceased Diana, according to the appellant's testimony, could still perform her routinary duties of taking care of the appellant's children, preparing "basa-basa" or "lugao" and setting the table, etc., clearly shows that she was not so ill from nephritis or bronchopneumonia that, even without her maltreatment with a horsewhip and hanging from a pulley, she would have collapsed and died as a result thereof. That the deceased was not so ill when she was maltreated is shown by the fact that, according to the evidence of the defense, the last time that she was treated by a physician was in or about March or April, 1932, eight or nine months before her death. If she was relatively strong on the day she was maltreated, it is inconceivable how she collapsed so suddenly from her alleged former illnesses of acute nephritis and chronic bronchopneumonia. The truth is that she undoubtedly collapsed from the maltreatment to which she had been subjected, thus aggravating her aforesaid illnesses. Therefore, it may be stated that the immediate cause of the collapse, which resulted in her death, was the maltreatment and the severe punishment which the appellant had inflicted upon her.

The physicians who testified in this case, three for the prosecution and two for the defense, engaged in lengthy discussions on "shock" or collapse, the former claiming that in the case of the deceased, said shock or collapse was the result of the maltreatment to which she had been subjected, without denying thereby, however, that a collapse also may, in some cases, be the result of acute nephritis or chronic bronchopneumonia, or of both diseases at the same time, while the latter claimed that in the said case it was the result of the said diseases. However this may be, or whether the physicians who testified for the prosecution were right or not, it is a fact which we can neither overlook nor set aside because it is so inferred from the testimony of Dionisia Cervantes, who in our opinion deserves credit, that after the appellant had taken down the deceased from the pulley and untied her, she felt so weak that it was necessary to lay her down on no less than the appellant's own bed, a thing as strange as it is unusual, it being of common knowledge that ordinarily there exist a great difference and a wide gap between master and servant; and that it was when the deceased got up from the said bed to go to the bathroom that she fell and collapsed and never recovered.

The defense contends that the injection of the deceased with one-half milligram of strychnine after she had collapsed might have also been one of the joint causes of her death. In this respect, the evidence shows that at the request of the appellant, Dr. Marfori, upon his arrival at the appellant's house at about six o'clock in the evening of the day in question, gave the deceased, whom he found prostrate as above stated, an injection of one-half milligram of strychnine. The injection produced no reaction whatsoever because from the time it was

administered to her until she was taken to the hospital, her condition remained the same, without the least change.

The physicians who testified in the case on the advantages and disadvantages of strychnine in cases of shock, were not in accord, in the same manner as the authorities cited by them are not in accord, foremost among them is Da Costa who, in his book "Modern Surgery", page 292, said:

"Crile has demonstrated experimentally that strychnine is perfectly futile in pure shock and may actually aggravate the condition. In collapse it is of some value. We believe this statement is true clinically. Strychnine goads a heart to increase action when that organ has not sufficient blood passing into it to enable it to contract firmly and strongly. The use of strychnine in shock has been compared by Hare to beating a dying horse to make it pull."

This court is of the opinion that the above quotation from Da Costa is not applicable in this case on the ground that the facts disclose that the condition of the deceased remained unchanged from the time she was injected at six o'clock until she was brought to the hospital at ten or ten-thirty. Said quotation, if applicable at all, would merely serve to show that the aforesaid injection was simply futile because the collapse was already hopelessly fatal.

On the other hand, Dr. Sanchez, as well as Dr. Marfori, advocates the use of the strychnine in moderate quantities (say 1/2 or 1/3 of a milligram) in cases of collapse, and the former cited in his support the author Stevens, who, in his Textbook Sixth Edition, 1933, page 37, said that although strychnine has no direct action on the heart and is an agent which has a feeble action on blood vessels, the weight of clinical evidence is in favor of its usefulness, particularly in cases of general depression or weakness. Dr. Nolasco himself, who testified for the defense, admitted the existence of authorities who advise and recommend the use of strychnine. For this reason, the aforesaid contention of the defense that the strychnine injected into the deceased in the amount of one-half of a milligram might have been one of the joint causes of her death cannot and should not be given any weight.

In view of the foregoing, and inasmuch as under the law any person committing a felony incurs criminal liability although the wrong done be different from that which he intended, it necessarily follows that the appellant is liable for the death of the deceased Ang Wan, alias Diana.

There is no doubt but that the appellant, in inflicting the said severe and cruel punishment upon the unfortunate girl, had no intention to cause so grave a wrong as that he committed and such circumstance should necessarily be taken into consideration to mitigate his liability, in accordance with the provisions of article 13 of the Revised Penal Code.

Wherefore, finding that the appealed judgment is in accordance with the law, it is hereby affirmed in toto, with the costs against the appellant; and in view of the provisions of Act No. 4103, which establish an indeterminate sentence, the minimum of the penalty imposed upon the appellant is hereby fixed at 6 years and 1 day of prision mayor, so that his aforesaid penalty will be understood to be from 6 years and 1 day of prision mayor to 12 years and 1 day of reclusion temporal. So ordered.

Street, Malcolm, Villa-Real, Hull, Butte, Imperial, and Goddard, JJ., concur.

DISSENTING

ABAD SANTOS, J.,

The feeling of righteous indignation naturally aroused by the killing of a young girl under the circumstances revealed in this case, should not be permitted to deviate us from our duty to administer justice with even hand.

The wrong; perpetrated on the dead girl cannot be righted by the commission of another wrong. And because I am convinced that it is an injustice to convict the appellant of voluntary homicide when the evidence clearly shows that he is guilty only of involuntary homicide, I am compelled to register my dissent from the opinion of the majority of the court in this case.

The evidence is clear that the appellant did not have the intention to cause the death of the girl. His purpose was merely to chastise her because of her having maltreated his two infant sons. This is the finding not only of the trial court but also of this court. Thus the lower court says in its decision:

"Las pruebas demuestran que el acusado castigo cruelmente a esta nina sirvienta sin haber tenido intention de matarla, pero esta falta de intencion no le exime de la responsabilidad de la muerte violenta de esta nina que resulto de tales castigos." And the opinion of the majority of this court also says:

"There is no doubt but that the appellant, in inflicting the said severe and cruel punishment upon the unfortunate girl, had no intention to cause so grave a wrong as that he committed and such circumstance should necessarily be taken into consideration to mitigate his liability, in accordance with the provisions of article 13 of the Revised Penal Code."

According to the medical expert who testified for the prosecution, the physical injuries inflicted on the girl by way of punishment would have required medical treatment for only ten days, so that the crime which the appellant can reasonably be presumed to have intended to commit was that of less serious physical injuries defined in article 265 of the Revised Penal Code and punished with *arresto mayor*.

The rule is: "If the unlawful act, in the commission or attempted commission of which death results, is of the grade of crime known as felony, the slayer will be deemed guilty of murder; whereas if the act is less heinous than felony, the slayer will be held to have committed manslaughter. Indeed, the grade of culpable homicide known as involuntary manslaughter includes all such killings as result unintentionally from the commission of unlawful nonfelonious acts, or the negligent performance of acts which are not unlawful per se. As to what crimes are felonies within the rule that one is guilty of murder who causes a death in the commission of a felony, the courts are generally agreed that offenses punishable by imprisonment in the state prison are felonies." (13 R. C. L., 846, 847.)

It has been held that an unlawful killing done without any design, intention, or purpose of killing, but in the commission of some unlawful act not amounting to a felony, is involuntary manslaughter. (*Adams vs. State*, 65 Ind., 565; *Bias vs. United States* [Ind. Terr.], 53 S. W., 471.)

In *United States vs. Meagher* (37 Fed., 875), the court declared that involuntary manslaughter at common law is where death resulted unintentionally, so far as the defendant was concerned, from an unlawful act on his part, not amounting to a felony, or from a lawful act negligently performed.

It has likewise been declared that involuntary manslaughter includes all those homicides which were below the grade of murder, and were neither justifiable nor excusable, and which were the accidental result of some unlawful act, less than a felony, not aimed or directed against the person slain. (*McManus vs. State*, 36 Ala., 285.)

"Voluntary and involuntary manslaughter differ from each other in that in the first the unlawful killing is voluntary ;—that is, the killing is done by design, or intention, or purposely; and in the second the unlawful killing is involuntary;—that is without any design, intention or purpose of killing, but in the commission of some unlawful act." (*Adams vs. State*, 65 Ind., 566.)

Our statutes contain no specific definition of what is known at common law as involuntary manslaughter, but it is clear that the acts constituting involuntary manslaughter come within the purview of article 365, in connection

with article 249, of the Revised Penal Code. Said article 365 provides that any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period; and defines reckless imprudence as consisting "in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place."

The provisions of articles 4 and 49 of the Revised Penal Code should be given reasonable interpretation. They should be interpreted in connection with the other provisions of the Code and in consonance with the enlightened principles of criminal law, such as those enunciated in the cases above cited. Under this view, it seems reasonable to hold that where death resulted unintentionally, so far as the defendant was concerned, from an unlawful act on his part, not amounting to a felony, or from a lawful act negligently performed, the crime committed is that of homicide by reckless imprudence as defined and penalized in article 365, in connection with article 249, of the Revised Penal Code.

In the case at bar, the evidence clearly shows that death resulted unintentionally, so far as the appellant was concerned, from an unlawful act on his part, not amounting to a felony. I am, therefore, of the opinion that he is guilty of homicide by reckless imprudence, and should be sentenced accordingly.

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