

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS DOMINGUEZ, DEFENDANT AND APPELLANT.

G.R. No. 42941. July 25, 1935

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Occidental Negros of the crime of homicide. The complaint alleges that between 11 o'clock on the night of the 12th of November, 1932, and 3 o'clock in the morning of the 13th of November, 1932, the accused-appellant being a policeman of the municipality of Silay, Occidental Negros, did abuse a prisoner under his control, one Diego Apinan, by giving him various blows with a cachiporra (a stick with a big knob frequently used by municipal policemen). The blows, according to the complaint, were given on various parts of the body but principally on the head, causing intercranial hemorrhage, which resulted in death.

The evidence shows that early on the morning in question the deceased, who was then a detention prisoner in the municipal building, was discovered in a state of collapse, and his brother and the district health officer of Silay, Dr. Cenen Gamboa, were sent for. When Dr. Gamboa arrived he found Diego Apinan with a frothy mouth, slow breathing, pupils dilated, pulse: almost absent, and also having a convulsion. He gave him an emergency treatment of an injection of 1 c. c. of camphor and other first aid, believing that he was suffering from a cardiac attack. Notwithstanding the emergency aid, Apinan died in a few minutes. The only other unusual thing he noticed about the body at that time was that the sweater the deceased was wearing was wet from saliva.

About ten hours later, at the request of the provincial fiscal, Dr. Esteban Fabie, chief district health officer of the Province of Occidental Negros, went to Silay and aided by Dr. Cenen Gamboa, performed an autopsy on the body of Apinan. Dr. Fabie's medical certificate reads as follows:

"1. Date of examination—November 13, 1932; time— 2:30 p. m.; place—municipal dispensary of Silay, Occidental Negros—identified by chief of police of Silay.

"2. Age given 21, apparent age, same; social condition—single and orphan by both parents.

"3. External appearance—in general emaciated and rather thin, pale discoloration of skin on the front part, no wound, no abrasion, no sign of any kind of injury, pressure or other mark such as swelling, depressions etc. The mouth was foaming when first seen this morning and the body was lying flat with face upwards with arms and hands on the sides of the body, the palms not closed or clasped but semiflexed fingers only. There was a generalized discoloration on the back particularly those regions in contact to the wooden bed; from the back of the neck to those same regions of the body and legs there was observed a dark violet cadaverish discoloration. No mark of injury, contusion, pressure or any kind except a little one-inch contusion similar to mark that may be made by slender whip, on the left middle area of the back below the scapula horizontally placed but not deeply made nor swollen.

"4. Internal examinations. The brain does not show any hemorrhage or any abnormality except that the

blood-vessels were slightly congested with blood. No mark of severe pressure on the skull without or within. The thoracic cavity did not show any fluid, blood nor adhesions of the thoracic viscera. The lungs are not normal in that there were palpable within the tissues tubercles of varied sizes; the lungs did not contain much air as could be noticed by squeezing the tissues. No hemorrhage noticed. The heart was enlarged full of liquid dark blood in both the auricles and ventricles of the left side. On opening the heart, there were noticed the following: left auriculo-ventricular valves thickened with vegetations on the edges, cordae tendineae are not normal as to length and tensile strength. The findings could be noticed in the right side also but to slight extent only. There was no abnormality found in the abdominal viscera.

"5. The person must have been suffering from chronic disease of the heart as noticed in the examination of that organ. While no laboratory and microscopic examination made on the different organs, still we are led to the conclusion that the person died of cardiac failure. There was incipient tuberculosis to be sure but this could have not caused any effect enough to kill the person.

(Sgd.) "E. A. Fabie
"District Health Officer"

The family of the deceased not being satisfied, two private doctors, witnesses for the prosecution, Drs. Manuel Tad-y and Jose Abelarde, made another post-mortem. Their certificate reads:

"REPORT OF THE AUTOPSY PERFORMED ON DIEGO APINAN BY
DR. MANUEL C. TAD-Y and DR. JOSE F. ABELARDE

"Time: 11:00 p.m.

"Date: November 14, 1932

"GENERAL EXAMINATION:

"The deceased Diego Apinan is well built, of about (5) feet tall. No external sign on front of the body was found. At the back, on the right, just below the scapula a bruise was found of about three (3) inches in diameter. External examination of the skull:

"Fronto-parietal Negative

"Occipital Depression

on the scalp and bone of about two (2) to three (3) inches long was found and behind this scalp, a bruise of about three (3) inches in diameter was present. Coagulated blood was found between the scalp and the skull.

"EXAMINATION OF THE BRAIN :

"Transverse, clear-cut incision caused by previous autopsy, cutting both hemispheres transversally. Right lateral ventricle of brain filled with coagulated blood. Brain in this part was in state of putrefaction. The amount of blood found in the ventricle was about three ounces.

"EXAMINATION OF THE INNER PART OF THE SKULL :

"A fracture was found extending from the right inferior occipital fossa of right occipital bone just below the sulcus transversus. The fracture is about three (3) to four (4) inches long and extends from sulcus sagittalis to interior angle of petrous portion of temporal bone just behind the root of processus zygomaticus.

"CAUSE OF DEATH :

"Fracture of the occipital bone with intra-cranial hemorrhage.

(Sgd.) "JOSE F. ABELARDE, M. D.

"MANUEL C. TAD-Y, M. D."

Subsequently, with the authority of the Court of First Instance, the body was exhumed, and the skull detached under the supervision of Dr. Santiago Ochoa of the Government Provincial Hospital at Bacolod. The skull was retained and presented to the court for inspection.

The second post-mortem, outside of the inspection of the body, was limited to an examination of the skull and brain. The doctors at the first post-mortem stated that they restored the heart to the cadaver before the body was turned over to the family for burial. The doctors who performed the second post-mortem claimed that they did not open the thoracic cavity because they had been, told by the family that the heart was no longer in the body.

Outside of the medical testimony, the principal witness for the prosecution was one Calixto Balidio, who arrived at the municipal building in order to spend the night with his son, who was confined in the municipal jail. He testified that the deceased was asking to be taken out because the room in which he was confined was too warm, that the accused finally went into that room, turned off the light, and a short time thereafter the witness heard noises produced by several successive sharp blows, while the deceased in turn was shouting "Help! . . . Help! . . . Enough!"

These cries were claimed to be heard by the witness Salvacion Raullo, who was then watching over her sick daughter confined in the lying-in hospital situated behind the municipal building of Silay, and by a woman named Gorgonia Montinola, who was in a neighboring house reading.

Calixto Balidio, after this occurrence, went to sleep and did not wake up until after the arrival of the doctor. The brother of the deceased, who saw him at about the same time as the doctor, said blood was dripping from his lower lip, that there were blood stains on his sweater, and that there was a bump on the right side of his forehead. The accused, the chief of police, and other policemen denied that there was any beating up or cries for help.

Considerable comment appears in the decision of the trial court that the first post-mortem was irregular and improper because the practice advised in a late work on medical jurisprudence as to the taking of accurate measurements and descriptions of the organs of the deceased for preservation and ultimate production in court was not followed. The same criticism could be directed to the second post-mortem. Where a death is likely to result in court proceedings, especially where the life or liberty of persons may be involved, the greater the care and precision given by the doctors performing the post-mortem, the better it is. But it is also recognized that in many outlying municipalities in these Islands, the facilities for making an ideal post-mortem do not exist, as they do in a thoroughly equipped hospital. The answer of one of the doctors, when he was badgered because he had not weighed the heart, that "there were no scales available", was reasonable.

Only the brother saw the bump on the forehead. All of the doctors testified that there was no mark or bruise on the forehead, face, hands, arms, or chest. The testimony that there were repeated blows given by the accused on the body of the deceased must therefore be held to be incorrect. Not being unconscious, as is shown by the outcries that the same witness testified to, one receiving such punishment would naturally attempt to ward off repetitions of the blows by the use of his arms and hands, and had that been done, signs of such blows would have appeared upon the arms and body of the deceased, as was alleged in the complaint. The representative of the Solicitor-General in oral argument had the temerity to suggest that all the blows landed on the same identical spot of the head of the deceased. The mathematical improbability of such an occurrence is so great that that solution cannot be seriously entertained, and we are driven to the conclusion that the witnesses were testifying to something untrue ;md that, if any blow was struck, there was only one.

The second set of doctors testified that they found a small bump on the right side of the head, which was not found by the government doctors, but the most remarkable part of their findings was that there was a fracture of the skull three to four inches long. After making such a finding the body was buried, and such a statement, would have

been accepted as true, in all probability, had the skull not been exhumed and when examined showed no sign of fracture. The word "fracture" was thereupon omitted from the testimony of these two doctors, but they talked at length about a depression which they found on the inside of the skull. We are not here discussing the skull of an infant but the skull of an adult. It is not made of soft material easily bent, but of hard bone that cannot be bent but can be fractured. Both the trial court and the representative of the Solicitor General in oral argument contend that there might have been a fracture of the skull but that the evidence thereof was destroyed by the way the skull was sawed open during the first autopsy, but even if that had been done, it could not have justified the two private doctors in stating as a fact that there was a fracture, describing it, when at the most, the evidence thereof was destroyed almost two days before they had been called into the case. The fact that they certified that there was a fracture between three and four inches long existing at the time they made their examination, when in truth and in fact no such fracture could have been seen by them, throws serious doubt upon any statement that they may make in this case. And speaking of accuracy in post-mortem, they say in their oral testimony that the amount of blood found in the right ventricle of the brain was about one-half a coffee cup, and one of the doctors added "or three teaspoonfuls". What was used in their certificate, namely, "about three ounces", is a much more accurate statement than "half a coffee cup", and three ounces would be eighteen teaspoonfuls. It was suggested by one of the government doctors that the brain having been cut in two during the first autopsy, a certain amount of blood would drain into the cavity.

As far as shown by the record, Dr. Fabie, the chief district health officer, was a stranger to the parties, and it is hard to believe that he virtually entered into a conspiracy to cover up the evidence of the commission of a crime which in no way concerned him.

The case was investigated at the time by the then provincial fiscal, and no action was taken. Upon his promotion to the bench and the appointment of a new fiscal, these proceedings were started about a year thereafter. A private prosecutor was active in the presentation of the case for the government.

We find that on the whole record the guilt of the accused has not been proven beyond a reasonable doubt and direct his acquittal and discharge from custody.

Costs in both instances de officio. So ordered.

Avanceña, C.J., Abad Santos, Vickers, and Recto, JJ., concur.

Judgment reversed, defendant acquitted.

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