

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NARCISO YAMUT, DEFENDANT AND APPELLANT.*G.R. No. 43255. September 02, 1935*

Ponente: VICKERS, J.

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Convicted of homicide in the Court of First Instance of Oriental Misamis and condemned to an indeterminate sentence from ten years and one day of prison mayor to seventeen years and four months of reclusion temporal, to indemnify the heirs of the deceased Petra de Diaron in the sum of P1,000, and to pay the costs, the defendant has appealed to this court and through his attorney de officio alleges that the lower court erred in believing the preposterous theory of the prosecution, and in not finding that the accused-appellant acted in self-defense against the treacherous attack of the deceased.

It appears from the evidence that Eugenio Diaron, alias Taning, husband of Petra de Diaron, had a dispute with Maximo Gonzales over the result of a jantac game. This occurred about ten o'clock at night in the barrio of Odiongan, in the municipality of Gingoog. Diaron took possession of the one peso bill, which was the sum involved, but Maximo attempted to snatch it away from him and the bill was torn in two. Diaron picked up the part of the bill that had fallen to the ground and went home. Gonzales followed him. Disregarding the demands of Gonzales for the return of the money, Diaron entered his house, closed the door, and went to bed. Maximo then went to the house of Jacinto Malimas, a municipal councilor and the lieutenant of the barrio of Odiongan. The municipal treasurer and the defendant policeman were spending the night in the house of Malimas, which was not far from that of Diaron.

Accompanied by the defendant in his underclothes, Maximo Gonzales returned to the house of Eugenio Diaron. The defendant knocked on the door and told Diaron to give the money in dispute to Gonzales. Without opening the door, Eugenio told the defendant he could not give the money to Maximo because it was a bet he had won, that if Maximo thought he was entitled to it he might complain to the lieutenant of the barrio the next day. Diaron's wife, Petra, annoyed that she should be disturbed over such a matter at that time of the night, began to express her opinion of the jantac players of Odiongan in strong language. Aggrieved by the refusal of Diaron to comply with his order as well as the offensive language of Petra, defendant left the house with Gonzales, warning Diaron and his wife to take care if they did not return the money because he would come back. The exchange of words between Eugenio Diaron and the defendant and the remarks of Diaron's wife had been overheard by the near neighbors, among whom were Ariston Brodeth and his wife, Sofronia Mendoza, and Leoncia de Lucido. Diaron and his wife went outside, and while Diaron looked around his house with a flash light, Petra sat on the steps and hurled offensive epithets at the defendant and Gonzales for having disturbed her and her husband at that time of the night. While she was still sitting on the steps and continuing her tirade, the defendant wearing a khaki shirt and carrying a revolver and a flash light returned with Gonzales. The defendant called out "justicia" and Gonzales said "pegala", whereupon the defendant fired at Petra hitting her in the arm. Gonzales ran away. Petra threw up her hands and said: "Senor, si no hemos hecho nada." The defendant then fired another shot. Petra

grabbed an ax and fell down at the foot of the stairway. After she had fallen to the ground, the defendant fired a third shot. He tried to pull the ax away from her, but as she held on to it he dragged her away from the stairway with his left hand, still holding the revolver in his right hand, and putting his foot on her breast he succeeded in snatching away the ax. Ariston Brodeth shouted to the defendant to let the woman alone. Petra cried for help, and the defendant let go of her and went away. Diaron appeared and began to cry and shout in a loud voice. The defendant came back, and Diaron ran to the house of Ariston Brodeth. The defendant followed him and attempted to enter Brodeth's house carrying a revolver and an ax. The defendant said that he was wounded on the arm, and Brodeth told him he had better go to the house of the councilor to have his wounds treated.

The injured woman was treated by Dr. E. P. Pascual in the hospital of the Anakan Lumber Company. She had the following gunshot wounds: One in the right arm, with an upward direction, one in the left thigh, and one in the left side. She also had a bruise on her chest. She died on February 21, 1934.

The contention of the accused is that he acted in self-defense; that while approaching Eugenio Diaron, who was stepping backwards, the defendant was struck on the back of the neck with an ax and knocked down by a person who came from behind a tank; that just before he received the blow someone shouted to him to take care; that he fired the first shot while he was lying on the ground; that he received a blow on the left forearm and fired two shots; that he then made use of his flash light and saw a woman who had already fallen down, brandishing an ax; that he snatched the ax away from her and went to the house of Brodeth, where he saw Eugenio Diaron with a bolo; that he told Diaron not to approach him because he was wounded; that he then went to the house of the councilor. The defendant further testified that he was awakened by the municipal treasurer, and that in his haste he took the revolver of the municipal treasurer by mistake instead of his own revolver; that he was accompanied by Carlos Enriquez and Maximo Gonzales, who had notified the councilor of the fight; that when he reached the place where Eugenio Diaron was brandishing a bolo, he told Diaron to lay down his bolo, but Diaron refused to do so, and when the defendant told him that he was a policeman, Diaron said he would split his head open; that as he was then in his underclothes he went to the house where he was staying and put on his uniform and badge and, accompanied by Maximo Gonzales and Carlos Enriquez, returned to the house of Eugenio Diaron who was still brandishing his bolo; that he again told Eugenio to lay down his bolo, but the latter refused to do so and repeated his threat.

According to the testimony of the witnesses for the prosecution, which was accepted as true by the trial judge, there was no fight or any brandishing of a bolo, but after the dispute as to who won the bet, Eugenio Diaron went home and went to bed. Ariston Brodeth, who appears to be an intelligent and trustworthy witness, testified that Diaron was unarmed when he entered Brodeth's house pursued by the defendant. Although the defendant testified that he carried a revolver when he first went to the house of Diaron, we are satisfied that this is not true. Maximo Gonzales himself testified that the defendant carried only a flash light. If there had been a fight and Eugenio Diaron was brandishing his bolo, the defendant would have undoubtedly taken his revolver and badge when he went to arrest Diaron. It results that the intervention of the defendant in the dispute between the two gamblers as to who had won the bet was officious, and the defendant took advantage of his position in trying to make Diaron deliver the money to Gonzales. Angered by Diaron's refusal to comply with his order and the offensive language of Diaron's wife, the defendant went back to the house where he was staying and put on his khaki shirt and badge and got a revolver, and then returned to the house of Diaron determined to make the latter respect his authority.

The fact that one of the bullets fired by the defendant was found near the stairway where Petra de Diaron was sitting disproves the contention of the defendant that he was attacked by her from behind, and leaves no doubt in our minds that the facts as to what occurred are substantially as related by the witnesses for the prosecution. If Diaron had brandished his bolo and threatened to kill the defendant, the defendant would naturally have reported

those facts to the councilor when he returned to the councilor's house, because the defendant claims to have been sent out by the councilor in the first place, but it does not appear that the defendant said anything to the councilor when he came back to get his revolver. The councilor was not called to testify.

The record shows that the ax which the defendant snatched away from Petra de Diaron was wide and thick and had a handle made of palma brava. If she had struck him on the back of the neck with this ax, as he claims, it would have caused more than a slight bruise. It would have seriously injured him and rendered him unconscious. Furthermore, if the deceased woman was sitting on the steps, as the evidence shows she was, she could not have hit the defendant, who was standing at the foot of the steps and facing her, on the back of the neck. It is clear therefore that if the defendant had any bruise on the back of the neck, as claimed by him and the sanitary inspector, it was caused in some other way.

That the defendant snatched the ax away from Petra de Diaron after she had been wounded, as stated by the witnesses for the prosecution, is admitted by the defendant. The defendant had his revolver in his right hand, and in pulling away the ax with his left hand while the injured woman was holding the handle of it he might easily have received the wounds on his arms. The defendant corroborated the testimony of the witnesses for the prosecution that after snatching the ax away from Petra de Diaron he followed her husband to the house of Ariston Brodeth. In this connection it should be observed that in the complaint filed by the chief of police of Gingoog against Eugenio Diaron for assault upon an agent of the authorities it was alleged that the defendant herein, Narciso Yamut, was wounded in the left arm by Diaron's wife with an ax, but no other wound or injury was mentioned.

The direction of the wounds as shown by the testimony of Dr. Pascual is in harmony with the theory of the prosecution, and his testimony as to the bruise found on the breast of the injured woman shows that it could have been caused as stated by the witnesses for the prosecution.

The guilt of the accused, as found by the trial judge, is in our opinion proved beyond a reasonable doubt. It appears that in the commission of the crime the aggravating circumstances of dwelling and abuse of position were present, but they are offset by the mitigating circumstances of obfuscation and voluntary surrender.

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

Abad Santos, Hull, Diaz, and Recto, JJ., concur.

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