

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NATIVIDAD LUAGUE AND WENCESLAO ALCANSARE, DEFENDANTS AND APPELLANTS.

G.R. No. 43588. November 07, 1935

Ponente: RECTO, J.

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RECTO, J.:

The spouses Wenceslao Alcansare and Natividad Luague having been charged with homicide, in the Court of First Instance of Occidental Negros and sentenced, the former to the penalty of from eight years and one day of prision mayor, as the minimum, to fourteen years, eight months and one day of reclusion temporal, as the maximum, with the accessories of the law, and the latter to that of from six years and one day of prision mayor, as the minimum, to twelve years and one day of reclusion temporal, as the maximum, with the accessory penalties of the law, both to indemnify jointly and severally the heirs of Paulino Disuasido in the sum of one thousand pesos, with costs, appealed to this court for a review of the judgment rendered against them, praying that the same be reversed and that they be acquitted.

Upon examination of the appeal, it appears: that in the morning of February 18, 1935, while the accused Natividad Luague was in her house situated in Lupuhan, barrio of Agpafigi, municipality of Calatrava, Occidental Negros, with only her three children of tender age for company, her husband and coaccused Wenceslao Alcansare having gone to grind corn in Juan Garing's house several kilometers away, Paulino Disuasido came and began to make love to her; that as Natividad could not dissuade him from his purpose, she started for the kitchen where Paulino followed her, notwithstanding her insistence that she could by no means accede to his wishes, for Paulino, bent on satisfying them at all cost, drew and opened a knife and, threatening her with death, began to embrace her and to touch her breasts; that in preparing to lie with her, Paulino had to leave the knife on the floor and the accused, taking advantage of the situation, picked up the weapon and stabbed him in the abdomen; and that Paulino, feeling himself wounded, ran away jumping through the window and falling on some stones, while the accused set forth immediately for the poblacion to surrender herself to the authorities and report the incident.

Natividad Luague's act in mortally wounding Paulino Disuasido, unaided by her husband and coaccused Wenceslao Alcansare, and in the circumstances above set out, constitutes the exempting circumstance denominated in article 11, subsection 1, of the Revised Penal Code, because, as stated by a commentator of note, "aside from the right to life on which rests the legitimate defense of our person, we have the right to property acquired by us, and the right to honor which is not the least prized of man's patrimony" (1 Viada, 172, 173, 5th edition.) "Will the attempt to rape a woman constitute an aggression sufficient to put her in a state of legitimate defense?" asks the same commentator, "We think so" he answers, "inasmuch as a woman's honor cannot but be esteemed as as right as precious, if not more, than her very existence; this offense, unlike ordinary slander by word or deed susceptible of judicial redress, is an outrage which impresses an indelible blot on the victim, for, as the Roman Law says: *quum virginitas, vel castitas, corrupta restitui non potest* (because virginity or chastity, once defiled, cannot be restored). It is evident that a woman who, thus imperiled, wounds, nay kills the offender, should be afforded exemption

from criminal liability provided by this article and subsection since such killing cannot be considered a crime from the moment it became the only means left for her to protect her honor from so great an outrage." (1 Viada, 301, 5th edition.)

Similar to the present question was the one determined by the Supreme Court of Spain in a decision of February 21, 1911: "This court in due homage to the principles of morality and in strict observance of the provision of law justly interpreted, has always held that one of the rights referred to in article 8, subsection 4, of the Penal Code, is that which assists a woman in defense of her honor when an attempt is made against it reasonably necessitating the use of violent means to repel the aggression or to avoid in time the imminent danger of its consummation; and in view of this, it must be conceded upon the findings of the trial court, that the accused Maria Sanchez Canistro acted in legitimate self-defense, because the conduct of Diego Cardenas, who made love to her, in blowing in at midnight, knocking at the door and demanding admittance and against Maria's refusal, insisting in his purpose and threatening to break open the door, in the light of prior events and the circumstances of the case, implies the imminence of an affront against honor, involving an actual and certain danger to the person so threatened, while at the same time the fact that she was alone; that no help was forthcoming; her founded fear that the door might give way and the dreaded evil wrought, her consequent helplessness on the advent of that crisis, and her natural desire to attest openly her conjugal fidelity by foiling all suspicious aspersions, show the reasonableness of the defensive measures availed of by her and warrant her complete exemption from liability, inasmuch as, aside from all these, it does not appear from the decision that said accused had previously committed any act deserving of censure or marring the just motive which obviously induced her to repel, as she did, a violence unprovoked by her. Thus viewed, all the requisites of the exempting circumstance above mentioned are present and should be taken into consideration, etc." (1 Viada, 303, 304, 5th edition.)

The theory of the prosecution, which we consider a trifle unsubstantial is as follows: The accused Wenceslao Alcansare, thinking that Paulino importuned his wife with unchaste advances, out of jealousy, decided! to get rid of him. His chance to bring about his plan came when, in the morning of the crime, Paulino happened to pass in front of the house of the spouses with his friend Olimpio Libosada. The accused wife invited Paulino to drop in, which the latter and his, friend did. The spouses met them at the threshold. The accused wife asked Paulino whether he had a knife and as the latter answered in the affirmative, she asked him to lend it to her because she wanted to cut her nails, to which Paulino willingly acceded. While the accused wife was cutting her nails, she asked Paulino where he came from and the latter answered, turning his head around, that he came from the house of one Inting, whereupon the accused wife slashed him in the abdomen. Paulino tried to return the blow but the accused husband picked up a stone and struck him in the forehead. Wounded in the abdomen and in the forehead, Paulino fled therefrom.

The government presented three witnesses to establish this theory. Pablo Alvarez, barrio lieutenant of Cabungahan, testified that on his way to "comunal" the day before the crime, he met the accused wife who told him that she had wanted to see him and ask his help because her husband, who was jealous of Paulino, was maltreating her and he was furthermore resolved to assault Paulino at sight. On the following day, Alvarez, on his way to Bacacay, dropped in the house of the accused spouses to inquire whether they had tobacco seeds and, as they answered him in the negative, he went his way. He had hardly left the place when Paulino and Olimpio arrived, the accused wife inviting the former to drop in. Paulino and Olimpio went to the threshold of the house and the accused spouses, in turn, went down, and the four engaged in a conversation which, to Alvarez, seemed a friendly one. The witness left and when he returned to the place sometime later, he was informed that, Paulino had been stabbed.

The accused were from the barrio of Agpangi and not from Cabungahan where the witness was the barrio

lieutenant. Had the accused wife gone to complain against the alleged conduct of her husband, she would have sought the lieutenant of Agpangi, her barrio. The accused wife, by reporting the incident directly to the municipal authorities without seeking the intervention of any barrio lieutenant, showed that she knew where to go in a difficulty.

Were it true that the accused husband, prompted by jealousy, designed to do away with Paulino, it would have been because he observed that his wife somehow returned Paulino's attentions, for otherwise he would not have indulged in tragic cogitations. From any point of view, however, it is quite incomprehensible why the wife would take upon herself, and the husband would charge her with, the execution of the plan. The observation is no less true if the spouses plotted in common for it would have been patently disgraceful and cowardly of the husband to thrust its execution upon the wife at the hazard of her life, and liberty to shield his own, in the event of prosecution; and there is really nothing of record compelling the supposition that the husband was thus minded. Under, the theory of the prosecution, whether the accused husband doubted his wife's fidelity or was sure of it, in connection with Paulino's attentions, the natural thing in either case would be for him, unaided by his wife, to avenge the affront or punish the offender. In the case at bar, we must assume that, if the motive attributed to him by the prosecution were true, the accused would have acted, as would the great majority of men in identical circumstances. The witness Alvarez, himself testified that he was informed the day before by the wife of the accused husband that the latter would get even with Paulino at the first opportunity.

The witness saw them together in the morning of the crime and he should have surmised that the announced tragedy might take place. Rather than foil it, as an agent of the law, if for no other reason, he went his way unconcerned, as if nothing serious was impending. We find his conduct, or that which he claims to have fallowed, so extremely strange to be considered true. When the truth is beyond our reach, as is often the case, we have to be contented with the probable. This is the basis of the so-called presumptions of fact. The acts which this witness claims to have done are so out of the ordinary conduct of men as to be devoid of probability. Occasionally, indeed, there are those who behave strangely, but this is the exception and not the rule.

In addition to this, the theory of the prosecution that the accused husband and his wife had conspired to kill Paulino is overcome by the very facts which the prosecution itself has attempted to prove. If such conspiracy had really existed, the accused spouses would have been fully prepared to carry it into execution, because rational beings differ from those who are not in that when they embark on anything, they make the means equal to its realization. However, these accused, on the occasion, had neither a rusty bolo nor an outworn club to cope with Paulino. The weapon with which Paulino was first wounded was his own knife which, according to the prosecution, the accused wife had to borrow from him on the pretext that she wanted to cut her nails, and later a stone which the accused husband casually picked up from the ground. Yarns of this kind make good material for fables.

Angel Emia, the other government witness who testified at the trial that he saw the crime attributed to the two accused by the prosecution, made a previous statement wherein he disclaimed knowledge of who had stabbed Paulino. Required to explain the contradiction, he bungled in his attempt. The trial judge erred in giving him credit.

Olimpio Libosada, another government witness, likewise affirmed that he had seen all that had transpired, claiming that he then accompanied Paulino. It seems strange, however, that in the two statements made by Paulino before his death he did not state that he was accompanied by Libosada or by any other person in the morning of the crime. It likewise happens that the conduct of this witness, according to his own testimony, appears to be inconsistent because he did nothing to defend and help Paulino, his friend and companion, in that most critical moment, and did not report the crime to the authorities, disappearing from the scene all of a sudden with the very

frivolous excuse that "he was afraid to be implicated". Furthermore, after discarding the testimony of Angel Emia, there is nothing to corroborate that of Olimpio Libosada which, by its inherent weakness, cannot alone and unsubstantiated by other reliable incriminatory circumstances, support a judgment of conviction.

As to the two statements, Exhibits C and D, styled antemortem by the Solicitor-General, the trial court properly disregarded them because there is no evidence of record that Paulino had made them under a sense of impending death and with no hope of recovery.

The trial judge gave unusual importance to the testimony of the two policemen who testified that they made an ocular inspection of the scene of the crime and found no bloodstain in the kitchen of the house of the accused spouses. This, according to the trial judge, destroys the theory of the defense that Paulino was stabbed in said kitchen by the accused wife when he tried to He with her through intimidation and violence. We are of the opinion that the trial judge erred on this point as he did on others. It appears that the said policemen did not also find any bloodstain on the threshold of the house of the accused spouses where, according to the prosecution, the aggression took place. Therefore, said testimony contradicts the defense no less than it does the prosecution.

In resume, we are of the opinion that we should, as we do hereby hold that the accused Natividad Luague in wounding Paulino Disuasido to death, acted in legitimate selfdefense, and that the other accused Wenceslao Alcansare had no participation in said act; wherefore, reversing the appealed judgment, we hereby acquit both accused, and order their immediate release, if in confinement, with costs de oficio.

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

Judgment reversed and defendants acquitted.

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