

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EPIFANIO DIOKNO AND ROMAN DIOKNO, DEFENDANTS AND APPELLANTS.

G. R. No. 45100. October 26, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Epifanio Diokno and Roman Diokno appeal to this court from the judgment of the Court of First Instance of Laguna, the dispositive part of which reads as follows: "In view of the foregoing considerations, the court finds the accused Epifanio Diokno and Roman Diokno guilty of the crime of murder, beyond a reasonable doubt, and sentences each of them to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the sum of P1,000 and to pay the costs of the suit. "It is so ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the court a quo in its judgment in question, to wit:

- The lower court erred in accepting Exhibit E as evidence.
- The lower court erred in admitting Exhibit K as evidence.
- The lower court erred in not acquitting the appellant Roman.
- The lower court erred in sentencing the appellant Epifanio to reclusion perpetua."

The following facts have been proven beyond a reasonable doubt during the trial:

The deceased Yu Hiong was a vendor of sundry goods in Lucena, Tayabas. At about 7 o'clock in the morning of January 4, 1935, Salome Diokno, to whom Yu Hiong was engaged for about a year, invited the latter to go with her. Yu Hiong accepted the invitation but he told Salome that her father was angry with him. Salome answered him: "No matter, I will be responsible." At about 6 o'clock in the afternoon of said day, Yu Hiong and Salome Diokno took an automobile and went to the house of Vicente Verina, Salome's cousin, in Pagbilao. As they found nobody in the house, they went on their way up to San Pablo, Laguna. On January 5th or 6th of said year, Roman Diokno telegraphed his father Epifanio Diokno, who was in Manila, informing him that Salome had eloped with the Chinese Yu Hiong. On the morning of January 7, 1935, Epifanio Diokno and Roman Diokno went to San Pablo, Laguna, in search of the elopers. Having been informed that the latter were stopping at the house of Antonio Layco, they went there. Upon arriving near the house, they saw Yu Hiong coming down the stairs. When Yu Hiong saw them, he ran upstairs and they pursued him. As the Chinese found the door of the house locked, he shouted that it be opened for him. At that moment, he was overtaken by the accused who carried knives locally known as balisong, of different sizes. Yu Hiong fell on his knees and implored pardon. In that situation Roman Diokno stabbed him with the knife in the back and later in the left side. Epifanio Diokno also stabbed him once. Yu Hiong fell on the landing of the stairs in the balcony, and there he was again stabbed repeatedly. Then Roman Diokno said: "Enough, father." Yu Hiong lost consciousness. Juan Alcantara, who lived on the same street, Hermanos Belen, in front of Antonio Layco's

house, saw the accused pursue Yu Hiong and fired shots for the police to come. Upon hearing the shots, municipal policeman Francisco Curabo appeared and found Yu Hiong pale and lying on the landing of the stairs. He then asked who had wounded the Chinese and the accused Epifanio Diokno answered that it was he. The policeman took the knife (Exhibit C) which Epifanio Diokno carried in his right hand and brought him to police headquarters. Roman Diokno had left before the policeman arrived and he was not located until after three days. The municipal president of San Pablo, Laguna, also went to the scene of the crime, found the Chinese almost unconscious and questioned him, putting down his answers in Exhibit E. The Chinese was brought to the provincial hospital of San Pablo where he was examined by Drs. David Evangelista and Manuel Quisiimbing, who found that he had five incised wounds in different parts of the body, one of them at the back and about three and a half inches long, piercing the pleura and penetrating the lower lobe of the right lung about an inch, which wound was necessarily mortal and which caused the death of the victim. On January 8, 1935, while the said Chinese was in a serious condition in the hospital, he made a statement telling how he was attacked by the accused (Exhibit K).

The accused, testifying as witnesses in their own behalf, stated that they had not gone to San Pablo together on the day in question; that when Roman Diokno arrived, his father Epifanio Diokno was coming down the stairs of Antonio Layco's house with a knife in his hand; that Epifanio Diokno told his son Roman to go home and tell their relatives what had happened; that when Epifanio Diokno overtook Yu Hiong on the landing of the stairs of Antonio Layco's house, he asked Yu Hiong whether he was willing to marry his daughter; that the Chinese answered him in the negative and at the same time tried to take something from his pocket; that as Epifanio knew that Yu Hiong carried a revolver, he feared the Chinese might harm him; he became obfuscated, drew his knife and knew not what happened afterwards.

The first question to be decided in the present appeal is whether or not the court a quo erred in admitting as evidence Exhibit E, consisting in the investigation conducted by the municipal president of San Pablo in the same place where Yu Hiong had fallen a few minutes before, at about 1.30 p. m. on January 7, 1935, and wherein Yu Hiong, answering the questions asked by said municipal president, stated that it was Roman Diokno and Epifanio Diokno who had wounded him.

It is argued by the defense that said document Exhibit E should not be admitted on the ground that some words had been altered and because it has not been proven that the declarant had a sense of impending death.

It does not appear that said document was altered after it had been signed, but on the contrary, municipal president Jacinto Peñaflores, upon being cross-examined by the defense, declared that he neither erased any word nor put another in its place after said document had been finished.

The fact that Yu Hiong failed to state that he had given up all hope of life, in answering the municipal president's questions, does not make his declaration inadmissible. It is enough if, from the circumstances of the case, it can be inferred with certainty that such must have been his state of mind (*People vs. Chan Lin Wat*, 50 Phil., 182). In the present case, Yu Hiong was semiconscious as a result of the wounds received by him and, consequently, he could not have the hope to live when he made his declaration immediately after he was mortally wounded. But even if the document Exhibit E were not admissible as an ante mortem declaration, it is admissible as a part of the res gestae because it was made under circumstances so proximate to the incident that it may be considered as a part thereof. (*People vs. Portento and Portento*, 48 Phil., 971; *People vs. Palamos*, 49 Phil., 601.)

The first assignment of alleged error is, therefore, untenable.

With respect to the second assignment of alleged error consisting in that the court a quo erred in admitting Exhibit K as an ante mortem declaration of Yu Hiong, because it does not appear that when the declarant made it he was aware of impending death and that he did not die until three days after making it, all that has been said relative to

Exhibit E, which is the subject matter of the first assignment of alleged error, may be repeated in connection with said Exhibit K, in the sense that it is admissible as an ante mortem declaration. Furthermore, when the deceased made the declaration Exhibit K, he complained of great difficulty in breathing and of being very ill. The fact that he did not die until three days later neither implies that he had no sense of impending death when he made his declaration because he did not improve thereafter, but became worse until he died; nor detracts from its character of an ante mortem declaration because what gives the declaration such character is the declarant's conviction, upon making it, that he is not going to live (U. S. vs. Mallari, 29 Phil., 14).

The third assignment of alleged error consists in the failure of the court a quo to acquit the appellant Roman Diokno.

The testimony of the eyewitnesses Juan Alcantara and Antonio Layco, corroborated by the different dimensions of the wounds which, according to Dr. Manuel Quisumbing, were caused by two instruments of different sizes, and the ante mortem declarations (Exhibits E and K) of the deceased, leave no room for doubt that Roman Diokno cooperated with his father and stabbed the deceased Yu Hiong with a knife in different parts of the body. Furthermore, the deceased stated in his ante mortem declaration (Exhibit K) that it was Roman Diokno who inflicted the necessarily mortal wound in his back, which caused his death.

We find the fourth assignment of alleged error well founded. The circumstance of abuse of superior strength, qualifying the crime of murder, which the trial court found to have been proven, has not been established beyond a reasonable doubt. In the case of *United States vs. Devela* (3 Phil., 625), this court said that "the mere fact that the number of the assailants is superior to that of those attacked by them is not sufficient to constitute the aggravating circumstance of abuse of superiority." In this case we have the photographs of the body of the deceased (Exhibits D and D-1) showing that he had a strong constitution; but there is no evidence of the physical constitution of the accused Epifanio Diokno and Roman Diokno. Therefore, we cannot determine whether or not said accused were physically stronger than the deceased and whether or not they abused such superiority.

Neither does this court find the existence of the other circumstance qualifying murder, that is, evident premeditation, proven beyond a reasonable doubt because, even assuming that both the accused went to San Pablo, Laguna, each carrying the knife used by him in attacking Yu Hiong, it being customary for the people of said province to carry it, it cannot be inferred with certainty from the mere fact that they carried knives that their intention in going to San Pablo was to look for the deceased in order to kill him. In order that premeditation may be considered either as an aggravating circumstance or as a qualifying circumstance, it must be evident, that is, the intention to kill must be manifest and it must have been planned in the mind of the offender and carefully meditated. It is not enough that it arose at the moment of the aggression.

Therefore, there having been neither abuse of superior strength nor evident premeditation, the crime committed by the accused is simple homicide.

The presence of the fifth mitigating circumstance of article 13 of the Revised Penal Code, that is, immediate vindication of a grave offense to said accused, may be taken into consideration in favor of the two accused, because although the elopement took place on January 4, 1935, and the aggression on the 7th of said month and year, the offense did not cease while Salome's whereabouts remained unknown and her marriage to the deceased unlegalized. Therefore, there was no interruption from the time the offense was committed to the vindication thereof. Our opinion on this point is based on the fact that the herein accused belong to a family of old customs to whom the elopement of a daughter with a man constitutes a grave offense to their honor and causes disturbance of the peace and tranquillity of the home and at the same time spreads uneasiness and anxiety in the minds of the members thereof.

The presence of the sixth mitigating circumstance of said article 13, consisting in having acted upon an impulse so powerful as naturally to have produced passion or obfuscation, may also be taken into consideration in favor of the accused. The fact that the accused saw the deceased run upstairs when he became aware of their presence, as if he refused to deal with them after having gravely offended them, was certainly a stimulus strong enough to produce in their mind a fit of passion which blinded them and led them to commit the crime with which they are charged, as held by the Supreme Court of Spain in similar cases in its decisions of February 3, 1888, July 9, 1898, February 8, 1908, May 25, 1910, July 3, 1909, and in other more recent ones.

The seventh circumstance of article 13 of the Revised Penal Code, consisting in having surrendered himself immediately to the agents of persons in authority, should also be taken into consideration in favor of the accused Epifanio Diokno.

In view of the foregoing considerations, this court concludes that the accused are guilty beyond a reasonable doubt of the crime of homicide defined and punished in article 249 of the Revised Penal Code, the penalty prescribed therein being reclusion temporal in its full extent. Three mitigating circumstances must be taken into consideration in favor of the accused Epifanio Diokno and two in favor of the accused Roman Diokno, with no aggravating circumstance, thus authorizing the imposition of the penalty next lower to that prescribed by law (reclusion temporal in its full extent), or prision mayor in its full extent, in the period that this court deems applicable, which is the medium period in this case, in accordance with the provisions of article 64, rule 5, that is eight years and one day of prision mayor.

Both accused should be granted the benefits of the indeterminate sentence provided in Act No. 4103, as amended by Act No. 4225, which prescribes a penalty the minimum of which shall be taken from that next lower to prision mayor, or prision correctional of from six months and one day to six years. Taking into account the circumstances of the case, the indeterminate penalty to which each of said accused must be sentenced is fixed at from two years and one day of prision correctional to eight years and one day of prision mayor, crediting each with one-half of the time during which they have undergone preventive imprisonment (art. 29, Revised Penal Code).

Wherefore, this court declares the accused Epifanio Diokno and Roman Diokno guilty of the crime of homicide and sentences each of them to an indeterminate penalty from two years and one day of prision correctional to eight years and one day of prision mayor, crediting them with one-half of the time during which they have undergone preventive imprisonment, and to indemnify the heirs of the deceased in the sum of P1,000, with the costs of both instances. So ordered.

Avanceña, C. J., Abad Santos, and Imperial, JJ., concur.

CONCURRING AND DECISION

LAUREL, J., :

I accept the conclusion of the majority of my brethren that the crime committed by the defendants and appellants was simple homicide as the existence of either the qualifying circumstance of evident premeditation (art. 14, par. 13, Revised Penal Code) or that of abuse of superior strength (art. 14, par. 15, Revised Penal Code), has not been clearly established. The mere fact that the two appellants were both armed with balisong knives and that the deceased knelt before them and implored forgiveness for what he had done is not, in my opinion, necessarily conclusive of the concurrence of abuse of superior strength in the commission of the crime (besides U. S. vs. Devela, 3 Phil., 025, 629, vide I Viada, Codigo Penal, pp. 278, 279). To constitute abuse of superior strength, it is necessary to show with sufficient clearness (People vs. Trumata and Baligasa, 49 Phil., 192, 194), that the

aggressors, individually and collectively, were greatly superior in strength to the offended party (People vs. Dayug and Bannaisan, 49 Phil., 423,

For the reason given in the majority opinion, I also agree to the taking into account of the mitigating circumstance of the appellants having acted upon an impulse so powerful as naturally to have produced passion or obfuscation (art. 13, par. 6, Revised Penal Code).

I also agree in according to the appellant, Epifanio Diokno, the mitigating circumstance of voluntary surrender. (Art. 13, par. 7, Revised Penal Code.)

I am of the opinion, however, that the mitigating circumstance of immediate vindication of a grave offense (art. 13, par. 5, Revised Penal Code) should not be considered in favor of the appellants. It should be observed that the proximate cause of the tragedy was the elopement of Salome, the daughter of Epifanio and the sister of Roman. Salome and the deceased had been engaged for about a year and the evidence shows that the elopement took place at the instance of Salome herself. Under existing legislation, a woman eighteen years of age or over, can contract marriage without the consent of her parents. If she leaves the parental home for this purpose, neither she nor her lover commits any offense. Under the doctrine laid down by the majority in the present case, if a woman thirty or more years of age should leave the parental home for the purpose of marrying or for some kind or species of that romance described by Tennyson in his Idylls of the King or by Scott in his Lay of the Last Minstrel, against the wishes of her parents, and her father or brother should, in hot pursuit, overtake the impassioned Romeo and kill him on the spot, the enraged assailant or assailants would be accorded the benefit of the mitigating circumstance of having acted in immediate vindication of a "grave offense" committed against them, notwithstanding the maturity or overmaturity in age of the woman and the fact that the elopement was had at her instance and upon her invitation. It seems to me that the interpretation is not in keeping with the mores of the times. Filial respect and family traditions are best conserved by home education or environment, not to speak of other factors, rather than by the rigid or liberal application of the penal laws. The act of the deceased in eloping with Salome, at the invitation of the latter was not a "grave offense" which called for or justified immediate vindication.

Disregarding the mitigating circumstance of immediate vindication, considering, furthermore, that there are no aggravating circumstances attendant in the commission of the offense, and applying the provisions of article 64 of the Revised Penal Code and those of the Indeterminate Sentence Law, Epifanio Diokno, having in his favor two mitigating circumstances, should be sentenced to an indeterminate prison term ranging from four years, two months and one day of prison correctional to ten years and one day of prison mayor, and Roman Diokno, having in his favor only one mitigating circumstance, should be sentenced to an indeterminate prison term ranging from six years and one day of prison mayor to twelve years and one day of reclusion temporal.

DISSENTING

DIAZ, J.:

I am firmly convinced that the crime committed by the appellants is not simply homicide but murder. It is so qualified by the proven fact that abuse of superior strength, which is one of the circumstances raising homicide, if committed, to the category of murder, was present in the commission thereof (art. 248, subsec. I, of the Revised Penal Code).

From Juan Alcantara's testimony to which the court gives absolute credit, so that it is stated in the majority opinion that he saw the appellants pursue the deceased, Yu Hiong, on said occasion, and that he fired shots in the air in order to call the police for help, it appears that upon looking out of the window of his house, almost fronting that of Antonio Layco on the landing of whose stairs the crime was committed, he saw the deceased running along

Hermanos Belen Street pursued at close range by the appellants, anxious to enter Layco's house about twenty or twenty-five meters away (t. s. n., page 57), in order to escape from the aggression of which he was the victim. It likewise appears that as he saw, upon arriving at the landing of the stairs of Layco's house, that the same was closed and that he had no other means of escape, not having as he, in fact, did not then have any instrument to defend himself, he fell on his knees, and in that position asked the appellants, his pursuers, to forgive him. It finally appears that instead of stopping before such attitude of the deceased, which clearly indicated surrender and acknowledgment of his helplessness, said appellants attacked him with their respective weapons, wounding him in the back, in the side and in other parts of the body, giving him no peace until they saw him down, and bathed in his own blood. I am of the opinion that, when two armed persons attack another who is not armed, as the appellants did to Yu Hiong who was then completely unarmed and showed signs of submission to them by falling on his knees and imploring their forgiveness, the circumstance of abuse of superior strength clearly and undeniably exists. It is because one who flees, falls on his knees later when he can no longer evade his pursuers, and immediately asks their forgiveness, shows not only his desire not to resist but his conviction that he is powerless to offer resistance, thereby admitting his inferiority and the superiority of his assailants. The Supreme Court of Spain, after whose Penal Code ours is patterned, settled a similar question substantially in this sense, in its decision of June 17, 1872.

In a decision of January 23, 1887, said court, resolving the question whether or not the circumstance of abuse of superior strength should be taken into consideration in a case where two persons attack another, there being no disparity in physical strength between the attackers and the attacked, and the former committed the aggression with arms, the latter having only a small rod to defend himself, sustained the affirmative.

In another decision of January 14, 1899, the question whether or not there was abuse of superior strength in a case where two persons, one armed with a cane and the other with a big stone, attacked another who was unarmed, was likewise resolved by said court in the affirmative.

The question whether or not the accused, who simultaneously pursued their completely unarmed victim, over-took, surrounded and attacked him later with steel weapons, mortally wounding him, acted with abuse of superior strength, was similarly determined in the decision of January 17, 1919, the court having held therein that singleness of action and purpose was present in taking advantage of the victim's lack of means of defense, with the correlative odds in favor of the aggressors.

Abuse of superior strength is generally determined by the excess of the aggressor's natural strength over that of the victim, taking into consideration the momentary positions of both and the employment of means weakening the defense, although not annulling it (decision of the Supreme Court of Spain of March 6, 1928). If the case under consideration were to be considered in this light, the conclusion must be that the appellants really acted with abuse of superior strength.

Considering the act committed by the appellants a manifest murder, and not homicide, due to the presence of the qualifying circumstance of abuse of superior strength, and it being a fact that the mitigating circumstances stated in the majority opinion were present in the commission thereof, I am of the opinion that the penalty that should be imposed upon them, under article 64, rule 5, of the Revised Penal Code, is from ten years and one day of prison mayor to seventeen years and four months of reclusion temporal, said penalty being next lower to that prescribed for the crime of murder, or at least, the indeterminate penalty of from five years of prison correctional to ten years and one day of prison mayor, in accordance with Act No. 4103. With due respect to the majority opinion, I dissent therefrom and vote as herein stated.

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