

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSEPINA BANDIAN, DEFENDANT AND APPELLANT.

G. R. No. 45186. September 30, 1936

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45186/>

DIAZ, J.:

Charged with the crime of infanticide, convicted thereof and sentenced to reclusion perpetua and the corresponding accessory penalties, with the costs of the suit, Josefina Bandian appealed from said sentence alleging that the trial court erred:

"I. In taking into consideration, to convict her, her alleged admission to Dr. Nepomuceno that she had thrown away her newborn babe, and

"II. In holding her guilty of infanticide, beyond a reasonable doubt, and in sentencing her to reclusion perpetua, with costs."

The facts of record may be summarized as follows:

At about 7 o'clock in the morning of January 31, 1936, Valentin Aguilar, the appellant's neighbor, saw the appellant go to a thicket about four or five brazas from her house, apparently to respond to a call of nature because it was there that the people of the place used to go for that purpose. A few minutes later, he again saw her emerge from the thicket with her clothes stained with blood both in the front and back, staggering and visibly showing signs of not being able to support herself. He ran to her aid and, having noted that she was very weak and dizzy, he supported and helped her go up to her house and placed her in her own bed. Upon being asked before Aguilar brought her to her house, 'what had happened to her, the appellant merely answered that she was very dizzy. Not wishing to be alone with the appellant in such circumstances, Valentin Aguilar called Adriano Comcom, who lived nearby, to help them, and later requested him to take bamboo leaves to stop the hemorrhage which had come upon the appellant. Comcom had scarcely gone about five brazas when he saw the body of newborn babe near a path adjoining the thicket where the appellant had gone a few moments before. Comcom informed Aguilar of it and the latter told him to bring the body to the appellant's house. Upon being asked whether the baby which had just been shown to her was hers or not, the appellant answered in the affirmative.

Upon being notified of the incident at 2 o'clock in the afternoon of said day, Dr. Emilio Nepomuceno, president of the sanitary division of Talisayan, Oriental Misamis, went to the appellant's house and found her lying in bed still bleeding. Her bed, the floor of her house and beneath it, directly under the bed, were full of blood. Basing his opinion upon said facts, the physician in question declared that the appellant gave birth in her house and in her own bed; that after giving birth she threw her child into the thicket to kill it for the purpose of concealing her dishonor from the man, Luis Kirol, with whom she had theretofore been living maritally, because the child was not his but of another man with whom she had previously had amorous relations. To give force to his conclusions, he testified that the appellant had admitted to him that she had killed her child, when he went to her house at the time and on the date above-stated.

The prosecuting attorney and the lower court giving absolute credit to Dr. Nepomuceno whose testimony was not corroborated but, on the contrary, was contradicted by the very witnesses for the prosecution and by the appellant, as will be stated later, they were of the opinion and the lower court furthermore held, that the appellant was an infanticide. The Solicitor-General, however, does not agree with both. On the contrary, he maintains that the appellant may be guilty only of abandoning a minor under subsection 2 of article 276 of the Revised Penal Code, the abandonment having resulted in the death of the minor allegedly abandoned.

By the way, it should be stated that there is no evidence showing how the child in question died. Dr. Nepomuceno himself affirmed that the wounds found on the body of said child were not caused by the hand of man but by bites of animals, the pigs that usually roamed through the thicket where it was found.

Infanticide and abandonment of a minor, to be punishable, must be committed wilfully or consciously, or at least it must be the result of a voluntary, conscious and free act or omission. Even in cases where said crimes are committed through mere imprudence, the person who commits them, under said circumstance, must be in the full enjoyment of his mental faculties, or must be conscious of his acts, in order that he may be held liable.

The evidence certainly does not show that the appellant, in causing her child's death in one way or another, or in abandoning it in the thicket, did so wilfully, consciously or imprudently. She had no cause to kill or abandon it, to expose it to death, because her affair with a former lover, which was not unknown to her second lover, Luis Kirol, took place three years before the incident; her married life with Kirol—she considers him her husband as he considers her his wife—began a year ago; as he so testified at the trial, he knew that the appellant was pregnant and he believed from the beginning, affirming such belief when he testified at the trial, that the child carried by the appellant in her womb was his, and he testified that he and she had been eagerly waiting for the birth of the child. The appellant, therefore, had no cause to be ashamed of her pregnancy to Kirol.

If to the foregoing facts is added the testimony of the witnesses Valentin Aguilar and Adriano Comcom that the child was taken from the thicket and carried already dead to the appellant's house after the appellant had left the place, staggering, without strength to remain on her feet and very dizzy, to the extent of having¹ to be as in fact she was helped to go up to her house and to lie in bed, it will clearly appear how far from the truth were Dr. Nepomuceno's affirmation and conclusions. Also add to all these the fact that the appellant denied having made any admission to said physician and that from the time she became pregnant she continuously had fever. This illness and her extreme debility undoubtedly caused by her long illness as well as the profuse hemorrhage which she had upon giving birth, coupled with the circumstance that she is a primipara, being then only 23 years of age, and therefore inexperienced as to childbirth and as to the inconvenience or difficulties usually attending such event; and the fact that she, like her lover Luis Kirol—a mere laborer earning only twenty-five centavos a day—is uneducated and could not supplant with what she had read or learned from books what experience itself could not teach her, undoubtedly were the reasons why she was not aware of her childbirth, or if she was, it did not occur to her or she was unable, due to her debility or dizziness, which causes may be considered lawful or insuperable to constitute the seventh exempting circumstance (art. 12, Revised Penal Code), to take her child from the thicket where she had given it birth, so as not to leave it abandoned and exposed to the danger of losing its life.

The act performed by the appellant in the morning in question, by going into the thicket, according to her, to respond to call of nature, notwithstanding the fact that she had fever for a long time, was perfectly lawful. If by doing so she caused a wrong as that of giving birth to her child in that same place and later abandoning it, not because of imprudence or any other reason than that she was overcome by strong dizziness and extreme debility, she should not be blamed therefor because it all happened by mere accident, with no fault or intention on her part. The law exempts from liability any person who so acts and behaves under such circumstances (art. 12, subsection 4, Revised Penal Code).

In conclusion, taking into account the foregoing facts and considerations, and granting that the appellant was aware of her involuntary childbirth in the thicket and that she later failed to take her child therefrom, having been so prevented by reason of causes entirely independent of her will, it should be held that the alleged errors attributed to the lower court by the appellant are true; and it appearing that under such circumstances said appellant has the fourth and seventh exempting circumstances in her favor, she is hereby acquitted of the crime of which she had been accused and convicted, with costs de oficio, and as she is actually confined in jail in connection with this case, it is ordered that she be released immediately. So ordered.

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

CONCURRING

VILLA-REAL, J., :

I concur in the acquittal of the accused Josefina Bandian not on the ground that she is exempt from criminal liability but because she has committed no criminal act or omission.

The evidence conclusively shows that on the day in question the accused Josefina Bandian had spent a year of marital life with her lover Luis Kirol by whom she was begotten with a child for the first time. Her said lover knew that she was pregnant and both were waiting for the arrival of the happy day when the fruit of their love should be born. Since she became pregnant she continuously had fever, was weak and dizzy. On January 31, 1936, at about 7 o'clock in the morning, she went down from her house and entered a thicket about four or five brazas away, where the residents of said place responded to the call of nature. After some minutes the accused emerged from the thicket staggering and apparently unable to support herself. Her neighbor Valentin Aguilar, who saw her enter the thicket and emerge therefrom, ran to help her, supported her and aided her in going up to her house and to bed. Asked by Aguilar what had happened to her, she merely answered that she was very dizzy. Thinking that he alone was unable to attend to her, Valentin Aguilar called Adriano Comcom, who lived nearby, and requested him to take bamboo leaves to stop the appellant's hemorrhage. Adriano had scarcely gone about five brazas when he saw the body of a newborn child near the path adjoining the thicket where the accused had been a few moments before. Upon being informed of the discovery, Valentin Aguilar told Adriano Comcom to bring the child into the appellant's house. Upon being asked whether or not the child shown to her was hers, the appellant answered in the affirmative. After an autopsy had been made of the body, it was found that the child was born alive.

Unconscious, precipitate or sudden deliveries are well known in legal medicine among young primiparse who, by reason of their ignorance of the symptoms of parturition and of the process or expulsion of the fetus, are not aware that they are giving birth when they are responding to an urgent call of nature (Dr. A. Lacassagne, *Precis de Medicine Legale*, pages 799-781; *Annales de Medicine Legale*, December 1926, page 530; Vibert, *Manual de Medicina Legal y Toaicologia*, vol. I, pages 512-514). There is no doubt that the accused, in her feverish, weak and dizzy condition when she went into the thicket to defecate and being a primipara with no experience in childbirth, was not aware that upon defecating she was also expelling the child she was carrying in her womb. Believing that she did nothing more than to respond to an urgent call of nature which brought her there, she returned home staggering for lack of strength to support herself and for being dizzy, without suspecting that she was leaving a newborn child behind her, and she only knew that she had given birth when she was shown the already dead child with wounds on the body produced by the bites of pigs.

Article 3 of the Revised Penal Code provides that acts and omissions punishable by law are felonies, which may be committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*); there being deceit when the

act is performed with deliberate intent, and fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

As the herein accused was not aware that she had delivered and that the child had been exposed to the rough weather and to the cruelty of animals, it cannot be held that she deceitfully committed the crime of infanticide or that of abandonment of a minor, because according to the abovesited legal provision, there is deceit when the act punishable by law is performed with deliberate intent. Suffering from fever and from dizziness, the appellant under the circumstances was not aware that she had given birth and, consequently, she could not have deliberately intended to leave her child, of whose existence she was ignorant, to perish at the mercy of the elements and of the animals. Neither can it be held that she faultily committed it because, as already stated, not knowing for lack of experience in childbirth that in defecating—a perfectly lawful physiological act, being natural—she might expel the child she carried in her womb, she cannot be considered imprudent, a psychological defect of a person who fails to use his reasoning power to foresee the pernicious consequences of his willful act. Having had no knowledge of the fact of her delivery, the accused could not think that by leaving the child in the thicket, it would die as a consequence of the she be considered negligent because negligence is the omisrough weather or of the, cruelty of the animals. Neither cansion to do what the law or morals obliges one to do, which implies knowledge of the thing which is the subject matter of the compliance with the obligation. Inasmuch as the accused was not aware of her delivery, her mind cannot contemplate complying with her legal and moral duty to protect the life of her child. Neither can it be held that the appellant lacked foresight because, having been absolutely ignorant of her delivery, she could not foresee that by abandoning her child in a thicket it would die. Neither can it be held that her act was the result of lack of skill because she did not know that to defecate in a state of pregnancy might precipitate her delivery, and as defecation is a natural physiological function, she could not refrain from satisfying it.

We cannot apply to the accused the fourth exempting circumstance of article 12 of the Revised Penal Code which reads: "Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it," because although the lawful act of satisfying a natural physiological necessity accidentally provoked the delivery, the delivery itself was not an injury, but the exposure of the child at the mercy of the elements and of the animals which caused its death. As the child was born alive, if the accused had been aware of her delivery and she had deliberately abandoned the child, her accidental delivery would not exempt her from criminal liability because then the death of said child no longer would have been accidental. Neither can we consider the seventh exempting circumstance of article 12 of the Revised Penal Code consisting in the failure to perform an act required by law, when prevented by some lawful or insuperable cause, because this exempting circumstance implies knowledge of the precept of the law to be complied with but is prevented by some lawful or insuperable cause, that is by some motive which has lawfully, morally or physically prevented one to do what the law commands. In the present case, what the law requires of the accused-appellant, with respect to the child, is that she care for, protect and not abandon it. Had she been aware of her delivery and of the existence of the child, neither her debility nor her dizziness resulting from the fever which consumed her, being in the full enjoyment of her mental faculties and her illness not being of such gravity as to prevent her from complying with her duties by herself, or from asking for help, would constitute the lawful or insuperable impediment required by law. Having been ignorant of her delivery and of the existence of the child, to her there was subjectively no cause for the law to impose a duty for her to comply with.

Having had no knowledge of the expulsion of her fetus, the death thereof resulting from its exposure to the rough weather and to the cruelty of the animals cannot be imputed to the accused, because she had neither deceitfully nor faultily committed any act or omission punishable by law with regard to the child.

IMPERIAL, J.:

I concur in the preceding opinion of Justice Villa-Real.

LAURELL, J.:

I vote for the acquittal of the accused on the grounds stated in the foregoing opinion of Justice Villa-Real.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.