

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SERAFIN DUNGKA Y STA. MARIA (ALIAS SERAFIN SANTA MARIA),
DEFENDANT AND APPELLANT.**

G. R. No. 45423. July 01, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding the defendant guilty of the crime of attempted robbery with homicide. The information is as follows:

"That on or about the 15th day of December, 1936, in the City of Manila, Philippine Islands, the said accused did then and there willfully, unlawfully and feloniously ask one Sy Ha to give him money and the latter gave him five centavos; but the accused by means of intimidation demanded some more money from said By Ha, and when the latter refused to do so, the accused, without any just motive, and with the decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and wound said Sy Ha with a dagger, thereby inflicting upon him three wounds, which directly caused his death.

"That the accused Serafin Dungka y Sta. Maria (alias Serafin Sta. Maria) has previously been convicted once of theft and once of robbery in an inhabited house by virtue of final judgments rendered by competent courts, as follows :

Nature of Offense

Date of commission of victim

Date of conviction

Penalty

Date of release

Theft M. C. D. F.-87951

May 8, 1938

May 9, 1938

1 month and 1 day.

June 5, 1933

Robbery in an inhabited house Court of First Instance, D-47017

Nov. 29, 1933

Dec7, 1933

6 months and 1 day and to pay Sy Tong Kang P4.71

May 12, 1934

and is therefore a habitual delinquent under the provisions of article 62, paragraph 5, of the Revised Penal Code, the date of his release from confinement in connection with his last offense of robbery in an inhabited house being on May 12, 1934."

Upon arraignment, the accused pleaded not guilty but when the case was called for trial he withdrew that plea, substituted it with that of "guilty", and asked leave of the court to prove that he was under the influence of liquor when he committed the crime, and that he did not intend to commit so grave a wrong as that committed. Thereafter, on December 31, 1936, the court found him guilty under article 2491 in relation to article 48 of the Revised Penal Code and sentenced him to eighteen years, eight months and one day of reclusion temporal with the accessory penalties provided by law to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. For being a habitual delinquent, the court imposed upon the accused an additional penalty of three years, six months and twenty-one days of prision correccional. Subsequently, on January 4, 1937 the court amended its decision and sentenced the accused to suffer the same principal, accessory and additional penalties and to pay the same indemnity and costs, under article 297 of of the Revised Penal Code instead of under article 249 in relation to article 48 of the same Code, Here on appeal the accused contends that:

"1.º El Juzgado erro al declarar que la circunstancia de embriaguez como atenuante no esta prevista en el Codigo Penal Revisado, y al no apreciarla en favor del acusado.

"2. El Juzgado erro al no estimar en favor del acusado la circunstancia atenuante de no haber tenido la intenci6n de causar un mal de tanta gravedad como el que produjo.

"3.º El Juzgado erro al compensar la circunstancia atenuante de confesi6n expontanea de culpabilidad con dos circunstancias agravantes de reincidencia.

"4.º El Juzgado erro al condenar al acusado a sufrir DIEZ Y OCHO ANOS, OCHO MESES Y UN DIA DE RECLUSION TEMPORAL, Y MAS UNA PENA ADICIONAL DE TRES ANOS, SEIS MESES Y VEINTIUN DÍAS DE PRISON CORRECCIONAL, aplicandole el artfculo 297 del Codigo Penal Revisado,"

The first assignment of error is well taken.

According to the trial court, intoxication as a mitigating circumstance is not provided in the Revised Penal Code. It should be noted, however, that intoxication is now an alternative circumstance and "* * * shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance." (Art. 15, Rev. Penal Code.) It is not denied that the defendant-appellant was in a state of intoxication when he committed the offense charged. He testified as follows:

"El ACUSADO.

Yo venia de la Calle Bilbao, y al pasar por la Calle Lakandola, alii fue donde yo bebi. Despues de beber me retire a casa, pasando por detras del Hospital Mary Johnston y alii me encuentre con el occiso, y nos chocamos.

"Sr. AZARRAGA.

¿Que cantidad de bebida tomo Ud.?

"El ACUSADO.

Primeramente seis centimos, y despuee, diez centimos de ginebra.

"Sr. AZARRAGA.

¿Y se quedo borracho?

"El ACUSADO.

Si, senor.

"Sr. AZARRAGA.

Es todo.

"Sr. FISCAL.

¿Es costumbre de Ud. emborracharse?

"El ACUSADO.

Antes no.

"Sr. FISCAL.

En la fecha de autos I por que tomo Ud. 6 centimos de ginebra?

"El ACUSADO.

Desde que yo vivi en la Calle Bilbao, fue, cuando aprend! beber en la casa de un amigo.

"Sr. FISCAL.

¿Cuanto tiempo hacia que vivia Ud. en la Calle Bilbao?

"El ACUSADO.

No vivia en la Calle Bilbao. Yo solia pasar alii a la casa de un amigo con frecuencia.

"Sr. FISCAL.

Antes de ocurrir este suceso en que Ud. estuvo emborrachandose?

"El ACUSADO.

Si, senor; antes de aquella ocasion.

"Sr. FISCAL.

Es todo." (Pp. 21, 22, rec.)

According to the Solicitor-General the foregoing testimony tends to show that defendant-appellant was a habitual drunkard. We do not think however that the same clearly indicates that the appellant was a habitual drunkard. For this reason, we must presume that intoxication was not habitual but accidental. It should therefore be considered as a mitigating circumstance in favor of the defendant. (U. S. vs. Fitzgerald, 2 Phil., 419, 422; U. S. vs. Recano, 4 Phil, 91, 93; People vs. Cruz, 49 Phil., 163, 164. Vide also, I Viada,Codigo Penal [1890], p. 223.)

We find no merit, however, in the contention that the defendant-appellant did not intend to commit so grave a wrong as that committed. The appellant was armed with a dagger and with it struck his victim thrice. He must have intended the result of the aggression and is liable for the consequences. Besides, by his plea of guilty, the

appellant admitted the allegation in the information that "with the decided purpose to kill, (he) did then and there willfully, unlawfully and feloniously attack, assault and wound Sy Ha with a dagger, thereby inflicting upon him three wounds, which directly caused his death." (U. S. vs. Barba, 29 Phil., 206-208; U. S. vs. Santiago, 35 Phil., 20, 22; People vs. Be Jesus, 63 Phil., 760.)

The resolution of the third and fourth assignments of error will depend on whether or not the defendant upon the facts related in the information should be convicted of the complex crime of attempted robbery with homicide under article 297 of the Revised Penal Code or of simple homicide under article 249 of that Code. Perusal of the information will show that the only averment of fact imputing attempt to commit robbery to the defendant is the allegation that the defendant after receiving five centavos from the deceased, Sy Ha, "by means of intimidation demanded some more money" from the latter. Before that time, there was, to paraphrase the information, "felonious asking" which term is devoid of any definite meaning. Even if we were to consider the demand made by the accused by means of intimidation as the commencement directly by overt acts of the commission of the crime of robbery, which consists in the taking of personal property *animus lucrandi* under the circumstances mentioned in article 293 of the Revised Penal Code, it might have been that the refusal of the deceased to give more money to the defendant was due to the fact that he had no more money. At any rate, we find the allegations in the complaint insufficient to warrant conviction for attempted robbery with homicide and we uphold the contention of counsel *de officio* and find the accused guilty of simple homicide (art. 249, Revised Penal Code) with the aggravating circumstance of reiteration, having been previously punished for robbery and theft (art. 15, No. 10, Revised Penal Code), and the mitigating circumstances of intoxication (art. 15, Revised Penal Code) and voluntary confession of guilt (par. 7, article 13, Revised Penal Code); and, in accordance with paragraph 4 of article 64 of the Revised Penal Code, in relation to the Indeterminate Sentence Law, sentence him to not less than seven years of *prision mayor* and not more than twelve years and one day of *reclusion temporal*, with the accessory penalties, and to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs. The judgment of the lower court is to this extent modified. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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