

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO GUNGAB, DEFENDANT AND APPELLANT.***G. R. No. 45498. September 24, 1937*

Ponente: VILLA-REAL, J.

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This is an appeal taken by the accused Pedro Gungab from the judgment rendered by the Court of First Instance of Ilocos Norte, which found him guilty beyond reasonable doubt of the crime of parricide committed on the person of his wife and, taking into consideration the presence of the aggravating circumstances of treachery and evident premeditation offset by the mitigating circumstances of having surrendered to the authorities immediately after he had committed the crime, having pleaded guilty before the trial court and having been intoxicated without being habitually so, sentenced him to suffer the penalty of reclusión perpetua, with the accessory penalties prescribed by law, to indemnify the family of the deceased in the amount of P1,000, and to pay the costs of the trial.

In support of his appeal, the appellant assigns as the only alleged error committed by the court a quo that of having found him guilty of the crime of parricide and having sentenced him to suffer the penalty of reclusión perpetua, with the accessory penalties prescribed by law, to indemnify the family of the deceased in the amount of P1,000, and to pay the costs.

When the case was called for trial on January 22, 1937, said accused Pedro Gungab, accompanied by his attorney, Federico Diaz, pleaded not guilty, and asked for a period of time up to the 27th of said month and year to prepare his defense, which motion was granted him. When the case was again called for trial on January 27, 1937, the accused Pedro Gungab asked for permission to withdraw his plea of not guilty previously entered and to substitute it with that of guilty. This latter petition was also granted him after the court had informed him of the consequences thereof and after said accused had ratified his said plea of guilty. Immediately afterwards, said accused asked the court for permission to prove some mitigating circumstances in his favor, which was likewise granted him. His testimony is as follows: That he and the deceased, without having had any courtship between them, had been married canonically by agreement of their respective elders eight months before the commission of the crime; that prior to the incident, he had caught his wife in sexual intercourse with another man, the second act having taken place two days prior to said incident; that when he caught her for the first time, he threatened to hack her with a bolo if she should again be unfaithful and she promised never to do it again; that, notwithstanding her promise, his wife again had illicit intercourse with the same man at a later date; that on the day of the crime, November 9, 1936, he requested his wife to cook rice for him; that before returning home at about 4.00 o'clock in the afternoon of said day, he drank one-half frasco full of wine without having taken any solid food, and when he arrived at his house at that time, he did not find his wife around; that he suspected that she had gone to the house of her paramour; that he waited for her and she arrived two hours later; that as he repeatedly asked her where she had come from and she refused to answer, he lost his temper and, without knowing what he was doing, he hacked his wife with his bolo; that he was not in the habit of drinking wine; that he did not know how to read or write.

The court a quo, together with the prosecuting attorney, took into consideration the presence of the aggravating

circumstances of treachery and evident premeditation merely because the accused had pleaded guilty of the crime of parricide with which he is charged in the information. While it is true that a plea of guilty freely and voluntarily entered by the accused admits all of the material facts alleged in the complaint or information (U. S. vs. Barba, 29 Phil., 206; U. S. vs. Santiago, 35 Phil., 20), the trial court has discretionary power to take evidence for the purpose of determining whether or not said plea of guilty was entered by him with full knowledge of its meaning and extent (U. S. vs. Talbanos, 6 Phil., 541; U. S. vs. Rota, 9 Phil., 426; U. S. vs. Agcaoili, 31 Phil., 91; U. S. vs. Jamad, 37 Phil., 305). In this case the court a quo, upon petition of the accused heard the testimony of the latter relative to the circumstances surrounding the commission of the crime. This court has examined said testimony and has found nothing therein to show that the accused had premeditated the death of his wife or that he had acted treacherously in hacking her with a bolo. It is true that the aggravating circumstances in "question are alleged in the information but, judging from the testimony of the accused, the latter must not have understood the true extent of his plea of guilty in the sense that he admitted not only having hacked his wife with a bolo but also having done so with premeditation and treachery. Taking into consideration the ignorance of the accused, it is neither just nor reasonable to assume that he had understood the allegation that "the aggravating circumstances of treachery and premeditation were present in the commission of the crime", inasmuch as "treachery" and "premeditation" are highly technical terms the juridical meaning of which is beyond the understanding not of the illiterates alone but even of those who, being educated, are not lawyers. Under the circumstances of the present case, this court cannot, without being unjust, hold that the accused-appellant, in pleading guilty upon arraignment, admitted not only having killed his wife but also having done so with premeditation and treachery.

After the aggravating circumstances of treachery and evident premeditation are eliminated, only the mitigating circumstances of intoxication, which is not habitual or subsequent to the plan to commit the crime, lack of instruction, voluntary surrender to the agents of the authorities, and voluntary confession before the court prior to the presentation of the evidence for the prosecution, remain to be taken into consideration. There being four mitigating circumstances present with no aggravating circumstance to offset them, the penalty of reclusion perpetua to death prescribed in article 246 of the Revised Penal Code for a person who kills his spouse, is clearly excessive. Article 63 of said Code, which regulates the application of indivisible penalties, as reclusion perpetua and death, is silent with respect to the case where there were two or more mitigating circumstances and no aggravating circumstance was present, unlike article 64 of the same Code regulating the application of penalties composed of three periods, rule 5 of which provides that when there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances. Article 5 of the Revised Penal Code authorizes this court to submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending, of course, the execution of the sentence, when a strict enforcement of the provisions of the Revised Penal Code would result in the imposition of clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense. The same is hereby done and it is recommended, with all due respect, that His Excellency, the President of the Philippines, exercise, in the manner he may deem proper, the authority conferred upon him by section 11, paragraph 6, of Article VII of the Constitution of the Philippines, for the benefit of the herein accused.

For the foregoing considerations, this court is of the opinion and so holds: (1) that when an accused, who lacks instruction, pleads guilty of the crime of parricide described in the information as having been committed with the aggravating circumstances of treachery and evident premeditation, and his testimony given under oath before the trial court, upon his petition, fails to show the existence of such aggravating circumstances, his plea of guilty shall be understood as being limited to the admission of having committed the crime of parricide, not of having done so with treachery and evident premeditation, and (2) that as the nonapplication of rule 5 of article 64 of the Revised

Penal Code, in cases where the law prescribes a penalty composed of two indivisible penalties, is evidently unjust and inequitable, when there are four mitigating circumstances and no aggravating circumstance is present, recourse shall be had to the Chief Executive, through the Department of Justice, by stating what is deemed proper, in accordance with the provisions of article 5 of said Code.

Wherefore, modified only in the sense of eliminating the appreciation of the aggravating circumstances of treachery and evident premeditation from the appealed judgment, the same is affirmed in all other respects, with costs to the appellant.

Let a certified copy of this judgment be forwarded to His Excellency, the President of the Philippines, through the Honorable, the Secretary of Justice, for further purposes. So ordered.

Avancena, C, J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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