

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CLEMENTE MANGSANT Y ESMIÑA, DEFENDANT AND APPELLANT.***G.R. No. 45704. May 25, 1938*

Ponente: IMPERIAL, J.

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The defendant appealed from the judgment of the Court of First Instance of Manila finding him guilty of the crime of murder and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased in the amount of one thousand pesos (P1,000), and to pay the costs. The information against him alleged that on April 7, 1937, in the City of Manila, with evident premeditation, disregard of sex and taking advantage of superior strength, and with the deliberate intention to kill, the said accused did then and there attack Demetria Ferrer, a girl 14 years of age, stabbing her from behind with a knife and inflicting upon her various wounds in different parts of the body which produced her instantaneous death.

Upon arraignment the defendant pleaded "not guilty," but during the trial and before the presentation of the evidence for the prosecution, said plea was changed to that of "guilty". He was then allowed to testify under oath to the circumstances under which he committed the crime. He testified in substance that the deceased and he, were lovers, having agreed to marry in the following May; that on the afternoon of April 7, 1937, the date alleged in the information, he visited his fiancée, and as in the course of the conversation, she revealed that she loved another man, he became so obfuscated that he wounded her with a knife until she was lifeless.

In view of the foregoing explanation and the allegations of the information, the court found that in the commission of the crime the aggravating circumstances of evident premeditation, disregard of sex and abuse of superior strength (Nos. 13, 3 and 15, respectively, of article 14 of the Revised Penal Code) were present as were also the mitigating circumstances of lack of instruction, obfuscation and plea of guilty (par. 1 of art. 15 and Nos. 6 and 7, respectively, of art. 13 of the Revised Penal Code) in addition to the aggravating circumstance of treachery which, in this case, qualifies the crime, and offsetting one against the other, it imposed the penalty prescribed in article 248 in its medium period. The attorney de oficio for the defendant, after analyzing the facts and the law, has recommended that the judgment appealed from be affirmed for being in accordance with law. The Solicitor-General holds a view different from both consisting in that the aggravating and mitigating circumstances which were taken into account in the decision of the lower court, with the exception of the qualifying circumstance of treachery and the mitigating circumstance of voluntary confession, have not been proved; that inasmuch as the defendant was allowed to explain the circumstances of the crime, he impliedly denied the aggravating circumstances, alleged in the information, which cannot be taken into consideration unless they have been proved; and that the mitigating circumstances cannot be deduced from the explanations made by the defendant nor from the allegations of the information, which he admitted.

We agree with the Solicitor-General. There was no premeditation according to the description or account of the crime given in the information. The aggravating circumstance of disregard of sex cannot be considered because it has neither been proved nor admitted by the defendant that in committing the crime he had intended to offend or

insult the sex of the victim. Viada, in his commentaries on the Penal Code, volume I, page 329, says: "Question III. In the murder of a girl of 14 years, qualified as such by treachery, is it proper to consider the aggravating circumstance of disregard of respect due the offended party on account of her age? The Supreme Court has resolved the same in the negative, saying: 'Considering that the trial court did not err in not considering against the accused the 20th aggravating circumstance of article 10, because nothing appears in the judgment from which it may be presumed that in the commission of the crime, the accused deliberately intended to offend or insult the sex or age of the offended party, but only to execute his evil purpose in a treacherous manner, taking advantage of the weakness of her sex and the tenderness of her age in order to perpetrate the same without risk to his person, etc.' (Decision of June 25, 1878, published in the Gazette of August 25th.)" Neither may the aggravating circumstance of abuse of superior strength be taken into account just because of the fact that the defendant is a man and the deceased a woman, inasmuch as this circumstance is inherent in the crime committed and is moreover absorbed by the treachery which, in this case, qualifies the crime as murder. Viada, in the same work, volume I, page 279, cites the following cases: "Question I. Does the man who kills a woman commit thereby the crime of homicide with the aggravating circumstance of abuse of superior strength?— The Audiencia de la Coruña so decided. However, the Supreme Court, in its decision of April 28, 1873, published on July 12 in the Gazette, held negatively, on the ground that the circumstance of sex is inherent in the crime in such a way that without it the crime could not have been committed, and it does not, therefore, by itself, suffice to constitute said aggravating circumstance.—The same doctrine is laid down in the decision of June 7, 1873, published on September 28, in the Gazette. Question IV. Qualifying the crime as murder because of the presence of treachery, is it also proper to consider the aggravating circumstance of abuse of superior strength?—The Supreme Court held the negative in its decision of September 14, 1887, published on the 28th of the same month in the Gazette, on the ground that the circumstance of abuse of superior strength is merged into that of treachery and is inherent in the same.—The same doctrine has been laid down in the last paragraph of the decision of said Supreme Court of November 11, 1872, published on January 7, 1873 in the Gazette, and in the penultimate paragraph of the decision of August 21, 1873, published in the Gazette of November 15."

As to the mitigating circumstances, it is not proper to consider lack of instruction in favor of the defendant, inasmuch as he admitted that he had studied in the first grade in a public elementary school. Lack of instruction cannot apply to one who has studied in the first grade in a public school, but only to him who really has not received any instruction (art. 15, first paragraph, Revised Penal Code). Much less may the circumstance that the defendant had acted upon an impulse so powerful as naturally to have produced obfuscation be considered in his favor because the revelation by the deceased that she loved another man, under the circumstances in which it was made, was not sufficient to produce that mental blindness which article 13, No. 6, of the Revised Penal Code, recognizes as mitigating.

The defendant and appellant is guilty of the crime of murder defined in article 248 of the Revised Penal Code and penalized by reclusion temporal in its maximum period to death. Inasmuch as the mitigating circumstance of voluntary confession is present in its commission, without any aggravating circumstance to offset it, the judgment appealed from is hereby modified and said penalty imposed in its minimum period. In accordance with the provisions of the Indeterminate Sentence Law (Act No. 4103), the defendant is sentenced to the penalty of from ten years of prision mayor to seventeen years, four months and one day of reclusion temporal, to the accessories of the law, to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs of both instances. So ordered.

Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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