

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CUSTODIO ROSEL, DEFENDANT AND APPELLANT.

G.R. No. 46095. October 10, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The accused-appellant Custodio Rosel was convicted of the crime of murder qualified by treachery, and sentenced to reclusion perpetua, to indemnify the heirs of the offended party Francisco Baldostano in the sum of P1,000 and to pay the costs. From said judgment of conviction he appealed to this court and, in support of his appeal, in his brief alleges that the trial court committed the following errors:

"1. In not acquitting him on the ground that he merely acted in defense of himself;

"2. In finding that he wounded Francisco Baldostano with treachery, notwithstanding that there is no evidence in the record showing the presence of such circumstance; and

"3. In holding that no justifying, exempting or mitigating circumstances whatever were present in the commission of the crime."

The facts which gave rise to the prosecution of the appellant for the said crime of murder are, according to the record, briefly as follows: On the night of February 14, 1938 several persons, among them Francisco Baldostano, were gathered for a small celebration in the house of Hilario Ilada in the barrio of Guyo, municipality of Catubig, Province of Samar. Some entertained themselves by singing when the accused Custodio Rosel, Esperato Orsolino, Ignacio Alberne and Pedro Gorlon arrived. Appellant greeted everybody in the house. In answer Francisco Baldostano said rather sarcastically that strangers should leave the place, adding in the following words more or less: "It is good I have means of livelihood. I have a rice land. You stranger (addressing the appellant) live at the expense of your wife." There was no doubt that he referred to the appellant because he addressed the latter when he said, "You stranger * * * etc.", and because appellant was not a native of the place. Appellant resented the greeting or remark which Francisco Baldostano made concerning him and demanded an explanation. Were it not for the intervention of some persons present, he would have attacked Baldostano at that very moment. He left for his house a little afterwards and returned about one-half hour later. Upon seeing that Francisco Baldostano was engrossed in conversation with some of those who still remained in the house, he propped his left arm against the railing of the stairs and stabbed Baldostano from below in the left armpit with the bolo with which he was armed and withdrew immediately. The wound thus inflicted on Francisco Baldostano caused his death eight days later. So unexpected was the attack of which he was the object on the part of the appellant that he was not able to lower his arm to protect his armpit or to lean forward to dodge the attack. This, undoubtedly, constitutes treachery because the same is present when means, methods or forms are employed in the execution of the crime which tend directly and specially to insure its commission without risk to the person of the aggressor resulting from the defense which the offended party might make.

Testifying in his behalf, appellant declared that on the day after wounding Francisco Baldostano he presented

himself to policemen Melecio Melendres and Juan whose surname he could not recall. It does not appear, however, that he informed them of the crime he had committed for which reason they did not place him under arrest.

The remarks of the deceased Francisco Baldostano under the circumstances in which he made them were highly offensive to the appellant and to any other person in his place. It is not strange that they engendered obfuscation in him and impelled him to act, as he did, in the immediate vindication of a grave offense.

Considering the facts proven, our conclusion is that the crime committed by the accused and appellant is that of murder. However, there being present the fifth mitigating circumstance in the commission thereof, without any aggravating one to offset it, the judgment rendered against him should be modified.

Wherefore, modifying the judgment appealed from appellant is sentenced to suffer an indeterminate penalty of ten years and one day of prision mayor to seventeen years, four months and one day of reclusion temporal. In all other respects, said judgment is affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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