

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DATU AMBIS (BAGOBO), DEFENDANT AND APPELLANT.

G.R. No. 46298. September 30, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Datu Ambis, the accused, appealed, from the judgment of the Court of First Instance of Davao finding him guilty of the crime of murder qualified by treachery, and attended by the aggravating circumstance of dwelling which was compensated by the mitigating circumstance of lack of education and instruction, and sentencing him to reclusion perpetua, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs.

When Ambrosia Puton (alias Fortunata, alias Ambuyong), became a widow, the herein accused desired to take her as one of his wives, but she declined, alleging that he already had five. The accused did not insist but he resentfully threatened her that should she marry again he would kill her second husband. Ambuyong, for the second time, married Esteban Fameron and both spouses, together with Ambuyong's five children had with her first husband, lived in their new residence in Baracatan, municipality of Sta. Cruz, Davao. At about 7 o'clock in the evening of May 13, 1938 while both spouses were seated at the table preparing for supper and Esteban Fameron was taking some viands from a saucepan, a report of a firearm was heard and Esteban fell face downward to the floor, dead. Ambuyong looked toward the door where the report came from and to which Esteban had his back turned and saw the accused carrying a gun and leaving the place. Upon hearing the cries for help, Saito Puton, brother-in-law of Ambuyong, went to the latter's house and on his way thereto he recognized the accused and saw the weapon carried by him. The body of the deceased was examined by sanitary inspector Manuel Jumilla who found several wounds therein all of which were produced by buckshots from a shotgun cartridge. According to him the wounds received by the deceased on the left side of the stomach, below the ribs, were mortal and produced his instantaneous death.

The accused denied having been the author of the crime, and attempted to establish the defense of alibi, which was rejected by the court. In this appeal, his attorney de oficio does not question the above-stated established facts, but maintains that the crime committed is homicide. The qualification is erroneous and is not in accordance with the facts because the crime is qualified by treachery, the deceased having been fired upon while he had his back turned, and was also attended by the aggravating circumstance of dwelling, which was correctly compensated by the mitigating circumstance of lack of education and instruction.

The crime committed by the appellant is defined by article 248 of the Revised Penal Code and punished with penalty of reclusion temporal in its maximum period to death, the medium period of which is reclusion perpetua, for which reason the penalty imposed by the court is in accordance with law.

The judgment appealed from is affirmed, with the cost of this instance to the appellant. So ordered.

Avanceña, C, J., Diaz, Concepcion, and Moran, JJ., concur.

Villa-Real, J., see dissenting opinion.

Laurel, J., concurs in the dissenting opinion of Justice Villa-Real.

DISSENTING OPINION

VILLA-REAL, J.:

I regret to have to dissent from the majority opinion in so far as it appreciates the aggravating circumstance of dwelling, the accused not having penetrated the house of the deceased in committing the crime of which he stands convicted. The ground of the Penal Code—which may be termed a socio-philosophical one—for considering dwelling as an aggravating circumstance, is explained by renowned commentators of the Spanish Penal Code in their works.

Viada, in his commentaries on the Penal Code, 5th edition, Volume II, pages 323-324, says:

"The home is a sort of sacred place for its owner. He who goes to another's house to slander him, hurt him or do him wrong, is more guilty than he who offends him elsewhere, and he furthermore abuses the confidence which has been reposed in him by opening the door to him.

"The aggravating circumstance, however, must not be appreciated when it is the offended party who has provoked the incident, because then he loses his right to the respect and consideration due him in his own house, or when treating of crimes which cannot be committed except in the house of another, as robbery in an inhabited place, trespass to dwelling, etc."

Groizard, in his commentaries on the Penal Code of 1870, Volume I, pages 462-463, states as follows:

"To commit the act in the dwelling of the offended party when he has not provoked the incident.—The home has always been considered as a sort of sanctuary worthy of respect and, to a certain extent, inaccessible to those who do not dwell therein. The ancients as well as the modernists have always considered it in this light. And this consideration is well founded. It is in the home where one's private life and his family life unfold, and these deserve everybody's consideration and respect. Therefore, any offense committed by strangers in this sort of sanctuary, in addition to its own import, involves another breach of that respect due and which should be shown in everybody's dwelling."

Cuello y Calon, in his commentaries on the same Code, Volume I, pages 138-139, says as follows:

"The other aggravating circumstance included in this number is the commission of the crime in the dwelling of the offended party when he has not provoked the incident. According to jurisprudence, the basis thereof rests on the greater perversity assumed in the guilty persons and the greater alarm produced by the offense. The Supreme Court, in some decision, has held that this aggravating circumstance cannot be appreciated when the accused has the same domicile as the offended party. According to the doctrine laid down by the same court, the juridical concept of dwelling, for the purpose of this aggravating circumstance, extends to every dependency of the house which forms an integral part thereof."

Jimenez de Asua, in his work entitled *derecho penal*, page 177, also states as follows:

"The dwelling is the extension in space of our own personality. We reign in it as in the intimacy of our own conscience. It is for this reason that the inviolability of the home is consecrated in the Constitution (article 6), and the Penal Code considers it as an aggravating circumstance to commit the crime in the dwelling of the victim himself. It is clear that if the offended party himself provoked the incident, the reason for the aggravation

disappears."

If, in the opinion of the eminent commentators above-mentioned, what aggravates the commission of a crime perpetrated in the house of the offended party is the abuse of the confidence which he reposes in the offender by opening the door to him, or the violation of the sanctity of the home by trespassing thereon with violence or against the will of the resident, therefore, when the offender does not penetrate the house in order to commit the crime but does so from without, the appreciation of dwelling as an aggravating circumstance, made in this case, is unfounded.

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