

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CATALINO RABAO, DEFENDANT AND APPELLANT.

G.R. No. 46530. April 10, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal from a judgment of the Court of First Instance of Camarines Sur convicting the appellant of the crime of parricide and sentencing him to an indeterminate penalty of from eight years and one day of prison mayor to twenty years of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs.

The information filed by the acting provincial fiscal of said province charged the defendant with parricide for having killed his wife Salvacion Agawa on December 15, 1937, in the municipality of Naga, Province of Camarines Sur, which crime was committed with evident premeditation and abuse of superior strength.

The defendant and the deceased Salvacion Agawa were married before the justice of the peace of Naga on January 15, 1936 and had since been living happily, a child of tender age having been born to the marriage. Since their marriage they had made their home in the house of Urbano Rellora, who lived maritally with the mother of the accused. On the morning of December 15, 1937, when the defendant was hardly awake after staying up late the previous night on account of the elections held in the municipality of Naga, he noticed that his wife was preparing water with which to give the child a bath. He told his wife not to bathe the child because it had a cold, but the wife insisted and a quarrel arose in the heat of which the accused punched his wife on the abdomen. She fell seated on a sack of rice nearby and immediately suffered an attack of which she died in spite of the aid rendered her by the accused himself and other persons who had arrived. The following morning Dr. Vicente Roxas performed an autopsy and found that the spleen of the deceased had been hypertrophied due to an acute and chronic malaria from which she had been suffering, and that death was caused by the hemorrhage of the spleen when it was ruptured as a consequence of an external blow on the abdomen which might have been that delivered by the accused.

The defense alleges that the lower court erred in declaring that the accused hit the deceased on the abdomen, which caused her death, instead of finding him, at most, guilty of parricide through reckless imprudence.

After an examination of the evidence, we are of the opinion that the lower court did not err in finding that the accused hit the deceased on the abdomen which directly caused the rupture of her spleen producing thereby an internal hemorrhage that caused her almost instant death. Urbano Rellora who, as stated before, was the owner of the house where the defendant and the deceased lived and who maintained marital relations with the mother of the accused, testified positively that he saw the accused punched his wife on the abdomen, as a result of which she fell seated on a sack of rice and at that very moment she had an attack, became unconscious and expired. This testimony is corroborated by Dr. Roxas who performed the autopsy, when he declared that the death was caused by the hemorrhage produced by the rupture of the spleen which rupture was caused by an external blow on the

abdomen of the deceased. The defendant himself, in his sworn declaration (Exhibit C) subscribed before the justice of the peace of Naga, voluntarily admitted having hit his wife on the abdomen with his fist when she said things that offended and made him nervous. The aggression was likewise corroborated by an other eye-witness, Raymundo Hilano, who declared that he was at that time passing in front of the defendant's house when he heard and saw him quarrelling with his wife and that the defendant was delivering blows on his wife. The testimony of this witness however, seems incredible and deserves no merit for he testified having seen the aggression through a window which was three and a half meters high from the ground where he stood. Considering the height of the window and the location of the witness, it is clear that he could not have seen what was happening inside the house.

The defendant's act is not mere reckless imprudence, as the defense contends, since under article 365 of the Revised Penal Code the acts that go to make up reckless imprudence must be lawful in themselves, and the attack consisting in the blow the defendant dealt his wife is certainly not lawful, since it transgresses the Revised Penal Code itself, which expressly prohibits it under pain of punishment.

The facts proven constitute the crime of parricide defined by article 246 of the Revised Penal Code, and in its commission there were present the following mitigating circumstances considered by the lower court in favor of the defendant: lack of intention to commit so grave a crime (article 13 [3], Revised Penal Code); having acted upon an impulse so powerful as naturally to have produced passion or obfuscation (article 13 [6]); having surrendered himself to the authorities immediately after the commission of the crime (article 13 [7]); with no aggravating circumstance. As to the penalty imposed, we find that it is not in accordance with that prescribed by the law. Under article 246 of the Revised Penal Code the crime of parricide is punished with reclusion perpetua to death. These penalties are indivisible and the Revised Penal Code provides, in article 63, rule 3, that whenever there is present some mitigating circumstance with no aggravating one, the lesser penalty shall be applied. In conformity with this legal provision, the penalty that should be imposed on the accused is that of reclusion perpetua.

After reviewing the facts, we are convinced that the defendant did not really have the intention of committing so grave a crime as parricide. The quarrel that led to the aggression had its origin from the natural and justifiable desire of the defendant, as a father, to prevent his child, which was then ill, from being given a bath. If, under the circumstances, he transgressed the law by an unjust attack on his wife, he is, nevertheless, deserving of the mitigating circumstances allowed in his favor. We invoke, for this reason, article 5, paragraph 2, of the Revised Penal Code, and recommend to his Excellency, the President of the Philippines, the commutation of the penalty imposed on the defendant in this decision.

Modifying the appealed judgment, we declare the defendant Catalino Rabao guilty of the crime of parricide and hereby sentenced him to reclusion perpetua, and to the accessory penalties provided in article 41 of the Revised Penal Code, to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs in both instances. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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