

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MAXIMINO AQUINO, DEFENDANT AND APPELLANT.

G.R. No. 46725. September 29, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In criminal case No. 7421 of the Court of First Instance of Bulacan, the provincial fiscal filed an information against Pascual de la Cruz and Maximino Aquino, charging them with the commission of the crime of murder, for having assaulted and killed Juanito Galvez with a cane and a knife, with evident premeditation and treachery, having furthermore committed said crime in an uninhabited place. Pascual de la Cruz was discharged, having been used as a witness for the prosecution, and the case was dismissed as to him. Maximino Aquino pleaded not guilty, was tried, convicted of the crime of homicide and sentenced to the indeterminate penalty of from ten years of prision correccional to twenty years of reclusion temporal, to the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs. From this judgment of conviction, Maximino Aquino appealed.

At about 8 o'clock In the evening of May 14, 1988, the accused Maximino Aquino went to look for Pascual de la Cruz in the latter's house and invited him for a stroll. Upon arriving at the rice field of one Alipio de la Cruz, situated in the barrio of Masalipit of the municipality of San Miguel, Province of Bulacan, Maximino revealed to Pascual that he was going to kill Juanito Galvez. The motive was no other than rivalry, as both Maximino and Juanito were courting a girl by the name of Sagrario de la Cruz, and she seemed to be more inclined to the latter. Another reason tor the grudge harbored by Maximino was that on one occasion, he surprised his mistress, Maria de Jesus, flirting with Juanito and this aroused his jealousy. While they were in the rice field, Pascual and Maximino, shortly afterwards, saw a man approaching. Maximino told his companion that said man was Juanito Galvez, and, leaving Pascual, he sallied forth to meet Galvez. Maximino and Juanito actually met each other and both walked together. After a few steps, Maximino withdrew from Juanito and with the cudgel or cane carried by him, he assaulted and. repeatedly struck him on the head, and immediately afterward stabbed him with the knife which he also carried, inflicting upon him a deep-cutting, transversal wound on the mid-anterior part of the throat, twelve centimeters long and five centimeters wide, with plain: and cleancut borders throughout its entire depth, cutting the skin, the muscles, the trachea, the veins and arteries in the anterior part of the neck, the wound being necessarily mortal; another contused wound three centimeters long on the left cheek bone, which affected the entire thickness of the soft tissue of said region; another contused wound two centimeters long on the right side of the nose, parallel to the nasal duct, cutting the entire thickness of the tissue of said region; and a contusion on the upper right side, crushing the mucous membrane. These wounds and contusion were discovered and described by Dr. Alfredo Lopez, president of the eighth sanitary division of Bulacan, who performed the autopsy on the body of Juanito. As was to be expected, the victim died immediately after the aggression, as a consequence of the necessarily mortal wound above-stated.

In the first and second assignments of error, it is contended that the evidence for the defense should have been

made to prevail over that of the prosecution, for being the more probable, stronger and more convincing. The defense of the accused was made to consist mainly in the proposition that it was Pascual de la Cruz who assaulted Juanito Galvez and caused his death, much stress being laid on the circumstance that Pascual was a discharged co-accused. We have carefully reviewed the evidence and we agree with the court, which has observed all the witnesses testify, that the evidence presented by the prosecution is convincing and excludes the defense interposed by the accused-appellant. In addition to the testimony of Pascual de la Cruz, the prosecution has presented circumstantial evidence corroborating the testimony of said witness. Sagrario de la Cruz testified that the accused had really been courting her, but that she rejected him. Consorcia de la Cruz asserted that four days before the crime, the accused had informed her that if the deceased continued to frequent the house of Sagrario de la Cruz, he would kill him. It is possible that Pascual de la Cruz may have agreed to help Maximino realize the crime, but we are satisfied that Maximino was the author of and the one, who caused the death of Juanito Galvez. According to the preponderance of all the evidence presented, his guilt has been established beyond all reasonable doubt. The first two assignments of error are without merit.

In the third assignment of error, it is claimed that the aggravating circumstance of nighttime has not been proved and that the indeterminate penalty imposed should be lowered accordingly. We are of the opinion that the circumstance of nighttime has been correctly appreciated because the accused sought it the better to realize the crime. As to the penalty imposed, the same is in accordance with article 249 of the Revised Penal Code and with Act No. 4103, as amended by Act No. 4225, on the ground that the aggravating circumstance of nighttime is not offset by any mitigating circumstance.

The crime was correctly qualified as homicide because neither evident premeditation nor treachery was present therein. The first circumstance was not present because it has not been proved that prior to the crime, the accused conceived and planned it and persisted in the idea until the realization thereof. Nor was the second circumstance present because, under the given facts, the aggression which produced the mortal wound was committed while the deceased was face to face with the accused.

The last assignment of error merits no further consideration for being a mere corollary of the former ones.

Inasmuch as the guilt of the accused was proved beyond reasonable doubt and the penalties imposed are in accordance with law, the judgment appealed from is hereby affirmed, with the costs of this instance to the accused-appellant. So ordered.

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

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