

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JULIAN SORIANO, DEFENDANT AND APPELLANT.

G.R. No. 46775. June 28, 1940

Ponente: MORAN, J.

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MORAN, J.:

An appeal from the judgment of the Court of First Instance of Laguna convicting the accused-appellant, Julian Soriano, of the crime of murder, and sentencing him to reclusion perpetua, with the accessory penalties of the law, and to an indemnity of P2,000.

Since their marriage on January 12, 1911, the accused and her wife Juliana Velecina had been living together until 1937 when they separated by reason of the illicit relations which the wife sustained with the deceased, Pedro Punzalan. In October, 1938, the accused, at the request of his son, David, 13 years of age, returned home to reunite himself with his wife. This reconciliation notwithstanding, the illicit relations between his wife and the deceased appeared to have continued. On January 16, 1939, at about 9 o'clock p. m., the accused, upon his return from Pila, Laguna, found the deceased in the store of their house talking with his wife. Thereupon, he went behind the stairs of the house, took the shotgun which he had previously placed thereunder, and when the deceased mounted the stairs, he fired at him, killing him instantly. Thereafter, he delivered himself up to the constabulary and signed a confession (Exhibit C) explaining the details of the killing, substantially as above stated. Later, he was brought by the authorities to the scene of the crime and there reconstructed the same which substantially corroborates his confession. His wife and their son David executed similar affidavits before the justice of the peace of Calauang, Laguna. Velecina stated in her affidavit that on the night in question, the deceased told her to close the store as the boy David was being bitten by the mosquitos; that she did as was told, but before she could close all the windows of the store she heard a gunshot; that she thereupon jumped down in front of the stairs of their house and saw an object which she perceived to be that of a person; and that she immediately went to the municipal building to report the matter. Their son David made, in his affidavit, substantially the same statement as that given by her mother.

At the trial of the case, the accused rendered an entirely different version of the commission of the crime stating that in the evening in question, as he went up to his house, he called out to his wife asking her to open the door; that he himself, however, opened the door and found his wife lying down with the deceased on the same bed; that the deceased thereupon rose, ran towards the kitchen and proceeded downstairs; that he pursued the deceased from the rear yard towards the street; that the deceased, instead of proceeding to the street, mounted the cement platform of the stairs of the house; and that he, upon seeing this, went below the stairs, took his shotgun which was hanging on the wall and fired at the deceased, killing him instantly.

We can give no credit to this last version of the crime by the defendant. It is inconsistent with his confession which we believe faithfully represents the truth. The confession was made by him immediately after the perpetration of the crime when he had as yet no opportunity to contrive or misrepresent. His testimony at the trial, on the other hand, must have been the result of afterthought or made upon advice, and is in itself incredible. If he

really called out to his wife before entering the house, Pedro Punzalan would, then, have had sufficient time to slip away, and could not accordingly have been found with his wife lying together on the same bed. And if the accused had really pursued the deceased from the rear yard of the house towards the street, it is hardly conceivable that said deceased would seek refuge in the house again instead of seeking safety in flight, which he could very well do under cover of darkness. Under these circumstances, we are convinced, beyond reasonable doubt, that the accused is guilty of the crime charged.

The crime committed is murder, qualified by treachery, with the mitigating circumstances of passion and obfuscation, and voluntary surrender, and without any aggravating circumstance, evident premeditation not being clear. Under article 64, No. 5, of the Revised Penal Code, the next lower penalty should be imposed upon the appellant, that is, prision mayor in its maximum period, to reduction temporal in its medium period, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

With the modification that the appellant, Julian Soriano, be sentenced to four (4) years, two (2) months and one (1) day of prision correctional, to ten (10) years and one (1) day of prision mayor, judgment is affirmed, with costs.

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

DISSENTING

LAUREL, J.:

I dissent.

I am of the opinion that the benefit of article 247 of the Revised Penal Code should be extended to the accused appellant who should accordingly be sentenced to suffer merely the punishment of destierro in the manner prescribed by law for the reasons now to be stated:

(1) The existence of the adulterous relations between the wife of the accused, Juliana Velecina and the deceased, Pedro Punzalan, is admitted. "For a number of years," the Solicitor-General says in his counter statement of facts, "prior to January 16, 1939, Juliana Velecina, wife of the appellant, had sustained adulterous relations with Pedro Punzalan, the deceased, and for that reason the appellant left his wife and home in 1937 and went to live in Pagsanjan, Laguna, until October, 1938, when at the request of his son David, 13 years of age, he returned home and lived again with his wife (pp. 33, 34, t. s. n.). Notwithstanding this reconciliation, the illicit relations between his wife and Pedro Punzalan continued (p. 38, t. s. n.)" V The trial court itself finds that "in spite of the fact that Julian Soriano had returned to his home (from Pagsanjan, Laguna, after the visit of his son, David), the illicit relations between his wife and Pedro Punzalan continued." (Decision, p. 12, appended to brief of the appellant.) Note that the separation of the accused from his wife was precisely due to the infidelity of the latter.. Note also that it was on account of the appeal of his son David that the accused, in October, 1938, returned to the conjugal home, and again began to live with his wife and son in their house in Calauang, Laguna. If the deceased went to the house of the spouses between 9 and 10 o'clock on the night in question, it was evidently for the purpose of continuing his illicit relations with the wife of the accused, believing that the latter would not return home then, having left several days before for the purpose of harvesting rice in the distant barrio of Labuin, municipality of Pila, Laguna.

(2) There are three witnesses who testified to the fact that the deceased and Juliana were surprised by Soriano in flagrante delicto. These witnesses are the accused himself (t. s. n., pp. 58-62), his wife (t. s. n., pp. 32-43), and their son, David (t. s. n., pp. 44-52). "Their testimony is also circumstantially corroborated by Sancho

Resurreccion (t. s. n., pp. 52-58). The majority opinion casts aside the declarations of these witnesses and accepts the alleged confession (Exhibit C) of the appellant, which confession is alleged to be corroborated by the affidavits of Juliana and David (Exhibits J and K). But, if the alleged confession (Exhibit C) is to be accepted, it must be accepted in its entirety; and if thus accepted, the accused acted in selfdefense and is entitled to acquittal. In this Exhibit C the accused narrated that when he reached home in the evening of January 16, 1939, he found Pedro Punzalan talking to his wife in the store of the house; that he took his shotgun which he had previously placed near the stairs, examined the same whether it was loaded and prepared its trigger ready for firing; that when the accused went upstairs and met him, the former was visibly surprised and immediately pointed at him with a revolver which, however, did not explode; that after the third click, he pulled the trigger of his shotgun, and killed the deceased; that he at once proceeded to Santa Cruz and gave himself up as the one who killed Pedro Punzalan. This is the substance of the alleged confession (Exhibit C). We cannot, Polandlike, parcel out this confession, and accept statements which are unfavorable to the accused and reject those which are favorable to him.

(3) Assuming that there is a conflict between the confession and the appellant's testimony in open court, I accept his testimony given under the solemnity of an oath before the trial judge, and not the alleged confession, Exhibit C, prepared by a corporal of the Constabulary under vicious circumstances narrated by the appellant.

(4) After the bloody incident, Julian Soriano walked towards the town of Santa Cruz, and, arriving there the next morning, presented himself before the constabulary authorities to whom he disclosed that he had killed Pedro Punzalan with the shotgun which he carried with him. This straightforward behaviour is that of an honorable benighted individual!

There is ample evidence on record which faithfully recount the web of circumstances which culminated in the death of Pedro Punzalan, and while the details of the occurrence taken separately do not seem to carry much force, considered together in the light of both factual and legal environment, it is not hard to see that the theory of the defense that the accused killed Pedro Punzalan after finding him ignominiously trampling upon the honor of the family, expresses the whole truth. When a man sustains illicit relations with a married woman, knowing her to be married, he takes his chances, and if killed in the act of adultery, while the killing may not be entirely justified, the law, on elevated moral considerations, atones the offense and sentences the offended husband merely to destierro. While the law does not encourage the taking of the law in one's own hands, it cannot discourage evaluation of human dignity and honor under purer principles of the eternal Code of Morals.

Judgment modified.

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