

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TERESO DUMON, DEFENDANT AND APPELLANT.***G.R. No. 47315. April 25, 1941*

Ponente: LAUREL, J.

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The defendant, Tereso Dumon, was charged in the Court of First Instance of Negros Occidental with the crime of double murder for having shot and killed, in the municipality of Bacolod, the spouses Manuel Magbanua and Loreto Magalona. On November 23, 1938, the said Court of First Instance, presided over by Judge Sotero Rodas, in a well-prepared decision, convicted the defendant of double homicide and sentenced him, for each homicide, to the indeterminate penalty ranging from four years, two months and one day of prision correccional to eight years and one day of prision mayor, to indemnify the heirs of each of the deceased in the sum of P2,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. The court also ordered the confiscation of the defendant's revolver and ammunition. From this judgment the defendant appealed to the Court of Appeals and therein recapitulated his contentions as follows: That he should be discharged from the information on the ground that he acted in self-defense; or he should be given the benefit of the exceptional circumstance provided in article 247, in relation to article 49 of the Revised Penal Code and accordingly sentenced only to destierro in the maximum degree; or he should be convicted only of homicide through simple imprudence, if it be found that he was guilty of some slight negligence in ascertaining the identity of the deceased spouses who were killed purely by accident. On the other hand, the Solicitor-General summed up the Government's case as follows: "The crimes committed by the appellant are two distinct and separate murders, there having occurred in the commission of the homicidal acts the qualifying circumstance of treachery. The aggravating circumstance of dwelling should be appreciated against the appellant. As we have stated at the outset, the circumstance of evident premeditation may be inferred from the chain of facts and circumstances, although not well marked. The trial court appreciated in favor of the appellant the mitigating circumstances of obfuscation and voluntary surrender. We do not agree that obfuscation could be appreciated in favor of the appellant because the now deceased did nothing to make him lose his reason. Even if they were his wife and her supposed paramour, still he had no reason to be obfuscated because he drove his wife from the conjugal home and expressly ordered her to look for another man with whom to live and be happy. Disregarding premeditation and offsetting the aggravating circumstance of voluntary surrender, the prescribed penalty should, therefore, be imposed in its medium period—reclusion perpetua—in each case."

On February 27, 1940, the Court of Appeals certified the case to this Court pursuant to the provisions of section 145-K of the Administrative Code, as amended by Commonwealth Acts Nos. 3 and 259, it appearing that some of its members were of the opinion that the penalty of reclusion perpetua should be imposed upon the appellant for the crime of double murder. The case was argued in this Court on July 26, 1940, when, acting upon a motion for rehearing filed by the appellant for the purpose merely of permitting him to present as additional evidence certified copies of the decisions of the Court of First Instance of Cebu in Criminal Case No. 2568 convicting his wife, Felicisima Maramara, and Benito Aguipo of adultery, and the opposition interposed thereto by the Solicitor-General, it ordered that said motion be attached to the record for consideration when the case is decided

on the merits.

It appears that after thirteen years of more or less stormy and loveless married life during which two children were nevertheless born, the appellant first suspected and eventually learned from his own wife, Felicisima Maramara, that the latter was in love and preferred to live with one Delfin Villaluz. Matters came to a head when, on July 31, 1937, a document (Exhibit O) was prepared and, though intended to be executed by the appellant and his wife, was signed only by the appellant. In said document the latter and his wife agreed to live apart, and the appellant, as husband, ordered his wife to look for another man with whom she could live and be happy and, in turn, Felicisima Maramara, as wife, commanded the appellant to look for another woman with whom he could live. While the ensuing separation was punctuated by occasional visits of the wife to the conjugal home, sometimes at the instance of the children and sometimes at the instance of the appellant, the spouses were never again reconciled. On or about August 17, 1938, Felicisima left Cebu and, on the pretext that she was bound for Manila, proceeded to Talisay, Negros Occidental. There she requested one Silveria Patalinhug de Maramara to accompany her to Bacolod to look for her paramour, Delfin Villaluz. Unable to find the latter, she stayed in the house of the newly married couple, Manuel Magbanua and Loreto Magalona, at No. 16 Smith Street, Bacolod, where she was seen to have been visited by a man who took her out not infrequently.

Shortly before noon on August 24, 1938, the appellant received in Cebu an anonymous letter (Exhibit 4) informing that his wife was staying at No. 16 Smith Street, Bacolod, Occidental Negron. Armed with a revolver and accompanied by Marcial Hipolito, the appellant hurriedly left for Bacolod, arriving there at about two o'clock the following morning. Upon finding the premises sought, the appellant, through the window, entered into the room where Manuel Magbanua and Loreto Magalona' were lying together in one bed and thereafter shot and killed them. It is conceded on all sides that the appellant mistook the deceased for his wife and her paramour, and the dispute has reference only to the circumstances under which the fatal shots were fired. Thus the prosecution claims that the appellant killed the Magbanua spouses while they were asleep, thereby holding him to the precise tenor of his affidavit (Exhibit B) signed shortly after the fatal occurrence wherein he partly stated the following: "I looked for the house No. 16. I stepped on a little shack. I peeped on the room through the open window and saw a man and a woman lying together on the floor inside the mosquito net. I got into the room through the window. The girl looked to me to be my wife specially because I saw her clothes in the same room. I shot them." On the other hand, the trial court found, upon the appellant's testimony, that after the appellant had entered the room in question and had become convinced that the woman lying in bed was his wife, he proceeded to lift the mosquito net, whereupon the couple rose from their bed; that it was only after the appellant saw the woman look for something and after the man had given him blows on the shoulder and had tried to wrest his gun from him that the appellant fired the fatal shots. After mature reflection, we are inclined to adopt this finding. No eye-witness was presented to contradict in any way the appellant's testimony during the trial, and the prosecution relies solely upon the appellant's affidavit (Exhibit B) and upon the testimony of police sergeant Roman Pampora to the effect that, shortly after the commission of the homicidal act, the appellant told him that "el disparo contra aquellos que estaban alia dormidos." It is not improbable that at the time the appellant made his sworn statement and gave the alleged information to Roman Pampora, he was still so ugpsset in mind as to be unable to detail the circumstances of the incident. Moreover, to find flaws in the appellant's testimony and to base conviction upon Exhibit B and the testimony of Roman Pampora, without more, is to find the appellant guilty upon the weakness of his defense rather than upon the required conclusiveness of the evidence for the prosecution. It results that there is no merit in the suggestion of the Solicitor-General that the qualifying circumstance of treachery elevates the offense to double murder.

In this instance the Solicitor-General does not insist in the presence of the aggravating" circumstance of evident premeditation, and it is merely urged that the aggravating circumstance of dwelling should be appreciated against

the appellant. We agree with the trial court that this circumstance cannot be considered because the house in which the deceased were killed was not the dwelling place of the appellant's wife and her paramour whom he believed to have killed. We also agree with the trial court that the aggravating circumstance of nighttime cannot be taken into account, on the ground that the appellant, upon leaving Cebu for Bacolod, did not know the exact time he would arrive at his destination. On the other hand, the trial court correctly found the presence of the mitigating circumstances of obfuscation and voluntary surrender.

The appellant, however, argues that he found the deceased couple in the act of carnal intercourse and that, as he mistook them for his wife and her paramour, he should be sentenced only to destierro, pursuant to article 247, in relation to article 49, of the Revised Penal Code. The trial court refused to believe that the deceased were found in the act of copulation. We do not find it necessary to pass upon this conclusion of the lower court in the light of the divided opinion of this Court in *People vs. Gonzalez*, G. R. No. 46310, promulgated October 31, 1939; and *People vs. Soriano*, G. R. No. 46775, promulgated June 28, 1940 (vide, also, *People vs. Ramiro C. A.* XXXIV O. G, 1516), for, even assuming that the deceased were engaged in the sexual act, article 247 of the Revised Penal Code cannot still be applied, since the appellant had expressly licensed his wife to commit adultery, in that after the appellant had learned from the very mouth of his wife that the latter was in love and preferred to live with Delfin Villaluz, he signed Exhibit 0 wherein he ordered his wife to look for and live with another man. In our opinion, this is consent sufficient, under article 344 of the Revised Penal Code, to have barred the appellant from instituting a prosecution against his wife if the latter had in fact committed adultery thereafter. (Cf. *People vs. Guinucod and Tagayan*, 58 Phil, 621-624.) Consequently, it becomes unnecessary to pass upon the appellant's motion for rehearing.

There is no basis for the appellant's further contention that article 365 of the Revised Penal Code may be made applicable and that he should be convicted only of homicide through simple imprudence, because the act of firing the fatal shots was intentional on his part and even if the appellant had actually killed his wife and her paramour, he would still be guilty of a felony. Neither is there basis for the alternative contention that the appellant acted in self-defense, for the reason that, apart from the circumstance that his intrusion constituted sufficient provocation and the weapon employed by him was not reasonably necessary, the measures taken by the deceased upon finding the appellant in their room cannot be considered unlawful aggression.

The motion for new trial filed with this court by the appellant on July 26, 1940, is denied.

The appealed judgment is affirmed, with costs against the appellant. So ordered.

Avaneña, C. J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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