

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARTINA ORPIANO, DEFENDANT AND APPELLANT.

G.R. No. 47423. November 14, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

In the Court of First Instance of Pangasinan, Martina Orpiano was charged with the crime of parricide committed according to the information as follows:

"That on or about the 20th day of February, 1938, in the municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this court, the abovenamed accused, did then and there wilfully, unlawfully and feloniously kill her lawful husband Santiago Dulay. Contrary to law."

After entering a plea of "not guilty," Martina Orpiano was tried and found guilty of the crime charged, and, due to the concurrence of three attenuating circumstances and no aggravating circumstances, was sentenced to an indeterminate prison sentence of six years and one day of prisidn mayor to twelve years and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P2,000 and to pay the costs.

From this decision, the accused has appealed and assigns as error the failure of the lower court to entertain her plea of self-defense.

It appears that the accused, Martina Orpiano, and the deceased, Santiago Dulay, were married in 1927. Their married life was not happy because of the jealousy and cruelties of Santiago Dulay. For eight years Martina bore stoically her unfortunate marital lot, but finally, unable to withstand ill-treatment, she left the conjugal home to live in the municipality of Villasis, Pangasinan. A month after her departure her husband followed her and through the intervention of third persons they became reconciled and again lived together as husband and wife in Villasis. Notwithstanding their reconciliation, however, Santiago Dulay showed no atonement in the treatment of his wife. On the night of February 19, 1938, Santiago Dulay threatened to kill his wife. As she was then suffering from fever she went to bed, and when she woke up the next morning, she found her husband gone. She inquired as to his whereabouts and then decided to visit her father who was also sick and to ask him for some medicinal herbs for the cure of her fever. Upon her return, she again inquired as to the whereabouts of her husband. Her companions in the house told her that her husband had arrived but that he had again left in search for her. Because she was having headache she laid herself down to rest. Some time later, her husband arrived and he immediately scolded her and indignantly said: "Where have you been? I will kill you. What you said that you are sick is only a pretext as you pretend to be sickly." He thereupon ordered his children of his first marriage to go out and their own children to take the carabaos to pasture. The two left alone in the house, the deceased began to kick and otherwise maltreat her, and in his rage, got hold of his bolo. When Martina saw this, she ran away from the house to look for the barrio lieutenant. Bolo in hand, the husband pursued her. In the pursuit he stumbled over one of the tobacco trunks in the field and fell thereby releasing his hold on the bolo. Martina ran back to pick up the bolo, but her husband swiftly stood up, held her by the arms and tried to wrest the bolo from her. In the struggle she

inflicted the following wounds upon her husband: two transversal wounds, one 9 cm. long and 3 cm. deep, and the other 8 cm. long and 3 cm. deep, which cut the jugular vein and various parts of the left side of the neck and fractured two cervical vertebrae.

The foregoing facts are testified to by Martina and corroborated by Carlos Nicolas. It is true that these facts are contradicted by Generosa Dulay and Jorge Fabro, the barrio lieutenant. Generosa Dulay, however, is the daughter of the deceased Santiago Dulay by his first marriage, whose testimony was limited to the ownership of the bolo, Exhibit A. As to barrio lieutenant Fabro, he could only testify as to segregated portions of the incident. He testified only as to the regular and ordinary walking of the deceased without a bolo and to the part when the deceased and the accused were locked in struggle. The space of time between these two segregated portions of the incident, which was surely much filled with action, was not within his knowledge.

The irritability and cruelty of the deceased, his insufferance and jealousy, are facts testified to by the accused and are not disproved. And a woman, though worn out and made unhappy by conjugal sufferings and cruelties but clinging fast to dear life, has every right to defend her own self in the face of a real menace, whether coming from a stranger or from an irate husband. This was the situation of Martina.

The judgment of the lower court is reversed and the accused acquitted, with costs de oficio. So ordered.

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

Judgment reversed, accused acquitted.

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