

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CIRILO CORICOR, DEFENDANT AND APPELLANT.

G.R. No. 48768. December 04, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellant was sentenced to reclusion perpetua, to indemnify the heirs of the deceased Pedro Lego in the sum of P2,000, and to pay the costs, having been found by the lower court guilty of murder committed on September 15, 1941.

The evidence for the prosecution was presented on October 20 and 21, 1941, and the evidence for the defense on October 21 and 22, 1941. Six witnesses testified for the prosecution and their testimonies are in substance as follows:

- Dr. Gregorio Peñalosa, 30, identified Exhibit A as written and signed by him which is a certification of the post-mortem examination he made on the body of Pedro Lego on September 12, 1941, 3 p. m. He presented Exhibit B, a diagram of a human body, where the wounds mentioned in Exhibit A are indicated by circles in red pencil. Wound No. 6 was fatal, while Nos. 10, 11 and 12 were serious. The wounds were caused by a sharp cutting instrument, such as a pointed cutting bolo. Wounds Nos. 5, 6, and 9 could have been inflicted while the victim had his back turned towards the aggressor. Death certificate Exhibit C was issued by the witness. He performed the autopsy about 15 to 20 hours after the death of Pedro Lego, which took place at 3 p. m. on September 16, 1941. Exhibit D is a certificate of the wounds of Catalina Regis who suffered superficial wounds, none of which being serious.

- Catalina Regis, 38 widow of Pedro Lego.—On the morning of September 15, 1941, she was with her husband in the house of Severino Regis in barrio Lukay, municipality of Alangalang, to attend a novena for the souls in purgatory. Pedro Lego "came later at 11 a. m. of the same day, which was the last day of the novena. On Monday morning, September 15, Cirilo Coricor went to the place." The witness and her husband had been in the house of Severino "since Friday yet, at 4 p. m." The accused is "a nephew of my husband. The mother of the accused is the aunt of my husband Pedro Lego." Cirilo arrived at 7 a. m. "to invite us to his house to give advice to his wife Isabel Regis." Cirilo said: "Tatay Pedro, before you return to Jaro, please pass by our house to give advice to my wife, because she does not mind me, does not obey me." At 11 o'clock of the same morning, Cirilo returned saying: "I return to invite you again, because I feel impatient waiting for you at home." After lunch, in which Cirilo partook, he said: "Tatay Pedro, I am going ahead because you are to take rest for a while, as I am afraid that Isabel might go away and you may not reach her at home." Cirilo went away with the corn which witness and Pedro Lego were to take with them, to compel them to go to his house. "At 3 in the afternoon we went away in the direction of Jaro and we passed by the house of Cirilo." Question as to their arrival at the house of Cirilo, the witness answered: "About half past two, I believe, no, I believe after three. Esperanza Coricor came along with us to the house. When we arrived he offered us places to sit and I sat on a bench near the door. Cirilo was sitting on the floor and my husband Pedro Lego sat on a bench near the window, at the side of a post." Cirilo "was cutting

roast pig and placing the pieces in a plate. There was a glass and one liter of tuba in a container of bamboo. At that moment he offered me tuba and gave me part of the roast pig. I drunk and Cirilo faced Pedro Lego, squatting, put the tuba in a glass which he placed on a bench, and faced me and took the bolo which was before me and then placed it in front of himself and then said: 'Tatay Pedro, take tuba,' and Cirilo took the bolo and with it he cut a piece of roast pig. While Pedro Lego was drinking the tuba from the glass which he lifted to his mouth, Cirilo gave him a thrust with the bolo." He took the bolo from the floor. The bolo was big and it had a horn handle. Pedro Lego was hit in the abdomen. "My husband covered the wound with his hand and jumped from the house, and Cirilo pursued him to the other side of the road, which was an abaca plantation. I went down immediately after them, going to the road to have a sight of them. They reached the abaca plantation. I could not see them, because they were screened by shrubbery. I heard a noise of blows. My children were shouting and crying. I was intending to go to the side of my husband, or else flee, but I could not because of my children. When Cirilo Coricor came out from the abaca plantation, after killing Pedro Lego, I heard him saying: 'Where is Catalina I am going to kill her too.' I felt I was held. When I moved my face I saw her sister holding him by the hand which was carrying the bolo. When I disengaged myself from him, I took my son and went running at full speed, but he reached me and stabbed me in the head. I felt dizzy. I believe he did not stab me with the sharp edge because I was not wounded. I fell down on my back. He mounted me and attempted to give me a thrust in the abdomen, but I was able to take hold of the bolo and pushed it up while he was trying to push it down, and then my hands were wounded, the same as my face. I felt bad due to my wounds and I swooned and said to Cirilo: 'Ay, I am going to die.' He left me unconscious. When I opened my eyes I tried to stand up. I felt very weak and I went to the house of Severino Regis, almost crawling. As soon as I laid down in the room of Severino Regis I heard Cirilo shouting: 'Where is that Catalina. So she is still alive. I will kill her.' Cirilo was then in the road. The witness saw him through a cranny. When Cirilo arrived at the house, he asked whether Catalina Regis went there. Severino and Esperanza told him that Catalina was not there, and Cirilo went away. The witness was treated by Dr. Peñalosa. Her wounds took thirty-three days to heal. The bolo Exhibit E was the one used by Cirilo.

At the time of the incident there were in the house of Cirilo, his wife Isabel, Esperanza, and a son and a daughter of the witness. Esperanza sat down in the same bench with Pedro. Esperanza did not see when Pedro was attacked by Cirilo because at that moment Esperanza had already gone down the stairs of the house of Cirilo to return home. The floor of the house was less than one meter high from the ground. The stairs had only two steps. There was a sleeping room. When Cirilo requested Pedro Lego and his wife to come to his house, he wanted his uncle to give advice to his wife Isabel, because he was noticing that she had a paramour, which was Saturnino Caaya. The witness suspected that Cirilo had a grudge against Pedro Lego, because the latter "sent him away from our land and he had to transfer to the land of Victorio Alcober " which happened two years before the incident. Cirilo then said that "we had preferences." At first "he did not talk with us, but later after our frequent visits to the place we resumed our old friendly relations." The witness saw the cadaver of her husband "at 3 o'clock in the afternoon." After a few more questions, the witness said that she saw the corpse of her husband in the municipal building at seven.

On August 14, "Isabel Regis arrived at our house in Jaro because she had a quarrel with her husband." Isabel said that Cirilo was jealous of Saturnino Caaya. Isabel remained in the house of the witness for four days. Cirilo came to take her, but before going out they quarrelled, Cirilo saying: "You are courageous because these people are siding with you."

- Dominga Lego, 7.—Pedro Lego, her father, was interred in the cemetery. He was killed by Cirilo. When requested to narrate the incident of the killing the witness answered: "I cannot."

"Q. But what did you see, did you not see how the accused killed your father?—A. I did not see.

"Q. What did you see?—A. Nothing.

"Q. What did your father try to do in return?—A. He sat down.

"Q. After?—A. They gave him some drink.

"Q. Who gave him some drink?—A. Cirilo.

"Q. What did he give to drink?—A. Tuba.

"Q. After?—A. He gave him a thrust.

"Q. What was your father doing when he was given a thrust?—A. Drinking.

"Q. Who gave him the thrust?—A. Cirilo.

"Q. Afterwards, what did your father do upon receiving the thrust?—A. He ran.

"Q. Where to?—A. To the abaca plantation.

"Q. And Cirilo, what did he do?—A. He pursued my father.

"Q. And you, where did you remain?—A. I remained with my mother.

"Q. Where was your mother when Cirilo pursued your father?—A. On the road, in the middle of the way.

"Q. Afterwards, where did you and your mother go?—A. We went to the house of uncle Severino.

"Q. How did you and your mother go to the house of Severino Regis?—A. I and my younger brother ran there.

"Q. And your mother?—A. She was wounded.

"Q. When you ran, what did your mother do?—A. She was lying on her back; she was being attacked.

"Q. Who was attacking her?—A. Cirilo."

- Zacarias Ladera, 35.—As Chief of Police of Alangalang, he learned that Pedro Lego was killed about half past four on September 15, 1941. He was notified by a chauffeur of a truck. He went to the house of the accused. Nobody was there. I saw tuba in a container. On the floor there was tuba and meat. The house was open. On the floor there were stains of blood. There was a bayong of corn at the door of the house. On the way from the house to the road there were also stains of blood. The cadaver was found in an abaca plantation at the other side of the road. It was about twenty meters from the road. The body was seen with face down. The witness was acquainted with the accused and his wife and they came to see him on September 10, when they asked for help in preparing an affidavit to be signed by Isabel Regis. The spouses came accompanied by Victorio Alcober. The day before, Alcober came to the house of the witness with a pencil draft of an affidavit, requesting that the affidavit be prepared to be signed by Isabel Regis, because the spouses were quarrelling and without said affidavit, Isabel Regis would be killed by her husband. The affidavit stated that Isabel Regis had sexual intercourse with Pedro Lego. A copy of said affidavit is marked as Exhibit "F." The accused told the witness that he wanted an affidavit to be sure and to have an evidence that his wife had been the paramour of Pedro Lego. At the time the affidavit of Isabel Regis was made, the justice of the peace was absent, for which reason it was not sworn to before him. The witness told Cirilo: "I am afraid you may punish or kill your wife for this affidavit", and Cirilo answered: "I love my wife much; I only wanted to be sure that my uncle Pedro had sexual intercourse with her and that is all."

- Ruperto Aguirre, 37.—On October 14, 1941, he saw the accused and his wife in the house of Cirilo's mother in Granja, municipality of Jaro. The witness was invited by a younger sister of the accused to apply a domestic

medicine to cure the stomachache of a son. Cirilo arrived after 2 o'clock, alone. Isabel, his wife, was already there. At 3 o'clock, when the witness and his wife left, Cirilo said to the witness: "Mano Perto, this is the last time that we shall see each other." The witness asked him: "Why, are you going to Manila?" The accused answered: "I am going to Manila." "What for?" "I am going to kill a man." "Who?" "I will not tell the name; you will know it because he will be from here if he is here or he will be from there if he is there." (On pp. 66 and 67, on cross-examination by the court, the contradictions of the witnesses were put in evidence.)

- Severino Regis, 30.—Pedro Lego and Catalina Regis left the house at 2 o'clock. They were accompanied by Esperanza Coricor, wife of the witness. Esperanza wanted to ask money from Cirilo Coricor. That same afternoon he saw again Catalina who was wounded. Cirilo arrived at his house asking for Catalina, saying that he was going to kill her. The witness told him to go away because Catalina was not there. The accused, who was holding a bolo, left at once.

Catalina Regis and Pedro Lego remained in the house of the witness "for just one night."

Ignacio Buñales, 50, first witness for the defense testified that on September 15, at 2 o'clock in the afternoon, Isabel Regis came running to his house. She said: "Cirilo wounded somebody." The witness saw the accused in front of the house of Victorio Alcober. The witness asked him. "Why are you covered with blood?" The accused answered: "I killed Pedro Lego" "Why?" "Because I caught him and my wife flagrantly." The witness said: "Then you should not remain here. Where is your bolo?" "It is with Victorio." The bolo was delivered by Sebastian Alcober to the witness who then invited the accused to present himself to the chief of police. The witness delivered the accused and the bolo to the chief of police.

Cirilo Coricor, 28, the accused, testified: "On September 15 at about 2 o'clock in the afternoon I went to distil tuba. After distilling in a distant place I came to distil tuba from coconut trees near my house. While I was near a coconut tree, before climbing it, I looked at my house and I saw that the window of my room was being closed, and I felt apprehensive and then I went there to see what was happening, and when I was approaching the room I heard low voices of persons. I looked through a hole into the room and at that moment I saw Pedro Lego raising his body which was over that of my wife and I saw his penis in erection. I saw my wife naked from the chest down. Upon seeing this I felt bad, as if my chest would explode and I thought that the peace of my home had been violated. Then I unsheathed my bolo. Slowly I went up passing through the kitchen door. My intention was to kill the two of them inside the room. As I was approaching the door of my room, Pedro Lego came out and I gave him a thrust, and my wife was able to escape passing through the door of the kitchen. Upon being wounded, Pedro Lego jumped out of the window, and I pursued him. After passing the threshold of my house, he faced me and made an attack. He was able to take hold of the blunt edge of the bolo while I was strongly holding it by the handle. After a while Catalina Regis, Pedro Lego's wife, arrived there and tried to help her husband, taking hold of the bolo in order to wrest it from me. Then we were three struggling for the possession of the bolo, and while they were exerting force to take it, by pulling it towards them, I was in turn pulling it towards me, and at that time the point of the bolo touched the end of Catalina's nose. Sometimes we stumble down. After stumbling for the fourth time, Catalina was placed beneath us and the bolo touched her face. After a while, as Catalina was hurt, she lost hold of the bolo and ran away and the two of us, Pedro Lego and myself, remained, and we continued struggling for the possession of the bolo. And he lost hold of it and I began stabbing him. From that place he was able to run to the other side of the road and I followed him and at that place I finished him, because I could not endure any longer the outrage he did to my home. I love my wife whom I brought to the altar."

At 2 o'clock in the afternoon when the accused left his house, the window of the room was open. He was the one who opened it in the morning. He remembered seeing it open because he went inside the room. The accused had been a distiller of tuba for more than two years. He used to make his distillation at about half past two in the

afternoon, the time when he saw the window of the room being closed. Of the twenty coconut trees from which he used to distil, there still remained eight to be distilled. It was about four when he approached the house to find out what was happening inside the room. Two years before, the witness was residing in his land in Jaro. He transferred to Lukay because of the wrong that Pedro Lego was doing to his wife. One week after his marriage, Pedro Lego started going to their house while the accused was away in his work. The accused saw Pedro Lego once sitting on a bench beside his wife. On another occasion he saw him near the door of the room. The accused heard from neighbors that there was something bad going on between Pedro Lego and his wife and that Pedro Lego would go to their house when the accused was out. Once, at about half past eleven, Pedro Lego arrived asking if they had any viand. The accused answered that they had none, Lego said that he brought viand but left it in the house of an uncle, surnamed Coricor, and ordered Cirilo to fetch the viand because Pedro wanted to eat with the spouses. The accused obeyed. When he returned, he saw Pedro Lego and his wife coming out of the room. The wife went to the kitchen, pretending to do something with the rice she was cooking. Pedro Lego pretended to be occupied cleaning the altar, and then said that he was looking for a chisel he placed in the ceiling. The accused then sensed that there was something wrong, as Pedro Lego had no business to be in the room. As the accused lacked the courage to talk to them, he went to Pedro Lego's wife and told her: "Inay Taling, please tell Tatay Pindoy that he is doing wrong to my wife and that in case I should catch them in flagrant copulation I would kill them and I would not recognize him as my uncle." Catalina answered: "Leave it to me. I will tell him." One week later, Pedro Lego returned. The accused thought that Lego would not stop making love to his wife. So he again went to Lego's wife and said: "Inay Taling, we are going away from Jaro to avoid trouble. If I remain here and uncle Pedro continues his acts and I catch him in the act I would not consider him as my uncle. I will kill him." That is the reason why the accused and his wife transferred to Alangalang to the land of Victorio Alcober.

The accused denies having gone to the house of Severino Regis, as testified by Catalina Regis, to invite Pedro Lego and his wife to come to his house to give advice to his wife in view of the latter's relations with Saturnino Caaya. The accused remained in his house waiting for the time to proceed with the distillation. Regarding his relations with Pedro Lego and his wife the accused said: "Since I learned that they were doing something wrong to my wife I ceased my friendly relations with them." The accused does not even know Saturnino Caaya, and he never suspected any man having love relations with his wife except Pedro Lego. The accused learned that Pedro Lego and Catalina Regis were in the house of Severino, because his sister Esperanza told him so, and was the one who invited him to attend the novena. The accused and his wife refused to attend the celebration, "because I knew that Catalina Regis was the one leading the prayers and her husband Pedro Lego was there," The accused avoided meeting Pedro Lego, "because I knew what he was doing to my wife." It is not true that the accused offered roast pig in his house to Pedro Lego and his wife. "We did not even roast any pig that day." The accused denies having gone to Severino Regis' home to look for Catalina with the intention of killing her. The fact that Catalina Regis was wounded only accidentally when she intervened to help her husband by trying to wrest the bolo from the accused can be shown by the fact that "if the wounds had been inflicted intentionally the wounds would have been big." Regarding the written admission of his wife, the accused had it prepared "in order that my wife would not repeat what she did." On September 3, the accused consented to let his wife go to her mother's house to have a massage, promising to return the next day. Several days passed but she did not return. The accused went to find out the reason for her failure to return. On September 8, the accused went to her mother's house. He did not find her there and the mother said that Isabel did not come to her house but to the house of Pedro Lego. The accused requested his mother-in-law to be the one to take his wife, "because if I would be the one to do it, it is possible that Pedro Lego would be mad at me." After taking Isabel, her mother told the accused that it took some time before Pedro Lego consented to her leaving his house on the pretext that the child became sick and should be cured. The accused brought his wife to Lukay, where he reprimanded her for going to Pedro Lego's house. The wife answered that she was brought to the house of Pedro Lego in Jaro by her aunt Catalina.

Then the accused said: "I believe you have copulated with your uncle Pedro. Why should you be there with him?" At first she refused to tell the truth, but upon the insistence of the accused she could not conceal what happened. Then on September 10, the accused brought his wife to the chief of police of Alangalang "to be reprimanded and be advised not to do again what she did." Since the accused and his wife transferred to Lukay, the accused has not been on speaking terms with Pedro Lego and his wife. The accused and his wife never visited Pedro Lego's house again nor has the latter visited the former at Lukay. After he killed Pedro Lego he went to the town to present himself to the authorities. On the way he met Ignacio Buñales who asked him why he was covered with blood and the accused said: "I killed somebody. I had a certainty that Pedro Lego and my wife were doing something wrong." Since the accused transferred to Lukay, he heard that once, in his absence, Pedro Lego came to his house. Pedro Lego has a piece of land in Lukay and the accused heard that Pedro Lego used to go to said place, but the accused never saw him. At the time the accused peeped into the room of his house he was already carrying the bolo Exhibit E which he was using for his work. He was also carrying a sickle which had fallen from his waist when he was pursuing Pedro Lego. The accused did not pay attention as to whether Pedro Lego had his pants on. He saw his sexual organ, the same as that of his wife, who had the skirts raised. When the accused went to distil tuba, his wife knew that he had to distil from coconut trees which were located far from their house. Ever since the accused was detained, he has not talked with his wife, who failed to visit him even once. The reason was because "she knows that I was also about to kill her. In fact I gave her a stab but she was not hit." Neither Pedro Lego nor Catalina Regis knew of Isabel's declaration Exhibit F. When Isabel left the house on September 3, she brought with her her eight-months-old daughter and left her two-year-old son in the house of her compadre Francisco Serrano.

A careful weighing of the evidence both of the prosecution and the defense leads us to the conclusion that appellant's version as to the circumstance under which Pedro Lego was killed is the more credible. That appellant should have gone to the house of Severino Regis to invite Pedro Lego and his wife to come to appellant's house so as to advise Isabel, because she had a paramour, one Saturnino Caaya, as testified to by Catalina Regis, appears not to tally with the fact that, according to the testimony of the accused, not contradicted by the same Catalina Regis, he went twice to her to complain about the illicit relations between Pedro Lego and Isabel, to the extent that appellant manifested to Catalina that if he should surprise Lego in flagrant copulation with Isabel, he will kill them and would forget that Lego is his uncle. If appellant was jealous of nobody else but Pedro Lego, of whose illicit relations with his wife he had ample evidence, including the written confession of Isabel, there is no reason for him to recur precisely to Lego to give advice to Isabel. The suggestion is too illogical to be entertained by a person in his senses, and there is no evidence that appellant had lost his. It is unbelievable that he should seek advice for his wife to desist from continuing with an alleged paramour, Saturnino Caaya, who is not even known to him. After appellant had twice complained to her of the illicit relations between Lego and Isabel, it is hard to believe that Catalina could have seriously entertained the alleged invitation by appellant to his house to give advice to Isabel.

Catalina's story to the effect that her husband and herself were regaled by the accused in his house with roast pig and tuba does not seem natural. It is a well-known custom among our people in the barrios to prepare roast pig only on important celebrations or gatherings. Roast pig is considered a delicacy only proper when there are joyous motives. If Lego and his wife were invited just to give advice to Isabel, on an unhappy domestic matter, it is incredible that appellant should offer roast pig, which is only prepared for merry occasions. The fact that Lego and his wife were coming from the house of Severino Regis, where the novena which took place must have been an occasion for preparing special dishes, only serves to make more incredible Catalina's story.

We are of opinion that the circumstances under which Pedro Lego was killed by appellant were as narrated in the latter's testimony and, accordingly, the appealed decision must be modified, so as to reduce the penalty to that

provided in the following article of the Revised Penal Code:

"ART. 247. Death or physical injuries inflicted under exceptional circumstances.—Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

"If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

"These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducers, while the daughters are living with their parents.

"Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article."

In applying the above article we feel that we are performing a duty extremely distasteful, because, with all due respect to a contrary opinion of the majority, the writer can not conscientiously agree with the philosophy underlying said part of the Revised Penal Code. That philosophy, acceptable during the immature stages of human evolution, when blind and unreasonable impulses were the law, when reason was swayed by obscurantism and absurd prejudices, when the Christian and other humanitarian religions had not yet set the tenets upon which modern civilization and culture have developed, has absolutely no place in the present stage of human society.

Under that un-Christian, barbarous, inhuman philosophy, the offended spouse is given the tremendous power to summarily execute two human beings, without the benefit of any hearing, trial, or court proceeding. Under our laws, under the democratic system of government established by our Constitution, the authors of the most heinous and abhorrent offenses, such as treason, piracy, parricide, murder, genocide, mass massacre, the criminals whose misdeeds place them in the category of moral monsters, are protected by a bill of rights, by an elaborate system of administration of justice, by a number of fundamental guarantees intended to insure that no one shall be deprived of the due process of law and that the equal protection of the laws shall be effective to everybody. Under the savage philosophy in question, those who should happen to be surprised violating the conjugal fidelity can be killed like vexatious insects or wild animals.

Conjugal infidelity committed by a married woman and her paramour is punished, as adultery, by article 333 of the Revised Penal Code with from 4 months to 6 years of imprisonment, and the one committed by a husband and his mistress, as concubinage, by article 334, with imprisonment from 6 months to 4 years and 2 months for the erring husband and banishment for the mistress. Under article 334, not all cases of conjugal infidelity committed by a husband is punishable. The great majority of them are left unpunishable. No fiscal will think of prosecuting the husband who should indulge in sexual intercourse with discreet mistresses or with prostitutes. For such acts of conjugal infidelity, some punishable with short terms of imprisonment, others with simple banishment, and still others not punishable at all, article 247, in effect, confers to the offended spouse the power to inflict the supreme penalty of death. The banishment provided for the killer is intended more for his protection than as a penalty. Such a twisted logic seems possible only in a paranoiac mind. It is high time to relegate article 247 to where it properly belongs, to the memory of the sins that humanity promised to herself never to commit again. The majority of the Court, however, opines otherwise.

For all the foregoing, setting aside the appealed decision, appellant is found guilty of the offense of having killed Pedro Lego as punished by article 247 of the Revised Penal Code and, accordingly, is sentenced to 2 years, 4 months and 1 day of banishment, and to indemnify the heirs of Pedro Lego in the sum of P2,000.

Paras, and Pablo, JJ., concur.

[1] This decision is rendered in lieu of the one promulgated on September 29, 1944, which cannot be reconstituted.

MORAN, C. J.:

I certify that Mr. Justice Briones and Mr. Justice Padilla joined in this decision.

CONCURRING

BENGZON, J.:

I agree to the application of article 247 of the Revised Penal Code. But I can not assent to the commentary that it is old-fashioned and unjust. Though it is not this Court's mission to vindicate legislative measures, it should be observed that similar provisions are found in the codes of France, Italy, Belgium, Mexico, Peru, Chile and other South American countries.[1] In some of these the offended husband is even exempted from all criminal responsibility.

Article 247 was taken from the Spanish Penal Code; it does not fully excuse the husband's misdeed, but it greatly reduces the penalty, considering the enormous provocation and his righteous indignation. As Groizard explains,

"El marido que sorprende a su mujer en adulterio y la mata, o mata a su complice, o mata a los dos, debe ser siempre justiciable. Todos los elementos constitutivos del delito, en este hecho concurren. Hay derecho herido: el derecho a la vida; hay ley violada; hay voluntad en la accion; hay daño inmediato; hay daño mediato, y no concurre ninguna de las circunstancias que hacen, con arreglo a los principios, de todo punto excusable el homicidio. Pero, a su vez, hay que convenir en que la voluntad criminal no se determina en tales casos con aquella ausencia de exitaciones que constituye el tipo ordinario del dolo, ni mucho menos con aquella otra calma y fria reflexion que constituye el dolo perfecto; a su vez, hay que confesar que la causa de la accion surge espontanea y con violento impetu en el animo del marido en presencia de la enorme ofensa que se le infiere, y por tanto, que la inmoralidad y la repugnancia del delito decrece y disminuye cuanto crece y aumenta el acicate natural del decoro que a la accion criminal le induce; a su vez, hay que proclamar que la opinion publica, cuando llega a su noticia la catastrofe, se indigna mas contra los culpables del adulterio que contra el culpable del homicidio; * * *."

DISSENTING

TUASON, J., with whom concur MORAN, C. J., FERIA, and HILADO, JJ.:

The decision of this Court not only disregards the sensible, realistic rule which gives weight to the trial judge's findings on matters of veracity; it gives credence to the highly improbable story of the accused in preference to the prosecution witnesses' version of the killing which is not only convincing in its natural details, independently of the trial court's well-considered decision, but is supported by indisputable facts.

Two accounts of the killing are pitted against each other, one given by two eye-witnesses for the prosecution, the other by the accused himself. They are condensed in the decision. A reading of the unabridged statements, in the form of questions and answers will convey a more vivid idea of, and, in their simplicity, inspire an abiding confidence in, the witnesses' truthfulness.

According to the prosecution's evidence the deceased had been invited by the defendant to his house and there

was suddenly attacked while taking tuba offered by the defendant himself. Contrasting this testimony, the accused said he caught the now deceased having carnal knowledge of his (defendant's) wife.

The defendant's testimony is absolutely incredible. It is a fact which no amount of argument can destroy, that the decedent's wife and children were inside the house at the commencement of the assault. This is undeniable from the other fact that the wife was seriously wounded, sustaining five wounds, although there is variance in the proofs as to the defendant's intention to inflict her injuries (which have deformed her face). It is also a fact that the time of the attack was from 3 to 4 o'clock in the afternoon. In the face of these facts, the most beastly and daring of swains would not put in his head the notion of committing the act attributed to the deceased. And it is even more inconceivable that the defendant's wife had the temerity to yield to Pedro Lego's lust with her husband just around, likely to show up at any moment, and only five days after she had been made to sign an affidavit in order, according to the accused, that she should not renew her illicit relations with Lego, or that he might have proof of her infidelity. When I say that the defendant was just around I am referring to his own testimony, that before the deceased came to his house he went out to gather coconut saps, testimony which is beyond doubt a perjury but is granted for the sake of argument.

The lower court's finding that the deceased, his wife and his children were together in the house of the accused is established by the testimony of the widow, of her seven-year old daughter, Dominga Lego, and that of Severino Regis. The first of these three witnesses declared that the accused twice came to the house of Severino Regis and implored Pedro Lego to drop in at his (defendant's) house and give counsel to his (defendant's) wife, who, the defendant told Lego, paid no attention to and would not obey him. The first time the accused came was in the morning and the second time was shortly after meal. Catalina Regis stated that in the afternoon the accused reminded the deceased of the necessity that he come right over lest Isabel Regis would go away. To make sure that the deceased did not fail to come, Catalina Regis further testified, the accused took upon himself the trouble of carrying some corn which Pedro Lego had put in a sack to take home to Jaro. This corn with its container was found by the chief of police, after the killing, on the ground near the steps of the defendant's house. On her part, Dominga Lego testified that from the house of Severino Regis, her parents, her younger brother, Severino Regis's wife, and she came to the house of the accused, and that in that house her father was stabbed by the defendant while she, the witness, was seated on a bench. A complaint does not build up a fabricated story by the testimony of a timid and untutored young tot. Lastly, Severino Regis stated that Pedro Lego, Catalina Regis, their children and the witness's wife, Esperanza Coricor, at about 2 o'clock in the afternoon went from his house to the house of the defendant. He added that his wife went along because she wanted to get money from the defendant who is her brother.

Neither at the time of nor after his arrest did the defendant say to the chief of police that he had surprised his wife and Pedro Lego. What he told the officer, according to the latter, was "su corazon estaba muy apenado, resentido por este affidavit (Exhibit F) y que desde algunos dias antes, estando todavia en Jaro ya estaba el muy resentido."

Ignacio Bañales, barrio lieutenant, was notified by the defendant's wife of the tragedy and soon saw the accused in the street. Bañales tried to make the court believe that he asked Coricor why he was splashed with blood and that the accused answered he had killed Pedro Lego "because I caught him and my wife in flagrante." But Banales said later that the defendant's statement that he had surprised his wife with Lego was made to him only in the courthouse on the day of the trial. On cross-examination the barrio lieutenant said that Coricor's only expression was "nakafijo." The defendant stated that when Bañales asked him why his clothes were splattered with blood he answered, "I had the certainty that Pedro Lego and my wife were executing illicit acts."

It is apparent that the statement which the accused is said to have uttered when he and Bañales met was the result of an effort to put up something after the barrio lieutenant had stated unwittingly or in unguarded moment that it

was in the courtroom he heard from the defendant's lips of his wife's unfaithfulness. It looks as if the defense had intended to have this statement taken as having been made by the accused when he was questioned by the barrio lieutenant shortly or immediately after the commission of the crime. In any event the statement stopped short of conveying the idea that the accused had, as he expressly said at the trial, seen Lego on top of Isabel with Lego's trousers down and Isabel's skirt up to the waist or chest. The accused went so far as to say, on the witness stand, that he had seen Pedro Lego's sexual organ and to describe it. The point is that the defendant is not a man whom we could expect to relate Lego's and Isabel's conduct with subtlety and refinement of words if he had found them in sexual intercourse. Blunt and crude in his speech to the point of vulgarity, the defendant would have said in unrestrained language what he had seen instead of indulging in innuendos or expressing what would sound to be a belief or conviction. In truth it is to be gathered from the tenor of the provincial fiscal's questions to Bañales that the latter had not said to the prosecuting officer "nakafijo" or anything suggesting coitus between Lego and Isabel.

The chief of police testified that in the defendant's house he found, at about 4 o'clock in the afternoon, tuba in a bamboo container, traces of spilled tuba and blood stains on the floor, and small remnants of meat. This testimony, the veracity of which can not be successfully questioned, corroborates the testimony of the witnesses for the prosecution—that the deceased and his family had been invited by the defendant and entertained with tuba and pork meat. The decision refuses to give credence to the presence of meat saying that the day was not an occasion for roasting a pig. But the witnesses did not say that the accused killed a pig. What Catalina Regis did say was that the accused had a piece of roast pork in a plate—which he could have gotten from his sister or bought elsewhere. It must be recalled that at Severino's house there had been a feast on the occasion of a prayer said for the soul of a departed relative and that at the luncheon the accused, according to the evidence, had taken part.

The fact that the chief of police found blood stains only at the entrance of the house is a clear refutation of the defendant's testimony that he caught the deceased and his wife in the room (which was on the opposite side of the sala from the entrance of the house) and that there was a struggle for the possession of his bolo inside the house between him and the deceased. At the same time, this fact confirms the testimony of the witnesses for the prosecution that upon receiving the first stab in the abdomen the now deceased fled from the house and was pursued by the accused.

It is significant that the defendant's wife and Severino Regis's wife, Esperanza Coricor, who is the defendant's own sister, were not presented as witnesses by the defense. These women made sworn statements before the justice of the peace on the same day of the crime corroborating Catalina Regis. Their affidavits were excluded from the record on the objection of defense counsel based on technical grounds. The exclusion was proper and the statements may not be used as basis of defendant's conviction, but they should not keep us from pausing before we take the defendant's grotesque tale without question.

There are other things that point to the killing as a premeditated, cold-blooded affair. Isabel Regis stated in her affidavit that her husband told her to leave the house as soon as she should see Pedro Lego and Catalina Regis come. The circumstances under which the affidavit, Exhibit F, was made, lead one to believe that the accused, in contemplation of his ghastly plan, used pressure on his wife to confess an alleged adultery. Isabel in another affidavit declared that she was forced by her husband to admit she had been abused by the deceased and that she consented to sign Exhibit F to stop him from scolding her. The chief of police thus narrated how the affidavit happened to be executed:

On September 10, the accused and his wife appeared in his office accompanied by Victor Alcober, the defendant's landlord. The day before that, Alcober had come with a draft, saying: "Do the favor of preparing an affidavit for Isabel Regis, one of my tenants, otherwise she will be killed by Cirilo Coricor, her husband, as they have been quarrelling (peleando)." It was then that he told Alcober to fetch Coricor and Isabel Regis. The next day Alcober

came back with Isabel and Coricor. The latter asked him to draw an affidavit. He asked the accused the reason why he wanted an affidavit and Coricor answered that it was to find out the truth and to have on hand proof that his wife had been Pedro Lego's mistress. He expressed concern lest the accused would make use of the affidavit to harm his wife, but the accused assured him: "I love my wife and I am not going to punish her." Upon this assurance he consented to write down the affidavit on a typewriter. As soon as the affidavit was written Coricor wanted to take it but he refused to hand it to him. Then he went out to answer the call of nature and left the paper on his table. When he returned, Coricor, Coricor's wife and Alcober were gone with the paper.

That the accused conceived the idea of arming himself with this affidavit only five days before he killed Lego and months after the alleged adultery mentioned therein took place, in Jaro, gives added reason for the belief that the defendant had long nurtured the idea of doing away with his wife's uncle.

Even the charge that Lego disrupted the defendant's marriage in Jaro, before the defendant and his wife moved to Lucay, is not by any means clearly convincing. The dead man's widow branded this imputation on her husband as a falsehood. She said she had not heard any rumor or gossips to that effect, and she ought to have known or heard of it if anything like that had happened. The fact is, it can be seen between the lines that the defendant is a man of nervous and violent temperament. Conceivably he may have been a victim of an obsession or hallucination about his wife's faithfulness. No small amount of tragedy has been the result of unfounded jealousy. Not infrequently is jealousy a disease of the soul haunting the imagination. Pedro Lego was not the only object of defendant's jealousy. He also accused one Calaya of breaking his home though he denied this at the trial and said he did not know any one by that name.

Whether the defendant's jealousy was founded or imaginary and whether or not jealousy had anything to do with the murder in question, it can be affirmed with absolute certainty that the deceased was not guilty of any improper conduct towards the defendant's wife on the day he was murdered. Indeed, jealousy may just have been a pretext. Note the frenzy with which the affidavit was made, its proximity to the date of the crime, and the remoteness from that date of the supposed amorous episode that was the subject of the sworn statement. Did the defendant know that Lego and his family were coming to attend the prayer five days hence in Severino's house? And was that the reason why he wanted to have "on hand proof of his wife's infidelity?" That is not implausible.

The defendant's real motive has to be looked for somewhere else. Catalina Regis stated what I believe was the dominating cause of the defendant's ire. Substantially, she testified that Pedro Lego had bought a piece of land in Lucay, the scene of the present crime. She said that the accused and his wife moved from Jaro to Lucay to work on that land. Later the property was given to Severino Regis, Isabel's brother, and the defendant was dismissed from it by Lego. It was then that Coricor and his wife moved to Victor Alocober's farm. This incident, according to Catalina Regis, was resented by the accused and his wife, both of whom charged that Pedro Lego and his wife "had preferences." For sometime thereafter Coricor and his wife refused to talk with the deceased and the witness, although in the course of their visits to Lucay the former good relations were restored, at least on the surface.

The following circumstances bear out the theory that the killing was motivated not by jealousy, much less defendant's having surprised the accused and Isabel Regis, but by something else. Isabel came out unscathed. It does not appear, aside from the defendant's gratuitous testimony given in court, that he went after his wife after he killed Lego to chastise her as he looked for Catalina Regis. On the other hand, he slashed Catalina Regis several times with his bolo until Catalina was knocked down and was believed dead. After Catalina, upon regaining consciousness, crawled away to hide, the accused, still carrying his bolo, upon finding her gone, looked for her apparently intent on finishing the woman. The defendant's determination to kill not only Lego but also Lego's wife could not have been due to jealousy or to Lego's having been caught by the accused with the latter's wife. The charge that Catalina Regis was a party to her niece's fall for Catalina's husband sounds too ridiculous to

deserve attention.

The attitude of the accused in connection with his appeal is also significant as indication of consciousness of guilt. He was prosecuted for two crimes, that of murder in connection with the death of Pedro Lego and frustrated murder in relation with his attack against Catalina Regis. He was convicted of both accusations although the court qualified the latter offense as serious physical injuries. The accused appealed only from the sentence convicting him of murder and abided by the decision as to the other crime. This belies defendant's statement that Catalina Regis was wounded unintentionally on his part when she allegedly intervened to wrest his bolo while he and Pedro Lego were grappling with each other. Again, the accused filed a formal motion to withdraw his appeal from the sentence for murder, although that motion to withdraw the appeal was allowed to be withdrawn upon insistence of the appellant who got an inkling from a dissenting opinion that his case might have been decided with modification of the sentence by this court in his favor.

[1] See Groizard, *ElCodigo Penal*, 2d Ed., Vol. 4, pp. 657-661.

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