

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIA GUY-SAYCO, DEFENDANT AND APPELLANT.

G.R. No. 4912. March 25, 1909

Ponente: TORRES, J.

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TORRES, J.:

Long before the commission of the crime herein prosecuted, Gelasio Galupitan, the husband of the accused, entered into unlawful relations with the deceased Lorenza Estrada; all were residents of the town of Santa Cruz, the capital of the Province of La Laguna.

The accused, Emilia Guy-sayco, duly became aware of this relation. As her husband had stayed away from home for more than two weeks, remaining in the barrio of Dujat, distant about two and one-half hours' walk from the said town under the pretext that he was engaged in field work, on the 20th of March, 1907, at about 2 p. m., she decided to go to said barrio and join him. To this end she hired a carromata, and after getting some clothes and other things necessary for herself and husband, started out with her infant child and a servant girl; but before reaching the barrio and the camarin where her husband ought to be, night came on, and at about 7 o'clock she alighted and dismissed the vehicle after paying the driver. They had yet to travel some distance, and for fear of being attacked she disguised herself, using her husband's clothes and a hat given to her by her companion, and dressed in this manner they continued on their way. On seeing her husband's horse tied in front of a house she suspected that he was inside; thereupon she went to the steps leading to the house, which was a low one, and then saw her husband sitting down with his back toward the steps. She immediately entered the house and encountered her husband, the deceased, and the owners of the house taking supper together. Overcome and blinded by jealousy she rushed at Lorenza Estrada, attacked her with a penknife that she carried, and inflicted five wounds upon her in consequence of which Lorenza fell to the ground covered with blood and died a few moments afterwards. The accused left the house immediately after the aggression, and went to that of Modesto Ramos where she changed her clothes.

From art examination of the body made on the following day by Dr. Gertrudo Reyes, it appeared that five wounds had been inflicted by a cutting and pointed weapon, one of which was on the left side of the breast and penetrated the left ventricle of the heart; this wound was of necessity mortal, the others being more or less serious.

A complaint was thereupon filed by the provincial fiscal on May 31, 1907, and the corresponding proceedings were instituted. The court below entered judgment on June 29, 1908, sentencing the accused, Emilia Guy-Sayco, to the penalty of twelve years and one day of reclusion temporal, to suffer the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. From said judgment she has appealed.

The above-stated facts, which have been fully proven in this case, constitute the crime of homicide defined and punished by article 404 of the Penal Code, for the reason that in the violent death of Lorenza Estrada, occasioned by the infliction of several wounds, one of which was mortal, none of the circumstances were present that qualify the crime of assassination and call for a heavier penalty as imposed by the previous article 403 of the code.

The reality and certitude of the crime at bar can not be denied. It has been proven by the testimony of several witnesses, to wit, Roberto Villaran, Susana de Mesa, the owners of the house, and Maria Ramos, all of whom witnessed the aggression; they saw the deceased die as the result of five wounds inflicted upon her, one of which was, of necessity mortal; it was also proven by the testimony of the surgeon who examined the body, which was seen by the said witnesses and by others who went to the place of the occurrence.

The accused pleaded not guilty, and in exculpation she alleged that, when Lorenza Estrada saw her and heard her remonstrate with her husband, she being then upstairs, Lorenza at once asked what had brought her there and manifested her intention to attack her with a knife that she carried in her hand, whereupon the accused caught the deceased by the right hand, in which she held the weapon, and immediately grappled with her, and in the struggle that ensued she managed to get hold of a penknife that she saw on the floor close by; she could not say whether she struck the deceased with it as she could not account for what followed.

From this allegation of the accused, her counsel, with a view to asking that she be absolved, claims that in wounding the deceased she acted in proper self-defense.

It has been proven beyond a reasonable doubt that as soon as the accused entered the house where she found her husband, without saying a word, she attacked the deceased with a penknife and inflicted wounds that caused the immediate death of the latter. Such an allegation can not therefore be admitted, even though corroborated by the husband and the servant of the accused, inasmuch as the testimony of the latter is entirely contradicted and destroyed by the testimony of the witnesses for the prosecution, who were present at the aggression, and who deny that the servant was present; it is not true that a penknife was found on the floor of the house; it is probable that the instrument with which the crime was committed was carried by the accused when she went to said house; and even though it were true that when the accused, Emilia, made her appearance, the deceased Lorenza arose with a knife in her hand and in a threatening manner asked the accused what had brought her there, such attitude, under the provisions of article 8, No. 4 of the Penal Code, does not constitute that unlawful aggression, which, among others, is the first indispensable requisite upon which exemption by reason of self-defense may be sustained.

In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of exemption from liability on the ground that 'it was committed in self-defense. It has always been so recognized in the decisions of the courts, in accordance with the provisions of the Penal Code.

In the commission of the crime the presence of mitigating circumstance No. 7 of article 9 of the code should be considered, without any aggravating circumstance to neutralize its effects, for the reason that it has been proven that the accused, at the time when the crime was committed, acted upon the impulse of passion and under great jealous excitement at the sight of her husband taking supper in the company of his mistress, after he had been absent from the conjugal dwelling for several days.

As to the penalty of indemnity contained in the judgment appealed from and impugned by the defense, article 17 of the code reads: "Every person criminally liable for a crime or misdemeanor is also civilly liable," and according to the established rule of the courts, in order that an accused person may be declared to have incurred civil liability, it is sufficient that said liability shall proceed from, or be the consequence of the criminal liability, and in addition thereto, article 122 of said code provides that the courts shall regulate the amount of indemnity for damages under said civil liability, upon the same terms as prescribed for the reparation of damage in article 121 of

the code, and a finding on the matter should be contained in the judgment.

For the reasons above set forth it is our opinion that the judgment appealed from should be affirmed, as we do hereby affirm it in all its parts with costs against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

DISSENTING

WILLARD, J.,

I think that the aggravating circumstance of disguise should be applied, and I do not agree with that part of the decision which treats of the matter of agresion ilegítima.

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