

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE CONSUELO, DEFENDANT AND APPELLANT.

G.R. No. 5190. July 28, 1909

Ponente: TORRES, J.

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TORRES, J.:

Before 10 o'clock on the evening of the 7th of December, 1908, Rosa Reposar was in the house of her sister, Consolacion Reposar, lying in a hammock, together with her little child, when Jose Consuelo, her husband, made his appearance and asked her to go home, whereupon Rosa at once left Consolacion's house, and followed her husband. Shortly thereafter, Rosa was heard crying out for help from her own house, which was close by that of Consolacion; the latter's husband woke up at once, and was about to render assistance, but the said Consolacion prevented his leaving; by this time the accused appeared near by calling for Consolacion's husband, but, as the latter paid no attention to him, he tried to enter their house, but one of the children saw his intention and locked the door. Consolacion then cried out for the police, thereby waking her brother, Pio Reposar, who was in his own house and who went to inquire what was the matter. Consolacion replied that there was a quarrel in Rosa Reposar's house, and Pio went thither, but the accused was no longer to be found; he only saw Rosa Reposar lying dead upon the floor, with a wound in the neck and two in the right side of her body. From the investigation it further appears that the accused Consuelo, after killing his wife with a bolo, left his house carrying the weapon, and called at the tribunal or municipal building, where he delivered it with fresh blood stains to Laureano Molina, a policeman on duty, telling him that he had killed his wife, Rosa, and on being asked the reason by the policeman the accused replied that such had been his luck. The policeman then arrested him and reported the affair to his sergeant, Bonifacio Salazar, and handed him the bloodstained bolo.

In view of the foregoing facts the provincial fiscal, on the 14th of the said month, filed an information with the Court of First Instance of Leyte against Jose Consuelo, charging him with the crime of parricide committed with premeditation, treachery, and cruelty on the person of his lawful wife, Rosa Reposar, and inflicting on her three mortal wounds, to wit, one in the neck, and two in the right side, in consequence of which the woman died instantly.

Proceedings were instituted, and the trial judge entered judgment therein on the 14th of January, 1909, sentencing the accused to the penalty of death, to be carried out at the place and in the manner provided by law, and further sentenced him to pay an indemnity of P500 to the heirs of the deceased, and, in case of a pardon being granted, to suffer the accessory penalties of article 53 of the Penal Code, without prejudice to the submission of the case to the Supreme Court for a review of the judgment, whether or not appeal were taken by the accused.

It appears from the above-stated facts, which have been fully proven in the case, that the serious crime of parricide, defined and punished by article 402 of the Penal Code with two indivisible penalties, to wit, life imprisonment (*cadena perpetua*) to death, has been committed, inasmuch as it has been fully shown in the proceedings that Jose Consuelo killed his wife with a bolo, the wounds discovered on her body, especially the one inflicted on the neck being serious and mortal. With the exception of a little child that the deceased was looking

after, there is no eyewitness to the crime, which was committed in the house of the said spouses, as it does not appear that the boy Marcelo, their own child, was present at the time, and for this reason it could not be ascertained if the aggression had been committed treacherously; but it can not be doubted that, when the accused attacked his wife with a deadly weapon, she was unarmed and defenseless, and he took advantage of the superior force that his sex and the weapon that he was carrying afforded him; the woman who was attacked being unarmed, was accordingly overcome and could not defend herself, and probably not even escape from the savage attack of her aggressor.

The guilt of the defendant as the sole, proven, confessed, and convicted author of said crime is unquestionable, because, apart from the fact that when Pio Reposar went to the house in response to the cries for help uttered by the deceased and found the defendant no longer there, although he had been there shortly before, and found only the still warm body of the unfortunate Rosa with three wounds, Consolacion Reposar, the surviving sister of the victim, having previously seen the said Jose Consuelo when he descended from his house after the cries of his wife, carrying a bolo in his hand, it further appears that, shortly after the crime, said accused reported at the municipal building and delivered the blood-stained instrument of the crime to the policeman on duty, Laureano Molina, and voluntarily informed him and Sergeant Bonifacio that he had killed his wife with the weapon, and afterwards repeated this confession when pleading guilty at the preliminary investigation, and when arraigned in court.

In the commission of the parricide no mitigating circumstance is present, but, on the contrary, there are two aggravating ones, premeditation and abuse of superiority, as hereinbefore mentioned, for the record discloses that the accused was in the habit of misbehaving and improperly conducting himself toward his wife and that he was accustomed to abandon and ill treat her to such an extent that she was obliged to complain to the justice of the peace about one month before the affray, when the defendant was punished with fifteen days' imprisonment for ill treatment and threats.

From the above, and as it further appears in the case that the accused, while undergoing the said sentence of fifteen days' imprisonment, repeatedly stated to Balbina Alvarado, a booth keeper in the pueblo of Palo who supplied rations to prisoners, that he would soon be wearing a tiger's suit because he was going to stab (pinchar) or wound his wife, and that it was preferable to wear such suit as he would have better food as a prisoner; and as he also repeated said statement to Antonio Cemino, an Insular prisoner from Bilibid Prison, telling him three times that he was in jail on account of his wife, and that as soon as released he desired to be like him and other Insular prisoners, it is clear that he intended to kill his wife. Marcelo Consuelo, the 10-year-old son of the accused, stated that on the night of December 7, before his mother was killed, his father had been sharpening the bolo which, when shown him, he recognized as his father's property. All of the foregoing facts which have been fully, proven in this case clearly show that the accused had for many days deliberately premeditated the tragic death of his unfortunate wife, and effected the same, with abuse of superior strength, after long and persistent meditation, as already stated.

Therefore, in view of the presence of two aggravating circumstances, without any mitigating circumstance, the adequate penalty under rule 1 of article 80 of the Penal Code is the higher of the two indivisible penalties imposed by article 402 of said code, with the accessories thereof.

The court, for the reasons above set forth and admitting the conclusions in the judgment appealed from in so far as they are in conformity therewith, is of opinion that the sentence of the lower court should be affirmed with costs, and that the penalty of death imposed on Jose Consuelo should be executed in accordance; with the provisions of Acts Nos. 451 and 1577, provided, however, that, in the event of a pardon being granted, he shall be further sentenced to suffer the accessory penalties of article 53 of said code, and to pay an indemnity of P1,000 to the

heirs of the deceased, with the costs of this instance.

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

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