

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GENOVEVA APEGO, DEFENDANT AND APPELLANT.*G.R. No. 7929. November 08, 1912*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-7929/>**TORRES, J.:**

This case comes to us on appeal from a judgment of February 15, 1912 by which the Honorable Mariano Cui, judge, sentenced the appellant to the penalty of twelve years and one day of reclusion temporal, accessories, to pay an indemnity of P1,000 to the heirs of the deceased and the costs.

At about 8 o'clock in the evening of December 24, 1911, the spouses, Pio Bautista and Maria Apego, coming from the municipality of Nasugbu, returned to their house, situated in the barrio of Sampaga, pueblo of Balayan, Batangas, and before entering the same called to Genoveva Apego, the woman's sister, who they knew was therein, and, as they receive no reply, went up into the house; the husband led the way and opened the door; he was followed by his wife who, once inside, lit a match and then a small kerosene lamp there was in the house. In the meantime the husband approached the place where Genoveva was, who, startled, immediately awoke, seized a pocketknife used in spinning hemp, which was in a box at her side, and with it attacked and struck Bautista, who was near her, a blow in the breast; thereupon her sister Maria, who was not aware of the aggression, asked Genoveva why empty tin cans and other articles were scattered about the azotea of the house, to which Genoveva replied by saying: "What! have you arrived already?" and at once got up in front the said spouses; at this moment Maria advised her to cogitate and reflex but Genoveva immediately ran out of the house, asking for help; it was then that the wife noticed that her husband was seriously wounded, and when he was afterwards examined by a physician it was ascertained that he bore a downward, penetrating wound, in the shape of a T, in the intercostal space between the second and third ribs of the left side, that it reached one the lungs and the heart, was necessarily fatal, and was inflicted with sharp-pointed, cutting instrument. A few moments after its infliction injured man died.

By reason of the foregoing, an information was filed in the Court of First Instance of Batangas, on January 8, 1912, by the provincial fiscal, charge Genoveva Apego with the crime of murder, and upon the institution of this case the aforementioned judgment was rendered.

We accept the classification of homicide given by the trial judge to the facts involving the violent death of Pio Bautista, since, in the commission the crime, it does not appear that there was present any of the qualify circumstances that determine a more serious crime and penalty.

It is unquestionable and beyond all doubt that Genoveva Apego, an unmarried woman of about 25 years of age, inflicted upon the deceased with a pocketknife a serious wound of a necessarily mortal nature, for died shortly afterwards. This wound penetrated the left nipple, extended between the second and third ribs of the same side from an upper toward a lower and an outward toward an inner direction and reached the heart and one of the lungs.

The record does not show whether the deceased was able to make any ante-mortem statement, nor does it appear

to have been ascertained what was the motive of the fatal aggression of which the said Pio Bautista was the victim.

The following conclusions of fact are derived from a careful study this case: upon the arrival of Maria Apego and her husband, Pio Bautista, at the stairs of their house, and as Genoveva Apego did not reply to the call made to her from the outside by her sister Maria, the said spouses went the upper floor of the house; Bautista led the way and, in order to enter, opened the outside door, a sliding door, and as there was no light inside stumbled against Genoveva Apego, who was sleeping near the said door, and touched her left arm; thereupon, Genoveva awoke and believing, as sh testified, that somebody was trying to abuse her, seized the pocketknife aforementioned, asking at the same time who was beside her, and as she did not receive a reply immediately, she got up and struck the person before her a blow with the said knife; in the meanwhile Maria Apego had separated from her husband to light a match and then a kerosene lamp there was in the house and was not aware of the assault made upon her husband by her sister, and only when the light had been lit did she see sister Genoveva in front of Bautista, who had already been wounded and was in an attitude indicating that he was about to fall to the floor; thereupon Genoveva went down out of the house, calling for help, and ran to the house of an aunt of hers where she was arrested by the policeman, Manuel Peinado, to whom she then and there delivered the pocketknife with which she had assaulted her brother-in-law.

In view of the shape and direction of the wound received by the deceased and the part of the body where it was inflicted, according to the detail report of the medical examination, it is unquestionable that the wound was inflicted by the defendant after she had arisen from the place where she had been sleeping, or, at least, when she had raised up in a sitting posture or was seated on the floor, at the time that the deceased perhaps stooped over, in stumbling against her, and touched her left arm; but in manner may it be presumed that she assaulted her brother-in-law, Bautista while she was still lying on the floor of the house; such a presumption precluded by a consideration of the direction the weapon took in penetrating the deceased's breast.

Maria Apego testified that, during the two years her sister Genoveva lived their house, the latter had conducted herself correctly, that they had always gotten along well and harmoniously together and had never had the least misunderstanding between them. The record does not show whether there had been any trouble or there existed any resentment between the defendant and the deceased who, before he died and during the few moments he lived after he was wounded, made no statement whatever relative to this point or to the conduct observed by the defendant with respect to the assault of which he was the victim, and, therefore, the defendant's testimony must be accepted, to wit, that she struck a blow with the pocketknife at the person beside her, and who afterwards turn out to be her brother-in-law, Pio Bautista, without knowing who he was and in the belief that, since he touched her left arm, he was about commit an attempt against her honor.

Under this hypothesis, it can not be denied that, upon the defendant's awakening, startled at feeling somebody grasp her left arm and believing that an attempt was being made against her honor, as she received no reply whatever to her question as to who was beside her in the darkness the house, she understood that there was a positive unlawful aggression from which she had to defend herself with the said pocketknife, and it also undeniable that there was no previous provocation on her part; but is unquestionable that, in making use of this deadly weapon, even in the defense of her person and rights, by decidedly wounding him who had touched her or caught her by the arm, the defendant exceeded her right of defense, since there was no real need of wounding with the said weapon him who had merely caught her by the arm, and perhaps did so to awake her, as she was asleep and had not replied to her sister's calls; and as party who she believed was making an attempt against her honor, because he had caught her by the arm, performed no other act of aggression such as might indicate a decided purpose to commit an attempt against her honor than merely to catch her by the arm, and although the defendant

believed that it was the commencement of such an attempt and that she had to defend herself therefrom, it is true that, once awake and provided, with an effective weapon for her defense, there was no just reasonable cause for striking a blow therewith in the center of the body where the principal vital organs are seated, of the man who had not performed any act which might be considered as an actual attempt against her honor.

From the foregoing considerations it is concluded that in the commission of the crime there was present the circumstance of incomplete exemption from responsibility, as all the three requisites specified in subarticle 4 of the Penal Code are not applicable; wherefore the criminal act is altogether excusable, on account of the lack of the second of the said requisites, although a majority of them were present, that is, the first and the third requisites; and, therefore, in accordance with the provisions of article 86 of the code, a penalty lower by one or two degrees than that prescribed by article 404 of the code, in the discretion of the court, must be imposed upon the defendant.

In view of the fact that the accused is an ignorant woman, wholly uneducated, and that it was not shown that, at the time when she assaulted the deceased, she knew that he was her brother-in-law, account must be taken of the circumstance prescribed by article 11 of the code, in connection with Act No. 2142, as no aggravating circumstance whatever was present to counteract the effects of the said extenuating circumstance; therefore penalty applicable to the defendant is the one lower by two degrees and in the minimum period.

For the foregoing reasons it is our opinion that, with a reversal of the judgment appealed from, the defendant, Genoveva Apego, should be, as she is hereby, sentenced to the penalty of two years of prison correccional, to the accessories of article 61, to pay an indemnity of hundred pesos to the heirs of the deceased, and, in case of insolvency, subsidiary imprisonment which shall not exceed one-third of the principal penalty, and to the payment of the costs of both instances. In computing the time of the sentence, credit shall be allowed for one-half of the imprisonment suffered by the defendant while awaiting trial. So ordered.

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

DISSENTING

CARSON, J.,

I dissent. I am of opinion that there was no criminal intent on the part of the accused, and that she did what she did in the reasonable belief that she was acting in defense of her virtue. (U. S. vs. Ah Chong, Rep., 488.)

DISSENTING:

TRENT, J.,

I dissent. I think the appellant should be acquitted upon the facts stated the majority opinion. This court says:

"The following conclusions of fact are derived from a careful study of case: Upon the arrival of Maria Apego and her husband, Pio Bautista, at the stairs of their house, and as Genoveva Apego did not reply to the call made to her from the outside by her sister Maria, the said spouses went to the upper floor of the house; Bautista led the way and, in order to enter, opened the outside door, a sliding door, and as there was no inside stumbled against Genoveva Apego, who was sleeping near the said door, and touched her left arm; thereupon, Genoveva awoke and believing, as she testified, that somebody was trying to abuse her, seized the pocketknife aforementioned, asking at the same time who was beside her, and as she did not receive a reply immediately, she got up and struck the person before her a blow with the said knife; in the meanwhile Maria Ape had separated from her husband to light a match and then a kerosene lamp, there was in the house and was not aware of the assault made upon her husband by her sister, and only when the light had been lit did see her sister Genoveva in front of Bautista, who had already been wound and was in an attitude indicating that he was about to fall to the floor; * * *

"* * * the defendant's testimony must be accepted, to wit, that she struck a blow with the pocketknife at the person beside her, and who afterwards turned out to be her brother-in-law, without knowing who was and in the belief that, since he touched her left arm, he was about commit an attempt against her honor."

The court further finds that the appellant immediately upon discovering she had done ran out of the house calling for help, and that she, her sister, and the deceased were on the very friendliest of terms. The that the appellant, a single woman 25 years of age, was alone in the house when the deceased and his wife arrived. The entry was made without the appellant's knowing anything about it, and she was awakened by someone stumbling against her and touching her left arm. She then realized that someone was in the house, and, it being so dark that she could not distinguish the person, and believing as the court says, that the person had entered for the purpose of raping her, she arose and struck in the dark with the knife. It later developed that she had struck her own brother-in-law and killed him.

The very moment she awoke was when she conceived the idea that some one had entered the house for the purpose of raping her. In the short interval of time between her awakening and the striking of the fatal blow was there any possibility of her disabusing her mind of such a belief which, to her, must have amounted to an over-powering fear? The wife of the deceased did not strike the match nor light the lamp until after appellant had struck the blow. All was in darkness. It was, then, impossible for her to ascertain the identity of the deceased before she had used t knife. So far as the record shows, no word was spoken by either of the spouses until after the blow had been delivered, and the accused receive no reply to her inquiry as to who was beside her. We must appreciate therefore, the entrance of the spouses with more or less noise, their around in darkness of the interior of the house, the awakening of the defendant from a sound sleep, her being alone in the house, her instant thought that some one is coming toward her intent upon committing a rape, increased by the failure of the deceased to answer her question, the utter absence of anything to disabuse her mind of such an idea. With her mind still somewhat sluggish, she realizes the presence of some bending over her; she knows she is alone in the house; the person bending over her has not uttered a word; he makes no reply when she asks him who he is; and she is unable to recognize him. What more natural than that a virtuous woman would instantly arrive at the conclusion that was about to be made the victim of an immoral and lewd assault? The court says that in the absence of any evidence showing resentment existing between the deceased and the accused, her testimony to the effect that she believed an attempt was being made against her honor must be believed. I fail to see what possible bearing resentment entertained by the accused toward the deceased would have. She did not recognize her assailant until after the light had been struck. The identity of the deceased did not enter into her belief that she was about to be

raped. Had her assailant been her worst enemy she would not have known it until after the harm had been done. But the facts of the case conclusively sh that? the accused entertained no resentment toward the deceased. The wife of the deceased testified that her sister had lived in the house f long time and that she and her sister had always been on the most amicable of terms. After the accused became aware of the identity of the deceased she made not the slightest move to continue her attack or defense. I therefore agree with the conclusion of the court but with reservation that the testimony of the defendant that she struck the b under the impression that she was about to become the victim of an unchaste assault must be accepted as true.

If the defendant believed that she was subjected to such an unlawful attack, the question arises, was such a belief excusable under the circumstances?

"The party killing, to justify, must have reasonable apprehension or fear of death or serious bodily harm, at the time of the killing. * * * But whom must the appearance of danger the apprehension of the party killing reasonably appear? To the jury after hearing all the evidence after ascertaining the real facts? * * * Or, must the real or apparent danger appear to the defendant ,at the time of the homicide to be reasonable? We think the latter correct. The jury must view the facts his standpoint. Each juror must place himself in the position of the defendant at the time of the homicide, and determine from all the fact as they appeared to defendant at the time of the killing, whether his apprehension or fear of death or serious bodily harm was reasonable; an if so, they should acquit." (Bell vs. The State, 20 Tex. App., other authorities cited in the monographic note to The State vs. 74 Am. St. Rep., 707, 723.)

I think that the circumstances of the case at bar, so far as the appelant could perceive them at the time, were perfectly applicable to an ass with intent to commit rape, and that, therefore, the only possible way to arrive at a decision in this case on the merits is to view the whole affair from the moment the defendant awoke until the fatal blow was struck as an attempt to commit rape, which resulted in the death of the ravisher. The court does not expressly state its views on this branch of the case. understand, however, that the sentence of conviction is based upon the theory that the accused exercised her right of self-defense to a disproportionate degree. At least such would be gathered from the following language:

"* * * and although the defendant believed that it was the commencement of such art attempt and that she had to defend herself therefrom, it is true that, once awake and provided with an effective weapon for her defense, there was no just nor reasonable cause for striking a blow therewith in the center of the body, where the principal vital are seated, of the man who had not performed any act which might be considered as an actual attempt against her honor."

As a matter of fact, the acts of the deceased were perfectly harmless. There was, as a matter of law, based upon those actual facts, no unlawful aggression. Based upon those actual facts of the case, there was no excuse whatever for the homicide. Based upon those actual facts, the c of homicide was committed with several aggravating circumstances. The court, however, has imposed a sentence of two years imprisonment and accessories. I must therefore believe that the court has tacitly, at adopted the view of the case that the sentence of conviction should be predicated upon the following operative facts: A would be ravisher approached the accused in the house where she was sleeping alone, etc. exercising her right of self-defense, she exceeded the limits of reasonable resistance against her assailant. In this view of the case, the question as to whether a woman may ever go so far in defense of her chastity as to kill her assailant, and if so, whether such extreme action was warranted in view of the circumstances as they presented themselves to accused at the time she killed the deceased. To the first part of this question the answer must be, yes. In repulsing a felonious attack a person may go as far in his self-defense as may reasonably be necessary, view the circumstances of the case from his point of view. The books are of cases where this principle has been applied; but it is doubtful if may be found where the victim of an attempted rape was tried for the murder of her assailant. In the case of United States vs. Santa (22 Phil. Rep.,

249), this court, in banc, said:

"When a man becomes so debased as to lose every instinct of manhood and engages himself in the commission of so serious a crime (rape), he certainly takes his life and liberty in his own hands, and if he loses latter or receives serious personal injuries, his loss is no greater t deserves. The appellant is therefore entitled to an absolute acquittal the ground of self-defense."

As to the second part of the question, it is necessary to again view t circumstances of the case as they appeared to the appellant at the time struck the blow with the knife. The court is of the opinion that she w not justified in striking that blow because it says the man "had not performed any act which might be considered as an actual attempt against her honor." This statement is inexplicable. The only acts which the deceased performed at all were those of stumbling against her body and touching her left arm, and the court had already arrived at the conclusion that the woman believed an attack was being made against her honor. In other words, the attempt had progressed to the point where her assailant had come in physical contact with her. Due either to willful or negligence, he did not reassure her as he should have done by answering her inquiry as to who he was. He Was not merely standing at distance threatening her or making indecent gestures. She was alone in house. There was no possible way of retreat. Her physical inferiority be conceded. In an other instant he would have grasped her by the arm and thus prevented her from using the knife at all. Was this the time temporize, to threaten, to plead for mercy, or to strike half-heartedly weapon which would be useless to her in another moment of time? The court would have had her select a less vital part of the body for th blow; this in the darkness and most probably without being able to distinguish even the outlines of the human being who had attacked her. would have called for deliberation and cool and discriminating but action. Every indication points to the fact that she struck wildly while not yet fully awake, and, by the merest chance, with fatal result

In the case of United States vs. Ah Chong (15 Phil. Rep., 488), the defe Ah Chong, and Pascual Gualberto, were employed at the officers' mess in Fort McKinley, the former as a cook and the latter as a muchacho. The two occupied the same room and no one else occupied the same building. On the night of August 14, 1908, Gualberto had gone o for a walk, leaving Ah Chong alone in the room. About 10 o'clock on tha night Ah Chong was suddenly awakened by some one trying to force open the door of the room. He called out, "Who is there?" Receiving no reply, he said: "If you enter the room I will kill you." He then seized and went to the door, which was suddenly pushed open, and Gualberto entered. It was very dark in the room. Ah Chong struct out wildly at intruder, and inflicted blows upon Gualberto which very shortly thereafter resulted in his death. Ah Chong thought the intruder was,a ladr He was tried for the killing of Gualberto and found guilty of homicide sentenced to six years and one day of presidio mayor. Upon appe he was acquitted. This court said, pp. 492, 493 :

"Under these provisions (Art. 8, Penal Code) we think that there can doubt that defendant would be entitled to complete exemption from criminal liability for the death of the victim of his fatal blow, if the who forced open the door of his room had been in fact a dangerous thief or ladron as the defendant believed him to be.

* * * * *

"But the evidence clearly discloses that the intruder was not a thief or ladron. That nether the defendant nor his property nor any of the property under his charge was in real danger at the time when he struck fatal blow. That there was no such 'unlawful aggression' on the part o thief or ladron as defendant believed he was repelling and re and that there was no real 'necessity' for the use of the knife to defe his person or his property or he property under his charge."

In this case a strong man, Ah Chong, was acquitted for killing his friend upon the ground that he believed that the intruder was a thief or a ladron seeking entrance for the purpose of larceny or robbery. In the case at a woman is convicted because she exceeded the means necessary to defend her honor. Had she stated that she believed that

the person who touched her arm had entered for the purpose of larceny or robbery, the two cases would have been, *mutatis mutandis*, identical; and under former, if the court had followed the doctrine laid down in that case, would have been acquitted. But as she was defending her honor she has been convicted. The court squarely places the loss of the property in the former case above the loss of the honor and virtue of a woman in the latter case. To my mind there is no comparison between the gravity of the two offenses. The loss of a few personal articles, either by theft or robbery cannot compare with the loss of a woman's virtue taken from her forcibly. Rape is one of the most heinous crimes, from a moral standpoint known to the human race. A virtuous woman had rather die than be raped. Yet, under the doctrine enunciated by this court, she is authorized to use the same means in repelling a vicious attack upon her honor that she would be in defending her personal property. Considering cases together, this court has said that a man may kill a person whom he believes to be entering his premises at nighttime for the purpose of robbery but that a woman must not go to that extent to defend her honor. I cannot assent to such a holding.

The appellant should be, in my opinion, acquitted.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.