

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JULIAN NARGATAN, DEFENDANT AND APPELLANT.*G.R. Nos. 24619 and 24620. December 16, 1925*

Ponente: AVANCEÑA, C.J.

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Two informations were filed in the Court of First Instance of Iloilo against the appellant. In the first he was charged with homicide committed on March 5, 1925, by striking with a bolo one Alitancio Falsario, inflicting a wound on him which caused his death. In the second, which charged him with physical injuries, it is alleged that on that same day he assaulted Pedro Noalla with a bolo inflicting a wound on his head which necessitated medical attendance for more than seven days and less than thirty and rendered him unable to engage in his ordinary work during the said time. By agreement of the parties both causes were heard jointly. After two witnesses for the prosecution had testified, the court, holding that the crime was committed at least with premeditation, dismissed the information for homicide and ordered the fiscal to file another for murder. Complying with said order, the provincial fiscal filed an information charging the herein appellant with the crime of murder, alleging that in the commission of the act he acted with premeditation and treachery. By agreement of the parties the evidence already presented under the information for homicide was considered as introduced under the new information for murder and the trial of the two cases proceeded.

In the murder case the court, considering premeditation as a qualifying circumstance and the aggravating circumstance of treachery offset by the mitigating circumstance of lack of instruction, sentenced the appellant to the penalty of life imprisonment, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs.

In the case for physical injuries the court sentenced the appellant to one year and one day of prison correccional, with the accessories of the law, and to indemnify the offended party in the amount of P86, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

According to the evidence of the prosecution, the facts are: That on the night of March 5, 1925, in the municipality of Miagao, Iloilo, at the time when Sabina Muynuyan, wife of Alitancio Falsario, was in her house working on a spinning wheel the appellant arrived and lay down on the floor, placing his head on the thigh of Sabina. The woman told the appellant to go to his house if he wanted to sleep and not to make any scandalous show in another house; to which the accused answered that he would kill everybody for having let Sabina's sister, with whom he was in love, to leave for another town; that Alitancio Falsario then arrived and dismissed the appellant, threatening him by saying that if he did not get out, something wrong would happen to him; to which the appellant replied, "you shall pay me for this," and immediately left the house; that Sabina then requested her husband Alitancio Falsario to go and get some water from the bamboo container that they had downstairs; that when Alitancio Falsario went down for this purpose, Sabina looked out from the window and saw the appellant standing beside the fence of the house; that Alitancio Falsario had hardly set foot on the ground when the appellant gave him a bolo blow on the left side of the neck; that Pedro Noalla, half-brother of the appellant by

their mother, who was coming home from the fields and who passed by the place at the very moment that the appellant was assaulting Alitancio, intervened and asked the appellant why he was assaulting Alitancio, and the appellant turning to him said, "and you too," thereupon striking him with a bolo on the head.

Alitancio Falsario died as a consequence of the wound inflicted upon him by the appellant, and Pedro Noalla necessitated medical attendance and was unable to engage in his habitual labor for forty-six days as a consequence of the wound he received.

According to the accused, when he went to the house of the deceased that night, feeling very tired, he lay down on the floor and fell asleep for a short time until the arrival of the deceased who told him to go home if he did not want anything¹ bad to happen to him; that after leaving and once in his own house he perceived that there was a quarrel in the deceased's house; that after a while he noticed that the deceased, who was on the ground floor of the appellant's house, was inviting him to come down; that when he came down, seeing the deceased was armed with a bolo, he did not dare approach him; hence the deceased rushed toward the appellant and assaulted him; that having dodged the blow and disarmed the deceased, the latter took hold of a stick and continued assaulting him, one of the blows having hit him on the frontal region; that since the deceased resumed striking him, he brandished the bolo and unconsciously wounded the deceased; that thereupon he dropped the bolo and ran to the town, presenting himself the next day to the authorities. The other evidence of the defense tends to establish the fact that it was the deceased who inflicted the wound on the head of Pedro Noalla.

The lower court rejected the defendant's version of the case and accepted the facts as stated by the prosecution, and we find that this holding is supported by the evidence. The testimony of Pedro Noalla, one of the witnesses for the prosecution and the offended party in the case for physical injuries, is of special merit in view of the fact that he is a brother of the appellant and there is nothing in the record to show any motive on his part to ascribe to his brother the facts to which he has testified. On the contrary, being a brother of the appellant, he would naturally have tried to help the latter, and as an offended party he would have been actuated by the desire to punish the culprit.

Relating to the murder case, the defense alleges that since the first information for homicide was dismissed, the appellant was placed in jeopardy and could not have been prosecuted nor convicted under the second information for murder. It should be noted that the dismissal of the first information was ordered so that the defendant might be prosecuted for the graver crime of murder, as shown by the evidence, in accordance with section 37 of General Orders No. 58, and the dismissal under these circumstances does not constitute jeopardy, nor any bar to the prosecution for the graver offense of murder. (*People vs. Mirasol*, 43 Phil., 860.)

The trial court has found that the commission of the crime was attended by the circumstance of premeditation. We do not believe that there is sufficient evidence in the record to establish this circumstance. The only proof to this effect that we can find in the record is the fact that the appellant was courting the deceased's sister-in-law and that on the night of the crime the accused made known his resentment for the deceased having allowed said sister-in-law to move to another town. This alone is not sufficient to justify the conclusion that the accused acted with evident premeditation.

The circumstance of treachery, however, is present and this qualifies the act as murder. The appellant stood by the fence and instantly attacked the deceased when the latter was not aware of his presence there and did not expect the assault.

As to the case for physical injuries, although the court has found that the offended party Pedro Noalla was incapacitated for his habitual work for forty-six days, the information only alleges that the incapacity was for thirty days. Consequently the appellant can be convicted in this case only under the provisions of article 418 of

the Penal Code.

The accused is held guilty of the crime of murder committed upon the person of Alitancio Falsario, qualified by the circumstance of treachery, with the mitigating circumstance of article 11 of the Penal Code, as amended and as applied by the trial court, and he is sentenced to seventeen years, four months and one day of reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P1,000, Philippine currency, and to pay the costs.

The appellant is also held guilty of the crime of slight physical injuries, under article 418 of the Penal Code, committed upon the person of Pedro Noalla, with the aggravating circumstance of relationship, compensated by the mitigating circumstance of article 11 of the Penal Code, and he is sentenced to two months and one day of arresto mayor, to indemnify the offended party Pedro Noalla in the amount of P86, with the corresponding subsidiary imprisonment in case of insolvency, and with the costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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