

45 Phil. 84

[G.R. No. 19921. July 30, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BLAS SOLINDAYAO, DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

An information was filed against the defendant in the Court of First Instance, charging him with the crime of parricide committed as follows:

“That on or about the 19th of September, 1922, and in the barrio of Gibatang, municipality of Calbayog, Province of Samar, Philippine Islands, and within the jurisdiction of this court, the accused Bias Solindayao did willfully, unlawfully, and criminally assault with a *bolo* his wife Filomena Eyano, inflicting six wounds on different parts of her body which caused the immediate death of said Filomena Eyano.

“Contrary to article 402 of the Penal Code.”

He was tried, found guilty, and sentenced to *cadena perpetua*, to suffer the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs, from which he appeals, contending, first, that the evidence was not sufficient to find him guilty of the crime, and, second, in not allowing defendant to present the testimony of Pantaleon Dalagdon in rebuttal of the testimony of Clemente Omayon for the prosecution.

JOHNS, J.:

The defendant frankly admits that he killed his wife, and the only question involved is as to why he killed her.

The witnesses for the prosecution were Magna Eyano, Saturnino Laoyon, and Melecio Rebosura, the testimony of the last two of whom is immaterial as it only refers to the injuries inflicted and the act of killing. The evidence of Magna Eyano alone refers to the motive or cause of the killing. She is the youngest sister of the deceased and the wife of Clemente Omayon, and claims that she for the last two months was living in the house of the defendant and was separated from her husband, Clemente Omayon, who lived in another house. She testifies that on September 19, 1922, the day of the killing, she was in the kitchen; that she saw the defendant and his wife leaving his room, and that she heard him ask his wife for a package of nails; that his wife told him that she had not touched nor took away the nails, but that he insisted that she had given them to some other person; that the wife replied that she had not; that as a result of this conversation, the defendant at once stepped into his room and came out armed with a bolo; that the wife on seeing him jumped from the house and ran away toward the street; that the defendant pursued and overtook her, giving her several blows with the bolo, and inflicting upon her several wounds which caused her death; that the real cause which angered the accused over the loss of the nails was the defendant's suspicions of his wife's frequent absences from the house.

On direct evidence the defendant was the only witness for himself. He testified that he killed his wife because when he arrived at his home September 19th at 4 p. m., passing through the kitchen, he saw his wife and Clemente Omayon in the sleeping room committing adultery; that he went upstairs through the kitchen, and as the floor creaked they heard him and escaped through the stairway; that he ran after and overtook them and struck them with the bolo; that his intention was to kill Omayon, but he discovered that it was his wife who was injured; that he does not know how many wounds were inflicted by him, because he was obfuscated; that he was married and had been living with his wife for about seven years; that during the last two months he had suspicions of illicit relations between his wife and Omayon; that after inflicting the wounds he presented himself to the lieutenant of the barrio, Pantaleon Dalagdon, and told him what he had done. He further testified that Magna Eyano, the witness for the prosecution, did not live in his house.

After the defense rested Clemente Omayon was called as a witness for the prosecution, and denied having been at the room of the accused's house with the deceased on September 19, 1922, and said that on that day about 4 p. m., he went to see lieutenant of the barrio Pantaleon to inquire about a man who had lumber for sale; that the house of Pantaleon was situated in front of the house of the defendant; that he saw the attack, and saw the deceased and his own wife as they jumped from the house; that he then called the lieutenant of the barrio, but did not go to the rescue of his own wife, because she was not in any danger, and because he was in the upper part of the house of the lieutenant of the barrio.

After this testimony was introduced, the attorney for the defendant called Pantaleon Dalagdon, as a witness for the defense, and stated to the court that he, Dalagdon, would testify that Clemente Omayon was not in his house on September 19, 1922, and that Omayon did not talk to him, and that he saw Omayon at that particular time as he passed behind his (lieutenant of the barrio) kitchen coming from the house of the defendant. The court refused to permit the witness to testify, to which counsel for the defendant duly excepted.

The testimony of the defendant is clear, straightforward and convincing, and if it be a fact that at the time in question Pantaleon Dalagdon saw Omayon passing behind his kitchen coming from the house of the defendant, it would have strongly corroborated the testimony of the accused in a very important particular.

It should be noted that, although the testimony tends to show that they were not living together, Magna Eyano was the sister of the deceased and the wife of Clemente Omayon, and that the defendant claims that he caught his wife and Clemente Omayon in the act of adultery.

Pantaleon Dalagdon was the lieutenant of the barrio and a disinterested witness, and the offered testimony would have flatly contradicted in every particular the evidence of Clemente Omayon.

The Attorney-General admits that the refusal of the court to receive the evidence was error, but claims that it was not prejudicial. In our judgment it was very prejudicial, and, if true, would strongly support the testimony of the

defendant. There was only one eye-witness for the prosecution, who testified as to the cause and origin of the quarrel, and upon that question the defendant was the only witness for the defense.

The law presumes a defendant to be innocent until he is proven guilty beyond a reasonable doubt. There was a direct conflict in the evidence between Magna Eyano and the defendant. She testified that she was living in the house and had been there for about two months, and that the inception of the quarrel was over a package of nails, all of which was flatly contradicted by the defendant. But it will be further noted that she further testified that the real motive, which angered the accused in connection with the loss of the nails, was the defendant's suspicions of his wife's frequent absences from the house. That part of her testimony indirectly tends to corroborate the theory of the defendant as to his motive for the killing. Assuming that the lieutenant of the barrio had testified that Clemente Omayon was not in his house on September 19, 1922, and that he never talked to him on that date, and that upon that date he saw him passing behind the kitchen of the lieutenant of the barrio coming from the house of the accused, together with the straightforward and convincing testimony of the defendant, the evidence would not be sufficient to convict the defendant beyond a reasonable doubt of the crime defined in article 402 of the Penal Code. Giving the defendant the benefit of a reasonable doubt, it is the opinion of this court that the evidence tends to show that the offense comes under article 423, as follows:

“Any husband who, having surprised his wife in the act of adultery, shall kill her or her paramour in the act, or shall inflict any serious physical injuries upon either, shall suffer the penalty of *destierro*.”

The judgment of the lower court, convicting the defendant of the crime of parricide, will be reversed, and one will be entered here that the defendant suffer the penalty of *destierro* under article 423 of the Penal Code, for the period of two years, four months, and one day, and in substance and to the effect that during that period he shall not be permitted to enter or be in the barrio of Gibatang, municipality of Calbayog, Province of Samar, or anywhere

within a radius of twenty-five kilometers of that barrio, with costs *de oficio*. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor,
and *Romualdez, JJ.*, concur.

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