

3 Phil. 728

[G.R. No. 1552. April 22, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. DAVID TOMULAC,
DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

The defendant in this cause was charged with the crime of assassination. He was tried by the Court of First Instance of the Province of Cebu on the 19th day of August, 1903, and was dismissed, because the court found that the testimony of Anatalia Ngojo, the wife of the deceased, was contradictory with reference to some of the important facts.

The testimony of Anatalia Ngojo shows that she knew the accused; that the accused lived in the house a short distance from where she and her husband, Prudencio Godines, lived; that Prudencio Godines was her husband; that she and her husband lived together, and were sleeping together on the floor of their house on the night of the 30th of April, 1903; that the floor was made of bamboo strips, with open spaces between the strips; that the defendant, on said night, went under the house where she and her husband were sleeping, and thrust a "pinuti" up through the interstices in the floor through the body of her husband; that this occurred between 7 and 8 o'clock on the said night; that the window of her house was open; that she looked out of the window and saw the defendant coming out from under the house with a "pinuti" in his right hand, running toward his (defendant's) house; that the moon was shining sufficiently bright for her to discern the face of the accused; that her husband died the following day, in the afternoon; that her husband, after being wounded, on the same night was taken to the

tribunal of her pueblo; that the defendant was arrested and brought to the same tribunal about 11 o'clock on the same night.

After several other witnesses were sworn, Anatalia Ngojo was recalled, and gave further testimony. In her second testimony she swore that she saw the defendant while he was under the house in the act of wounding her husband; that she and her husband were sleeping upon a petate, and that she saw the defendant while he was under the floor of her house, through the floor, at the head of the bed where she and her husband were sleeping. Nothing is said in her second examination with reference to her having seen the defendant also while he was in the act of leaving her house, after her husband had been wounded. She does not say, in her second examination, that the only time she saw the defendant was while he was under her house.

The court below found that this second statement contradicted her first statement with reference to the time and place when and where she saw the accused. This conclusion is not justified from the evidence. The evidence, as it stands, shows that on her first examination she saw the defendant as he was leaving the house, running, with a "pinuti" in his hand. The second examination shows that she saw the defendant also while he was yet under her house and in the act of wounding her husband. We must conclude, therefore, that she saw the accused on two different occasions, and identified him.

The testimony of Serapia Godines shows that she knew the accused, as well as the deceased, Prudencio Godines; that Prudencio Godines died about the end of the month of April, 1903; that the accused lived near the house of the deceased; that on the night when the deceased was wounded she met the accused coming out from under the house of Prudencio Godines, carrying a "pinuti" in his right hand; that at the time she saw the defendant he was about four "brazas" from the house of the deceased; that she saw the deceased on the night he was wounded, and that he had a wound in his body in the costal region, which was made by a sharp instrument, and which extended clear through his body; that the defendant was arrested on the same night, in his house, at about 11 o'clock p. m.

The testimony of Leocadio Dignos shows that he knew the defendant, as well as the deceased, Prudencio Godines; that the deceased, Prudencio Godines, died from the effect of wounds which he received on the night of the 30th of April, 1903; that he, together with certain municipal policemen, arrested the defendant about 11 o'clock at night on the 30th day of April, 1903, in his house.

The testimony of the witnesses, called on behalf of the prosecution, shows that the accused and the deceased had a quarrel concerning the possession of a certain tract of land, and that the accused charged that he had been put out of the possession of this land through the influence of the deceased. This evidence was introduced for the purpose of showing the motive on the part of the accused for committing the alleged offense.

The accused was sworn in his own behalf and stated that on the night that Prudencio Godines was killed, he, together with others, went out from their houses at about 4 o'clock in the afternoon for the purpose of fishing and did not return until about 3 o'clock the next morning, and therefore could not have been present at the house of Prudencio Godines at the time the crime was committed. Three witnesses were sworn in support of this fact whose testimony agreed exactly with that of the accused.

We are not inclined to believe the proof of *alibi*. From the foregoing testimony we reach the following conclusions :

First. That the accused, on the night of the 30th day of April, 1903, did, with premeditation, while one Prudencio Godines was lying upon the floor in his house, thrust a "pinuti" up through the interstices in the floor of the house and through the body of the said Godines, from which wound the said Prudencio Godines died the following afternoon.

Second. That the said acts were committed by the defendant at nighttime and with treachery.

The court, having found that the defendant committed the crime

charged, with premeditation as a qualifying circumstance, and the existence of two aggravating circumstances, to wit, nocturnity and *alevosia*, it does hereby revoke the sentence imposed by the Court of First Instance of the Province of Cebu, and does hereby sentence the said defendant to be imprisoned for the period of his natural life, with accessories imposed by the law, and to pay a fine in the sum of P1,000, Philippine currency, for the use and benefit of the widow of the deceased, and the costs of both instances.

Arellano, C.J., Torres, McDonough, and Mapa, JJ., concur.

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