

6 Phil. 421

[G.R. No. 2537. September 01, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SERAPIO SISON ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

Between 8 and 9 o'clock of the night of November 8, 1904, a band of men, five or six in number, all armed with daggers or axes, entered the store of the Chinaman Yap Pieco, in Dagupan, in the Province of Pangasinan, attacked and bound the four Chinese who were there, assaulted them with knives and axes, and carried away 1,500 pesos in money and a quantity of opium worth 100 pesos. As a result of the wounds then received, Yap Pieco died on the next day and Tan Chuanco, on the 21st of November. That this crime was committed in the manner aforesaid is not disputed. The only question in the case is as to the participation of the defendants therein. Of these defendants, Aniceto de la Cruz and Roque Fernandez were acquitted by the trial court. Serapio Sison, Teodoro Pacheco, and Anaetasio Defuntorum were convicted of the crime of robbery with homicide and sentenced to death. The defendant, Jose de Venecia, was convicted as an accomplice and sentenced to twenty years' imprisonment. Each of the four defendants convicted, demanded, and was given a separate trial in the court below.

In the trials of Sison, Pacheco, and Defuntorum, the Chinamen Si Sieco and Tan Pongco, two of the persons assaulted, and the only ones who survived, positively identified these three defendants as persons who participated in the assault. The witness Si Sieco had known Serapio Bison for some time. It was proved that Sison, Pacheco, and Defuntorum were together between 7 and half past 7 on the night in question at the house of Dr. Del Rosario, which was 300 feet from the place where the crime was committed. Some time after 9 o'clock on the same night Dr. Del Rosario saw Serapio Sison again in front of his house talking with a *cochero*. Domingo Casilan, the *cochero*, testified that about that time Serapio

Sison, Teodoro Pacheco, and another person unknown to him attempted to hire his carromata.

The Chinaman Sy Ongco testified that at about half past 7 the same night Serapio Sison, with four or five other defendants were in his restaurant, where they remained for half an hour; that later, about 9 o'clock, he saw a band pass across the bridge near his restaurant, one of them being Serapio Sison, who was carrying a sack filled with money. The witnesses Tan Pongco and Si Sieco both testified that the money taken from the safe of Yap Pieco was placed by the robbers in a sack. There was other evidence in the case against Serapio Sison which tended to connect him with the offense and in our opinion the evidence as to him is sufficient to support the judgment.

The testimony of the two eyewitnesses was positive and unequivocal and they both stated that they could not be mistaken: There is nothing in the case to cast doubt upon their testimony unless it be the proceedings had before the justice of the peace on the night of the robbery.

Several of the assignments of error made by the appellants relate to this preliminary examination. The defense called the justice of the peace and his secretary and offered to prove by them that Si Sieco and Tan Pongco, on the night in question, had stated in this preliminary examination that they did not know any of the persons who committed the robbery. They also offered in evidence the written record of this preliminary investigation. The judge below excluded this on several grounds, one of which was that the defense had not laid the proper foundations for the impeaching of the testimony of these witnesses in accordance with the provisions of the Code of Civil Procedure.

The proceedings before the justice of the peace are in the record before us and we do not think it necessary to decide whether the judge committed an error of law in excluding the evidence or not because we are satisfied after considering it in connection with all the evidence in the case that the error, if any, could not in any way prejudice the defendants. The crime was committed, as has been said, some time between 8 and 9 o'clock. The justice of the peace and his secretary arrived at the place at 10 o'clock. They testified that the four Chinese were all seriously injured. Neither the justice of the peace nor his secretary could talk or understand the Chinese language. None of the Chinese understood Spanish or Pangasman sufficiently well to communicate with the justice of the peace in either one of those languages and the questions which the justice of the peace and his secretary put to the witnesses were interpreted to them by other Chinese who were bystanders and the

answers of the witnesses were interpreted in the same way. The secretary made certain notes of these proceedings in pencil at that time and afterwards extended them in the form in which they appear in the record before us. In that record both Tan Pongco and Si Sieco are made to say that they did not know any one of the parties who committed the assault. But this is a record not of what these witnesses said to the justice and his secretary but of what the interpreters said to them. These interpreters were not sworn as such and were in no sense officers of any court. These two witnesses denied that they had ever attended any preliminary investigation of this kind or ever made any declarations at all. Under all the circumstances of the case we do not believe that the statements contained in this preliminary investigation are sufficient to overcome the positive evidence given by these witnesses at the trial in the Court of First Instance as to the identity of these defendants and, even considering that the record of this preliminary investigation was received in evidence in the case, we still should be of the opinion that all the evidence taken together is sufficient to sustain the judgment as to these three defendants.

The Chinaman Tan Chuanco was taken to the hospital and died on Monday, the 21st of November. On Friday his brother, Tan Aco, testified that Tan Chuanco gave him, the witness, a small piece of paper on which was written the names of Sison, Pacheco, and Anastasio as persons who took part in the commission of the crime. The court below admitted this paper in evidence as a dying declaration of Tan Chuanco. We do not find it necessary to consider whether this was error or not because, if it was error, it was not prejudicial to the defendants as we have eliminated it in our consideration of the case. After such elimination the evidence is still sufficient to sustain the conviction of these three defendants.

The judge refused to exclude from the court room the Chinaman named Mariano. It does not appear what connection Mariano had with the case and it does appear that he was not a witness. Under these circumstances, taking into consideration both section 39 and section 40 of General Orders, No. 58, the court committed no error in refusing such exclusion.

The evidence against Pacheco and Defuntorum was substantially the same as that against Sison. Both of these men were positively identified by the two eyewitnesses as persons who took part in the assault.

The evidence is not sufficient to support the judgment as to Jose de Venecia, Neither one of the eyewitnesses identified him as a person present at the time the offense was committed. The only acts proved against him were that he was seen with Pacheco and Sison between 7

and half past 7 on the night in question and was again seen with Pacheco after 9 o'clock on the same night. This evidence is not sufficient to show that he entered the store of Yap Pieco; neither is it sufficient to show that he in any way aided or assisted the other defendants in committing the crime.

It appears that the defendant Defuntorum was the servant of the defendant Sison, and we give him the benefit of article 11 of the Penal Code as an extenuating circumstance.

The judgment as to Serapio Sison is hereby affirmed, with one-fourth of the costs of this instance against him.

The judgment against Teodoro Pacheco is hereby affirmed, with one-fourth of the costs of this instance against him.

The judgment against Anastasio Defuntorum is modified by making the penalty life imprisonment (*cadena perpetua*) instead of death, and as modified the decision is affirmed, With one-fourth of the costs of this instance against him.

The judgment against Jose de Venecia is reversed and he is acquitted, with one-fourth of the costs of this instance and one-sixth of the costs of first instance *de officio*.

After the expiration of ten days from the date of final judgment let the record in this case be returned to the trial court for execution. So ordered.

Arellano, C. J., Torres, Carson, and Tracey, JJ., concur.
