

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN MAIDO, HILARIO MAIDO AND PLACIDO CIRILO, DEFENDANTS AND APPELLANTS.

G.R. No. L-12412. September 07, 1917

Ponente: STREET, J.

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STREET, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo, finding the appellants Juan Maido, Hilario Maido, and Placido Cirilo guilty of the crime of robbery in a band with double homicide, and sentencing them to cadena perpetua.

The offense of which the accused were convicted was committed just after night fall on April 26, 1914, in the municipality of Santa Barbara, in the Province of Iloilo. It appears that upon this occasion some twelve or more armed men, six of whom had revolvers, made an attack upon the store of J. F. Starr for purposes of robbery. As an incident to the accomplishment of this crime Starr and his father-in-law, Salvador Sorianos, were killed. Four of the actors in this tragedy, namely, Agapito Solana, Valentin Vejil, Maximo Soriaso, and Tiburcio Primaleon (Busoy) were convicted in another case; and upon appeal to the Supreme Court the sentence of death was confirmed as to Maximo Soriaso, and as to the others the sentence was reduced to imprisonment for life. (33 Phil. Rep., 582.)

The facts as revealed in the record in the present case are practically the same as were developed at the trial of the previous case; but the evidence of the prosecution is here materially weakened by the failure of the prosecution to produce the witness Catalino, who was admittedly a participant in the robbery and who was used as a witness for the prosecution in the former case, the cause having been dismissed against him.

In the present case the principal witness for the prosecution is Tiburcio Primaleon, who also testified in the former prosecution and who then told upon the witness stand a story of the crime which he now repeats with some variations. In the present prosecution the testimony of this witness is clear and convincing and was not impaired upon cross examination. At the time the testimony was given he was under a sentence of death, and he seemed to have lost all motive or desire to falsify.

In the testimony of this witness given in the other trial Placido Cirilo was not mentioned as a participant in the crime, and the explanation now given is that the witness desired at that time to shield him from prosecution. He now says Placido was the head of the whole thing, and that he had planned it and carried it into execution.

The witness states that at least two meetings were held in the house of Placido Cirilo prior to the robbery at each of which five or six persons were present; and that at these meetings the project was determined upon. The first of these meetings occurred on Thursday night and the second on Saturday night before the crime was committed on Sunday. The witness states that Placido Cirilo was the man who told Juan Maido and Hilario Maido to remain on guard outside, and that he (Placido) then entered the store and first began the trouble by attacking the old man Sorianos.

Upon the point of the complicity of Placido Cirilo, Tiburcio is corroborated by Beatriz Sorianosis, the widow of J. F. Starr. This woman showed remarkable intelligence and coolness upon this occasion and has made an intelligent and fair witness. She says that at the trial she recognized and remembered the defendant Placido Cirilo as a man whom she saw struggling with her father before the latter was killed. The girl Clarita Sorianosis, who was in the house at the time of the tragedy, also identified this defendant as a person whom she had seen drinking some wine in the store while she was assisting in serving some articles of food which had been ordered by the conspirators.

The case against Juan Mado and Hilario Mado rests almost exclusively upon the testimony of Tiburcio. It is true Beatriz Sorianosis at one place in her testimony said that she thought she remembered Hilario Mado as having been among those present; but she is evidently mistaken in this as she says she thinks he had something that appeared like a cane and that with this he hit Starr. From this it would seem that she mistook him for somebody else, probably Tiburcio, as the latter testifies that he had such an instrument and with it jabbed Starr. Besides if the theory of the prosecution is correct she could not have seen him as he was outside. Juan Mado she does not remember. The result is that, as before stated, the connection of the two Mados with the crime rests exclusively upon the testimony of Tiburcio.

The circumstance that the two Mados ran away from this locality and remained hidden for some months until they finally came in and surrendered to Lieutenant Borromeo of the Constabulary furnishes some corroboration of their guilt.

The substance of the testimony of Tiburcio as it affects the two Mados may be summed up thus: They were not among the first arrivals at the scene of the robbery but came later, Hilario arriving with Placido Cirilo. Juan Mado and Hilario Mado did not enter the house where the crime was committed but remained outside to guard against interference, and Placido Cirilo was the person who assigned this duty to them. When the pistol shots sounded in the air they ran away.

The defense attempted to prove an alibi for these two defendants; but the proof in support of this defense is in our opinion entitled to no weight.

After a careful study of the testimony, we are forced to the conclusion that the evidence given by Tiburcio Primaleon is true. It is credible and consistent in itself and is supported by the strong moral sanction derived from his appreciation of the fact that he was soon to be executed.

This testimony therefore can not be rejected. As is well said in the brief of the Attorney-General.

"At the time he testified in this case he expected to be notified any day that the date of his execution had been set. He stated in court that he knew he was going to be hanged and that he was resolved to tell the truth and nothing but the truth to the court. If there is any thing that would make a man tell the truth and keep him from lying it seems that the knowledge of his approaching death would. Is it reasonable to believe, with no evidence to support such a belief, that this man would deliberately perjure himself and attempt to convict three innocent men of a crime, while he himself expected to be hanged shortly? His testimony even when read in cold type impresses the reader with its sincerity and truth."

It follows that in our opinion all of the defendants are guilty beyond a reasonable doubt and that the judgment of the lower court should be affirmed. The aggravating circumstance is present that the offense was committed in the nighttime; and the penalty imposed by the lower court might be raised to the penalty of death; but this is not proposed, inasmuch as in the other case the court gave all of the defendants except Maximo Soriaso the benefit of the provisions of article 11, of the Penal Code, as amended, and we think that the same leniency should be observed with respect to the defendants in this case. The judgment should therefore be affirmed, with proportional

costs of this instance against the respective appellants. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Malcolm, JJ., concur.

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