

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELICIANO FUENTEBELLA, DEFENDANT AND APPELLANT.

G.R. No. 11734. December 20, 1916

Ponente: TRENT, J.

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TRENT, J.:

This case brings up for review the judgment of the Court of First Instance condemning Feliciano Fuentebella to the extreme penalty of death, to indemnify jointly and severally with Gaudencio Concepcion and Jose Anastacio, who were tried separately, the heirs of Jesusa Anastacio in the sum of P1,000, to the accessory penalties provided by law, and to the payment of the costs of the cause for the crime of murder.

Vicenta Bernardo, Arcadia Bernardo, Feliciano Fuentebella, Jesusa Anastacio, Concepcion de Leon, Petrona Anastacio, Egipciaca Bernardo, Sofia Bernardo, and other members of the family were living in the same house in the barrio of Santa Maria, municipality of Zamboanga, Department of Mindanao and Sulu. Jesusa Anastacio, a single girl about nineteen years of age, was the daughter of Sofia Bernardo. About 9 o'clock on the night of July 12, 1915, the entire family, except Jose Anastacio, ate their evening meal together, Jose Anastacio having eaten his meal about 7 o'clock and had gone out. Jesusa Anastacio disappeared from the house a few minutes after 9 o'clock and her body was found about 2 p. m. on the following day about 1 kilometer from the house in a rice field. That Jesusa was murdered on that night there can be no doubt. This fact is not questioned by anyone.

The theory and contention of the prosecution may be stated as follows: Late in the afternoon or early in the evening of the 12th Jesusa and Feliciano Fuentebella agreed to leave the house together on that night and Jesusa, immediately after completing her evening meal and in conformity with the agreement, slipped out of the house, going down the back steps. Jose Anastacio, having learned of the proposed escape of Jesusa and he having had a previous engagement with Gaudencio Concepcion to go out for the purpose of gambling, was waiting with Gaudencio at the foot of the stairs, and as soon as Jesusa arrived at that place the two men, Jose and Gaudencio, seized her and took her to a mango tree about 40 yards back of the house. Here the two had carnal intercourse with Jesusa, each in turn holding her while the other performed the act. About the time the last had finished, Feliciano Fuentebella appeared on the scene and he too had forced intercourse with the girl. Thereupon the three consulted together as to what had better be done with their victim and upon the suggestion of Feliciano Fuentebella they decided to kill her, and while Feliciano held her all three struck her several blows, Jose striking her in the mouth with a heavy stick, Gaudencio stabbing her in the lower jaw with a bolo, and Feliciano stabbing her several times in the head and neck with a large knife. The three then took the body of the girl from where she was killed under the mango tree out into the rice field and threw it into the mud and water where it was later found. Feliciano Fuentebella denies all knowledge of and participation in the commission of the murder.

The material witnesses, both for the prosecution and the defense, testified substantially as follows:

Arcadia Bernardo: (Jesusa's mother is a daughter of Arcadia's brother.) "On that night we were eating our supper and she (Jesusa) arose from the table and went to the kitchen. I also arose and went to the sala. Egipciaca went to put away the plates and when she was in the kitchen she looked for Jesusa to help her. When

she could not find Jesusa, then I went into the kitchen and asked what was the matter. Egipciaca said, 'Jesusa is not here.' Then Feliciano also went into the dining room and asked, 'What is the matter?' I then told Feliciano to look for Jesusa in the house. As he did not find her there, I told him to get a light and look for her downstairs. He then got a lantern and went down, passing through the batalan. It was about fifteen minutes after we had finished supper when we noticed that Jesusa was missing. From ten to fifteen minutes after Feliciano went downstairs with his lantern he came back upstairs to get his bolo, saying the night was very dark. After he went down the second time I did not see him any more that night. I did not notice his clothing the first time, but the second time he went out he had on striped clothes—this coat and these trousers (Exhibit T). These clothes were taken from our house by the authorities. I did not see Feliciano after he left the second time until he returned the next day in company with the police. Q. How can you explain that these clothes (Exhibit T) are the same used by Feliciano that night when you say that when he left that night he did not come back at all?—A. When he returned the second time he was wearing these clothes. He returned the following morning. During the night he did not return. I saw him in the morning about 6 o'clock when he knocked at the door. He then said that he would go and report Jesusa's disappearance to the police. He went out and again returned about 10 o'clock in the morning with the police. These clothes were taken from the house on that morning by the police when they searched the house. The clothes were found in a dirty clothes basket in the room where Feliciano slept. Sometimes Jose Anastacio slept in the same room. Jose had not returned when the first search was made. When Feliciano went out the first time on that night he was only wearing underclothes. He had on these clothes (Exhibit T) when he went out the second time."

Egipciaca Bernardo (aunt of Jesusa): "While they were eating" supper on that night about 9 o'clock, I was in the sala reading. Then my aunts came in and I went out to get the dishes, and when I took the dishes from the table, the girls were beginning to wash them. I was waiting in the kitchen and I seemed to hear the voice of Jesusa asking for help, saying, 'Help me, because Jose is killing me.' And I did not pay attention to it on account of my fright. Then I went to the batalan and asked the girls where Jesusa was and they asked me if she did not come inside with me, and I told them no. Then I went to the kitchen to take a light and go to the closet to see whether she was there, and she was not there and afterwards I went to the batalan and called very loud. My Aunt Arcadia then came and asked me what was the matter and I told her that Jesusa was missing. Then I began to search for her in the kitchen. Feliciano then came and asked what was the matter. I told him that Jesusa was not there and Arcadia said to him, 'You better search for her downstairs.' Feliciano replied that it was better to take a lantern. Feliciano took the lantern and said that it had no petroleum and my aunt gave him some kerosene and then he put oil in the lantern and lighted it and went downstairs. After about ten or fifteen minutes he came upstairs saying that he was going to take his bolo. The first time he went downstairs he was wearing a striped coat and drawers (Exhibits Q and R). When he went downstairs the second time he was wearing these clothes (Exhibit T). He took his bolo with him the second time and the bolo was in this scabbard (Exhibit E). This hat (Exhibit M) belongs to Feliciano. This bundle of clothes (Exhibit N) belongs to Jesusa. This lantern (Exhibit P) was the one carried by Feliciano when he went to look for Jesusa. I do not know whether Feliciano returned on that night after going down the second time or not. Yes, it seemed to me that I hear Jesusa crying for help, but with my fear and fright I could not tell my aunts that same night, but I did on the day following. I was familiar with Jesusa's voice, but the voice was weak and her exact words were 'Help me, because Jose is killing me.' She only said it once. After I hear that voice, it was from five to ten minutes before I called and about one minute after I called before my aunt came in, and about two minutes after my aunt came in, Feliciano came in. I seemed to hear a voice calling, 'Help me, because Jose is killing me.' The next day my belief was confirmed when I saw the corpse. When Feliciano went down the second time I went inside and closed the door of the sala communicating with the batalan. The house was closed after he went down the second time and no one can enter the house after it is closed unless someone inside opens the door. The next morning about 6 o'clock Feliciano returned, knocked at the door, and told Arcadia that he had not found Jesusa. He then said that he would report the matter to the police and my aunt said 'Very well.' Jose Anastacio returned about 11.30 that night and I opened the door and he entered."

This witness was recalled a day or so later and testified: "It was some five minutes after Feliciano left the

house the first time before I heard the voice of Jesusa calling for help.

"Q. So that where was Feliciano when you heard that cry?—A. He was in the room and afterwards went out.

"Q. You just finished saying that Feliciano was downstairs when you seemed to hear that voice and now you say he was in his room; now which is right, was he up in the house or downstairs?—A. He was downstairs, out of the house.

"Q. Then in what moment did you shout calling Jesusa?—A. When we were washing the dishes.

"Q. And how long afterwards did you hear the voice of Jesusa calling for help?—A. About five or six minutes afterwards, when Feliciano had gone down already.

"Q. You mean to say that the voice of Jesusa crying for help was heard by you five or six minutes after you shouted calling for Jesusa, is that true?—A. Yes, sir.

"Q. Then you were mistaken yesterday when you said that you heard the cry for help first, and that made you call in a loud voice 'Jesusa, Jesusa!'—A. Yes, sir, I was mistaken. My mind was just clarified today. In general terms, I may say that all the testimony given by me yesterday was a mistake and that the true statement is that one given by me this morning."

Jose Anastacio (22 years of age, laborer, married, separated from his wife) : "About 5.30 on the afternoon of July 12, 1915, coming from the rice field I met Gaudencio Concepcion and we agreed to go out that night to gamble. After that I went up into our house, the house of Vicenta Bernardo, and took merienda about 7 o'clock in the evening. Then I went down, Feliciano remaining in the house. Before going out I heard Feliciano asking Jesusa to run away with him that night. I met Gaudencio downstairs and told him that we should not go away yet as I heard Feliciano inducing Jesusa to run away, so we remained under the batalan. At about 9 o'clock when Jesusa came downstairs Gaudencio and myself took her to the mango tree. I struggled with her and when I had sexual intercourse with her Gaudencio was holding her. When I had gotten through, Gaudencio had sexual intercourse with her while I held her by the throat. While Gaudencio was having sexual intercourse with Jesusa the girl cried out 'Help me.' When Gaudencio had about finished, Feliciano appeared and said to us, 'So you are here, are you? I was the one to take her away.' After Feliciano had sexual intercourse with her he asked me what we should do with the girl. I told him I did not know. Then he said we had better kill her, and we killed her, all three of us striking her, Feliciano using a fan knife. This is the knife he used (Exhibit I) and this is the bolo (Exhibit H) which Gaudencio used. When Feliciano came he was carrying some clothes and was wearing a colored coat and striped trousers. The first time he came he was wearing his colored coat and trousers. After we killed the girl Feliciano returned to the house to get his bolo and to change his clothes and when he returned he was wearing the striped coat and striped trousers (Exhibit T). When he came the first time he was carrying the lighted lantern (Exhibit P), and when he returned the second time we three took the corpse on our shoulders and carried it to the rice field. I carried the feet, Gaudencio the trunk, and Feliciano the head. Before we started with the body Feliciano took off his coat and trousers and was then in his undershirt and drawers. He was then wearing this hat (Exhibit M) and his bolo (Exhibit E). After we had disposed of the body Feliciano went toward San Jose street and went home. I also went home to the house of Vicenta Bernardo. I arrived at the house about 11 o'clock and Egipciaca Bernardo opened the door for me. Feliciano returned about 1 o'clock and I opened the door for him. When Feliciano left the place where we had thrown the body, he carried a bundle. When I saw and heard Feliciano talking with Jesusa on that night I was jealous. When Feliciano asked the girl to run away with him she agreed to do so. About five minutes transpired from the time Feliciano came to us at the mango tree, had intercourse with the girl, and we killed her before he returned to the house to change his clothes."

"Q. Explain how long you would have to walk to cover the period of time from here to the church. (The court:

'It would take two or three minutes to walk from here to the church.') After the killing I noticed blood stains on Feliciano's shirt and trousers. The night was dark, but we had a lighted lantern. When the girl received the first blow she cried, 'Help me, Jose is striking me.' She only spoke once after she was struck the first blow. I may be mistaken when I said that she cried out for help while Gaudencio was having intercourse with her. I never had intercourse with Jesusa at any time except on that night. When Jesusa came downstairs she followed Gaudencio and myself to the mango tree without speaking a word and neither Gaudencio or myself spoke to her before we raped her. I threw her down, but she did not cry for help. She cried out once after we three had raped her and after we had struck her the first blow. It is not true that Feliciano caught me having intercourse with her on the 28th of June in the house where we lived. I don't know who the father of Jesusa's child is. (Jesusa had been pregnant about five months.) In carrying the body to the rice field the head was hanging over Feliciano's left shoulder."

Sofia Bernardo, the mother of Jesusa Anastacio, testified that she spent the night of July 12 at the house of Tomas Anastacio, her son; that Feliciano came to Tomas's house about 11.30 that night and told them that Jesusa had disappeared; that Feliciano was wearing these clothes (Exhibit T) ; that if he carried a bolo she did not see it, but that he was carrying a lantern; that if Jesusa had any illicit relations with anyone she did not know it; that these clothes (referring to certain exhibits) belonged to Jesusa; and that when Feliciano arrived at the house where she was staying that night he was not frightened or excited; he was calm, as if nothing had happened at all.

Fidel Ruivivar, then sergeant of police of Zamboanga, testified that by order of his chief he inspected the premises around the house where the deceased lived on the morning of the 14th of July; that he returned in the evening of that day to inspect the house; that he searched Feliciano's room and found the hat (Exhibit M) and some dirty clothes in a basket; that he also found the knife in the tampipi in Feliciano's room; that he got from the laundry the clothes marked Exhibit T; and that Feliciano showed him the laundry and told him that the clothes belonged to him (Feliciano).

Jose Magno, chief of police of Zamboanga, testified that he went to the house where the deceased girl lived in the afternoon of July 13 and also on the night of the 13th and the afternoon of the 14th as well as at other times; that on the afternoon of the 13th when Feliciano was arrested he and Sergeant Ruivivar went to the Chinese laundry and got the clothes (Exhibit T) which Feliciano said he was wearing the night before; that he took the drawers marked Exhibit R from Feliciano at the time he was arrested; that he turned these clothes over to a bacteriologist, Dr. Baltazar; that the first time that he made a search of Feliciano's room, which was on the night of July 13, he searched the tampipi, but the knife was not then in it; that although he searched the entire room at that time he found no knife; and that he found what was, in his opinion, blood stains on the drawers which he took off of Feliciano and sent to the laboratory.

Angel Garcia testified that he found the bundle of clothes marked Exhibit M on the land of Juan Fernandez on the morning of July 13 near the cockpit.

W. L. Lamb, customs' secret service agent of Zamboanga, testified that the scabbard marked Exhibit E was taken by him from the house where Feliciano lived the day after (July 14) Jesusa's body was discovered; that he then noticed blood on the scabbard; that he found the bundle of clothes marked Exhibit O in the sewer; that he pulled the clothes out with a pole; that he had several conversations with Feliciano on the days following the murder of Jesusa; that he asked Feliciano why his trousers were muddy; that Feliciano told him that he had fallen off a small bridge at the rear of the house in the cocoanut grove; that Feliciano, in stating what he did on the night of the 12th, said that he saw Gaudencio Concepcion standing about 4 brazas from the kitchen window of the house at about 7 or 7.30 on that evening; that in all his conversations with Feliciano he only tried to get Feliciano to tell the truth; and that he made him no promises whatever.

Dr. Martin Baltazar of Zamboanga testified that he made bacteriological examinations of the stains or spots on the knife (Exhibit I) and other exhibits from the 14th to the 17th of July; that these exhibits, including the drawers marked Exhibit R, showed positive blood stains, but that he could not determine whether the blood was that of a human or an animal; that the same is true of the coat and hat; and that while these articles were in his office they were kept under lock and key.

Feliciano Fuentebella (46 years of age, widower), having taken the stand in his own behalf, testified substantially as follows: "At about 7 o'clock in the evening of the 12th of July, 1915, when I came home, Jose Anastacio was taking a cup of tea, and after finishing it he went downstairs. After we all had finished merienda, I went to the house of Antonio Padua to get some clothes which I had left there and returned about 8 o'clock. About 9 o'clock six of us in all had supper. The first to arise from the table was Jesusa and she went toward the kitchen. A little later I went into my room where my son Jose was asleep and prepared my bed. Soon thereafter and while I was saying my evening prayers just before going to bed, I heard Egipciaca calling 'Jesus, Jesus.' A few minutes later she repeated those words. Jesus is Jesusa Anastacio. Then I heard her say, 'Take a light downstairs.' I went into the dining room and asked her what was the matter and she said, 'Jesusa is not here/ She further said, 'We looked all over the kitchen for her and we did not find her.' Arcadia told me to go and look for her. After putting some kerosene in the lantern I went downstairs with the lantern lighted and searched around the house and a part of the yard. I saw that the gate was open; then my light went out. I returned to the house and told them that I could not find Jesusa. I then lighted the lantern and went down again. I then heard some dogs barking in front of a house nearby. I went to different places where the dogs were barking and on arriving in front of the house of Flaviano Clemente, I called for him and he gave me some matches, and I told him I was looking for Jesusa. After searching in different places, including the cocoanut grove, which is back of the house, I returned to the house, knocked at the door, which was opened by Egipciaca, and told the people that I could not find Jesusa. Arcadia then said to me, 'She must have gone to her mother in San Jose street,' and said that I had better go there to look for her. I then entered my room and took my bolo and on the way to the house where Jesusa's mother was staying that night, I met Quirico de los Reyes and had a short conversation with him, telling him where I was going and the object of my trip. Continuing my journey I passed through the cocoanut grove and on account of the night being very dark I slipped into a pool of mud, wetting my trousers with muddy water. I passed through that way because it was nearer. I arrived at the house where Jesusa's mother was at about 11.30 that night and told Sofia my business. I again returned home, arriving there about 12.45 that night, knocked at the door and Jose Anastacio opened it. After closing the door I went to my room and laid down to sleep. In about two minutes Jose Anastacio entered the room and laid down near me. I noticed that he was restless and asked him what was the matter and he replied, 'I do not know what is happening to me.' The following morning about 6 o'clock, after having told the inmates of the house that I could not find Jesusa, I then told them that we should report Jesusa's disappearance to the authorities. It having been decided that I should make the report, I entered my room, changed my clothes, and left, it being about 6 o'clock in the morning. I went to the house of the justice of the peace, arriving there about 6.30. As at that time the justice of the peace was in bed, I waited until he came out, and I told him my business. He asked me several questions about the matter. I then went to the police station and reported the matter to Corporal Ledesma. I then returned to my house. On the 28th of June, 1915, at about 3.80 p. m., I entered the big room where Jose Anastacio, my son and I slept and saw Jose Anastacio and Jesusa embracing each other. I reported this matter to Jesusa's mother. Yes, I had several conversations with Mr. Lamb and he tried to get me to say that I took part in the killing of Jesusa, but I would not do it. I was present at the house on the evening of the 13th when my room was searched by the chief of police. They found nothing at that time. The day after that I learned while in jail that the authorities had found in the house some clothes, a knife, and a bolo all stained with blood. I was not present when these things were found as I was arrested on the afternoon before. The drawers (Exhibit R) which were taken off of me by the authorities, did not then have any blood stains on them. The coat and trousers (Exhibit

T) were shown me by the fiscal before the trial, with the doctor's certificates attached and I was asked if they were mine, and I said yes. Then the fiscal asked me why they had blood stains on them and I replied that I did not know because the day those clothes reached the station they had no blood on them."

Jose Julian, justice of the peace, testified that early in the morning of July 13, 1915, Feliciano FuentebeUa came to his house and informed him that Jesusa had escaped the night before; that he told Feliciano to report the matter to the chief of police and the proper investigation would be made; that Feliciano told him that Jesusa had disappeared between 8 and 9 o'clock on the night before; that he (the witness) then went to the house of Jesusa on the same day about 3 o'clock in the afternoon, accompanied by two doctors and the chief of police; that he examined the house, including the room of Feliciano, Feliciano being present; that he then examined the bolo and sheath, but did not notice any stains on either of them; and that he examined them for the purpose of finding blood on them, which would lead him to believe that the scabbard or bolo had something to do with the murder.

Gregorio Ledesma, municipal secretary of Zamboanga, testified that he was, on the morning of July 13, in the police station and saw Feliciano there looking for the chief of police.

Quirico de los Reyes testified that he met Feliciano about 10.30 on the night of July 12 carrying a lighted lantern in his hand; that he asked Feliciano where he was going and Feliciano replied that he was in search of Jesusa; and that he then told Feliciano that if he did not find her to report the matter to the municipal authorities.

Marcelina Bernardo, the wife of Gaudencio Conception, testified that her husband never left their house on the night of the 12th. Maria Bernardo testified to the same effect, as well as Aguedo Bernardo.

Feliciano Fuentebella took part in the murder, according to the witnesses for the prosecution, during the time he was absent from the house the first time. Arcadia Bernardo testified that Feliciano was then absent from ten to fifteen minutes. Egipciaca Bernardo says in her changed testimony that it was about five minutes after Feliciano left the house the first time before she heard the voice of Jesusa calling for help. Jose Anastacio says that Feliciano arrived at the mango tree, where they were, about the time Gaudencio had finished having intercourse with the girl; that they had a short conversation; that Feliciano had intercourse with the girl, after which they discussed the proposition as to what should be done with the girl; then they decided to kill her and did kill her, and Feliciano then returned to the house. Jose Anastacio says all this occurred at the mango tree within about five minutes or within the time which it would take to walk from the court house to the church, which the judge places at two or three minutes. If Egipciaca Bernardo's first testimony be true, Feliciano was in the house when she heard Jesusa cry out, "Help me, because Jose is killing me," and must have remained in the house a few minutes after that before going out to look for Jesusa, because he had to get the lantern, put oil in it, and light it. The declaration of Egipciaca to the effect that Feliciano was in the house when Jesusa cried for help is partially corroborated by the testimony of Jose Anastacio, because the latter testified that Jesusa cried for help while Gaudencio was raping her. Again, the prosecution's witnesses establish the fact that when the first search was made by the authorities, although they carefully examined the tampipi, the knife was not found, but was found the following day in the tampipi. The testimony of Feliciano Fuentebella to the effect that when he returned to the house and informed the members of the family that he could not find Jesusa, that it was then decided that he should go to the house where her mother was staying that night; that he met Reyes on the way; that he arrived at the house about 11.80; that he reported the matter to the justice of the peace and to the police authorities, is fully corroborated and its truthfulness is not seriously questioned by the Government. All these facts and circumstances strongly indicate the innocence of Feliciano. But it is contended that the blood stains on Feliciano's clothes, which he was wearing that night, and on the knife and bolo conclusively establish the defendant's guilt. The justice of the peace says that when he examined the bolo and scabbard he saw no blood stains, although he looked for such. Feliciano says that there were no blood stains on his drawers when the police took them off him and that if there were blood stains on

the other clothes, he did know it. Jose Anastacio said that the head of the deceased Jesusa, while they were carrying the body to the rice field, hung across Feliciano's shoulder. If this were true, his undershirt would have been soaked with blood as the girl had just been stabbed several times in the neck with the knife and struck in the face or jaw with a bolo. Furthermore, there appears no motive whatever on the part of Feliciano for participating in the murder of Jesusa. On the other hand, Jose Anastacio admits that he was jealous when he saw and heard Feliciano talking with Jesusa on that night.

After giving due weight to the findings of fact made by the trial court, based upon contradictory testimony, we must reach the conclusion that there is at least a very serious doubt as to the guilt of Feliciano Fuentebella of the crime for which he stands convicted. The judgment appealed from is, therefore, reversed, and the defendant acquitted, with costs de oficio. So ordered.

Torres, Carson, Moreland, and Araullo, JJ., concur.

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