

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SARIKALA, DEFENDANT AND APPELLANT.

G.R. No. 12988. January 24, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

C. H. Cotton, a farmer of the American colony of Mumungan, Lanao, and his adopted daughter Francisca, a girl of 11 or 12 years of age, were foully murdered on or about January 14, 1917, while sleeping in their home. Sarikala, a Moro laborer, was charged with the crime, was found guilty in the lower court, and was given the death penalty. On review, as the proof is entirely circumstantial in nature, we must describe antecedent events and closely analyze the evidence.

And first, the motive. Sarikala had been employed as a laborer by Cotton. His services had been found to be unsatisfactory. On Saturday, January 13, 1917, Sarikala was discharged by Cotton who used violent and profane language. We shall not repeat these words but they were such as naturally to arouse enmity. A further point indicating ill-feeling on the part of Sarikala toward the little girl is revealed by evidence to the effect that some time previous Francisca had outraged the Moro's religious belief by putting pork in his rice. The finger of guilt thus points at Sarikala. But mere suspicion is not sufficient to convict.

So next, the circumstantial evidence, deduced point by point—

First. Sarikala was familiar with the house of Cotton and his belongings. He knew that the wire of a window which was found open after the murder could be broken with pliers and he knew that Cotton had weapons which could be used to commit the crime.

Second. Sarikala admitted having spent the night of January 14, 1917, in the little house near Cotton's residence.

Third. Sarikala left the scene of the murder immediately thereafter. Flight, when unexplained, is a circumstance from which an inference of guilty may be drawn. "The wicked flee, even when no man pursueth; but the righteous are as bold as a lion."

Fourth. On a white coat and khaki trousers belonging to Sarikala were found blood stains. The medical expert testified from microscopical examination that this was blood but that he could not tell whether it was the blood of a human being or of an animal. On this point, Stewart on Legal Medicine (p. 322), says:

"Under ordinary circumstances there is no difficulty in determining whether a given stain is, or is not, a blood stain; and, in case the blood corpuscles are intact the blood of reptiles or birds is readily distinguished from that of mammals. But even under the most favorable conditions the determination of the particular mammal from which a sample of blood has been obtained, is a matter of great difficulty, calling for expert skill and very careful microscopical examination. Even the most expert would hesitate to testify to the presence of human blood, in distinction from dog's blood, for example, when such testimony would mean the conviction of one accused of murder."

Fifth. The ghastly wounds were made either by the machete (knife or bolo) of Cotton, or a weapon identical therewith. Sarikala knew of this weapon, and after the murder, while in jail, told another person that Cotton's weapons could be found in the well. The weapons were discovered in the well.

Sixth. After arrest, Sarikala told a story implicating another Moro named Mudag. But no motive for Mudag to commit the murder, unless it was robbery, can be imagined and no other evidence against Mudag was presented.

Seventh. Sarikala made denials as to his ownership of the breeches, as to having asked permission of another Moro Tayaba to sleep in his house, and of having met Esperanza Andrews who lived nearby. The statements of Sarikala on these points were found to be false. .

Eighth. Sarikala testified that the coat with the blood stains was one which he had exchanged with his cousin. But the cousin was not introduced as a witness. American courts have been generally much more liberal to the accused for failure to produce evidence than English courts. The true rule is we believe as stated by Dean Wigmore in his work on Evidence [4, p. 3148]:

"The failure to produce evidence, in general, other than his own testimony, is open to inference against a party accused, with the same limitations applicable to civil parties. Here the effect of the burden of proof has sometimes tended to confuse. It is true that the burden is on the prosecution, and that the accused is not required by any rule of law to produce evidence; but nevertheless he runs the risk of an inference from nonproduction. This seeming paradox, which has been already sufficiently noticed in treating of the general principle, has misled a few courts to deny that any inference may be drawn. (People vs. Cline [1890], 83 Cal., 374, 378; 23 Pac, 391 [larceny of horse; defendant's failure to call the alleged vendor, held to be open to inference] ; State vs. Griswold [1900], 73 Conn., 95; 46 Atl., 829; Price vs. U. S. [1899], 14 D. C. App., 391, 400 [failure to attempt to prove an alibi]; Frazier vs. State [1893], 135 Ind., 38, 39; 34 N. E., 817 [failure to produce any evidence]; State vs. Hinkle [1858], 6 Iowa, 385 [failure to explain where arsenic was bought] ; State vs. Hasty [1903], —id.—; 96 N. W., 1115 [the absence of contradiction for certain facts may be noticed, even though the accused is the only one who could contradict them]; Com. vs. Webster [1850], 5 Cush., 295, 316; (quoted supra.) Com. vs. Harlow [1872], 110 Mass., 411; Com. vs. Brownell [1887], 145 id., 319; 14 N. E., 108; People vs. Mills [1893], 94 Mich., 630, 638; 54 N. W., 488; State vs. Costner [1900], 127 N. C., 566; 37 S. E., 326 [failure to call witnesses to explain accused's whereabouts] ; Jackson vs. State [1892], 31 Tex. Cr., 342, 344; 20 S. W., 921 [failure to account for possession of stolen goods].)"

"The inference (supposing the failure of evidence not to be explained away) is of course that the tenor of the specific unproduced evidence would be contrary to the party's case, or at least would not support it." (1 Wigmore on Evidence, p. 377; see also Ann. Cas. [1914 A], pp. 907 et seq., especially p. 932.)

Counsel de officio has presented the case for his client in a most convincing manner. Cupidity, not revenge, he argues, was the motive. Not one of the articles missing from the house was found in the possession of the accused. Naturally, counsel dwells on the thin veneer of circumstantial evidence, suspicion, conclusion, and conjecture. The brief concludes:

"It is not known who committed either the murder or the robbery. It might have been Mudag, or it might have been Andrews, or it might have been someone else. We may never know the author of the deed; certainly we do not know him at this time. And, however much ill-founded suspicion there may be, certain it is that Sarikala has not been proven to be the perpetrator of the crime." .

To a considerable degree we are inclined to concur with counsel. We must convict, if at all, on circumstantial evidence. Yet when we weigh the argument for the defense against this circumstantial evidence, we find the

balance inclined towards guilt. We believe that for revenge Sarikala secured the machete, broke open the window of Cotton's house, entered, treacherously, murdered Cotton and the little girl, threw all the weapons in the well, left his bloody trousers in the hut, escaped, and then when arrested endeavored to put the guilt on Mudag.

The crime charged was double murder with robbery. Robbery was not proved. The trial judge took into consideration as to the death of Cotton the qualifying circumstance of premeditation and the extenuating circumstance of passion and obfuscation, and as to the death of the little girl the qualifying circumstance of premeditation with the aggravating circumstance of nocturnity and no mitigating circumstance. On close study we cannot agree that premeditation or nocturnity are proved. As to the mitigating circumstance of passion and obfuscation we likewise cannot agree that it can be taken into consideration because more than twenty-four hours elapsed after the insults of Cotton to the accused and the criminal act.

"The mitigating circumstance of passion and obfuscation cannot be considered when a long period of time has intervened between the impulse which produces it and the criminal act." (Decision of the supreme court of Spain of March 29, 1882.)

On the contrary, we find present, alevosia, raising the crime to murder, and the aggravating circumstance of commission in the dwelling of Cotton and his daughter, but balanced by the mitigating circumstance of ignorance and lack of education. Wherefore, we sentence the defendant and appellant to life imprisonment (cadena perpetua), the accessory penalties provided by law, to pay an indemnity of P500 to the heirs of C. H. Cotton and an indemnity of P500 to the heirs of the girl Francisca, and to pay the costs of both instances. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Avanceña, JJ., concur.

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