

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MORO MACARINFAS, DEFENDANT AND APPELLANT.

G.R. No. 14642. August 16, 1919

Ponente: TORRES, J.

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TORRES, J.:

On October 5, 1918, the provincial fiscal of Misamis filed a complaint in the Court of First Instance of said province against Moro Macarinfas accusing him of the crime of robbery with murder, but the demurrer filed by the counsel for the defense having been sustained, the complaint was amended accusing the said Macarinfas only of the crime of murder committed in the following manner:

"That on or about the night of May 28, 1918, in the barrio of Karangan, municipality of Misamis, Province of Misamis, P. I., the said accused intentionally, maliciously and unlawfully, with treachery, did then and there, with a sharp pointed bolo with which he had previously provided himself, stab Roque Macaeran in his own house, inflicting a wound in the abdomen which caused death within a short time. Contrary to article 403 in connection with articles 10, 15, and 20 of the Penal Code."

Trial having been had and the evidence of the prosecution as well as of the defense having been submitted to the court, the latter on October 7, 1918, rendered judgment accordingly declaring the accused guilty of the crime of murder, for having killed Roque Macaeran with premeditation and sentenced him to capital punishment, taking into account in the commission of the crime, the aggravating circumstances of nocturnity and treachery—said act having been accomplished in such a way as to render it absolutely impossible for the deceased to defend himself, aside from the fact that it was committed in the dwelling of the offended party. This case has been brought to this court for review and the counsel for the defense alleges that the lower court has erred in condemning the accused not for the crime of homicide but for that of murder with the qualifying circumstance of premeditation which was not alleged in the complaint, and in not considering in favor of the accused the special circumstance mentioned in article 11 of the Penal Code.

The fiscal, on the other hand, is of the opinion that the accused is guilty of the crime of murder because he killed the deceased with treachery, but adds that in the present case the circumstance of nocturnity should not be taken into consideration to aggravate the penalty for it is merged in that of treachery. He admits, furthermore, that the aggravating circumstance of race mentioned in article 11 of the Penal Code as amended, should be taken into consideration in favor of the accused, but alleges that the aggravating circumstance that the crime was committed in the dwelling of the offended party is compensated by the said mitigating circumstance, wherefore he believes that the accused should be condemned to *cadena perpetua* (life imprisonment), to indemnify the heirs of the deceased of the sum of five hundred pesos (P500) and to pay the costs.

From the testimony of the wife of the deceased, not contradicted by any other evidence in the record, it appears that at about 8 o'clock on the night of May 28, 1918, Roque Macaeran, his wife and children were eating their supper in their house situated in the barrio of Carangan in the municipality of Misamis, Province of Misamis, seated on the floor of the said house—said floor is raised from the ground so that a man can stand upright without

touching it, and is made of small pieces of bamboo placed parallel to and separated from each other about the width of a finger. That night the deceased was seated on the bamboo floor, his legs wide apart, his knees a little bit raised and his feet at a distance from their base of control; that is to say, from the lower trunk and its muscles. While in this position they heard the noise made by the chickens under the house whereupon the deceased remarked that there must be somebody down there. At this moment he was raising to his mouth a mouthful of rice but scarcely had he placed it in his mouth when he said: "They have wounded me," and the rice which fell from his hand was scattered. Thereupon his wife cried out asking for help from their neighbors, went to the kitchen, and afterwards peeped out of the window from where she saw some one running but could not recognize who it was on account of the darkness. The wound started near the anus where it was approximately one and one-half inches wide and ended in the abdomen where it appears smaller. It bled profusely and in less than one hour caused the death of Roque Macaeran, who, a short time before, was in good health and without any infirmity (record, pp. 13-19).

It is also, a fact, uncontradicted by no evidence in the case, that on the afternoon of the date in question the accused asked for some tuba (coconut sap) in the coconut plantation which the deceased was cultivating with the consent of the owner, but could not get any because the said owners had already taken it all (record, p. 21).

It is also true, and the accused so admits, that when Roque Macaeran died the said accused was living in the house of Tecla Neri (record, p. 45), which was not very far from that of the deceased because a person talking in a loud voice in the former house could be heard although indistinctly in the latter house (record, p. 35).

The said Tecla Neri testified that on the night in question upon her request, Francisco Jalim, who was then living in her house (record, p. 34), went to ask for some salt in the house of Tatoy Neri's cousin (record, p. 35) ; that on the morning of the following day the witness saw the accused and his wife sleeping in her house; later on the wife of the accused asked her if she had heard outcries coming from a certain place to which she answered "no;" that then the accused took part in the conversation, said that on the previous night he accompanied Francisco Jalim when asking for salt in the house of Tatoy; and that while he was waiting for Francisco to come out from the house, they heard those outcries and then they began to run (record, p. 36). The same witness added that on that morning she saw in her kitchen chicken feathers, the color of "buaning," wet and packed up in a sack (record, p. 36).

The accused as a witness in his own behalf denied having gone out of the house on the night of the occurrence (record, p. 46) ; but there is no question that he did not tell the truth and that Tecla Neri's testimony is more worthy of belief.

In fact the same testimony of the accused shows that he told a lie on the witness stand inasmuch as in the beginning he said that he was living in the house of Tecla Neri when Roque Macaeran died, but a little further on when he was asked when Roque Macaeran died he answered he did not know; and furthermore he went to the extreme of saying that he did not know that Roque Macaeran had died; that he only knew about this on the day he was arrested by the police; and added without having been asked about it that he did not know of what sickness Roque Macaeran had died. All of this shows that the accused did not give any value to the oath which he took before testifying as a witness and that he did not tell the truth. However, there is another detail which sustained this conclusion beyond any reasonable doubt. The accused admitted having declared to the chief of police that he was the one who stabbed to death Roque Macaeran, but alleged that he was forced to make this declaration because when he was in jail they did not give him anything to eat nor allowed him to attend to the necessities of nature; that they had him handcuffed and suspended within the jail and that only when he admitted at the preliminary investigation before the justice of the peace that he was the author of the death of Roque Macaeran did they untie his hands within said jail, adding that such an admission of guilt was not true because he made it

when he was out of his mind (record, p. 48).

Now if it be true that when he made that declaration he was out of his mind or that he did not know what he was doing or saying, then it would be difficult for him to reproduce on the witness stand in detail that confession, and much less could he explain as he did, that he was forced to admit his guilt, because of the cruel restraint to which he was subjected. Therefore, if in testifying as a witness he could make similar explanations, it was because when he admitted his guilt he was conscious of his acts; and therefore he told a lie when he said he was out of his mind when he made that confession before the chief of police or the justice of the peace.

As against this testimony of the accused the only witness who testified in his favor was Tecla Neri who had no interest in the result of this proceeding; and it cannot be believed that she might have told a lie to prejudice at the same time Francisco Jalim who had been living in her house since January, 1918, and was in charge of it; for her testimony is equally prejudicial to both. Furthermore, the testimony of Tecla Neri is corroborated by Francisco Jalim and his wife Ines Dagojoy, both of whom affirm that Francisco left the house of Tecla Neri on that night with the accused to look for salt. It is true that Francisco Jalim and the accused were companions on the night of the occurrence and there is some ground to suspect that the said Francisco Jalim may have been an accomplice in the commission of the crime, for which reason his testimony should be received with great caution. But, when he said that he went out on that night in company with the accused, he deserves the credit of one who knows the value of an oath as this fact to which he testified puts him in danger of being prosecuted as an accomplice or coadjutor of the crime in question when he could very well have avoided that danger by keeping silent. If to this is added the testimony of the disinterested Tecla Neri, the conclusion that the accused left the house on the night in question in company with Francisco Jalim becomes irresistibly and necessarily that he was already out of the house at the moment the outcries were heard because, according to the declarations of the accused to Tecla Neri, he and Francisco Jalim began to run when they heard said outcries.

Francisco Jalim testified that about 5 o'clock on the said night he left the house of Tecla Neri together with the accused to look for salt; that on one side of the street where they were walking the accused took from under the grass a bolo which he carried sheathed and suspended from his belt; that upon arriving near the house of Roque Macaeran the accused told him to wait there which he did, remaining at a distance of about 30 feet (five brazas) away; that the accused then took one of the chickens under the house of the deceased and afterwards thrust the end of the sharp pointed instrument (bolo) which he was carrying through one of the cracks of the bamboo floor of the said house, adding that he saw what the accused did because he was only 30 feet away (five brazas); that there was a light in the house and that because of the horror of the crime which he had seen he ran to the house of Tecla Neri where he was living and then went to sleep through fear.

Ines Dagojoy, wife of Francisco Jalim, confirmed the testimony of her husband, saying in addition that later on the accused came and went directly to the kitchen where he and his wife killed the chicken (record, p. 40).

The fact that on the night of the occurrence a chicken was killed in the house of Tecla Neri is undeniable, for according to the testimony of Tecla Neri, un rebutted, on the morning following the night of the incident chicken feathers still wet and packed up in a sack were found in the kitchen of her house. That said chicken had been the result of a criminal act is also without doubt, for otherwise its feathers would not have been hidden in a sack. Ines Dagojoy testified that it was killed by the accused and her husband Francisco Jalim was sure that it was stolen by the accused from the barn of Roque Macaeran on the night when the latter was stabbed to death. These details tend to show that the accused was below the house of the deceased several moments before wounding Roque Macaeran, making the chickens noisy, and that hardly had said noise ceased before the deceased was wounded through the floor by a criminal hand.

In accordance with the merits of the case the testimony of Francisco Jalim states the truth, namely that the accused was the author of the death of Roque Macaeran. It is true that the conduct of Francisco Jalim appears suspicious according to his own testimony, which places him in the compromising position of being considered as an accomplice of the crime in question, since he knew all the details of its execution as though he himself had done it, and under such circumstances nothing is more natural than to accuse another of the fault. But in the present case according" to the judgment of the court his testimony has a seal of truth.

The accused in his contradictory testimony has not attempted to impute the crime to Francisco Jalim, who was then going in his company, but ended in denying his guilt in spite of the accusatory testimony of the said Jalim. The chief of police of the municipality of Misamis testified that the accused confessed to being the author of the death of Roque Macaeran, a confession which was freely and spontaneously made without intimidation, undue influence or violence; and that in the presence of the justice of the peace he also made the same confession of guilt (record, pp. 41-42). Corroborating this testimony is Exhibit A which is a sworn declaration signed by the Moro Macarinfas with his thumb mark, in which declaration, which is in Visaya (record p. 56) and translated in English (record, p. 57), the said Macarinfas declares that he was induced by Francisco Jalim to kill Roque Macaeran; that as he did not know what would happen he stabbed Roque Macaeran with his bolo, aided by Francisco Jalim in pushing it up through the floor; that afterwards they stole a chicken which they took to the house of "Tecla Neri.

The accused admits the authenticity of this Exhibit A (record pp. 46-47) although he alleges that he had to make the confession of guilt because of his difficult situation in the jail but that it was not true because when it was made he was out of his mind, imputing the deed to Francisco Jalim.

This explanation of the accused merits little credence for it lacks justification and it is contradictory in itself because, if the confession was made when he was out of his mind, he could not very well explain on the witness stand that he had made it because of the difficult situation in which he found himself. However, even admitting that his confession was made because he was subjected to a somewhat cruel rule, his guilt always remains patent, for the positive declaration of Francisco Jalim, corroborated by several incontrovertible and unequivocal facts which were gotten out of the trial, establishes, beyond all reasonable doubt, the fact that the accused was the one who killed Roque Macaeran.

The lower court classified the crime as murder, taking into consideration the fact that it was committed with premeditation, but this circumstance does not appear alleged in the complaint, and there is no evidence in the case to show that it concurs in the execution of the crime.

However, the crime should be classified as murder because it was committed with treachery, article 403, paragraph 1, Penal Code, for the accused with a sharp pointed instrument, thrust from beneath the floor thru the strips of bamboo of the same, attacked with intent to kill the deceased at the very moment the latter with his family was seated, on said floor, off his guard, and, on account of the obscurity of the night, unable to see his aggressor hidden below the said spot on the floor, the deceased had no intimation of the attack till the moment the weapon passed thru the floor and his anus to the interior of his abdomen. As the deceased was able neither to get up, nor evade nor escape from the attack—on account of the suddenness and originality of this attack of an unseen aggressor—such act evidently constitutes the crime of murder as said criminal act, causing the death of the wounded, was executed with marked *alevosid* [treachery] in which is merged that of nocturnity—as the aggressor made use of the obscurity of the night to insure his criminal purpose.

Furthermore, in the commission of the crime the generic aggravating circumstance that it was committed in the dwelling of the offended party was present for the accused was under the floor of the house. But this circumstance

is compensated by that found in article 11 of the Penal Code as amended by Act No. 2142. (U. S. vs. Jakan Tucko, 20 Phil. Rep., 235.)

Based upon the above considerations the court is of the opinion that with the revocation of the judgment submitted, Moro Macarinfas should be sentenced, as we do hereby sentence him, to the penalty of cadena perpetua (life imprisonment), with the accessory penalties, Nos. 2 and 3 of article 54 of the Penal Code; and even if the accused be pardoned of the principal crime he shall suffer the penalty of absolute perpetual disqualification and be subjected to the surveillance of the authority during" his lifetime, if these accessory penalties have not been remitted with that of the principal, and to pay to the widow and heirs of the deceased the sum of one thousand pesos (P1,000) as indemnity, without subsidiary imprisonment in case of insolvency, according to article 51 of the Code, together with the costs of both instances. So ordered.

Arellano, C.J., Johnson, Araullo, Street, Malcolm, Avanceña, and Moir, JJ., concur.

Judgment modified.

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