

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO MELAD, DEFENDANT AND APPELLANT.

G. R. No. 16719. March 08, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This appeal is taken by the accused Maximo Melad from a judgment of the Court of First Instance of Cagayan, sentencing him, under article 404 of the Penal Code, to seventeen years four months and one day of reclusion temporal, with the accessories provided by law, to indemnify the heirs of the deceased Marcelina Mape in the sum of P500 and to pay the costs.

The crime charged is homicide committed by the accused upon the person of Marcelina Mape on March 8, 1919, in the municipality of Penablanca, Cagayan.

The only contention made by the defense in this court is that the -evidence adduced by the prosecution is insufficient to convict.

The Honorable Federico Olbes, Judge, who tried this cause, in examining the evidence adduced at the trial, says the following in his decision:

"The prosecution presented the following witnesses:

"Santiago Gatering, 60 years old, who declared that one morning in the month of March of last year, while in the company of Pedro Anam, he saw Maximo Melad carrying Marcelina Mape who, he thought, was ill; that in the afternoon when he returned from the place where he and Pedro Anam had gone he found, in the southern part of the road, the corpse of Marcelina Mape which they then examined and recognized.

"This witness also declared that the only houses in that place were those of Marcelina Mape and the accused Maximo Melad, which were about 50 meters apart.

"He further declared that on that occasion Juan Taguiam, his wife, and the daughter of Marcelina Mapa were away from the house where Marcelina was.

"Pedro Anam completely corroborates the testimony of the witness Santiago Gatering. His declaration differs from that of the preceding witness only in this respect, that according to Anam the incident was investigated by the Constabulary soldiers nine days afterwards, that is, the next day after a brother of the deceased Marcelina Mape was notified of the fact. The witness Gatering denies this fact.

"The third witness of the prosecution was Mariano Hernandez, son of Agustina Manuel, who is the paramour of the accused Maximo Melad. This witness, a young man of 18 years, testified that at daybreak on a certain Saturday, Maximo Melad awakened him and ordered him to take care of the beans; that at that time he saw Maximo Melad leave the house and proceed eastward, carrying with him a stick; that sometime afterwards, while answering a call of nature, he heard a cry somewhere in the east and he returned to their house where he saw Maximo Melad who had a roll of bank bills. This witness also declared that prior to that date he lived in

the house of Federico Suyo, but that on that occasion he was in the house of Maximo Melad who lived with his mother Agustina Manuel. He also stated that on the morning following that Saturday Maximo Melad and his paramour Agustina Manuel moved to the house of Federico Suyo.

"The fourth witness of the prosecution is Juan Taguiam, who is married to a niece of the deceased Marcelina Mape. This witness declared that he lived with Marcelina Mape, her daughter and his own wife, a piece of Marcelina; that several days previously the daughter of Marcelina Mape had moved to another place and barrio to take care of certain plants; that on Friday immediately preceding the act in question, he went with his wife to the place where the daughter of Marcelina Mape was, and there he, his wife and the daughter of the deceased Marcelina Mape slept together in the sitio of Dodan; that he had gone to Dodan to take care of the beans he had planted; that about noon of Saturday, upon returning to the house where they left Marcelina Mape, they found out that she was not there and after waiting for her in vain for some time, he gave the alarm to the municipal president of Penablanca. He also declared that Marcelina Mape had some money and that she used to carry it around her waist.

"The defense is based upon the declarations of the witnesses Federico Suyo, Agustina Manuel and Maximo Melad, the accused.

"Federico Suyo declared that one day, while in the company of the accused Maximo Melad, he saw at a place in the road near the house of the deceased Marcelina Mape the remains of a person; that then he called Juan Taguiam to examine it, and the latter stated that it is the corpse of Marcelina Mape; that Juan Taguiam then transferred the remains to the interior of a forest at the base of a tree in order that other persons might not see it.

"Agustina Manuel declared that the night preceding the day of the crime, she was not at the house of Maximo Melad, and that his son, Mariano Hernandez, lived long before that date in the house of Federico Suyo.

"The only testimony of the accused Maximo Melad is his denial of the facts that he had been seen by the witnesses Catering and Anam and that the witness Hernandez, son of his paramour, was at his house on that Saturday.

"This is all the evidence adduced by both parties.

"The principal argument of the accused is that the first accusation was presented against Juan Taguiam, who was acquitted by this court, as is shown by Exhibit A which was admitted in evidence. The defense contends that if Maximo Melad was really the author of the death of Marcelina Mape there is no reason why the first prosecution was against Juan Taguiam.

"This circumstance was taken into consideration by this court, for if the evidence against Maximo Melad is true, it must have existed prior to the filing of the first information against Juan Taguiam, and, apparently, the motive which induced the prosecution to file the first charge against Juan Taguiam, instead of against the present accused, Maximo Melad, is not shown.

"But the judge who renders this judgment is the same judge who heard the evidence adduced in the criminal case No. 1795, U. S. vs. Juan Taguiam, and he saw in said case two affidavits, one signed by Maximo Melad and the other by Federico Suyo. In the first Maximo Melad declares that he saw Juan Taguiam kill Marcelina Mape with a stick and that under the compulsion of Juan Taguiam, he helped him take the corpse to a place in the road near the house of the deceased Marcelina Mape. Naturally, with these affidavits, the prosecution filed the information against Juan Taguiam; but this court after hearing these two witnesses acquitted Juan Taguiam. This is the reason and motive why the prosecution filed the first charge against Juan Taguiam and not against Maximo Melad.

"After examining all the testimony of the witnesses in this cause against Maximo Melad, this court cannot but reach the conclusion that said accused Melad was the person who killed Marcelina Mape and that robbery was

the motive of the crime, the facts proved being therefore the following:

"That in the morning of March 8, 1919, at the place known as Litto, in the municipality of Pefiablanca, Province of Cagayan, the accused Maximo Melad, armed with a stick, entered the house of the deceased Marcelina Mape and then and there killed her and took all the money which she had.

"The court cannot convict Maximo Melad of the complex crime of robbery with homicide because the information charges him only of homicide. Nevertheless, aggravating circumstance No. 20, of article 10 of the Penal Code, should be applied against the accused, because the deceased was a woman and furthermore the accused committed the act in the dwelling of the deceased.

"The circumstance of lack of instruction cannot be applied in favor of the accused Maximo Melad."

We have carefully examined the evidence before us and we are of the opinion, and so hold, that the findings of fact of the trial court are in accordance with the merits of the case. The appellant's brief raises no question of law which this court should determine, and the judgment appealed from being in accordance with law, it is affirmed, with costs against the appellant. So ordered.

Mapa, C. J., Araullo, Street, and Malcolm, JJ., concur.

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