

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HUGO ZARA ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 17564. November 02, 1921*

Ponente: STREET, J.

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This appeal has been brought by Hugo Zara, Policarpo Umali, and Faustino Borruel, to reverse a judgment of the Court of First Instance of the Province of Batangas, finding them guilty of the offense of robbery with homicide, committed upon the person of a Chino named Singa (alias Tacua), and sentencing each of them to undergo the imprisonment of cadena perpetua with accessories as prescribed by law; to indemnify jointly and severally the heirs of the deceased in the amount of P1,000, and to pay each one-third part of the costs.

It appears in evidence that the deceased in this case was a Chinaman, resident of Lipa, in Batangas, bearing the name of Dy-Chinco, alias Singa, alias Tacua, whose principal business apparently was that of a dealer in hogs. On March 3, 1920, said Chinaman left Lipa for the town of Taisan, in Batangas, taking with him the sum of P530 in paper bills, to be used in payment of the hogs which he intended to buy on this trip. On his way to Taisan he stopped in the town of Rosario, where he collected the sum of P400 from Emeteria Cabal, whose husband he also employed to help in taking the hogs back to Lipa. The deceased then proceeded on his way to Taisan; and at about 5 o'clock in the afternoon, a conversation occurred at the municipal building between the deceased and the accused Hugo Zara, in which the latter, who was already indebted in the amount of P30 to the deceased, was heard to ask the deceased to lend him money. The deceased replied that he had no money to spare, as what he had with him would be needed to pay for the hogs which he intended to buy.

When night came on the deceased put up at the house of Mauricio Hag, situated in the barrio of Mahanadiong, Taisan; and inasmuch as this date coincided with the celebration of the day of the local patron saint, it resulted that the inmates of the house absented themselves that evening to attend the celebration in Taisan. The deceased therefore alone remained in the house of Mauricio Hag during the first part of the night; and while he was stretched upon the floor apparently asleep, some felonious intruder approached the spot where he lay and killed him with a bob. Upon examining the corpse, the sanitary inspector found several wounds, the most serious of which was one which nearly severed the neck.

The body was found in a natural position on its back, with the head on the pillow in such position as naturally gives rise to the inference that the mortal blow had been given either while the victim was actually asleep or before he had any chance to rise from his recumbent position. Near the body were found two pocketbooks with a few small coins. These books were identified by the widow as property of the deceased which had been in his possession at the time of his departure from home.

On the day succeeding the perpetration of this crime Hugo Zara was arrested as its suspected author; and shortly thereafter, due to revelations made by him, the other two accused were arrested on the charge of being joint authors of the same offense.

Soon after being arrested, each of the three accused made separate statements which have this feature in common, namely, that while each declarant admits complicity in the offense, he nevertheless lays the blame principally to some one other than himself. Thus, Hugo Zara, according to Exhibit C, said that, after eating supper at his home in the barrio of Mataasnalupa on the evening of March 3, 1920, he started for the poblacion (Taisan) and on the way he met Policarpo Umali and Faustino Borruel; that after going some distance he hid himself at a coconut tree on the west side of the street, watching to see what they would do; that Policarpo and Faustino then passed around the house of Mauricio Hag, until they reached the kitchen porch of said house, when they stopped. Shortly thereafter they went up into the house, Policarpo leading the way, with Faustino following. At this time the declarant was a short distance away to the north of the house. Immediately after the two above-mentioned had penetrated into the house of Mauricio, the declarant heard noise, accompanied or followed by a shriek. Thereupon the declarant was seized with fright and fled.

Faustino Borruel stated (Exhibit D) that on the night in question he was approached at the circus by Hugo Zara, whom he accompanied northwards until they reached the tienda of one Arcadio Vical, where they were joined by Policarpo Umali; that the three proceeded together towards the house of Mauricio, and that upon arriving near thereto Zara posted the declarant Borruel at a certain nanca tree to give information in case any one should approach, stating that he and Policarpo were going up to kill the Chino. Accordingly, while those two were in the house of Mauricio, the declarant paced to and fro in front, and he presently heard noise and a shriek. Immediately he heard two other noises, and at the same time saw Hugo Zara make a stroke. Policarpo then put his head out of a window of the house and called to Borruel to come up, which the latter did. Upon coming up he saw the body of the deceased and Hugo Zara standing at its head in the act of sheathing his bolo.

Policarpo Umali gave, in the statement, Exhibit E, substantially the same account of his relation to the crime as is contained in the statement of Borruel. In addition he admits that the homicide was committed for the purposes of robbery. He says further that as Hugo Zara unsheathed his bolo at the door preparatory to entering, he cautioned the declarant to watch for any people who might be approaching; and the declarant accordingly stood on watch at the door, observing what Hugo Zara was doing. He says that he saw the Chino within, asleep, and that Zara crept up and gave him a slash on the left arm, which caused him to shriek and to attempt to get up. Zara thereupon gave him a cut on the throat which rendered the victim incapable of emitting any sound with the voice. The declarant himself then entered the room, opened the window and called to Faustino Borruel, while Hugo Zara searched the body and took therefrom a large roll of paper money. This money Zara pocketed, at the same time taking his station at the head of the Chino, where he stood, sheathing his bolo, at the moment Faustino entered.

Among additional items of proof in the case is the fact that when the room where the murder was committed was inspected a footprint showing the toes and ball of a human foot were seen stamped upon the floor in blood. After Zara had been arrested he was taken to the house and notwithstanding an exhibition of unwillingness on his part, his left foot was placed over this spot and it was found to fit precisely.

Also, after Faustino Borruel and Policarpo Umali had been arrested, they were taken by Lieutenant Garcia, of the Constabulary, and the chief of police of Taisan, to the house where the crime was committed, and each there voluntarily described to said officers the details of the tragedy in a way that showed complete familiarity both with the scene and incidents of the crime.

The proof set forth above is in our opinion conclusive as to the guilt of each of the accused as to the offense of homicide; and in this connection we bear in mind that what is set forth in the three respective statements of the accused (Exhibits C, D, and E) is competent only as against the actual declarant. As against Hugo Zara, the case is made out by proof of his conversation with the deceased on the afternoon preceding the tragedy; by his own statement, indicating his complicity in the crime—but assigning to himself the role of watcher instead of chief

actor;— and finally by the coincidence of the ball of his foot with the mark in blood left on the floor of Mauricio Hag's house. As against the other two the case is satisfactorily made out from the admissions of guilt contained in their respective statements, in connection with admissions made at the time of the ocular inspection of the premises in their presence.

That the crime of robbery was committed in connection with this homicide, and as a result thereof, is proved, as against Policarpo Umali, by his own admissions, and as against all three of the accused by the fact that the deceased had money in his possession at the time of his death and that after the commission of the deed his two purses were found near his body, stripped of their paper contents. In this connection it may be observed that the conversation which Hugo Zara had with the deceased on the afternoon immediately preceding the perpetration of the crime is important as showing that this accused needed money at that time and that he learned in this conversation that the deceased then had upon his person money which he intended to use for the purchase of hogs.

The main efforts of the defense in this case appear to have been directed to the neutralization of the effects of the documents, Exhibits C, D, and E, containing the statements of the three accused, as severally approved by them in placing their marks upon, or signing the same before Benito Africa, justice of the peace, in Lipa, Batangas, soon after the crime had been committed; and to this end a considerable mass of testimony was presented for the defense at the trial in the Court of First Instance, tending to show that these statements were extorted from the accused by mistreatment, menaces, and even torture, inflicted upon them by members of the Constabulary after they had been arrested. A careful perusal of the transcript shows the false and artificial character of these pretenses, and the trial judge in our opinion showed proper discernment in declaring the same to be baseless. We may add that certain proof submitted on behalf of Policarpo Umali and Faustino Borrue, tending to show an alibi on their part, is unconvincing, since the alleged presence of Faustino at the circus and of Policarpo at a restaurant on the night of the commission of the crime, even if credited, is not necessarily inconsistent with the possibility of their participation on the same night in the robbery and murder which is the subject of this prosecution.

Error is assigned to the action of the lower court in admitting oral evidence with reference to the experiment performed by placing the left foot of Hugo Zara over the bloody footprint left on the floor at the scene of the crime; and in this connection it seems to be supposed that it was necessary to present in court either a photographic reproduction of the footprint or the very board upon which the footmark appeared. This assignment is not in our opinion well taken; and the testimony showing the coincidence of the foot of the accused with the footprint in question, which lacked the print of the heel, must be considered admissible and competent evidence. It is needless to say that we are not unmindful of the possibility of error in an experiment of this kind, and if this had been the only proof against Hugo Zara, it may be assumed that he would not have been convicted. As corroborative of his guilt the circumstance mentioned is entitled to some weight in connection with other incriminatory facts.

A point is suggested by the ninth assignment of error which requires a few words of explanation, inasmuch as it relates to a matter about which some confusion apparently exists in the minds of legal practitioners. The question raised has reference to the conditions under which the confession of an accused person, admitting complicity in the perpetration of a crime, may be introduced as evidence against him in a criminal prosecution.

In this connection it may be premised that judicial experience concurs with common sense in the conviction that, in order to be worthy of credit, a confession must be freely given, and not be induced either by fear or the promise of leniency. Hence, it is a universally recognized rule that where a confession appears for any reason not to have been voluntarily made—as where it is extorted by threats, violence, or intimidation, or has been obtained by promises of reward or leniency—it should be rejected.

In common-law countries the question of the admissibility, or competency, of confessions, as apart from the weight to be attached to them, has given rise to a special problem, owing to the fact that criminal causes in Courts of First Instance are there usually tried before a jury; and in order to avoid the prejudicial effects upon the minds of the jurors that might be produced by the unrestricted admission of confessions, the practice is usually followed in those countries of requiring the judge, and not the jury, to determine primarily whether or not a confession offered in evidence was voluntarily given; and this is done when evidence of the confession is offered. If the court decides that the confession was voluntary, it is admitted and allowed to go before the jury, with instructions of course to the jury, in case of a conflict of the proof, to attach no weight to it, unless they believe that it was voluntarily given. And of course where the court decides that the confession was not voluntary, it is withheld altogether from the jury. (See 1 R. C. L., pp. 577-579.)

With the introduction of the American criminal procedure into these Islands—minus, of course, the system of trial by jury—it was deemed advisable to give emphatic expression to the rule excluding evidence of confessions, unless they are shown to have been voluntarily given; and to this end the Philippine Commission adopted the provision contained in section 4 of Act No. 619, to the effect that no confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency. In obedience to this very explicit and mandatory provision, this court held in *United States vs. Pascual* (2 Phil., 457), that the failure of an accused person to object to the introduction of evidence of a confession made by him, without compliance with the prerequisites stated in that section, did not operate as a waiver of the irregularity, and that an objection thereto might be raised at any stage of the proceedings, even in the Supreme Court.

That the rule thus introduced in these Islands was somewhat more strict than that prevailing in other jurisdictions is evident from the cases collated under the appropriate topic of the title Criminal Law in the encyclopædic treatise *Corpus Juris*, from which it appears that the general rule on this point is that if no timely objection is interposed, a confession may be admitted without preliminary proof showing that it was voluntarily made. (16 C. J., 733.)

Now, the entire Act No. 619 was repealed by the Administrative Code, as will be seen from the schedule of repealed statutes inserted at the end of the Code; and it will be found that section 4 of Act No. 619 has not been reproduced therein. It results that said section has not been in force in these Islands since July 1, 1916, when the Administrative Code first went into effect.

Of course the repeal of section 4 of Act No. 619 in no wise impairs the general rule of jurisprudence to the effect that a confession improperly obtained by the means or under the conditions stated in that section is not competent evidence against an accused person, but the repeal of that provision does undoubtedly change the burden of proof, for under that provision it was incumbent on the prosecution to prove that the conditions necessary to the effectiveness of the confession were complied with, while in the state of law now existing, it will suffice for the admission of the confession that it was given under conditions which accredit *prima facie* its admissibility, leaving the accused at liberty to show that the confession was not voluntarily given or was obtained by some undue means, thus destroying its weight.

In the case now before us it appears that the fiscal, as preparatory to the introduction in evidence of the three documents, Exhibits C, D, and E, which are the confessions of the three accused, offered proof sufficient to accredit *prima facie* that those confessions had been made under such conditions as would make them admissible against the accused; and said documents were accordingly admitted in evidence by the court. When the turn came for the defense to submit its proof, testimony was introduced in their behalf tending to show that these confessions had been obtained by improper methods and that they were not freely and voluntarily given. The defense having

then concluded the submission of its proof, the court allowed the prosecution to introduce additional testimony on the point whether the confessions were voluntarily made, in order to refute the proof to the contrary already submitted in behalf of the accused. The action thus taken constitutes the basis of the ninth assignment of error, it being claimed by the defense that the testimony thus introduced was, properly speaking, proof in chief and not admissible as evidence in rebuttal.

From what has been said it is evident that this assignment is untenable; for, in the present state of the law, upon the presentation of a confession in evidence, the burden of proof is on the accused to show that the confession was given under circumstances which destroy its probative force, and the prosecution is in turn entitled to rehabilitate a confession thus impeached by submitting any relevant proof to the contrary.

In what has been said we do not wish to be understood as intending to discourage the practice of fiscals, and other prosecuting attorneys, of fully developing as part of the original case for the prosecution the proof with reference to the circumstances under which a confession is made, with a view to showing that it was voluntarily given. This practice we consider proper because such proof is not only relevant, but of the greatest moment, as reflecting upon the weight which should attach to the confession. What we mean to indicate is merely this, that after the prosecution has made a prima facie case for the introduction of the confession in evidence, the technical burden of proof is on the defendant to impeach it; and if the fiscal, upon offering a confession in evidence, fully develops the proof then available to the prosecution on this point, this circumstance does not have the effect of restricting the range of the proof which he may submit on the same point after the defense has rested.

Other questions raised in the assignments of error do not in our opinion call for extended discussion, as they relate to matters which would not constitute reversible error even if the assignments, abstractly speaking, should be conceded to have been well taken. Of this character are the assignments directed to supposed errors in estimating particular features of the proof, as well as that directed to the action of the trial court in refusing to make ocular inspection of the quarters where the accused had been incarcerated.

Upon the point of the qualification of the crime it is evident that the offense in fact committed constitutes the complex crime of robbery with homicide, in the perpetration of which alevosia could be estimated as an aggravating circumstance. We find, however, that the complaint is defective, in respect of charging the complex crime of robbery with homicide, in that it does not charge that robbery was in fact committed, but only that the accused assaulted and killed the deceased with the intention to rob, as will be seen from the following language taken from the complaint itself:

"That the said Hugo Zara and two others, the accused above-mentioned, on or about March 3, 1920, in the municipality of Taisan, Province of Batangas, Philippine Islands, with the intent to rob the Chinaman Singa, alias Tacua, of the P900 which he then had about him, with premeditation and treachery, voluntarily, illegally, and criminally attacked with their respective cutting weapons, said Singa, alias Tacua, who was at the time in deep sleep, inflicting upon him several wounds in different parts of the body which caused the instantaneous death of said Singa, alias Tacua."

It is evident that under this complaint the accused cannot be convicted of robbery with homicide, under subsection 1 of article 503 of the Penal Code, which provision was apparently applied by the trial judge, since robbery is not alleged to have been committed. The offense must therefore be dealt within the aspect of an homicide qualified by alevosia, that is to say, as murder; for it cannot be denied that the complaint above set out contains in itself a distinct and sufficient charge of murder.

That alevosia was present in the commission of the offense is to be deduced from the fact that the deadly assault upon the deceased was characterized by surprise, having been made during the nighttime, and while the deceased,

if not actually asleep, as was probably the case, was in a recumbent position on his pallet, entirely unprepared to meet aggression. From the several statements made by each of the accused, it appears that the first noise made after the assassin entered the house was accompanied, or immediately followed, by a shriek. This shows that there could not have been any struggle prior to the fatal blow, an inference corroborated by the position in which the body was found.

In the light of what has been said it is evident that the three accused should be, and they hereby are, declared to be guilty of murder under No. 1 of article 403 of the Penal Code; and there being no mitigating or aggravating circumstance to be appreciated, the proper penalty to be assigned to each of them under the second paragraph of the article mentioned is cadena perpetua. It results that although the trial judge erroneously applied No. 1 of article 503, instead of No. 1 of article 403 of the Penal Code, and so doing found the three accused guilty of robbery with homicide, instead of murder, the sentence actually imposed was in all respects in conformity with the law and the facts.

The judgment will therefore be affirmed; and it is so ordered with costs against the appellants, it being understood that they are sentenced for murder. So ordered.

Johnson, Araullo, Avancena and Villamor, JJ., concur.

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