PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIMEON ORENCIADA AND URSULO CENITA, DEFENDANTS AND APPELLANTS.

G.R. No. 21562. August 07, 1924

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought for the purpose of reversing a judgment of the Court of First Instance of the Province of Bohol, finding the appellants, Simeon Orenciada and Ursulo Cenita, guilty of the offense of murder, committed upon the person of one Maximo Mora, and sentencing them to cadena perpetua, with the corresponding accessories, and requiring them to indemnify the family of the deceased in the amount of P1,000, and to pay the costs.

It appears that on the night of May 12, 1923, the appellant Simeon Orenciada and his brother Leoncio Orenciada went to the tienda of one Maximo Mora in the municipality of Carman, in Bohol, and upon entering the door Simeon asked Mora whether he had biscuit for sale, indicating a desire to purchase the same. Mora answered in the affirmative, and turned his back in order to get the biscuit out. As he did this Simeon struck him a heavy blow in the back with a bolo, inflicting a wound about 8 inches long and 4£ inches deep. The cut involved the backbone and necessarily was of a mortal character, death ensuing in a few hours. Leoncio Orenciada appears not to have been criminally implicated in this dastardly and treacherous assault committed by his brother, and indeed Leoncio testified at the trial as a witness for the prosecution, giving, we believe, a truthful account of the circumstances attending the commission of the deed.

It is admitted for the defense that Simeon Orenciada slew Maximo Mora upon the occasion mentioned, but it is claimed by him that the fatal blow was given in the course of a fight in which Mora was the aggressor. The impossibility of this contention is clearly shown not only by the fact that the deceased was struck in the back, but by the testimony of Leoncio Orenciada and of other witnesses, including the wife of the deceased, who were nearby at the time the crime was committed and who describe many circumstances nearly connected with the act, in a manner wholly inconsistent with the idea that the deceased could have been the aggressor. In addition to this Simeon Orenciada made a detailed confession soon after his arrest in which he admitted himself to be the slayer of Maximo Mora, claiming that he had been hired to commit the crime by his coaccused, Ursulo Cenita.

Ursulo Cenita made no formal confession of his complicity in the offence, and at the joint trial of the two accused Simeon Orenciada repudiated his own former confession, made at the preliminary examination, and told an incredible tale tending to show that the deceased had been the aggressor in the fatal encounter. The confession made by Simeon Orenciada was of course used against him at the trial; but this confession is not per se competent evidence against his coaccused, Ursulo Cenita, except as the latter implicated himself in said confession in the manner and to the extent presently to be stated. But before this point is taken up it is desirable to state a few items of independent proof tending to show the connection of Ursulo Cenita with the crime.

The father of Simeon Orenciada, one Mariano Orenciada, testified that in March of the year 1923 he was in the house of his son Simeon upon an occasion when Ursulo Cenita also happened to be present. In the course of this visit Mariano Orenciada heard Ursulo Cenita attempting to persuade Simeon to kill three persons with whom Ursulo Cenita was at enmity. These three persons thus to be disposed of were Maximo Mora, Gildo Cenfron and Tomas Safra; and Mariano Orenciada says that the proposal was that Cenita would give P30 each for the taking of the life of Maximo Mora and Gildo Cenfron and P60 for the killing of Tomas Safra. One of the arguments which Cenita used upon this occasion to prevail upon Simeon to take the life of the three persons mentioned was that Simeon Orenciada was an obscure person and unknown in the pueblo of Clarin where the intended victims lived; and as a consequence Simeon would not be recognized if he should commit the contemplated acts. Mariano Orenciada says that upon the making of this proposition Simeon made no answer but that he (the witness) interposed the observation that the speaker should carry his own aims into effect and not commend the deed to the hands of Simeon who was poor.

Again, on May 15, 1923, which was the third day after Mora was killed, Mariano Orenciada and his daughter Irinea, of the age of 15 years, were returning to their home from a fiesta at Biga. While on the way Ursulo Cenita overtook them, mounted upon a horse. When he arrived within speaking distance Ursulo Cenita asked the father for Simeon and was told that Simeon was then attending the fiesta. Upon this Cenita exclaimed: "Caramba, he killed that person towards whom I entertained little enmity. I don't understand why he did not first kill Tomas Safra." Hearing these words spoken by the horseman, the girl Irinea exclaimed: "So you are Ursulo! See now, my brother says he has done what you ordered; he is very poor; you will see how they will discover this act." Ursulo answered, "Just keep your mouth shut, for Simeon is unknown in Clarin, and they will not recognize him." With these words the speaker reined up his horse and rode off.

The witness Mateo Divino, of the age of 52 years, testified that he was acquainted with Ursulo Cenita and had been accustomed from time to time to do certain small services for him. He says that on May 10, 1923, or only two days before the murder, Ursulo Cenita came to the house of the witness and told him that he had something for him to do, which was to take F10 and 12 hands (manos) of tobacco to Simeon Orenciada, and to say to Simeon that Cenita would pay the balance when Simeon should have complied with the instructions which had been given him. The witness took the P10 and the tobacco and delivered the same to Simeon, at the same time conveying the message which Cenita had told him to deliver. The witness says that he had no personal knowledge of the import of the message as respects the reference to the instructions that Simeon had received from Cenita; and the witness says that his curiosity prompted him to ask Simeon what the money was for. Simeon replied, "You ought not to understand that; you will know later." Upon this the witness asked no more questions and went away.

Another circumstance strongly tending to show the guilt of Cenita is related by the two policemen, Pelagio Melendo and Vito Batayan, who say that after the preliminary examination at which Simeon Orenciada made his declaration confessing his guilt and implicating Cenita, the two prisoners were carried to the station and placed in separate cells. After the public had retired only a few policemen remained. Cenita then called to Pelagio Melendo and, clapping his hands together, said: "By my life, what a traitor is this Simeon; he has betrayed me." Melendo then asked how Simeon had betrayed him, and Cenita explained by saying that he had already given the P20 necessary to complete the 1*30 which he had promised to give. "And now," exclaimed Cenita, "he tells the truth, after having promised that he would not testify against me, and he has joined me with him in this cause."

Mariano Orenciada visited Simeon more than once while the latter was detained in jail and on one occasion received P20 from Simeon with the information that this money came from Cenita and constituted the balance necessary to complete the amount which Simeon had been promised as compensation for the deed. That Cenita had money about him while in jail is a proven fact, and one of the policemen already mentioned saw Cenita pass

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some money, believed by the witness to be the sum of P10, to Simeon. Furthermore, it appears that while the two prisoners were in jail Cenita on a certain occasion surreptitiously passed something wrapped in a piece of paper to the wife of Simeon who was then visiting her husband in jail. The father, Mariano Orendada, saw this incident; and after he and his daughter-in-law had gone away they looked to see what was in the paper and found the sum of P100, with a document of transfer of a carabao. Mariano Orenciada then returned to the jail and spoke to his son about the money and the document. Cenita, overhearing the conversation between the two, said that that was the money which he had delivered in order that Simeon should answer for everything and that he (Cenita) might be free.

But the most damaging circumstance against Cenita is found in the Exhibits 2 and 3 which are letters written by Cenita and directed to Simeon. In this connection it appears that, while the two prisoners were detained in separate cells, Cenita was permitted to have writing material with which he wrote two short letters (Exhibits 2 and 3) in ink upon a small piece of paper. These letters were addressed to Simeon and appear to have been written for the purpose of closing Simeon's mouth and preventing him from making further harmful admissions. Among other things the writer advises Simeon that he must begin to deny everything in order that the lawyer who would defend them might have something to build upon. The author of the letters refers to the confession that had been made by Simeon at the preliminary hearing, and without calling in question the truthfulness of said confession, he says that it must be denied by Simeon at the trial. The authorship of these two letters is proved beyond all question; and a policeman in fact saw Cenita pass one of them into the cell where Simeon was confined. It may be added that Simeon upon receiving these two letters delivered them promptly to the municipal president.

It is well established in this jurisdiction that a confession made by one of two or more accused persons, without the intervention of the others, is competent only against the declarant. (U. S. vs. Castillo, 2 Phil., 17; U. S. vs. Paete, 6 Phil., 105; People vs. Tabiiche, 46 Phil., 28.) In conformity with this doctrine, the confession of Simeon Orenciada would not be competent as against Cenita, but the application of the rule is modified in the present instance by the letters to which we have referred (Exhibits 2 and 3). These show a full appreciation on the part of Cenita of the character of said confession, and they contain admissions which clearly involve the author in its legal effects. It is, therefore, legitimate for the court in estimating the proof in this case to consider the confession of Simeon Orenciada, in connection with these letters, as evidence against Cenita. We may add that, in the light of these letters and other items of proof already mentioned, it is impossible to doubt that Cenita prevailed upon Simeon Orenciada to kill Maximo Mora, as alleged in the complaint.

The crime committed was murder, qualified by the circumstance that it was done for a price or promise of reward. As against Simeon Orenciada, the active agent in the killing, there is to be estimated the aggravating circumstance of alevosia, since this accused treacherously attacked the deceased when his back was turned, there having previously been no struggle between the two. But Cenita is not involved in the aggravating circumstance of alevosia, because it does not appear that he had any previous knowledge of the exact manner in which the crime should be committed or that the two accused had previously agreed that the attack should be made in a treacherous manner.

The aggravating circumstance of known premeditation cannot be appreciated against Simeon Orenciada, because it does not appear at what time prior to the murder this accused yielded to the inducement held out to him by his coaccused and finally resolved to commit the deed. (1 Viada 271; Sen. of February 24, 1885.) But this aggravating circumstance is properly to be appreciated against Ursulo Cenita, since the evidence shows that he had fully resolved to compass the death of the deceased for some time prior to the consummation of the act. This is shown not only by the conversation which was overheard by Mariano Orenciada in the month of March, 1923, wherein Cenita laid the fatal proposition before Simeon Orenciada, but also by the fact that only two days before

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the crime was committed he had caused to be delivered to Simeon Orenciada a sum of money and a quantity of,tobacco, constituting a part of the price which he had offered for the death of Maximo Mora. These circumstances show a persistent meditation and deliberate resolution to commit the deed, constituting known premeditation, on the part of this accused. (Sen., 12 Feb., 1891; Sen., 6 Nov., 1895; 1 Hidalgo, pp. 198, 199.)

The trial court conceded the benefit of article 11 of the Penal Code, as amended, to both of the accused; and we are not disposed to question the propriety of his so doing. The result is that each of the accused must be declared guilty of murder with one mitigating and one aggravating circumstance; and the penalty of cadena perpetua imposed upon the two accused was proper.

The judgment appealed from will, therefore, be affirmed, with the sole modification that the liability of the two accused for the indemnity imposed by the lower court is declared to be joint and several, and it is so ordered, with costs against the appellants.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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