

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINGO OLFINDO ET AL., DEFENDANTS. DOMINGO OLFINDO, GREGORIO TONGO, AND MICAEL ODI, APPELLANTS.

G.R. No. 22679, December 10, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendants are accused of the crime of double murder, the information alleging "that on or about July 10, 1923, in the municipality of Viga, Catanduanes, Province of Albay, Philippine Islands, the said accused did wilfully, unlawfully and feloniously, with evident premeditation and treachery, kill Maria Magdalena and Aproniano de la Cruz by choking Maria Magdalena and drowning her in the river, and tying a rope around the neck of Aproniano de la Cruz and drowning him in the river afterwards."

The trial court found the defendants Gregorio Tongo, Micael Odi and Domingo Olfindo guilty as principals of the murder of Maria Magdalena and of the homicide of Aproniano de la Cruz; and Domingo Olfindo was found guilty as an accomplice in the murder of Maria Magdalena. The principals were sentenced to suffer cadena perpetua and the accomplice to suffer fourteen years, eight months and one day of cadena temporal, with the accessory penalties and an indemnification to the heirs of the deceased in the sum of P1,000.

After the judgment had been rendered the three persons convicted presented a motion for a new trial on the ground that the principal witness for the prosecution, Ignacio Ucero, had retracted the testimony given by him before the court and had confessed that he knew nothing about the case. The court denied the motion and the defendants appealed both from the judgment of conviction and from the order denying the motion for a new trial.

It appears from the evidence that on the occasion of the death of a young daughter of one Clemente Odi, a large number of persons, among them Domingo Olfindo, Rafael Tulang, Ignacio Ucero, Gregorio Tongo and Micael Odi, a brother of Clemente, gathered at the latter's house, situated in the barrio of San Isidro, municipality of Viga. While some of them were constructing a coffin in the basement of an adjoining house belonging to the accused Gregorio Tongo, others were reading the *pasion* in the house of the dead and still others were passing to and fro between the house of Clemente and the basement where the coffin was made.

As seems to be the custom in that locality on such occasions an abundance of tuba was consumed, the accused Gregorio Tongo and Micael Odi partaking very liberally and becoming more or less intoxicated.

In the evening of the same day Domingo Olfindo, Rafael Tulang, Ignacio Ucero, Micael Odi, Julian Aldave and Gregorio Tongo were gathered together in the latter's house, and in conversation among them it was suggested that the deceased girl probably had been bewitched by one Maria Magdalena, an elderly woman, who pretended to have some knowledge of medicine and was generally engaged in treating the people of the community for minor ills. Domingo Olfindo then proposed that Maria be killed. In this Micael Odi agreed and proposed in turn that Aproniano de la Cruz, a young boy, Maria's son, be also put out of the way inasmuch as he, too, undoubtedly was a wizard and no better than his mother. Both propositions were accepted by the persons present and it was

agreed that two parties be formed, one composed of Domingo Olfindo, Rafael Tulang and Ignacio Ucero for the purpose of killing Maria Magdalena and the other consisting of Gregorio Tongo, Micael Odi and Julian Aldave to take the life of Aproniano de la Cruz.

The party designated to kill Aproniano immediately went in search of him and found him alone in his mother's house in the sitio of Napo. The accused Gregorio Tongo and Micael Odi entered the house and after a short struggle beat the boy into submission, tied a rope around his neck and dragged him down to a river where they held him under the water until he was dead. They thereupon threw the body into a deep pit and covered it with earth.

When Tongo and Micael Odi, after having buried Aproniano, returned to San Isidro, found that Domingo Olfindo, Rafael Tulang and Ignacio Ucero, had, through fear of Maria's supposed witchcraft, desisted from their purpose of killing her, Gregorio Tongo then said that he would kill Maria if no one else would do it and inquired of Domingo Olfindo where she might be found. Domingo replied that she was in the house of his father Segundo Olfindo whom she was treating for some illness, but that she would soon arrive. He thereupon instructed his son Gaudencio to go to the house of Segundo and ask Maria to come over to his, Domingo's house, because he was sick and needed treatment. Gaudencio did so and returned immediately stating that Maria would arrive in a few moments. Upon learning this, Gregorio Tongo and Micael Odi secreted themselves downstairs in Domingo's house where there was no light. Shortly afterwards Maria arrived, but as she began to ascend the stairs of the house Gregorio Tongo, without any warning, seized her by the feet and dragged her to the nearby river where he and Micael Odi held her under the water until life was extinct. With the assistance of Ignacio Ucero, Rafael Tulang and Domingo Olfindo the body was taken to a place some six hundred meters distant and was there buried in a grave so shallow that the remains came to the surface about two weeks later, which led to the detection of the crime and the apprehension of the defendants.

The facts stated are conclusively proven by the repeated confessions of all of the accused and by the testimony of the witnesses. The principal witness for the prosecution, Ignacio Ucero, has, however, signed an affidavit to the effect that his testimony before the court was false, and that he was not in the barrio of San Isidro on the date of the commission of the crime and knew nothing about it. The court below denied the motion for a new trial based on this affidavit and the appellants make this ruling their only assignment of error.

We do not think that the court erred in denying the motion; leaving out the testimony of Ucero, there is still sufficient evidence in the record to sustain the conviction. Moreover, a reading of the testimony convinces us that Ucero told the truth on the witness-stand and that he does not tell the truth in his affidavit. His story that he was not present in San Isidro at the time of the planning of the crime is entirely out of harmony with the rest of the evidence. In view of the fact that he is a brother-in-law of Domingo Olfindo and that popular opinion in the locality undoubtedly is in favor of the defendants, Ucero's retraction may be readily understood. We may say further that ordinarily but little weight can be placed on retractions of testimony. In the case of *United States vs. Dacir* (26 Phil., 503), this court said:

" * * * Manifestly, loose statements or even sworn statements of witnesses, made after the trial has closed, varying or contradicting their testimony given at the trial, will rarely be sufficient in the absence of special circumstances, to raise such a doubt as to the truth of their testimony given at the trial and accepted as true by the trial judge, as to justify the granting of a new trial."

Though the appellants' assignment of error only goes to the denial by the court below of the motion for a new trial, the defendants appealed against the judgment as a whole and under the settled doctrine of this court such an appeal throws the whole case open to review, and it becomes the duty of the appellate court to correct such errors

as may be found in the judgment appealed from whether they are made the subject of assignments of error or not. (U. S. vs. Abijan, 1 Phil., 83.) In examining the present case, we find that the trial court treated the offenses alleged in the information as one single crime and imposed the penalty accordingly. Under the rule laid down in United States vs. Balaba (37 Phil., 260), this was error. There were two separate and distinct crimes committed, namely, the homicide of Aproniano de la Cruz and the murder of Maria Magdalena.

Gregorio Tongo and Micael Odi are guilty as principals of both crimes. Taking into consideration the aggravating circumstance of nocturnity and the extenuating circumstance of intoxication, they should be sentenced to cadena perpetua for the murder of Maria Magdalena and to twelve years and one day of reclusion temporal for the homicide of Aproniano de la Cruz.

The judgment appealed from is therefore modified as to the defendants Gregorio Tongo and Micael Odi and each of them is sentenced to suffer cadena perpetua, with the accessory penalties, for the murder of Maria Magdalena, and jointly and severally with Domingo Olfindo to indemnify the heirs of the deceased in the sum of P1,000. The same defendants are each of them sentenced to suffer twelve years and one day of reclusion temporal, with the accessory penalties, for the homicide of Aproniano de la Cruz and jointly and severally to indemnify the heirs of the deceased in the sum of P1,000. In serving the respective penalties the provisions of paragraph 1 of article 88 of the Penal Code shall be observed. The judgment appealed from is affirmed as to the defendant Domingo Olfindo. Each of the appellants will pay one-third of the costs of this instance. So ordered.

Johnson, Street, Malcolm, Avancena, Villamor, Johns, and Romualdez, JJ., concur.

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