

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ENRIQUE RAMISCAL, DEFENDANT AND APPELLANT.

G. R. No 24935. March 29, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the morning of July 20, 1925, the defendant Enrique Ramiscal went into the Chinese store called "Kantina Central Carmen," in the barrio of Luksuhin, of the municipality of Calatagan, Province of Batangas, to purchase a bulb for his flashlight, and while there inflicted a wound with a knife on the posterior side of the right under arm of the Chinaman Chua Hu, as a result of which the latter died in the San Juan de Dios Hospital in Manila on July 29, 1925.

The justice of the peace of Calatagan, who took the declaration of the wounded Chua Hu, testifies having asked him the name of the person who struck him and the reason for the assault and that the Chinaman answered that it was Enrique Ramiscal who was buying a face powder called "Mavis," and who complained that the price was somewhat * * *. He asked him where he was wounded and the Chinese replied that it was within the store. The said justice of the peace set down in writing the declaration of the said wounded Chinese but it was not admitted by the court because it was not an ante mortem, declaration and therefore is not attached to the record.

The defendant testifies having gone to the store in question to buy a bulb for his flashlight; that he was dickering about the price of a flashlight including the bulb, finally offering P3.50, but the Chinaman refused to sell it; that afterwards he tried to buy the bulb only and argued about the price until they finally agreed upon P0.45. When the defendant handed the Chino P0.45 he complained that he was short ₱10. What followed may be gathered from the following dialogue: "You are a fool, you do not know how to count.—You are the fool, you want to cheat me, charging me 10 cents more.—If you do not like I will return to you the bulb and give me back my money." The Chinaman returned the money and took the bulb from the defendant saying to him: "You get away; may a lightning strike you; you pretend to buy when you don't want to buy."

According to the defendant, after having been insulted by the Chmamen he was put out of the store by them and being armed with clubs they struck him some blows on the back and, in order to defend himself from such assault, he remembered his knife in his pocket, which he took out and opened and continued to defend himself with it until he reached the Chinaman at his right whom he stabbed. Defendant's statement shows that a fight took place outside of the store; but the witnesses for the prosecution Ambrosio Umali, Chua Chuan, and Marcelo Barba contradict him as to the last point of his testimony. Umali testifies that he entered the store at the same time to buy some cigarettes but he left immediately when he saw the accused stab the Chino Chua Hu with a knife, who was in a position as though placing something in the show case. Chinaman Chua Chuan also testifies that he went to the store upon hearing the cries of the wounded Chinese for help. Upon entering the store he saw Chua Hu and the defendant inside, the accused in front of a table behind which was the wounded man. Upon inquiring of the defendant what had happened the latter threatened him with his knife thus compelling him to leave the store, but on leaving the store he was chased by the defendant and, picking up a piece of wood near the warehouse of the

store, he struck the defendant until he fell to the ground. He then returned to the store where he saw Chua Hu bleeding with a wound in his right underarm.

Barba, the other witness whom the trial judge gives full credit for being impartial, testifies that on that morning he was preparing some shaft bearings at the railroad near the store where the crime was committed and claims having seen Umali leave the warehouse to go to the store and then leave the store immediately and return to the warehouse. At the same time he also saw Chinaman Chua Chuan come out of the warehouse and go to the store and the said Chua Chuan leave the store chased by the defendant; he saw Chua Chuan pick up a piece of wood, turn towards the defendant and strike him until he fell to the ground.

Considering the evidence presented in the case, the trial court reached the conclusion that the wound which produced the death of the Chinaman Chua Hu was inflicted upon him by the accused while he was within the store. We accept this conclusion of the court as being more in conformity with the truth of the matter. At the time that the accused inflicted the wound upon the deceased there was not a single eyewitness, for when the witnesses Umali and Chua Chuan entered the store the wound had already been inflicted. From this point of view the only circumstance in the record to show the qualifying circumstance of *alevosia*, which qualifies the crime of murder, is the fact that the wound was inflicted in the right underarm of the deceased. In our opinion, however, this circumstance alone, and even taken in conjunction with the testimony of Umali that he saw the accused stab the deceased while the latter was in a position of placing something within the show case, and considering the last words of the conversation between the accused and the deceased, is not sufficient to hold, with reasonable certainty, that the latter was completely unaware of the attack that might have come from the defendant. The qualifying circumstance of treachery (*alevosia*) may not be deduced from *indicia* nor from presumption. The fact that the defendant employed ways and means in the execution of the crime, tending directly and specially to insure it, must be proven with convincing evidence. As there is no certainty that in the death of the deceased there was treachery, which characterizes the crime of murder, the crime may only be punished as homicide.

We are of the opinion that in view of all the circumstances concurring in the present case the crime does not constitute murder qualified by treachery, but that of homicide. Taking into consideration the extenuating circumstance of lack of instruction, found by the trial court, it results that the penalty imposed upon the defendant of twelve years and one day reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased Chua Hu in the sum of P1,000, crediting him with one-half of the preventive imprisonment already suffered and to pay the costs, is within the limits prescribed by law. Wherefore, the judgment appealed from should be and is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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