

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAXIMO CAPITANIA, DEFENDANT AND APPELLANT.

G. R. No. 25410. October 21, 1926

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 20th day of July, 1925, the chief of police of the municipality of San Pablo, Province of Laguna, presented a complaint in the court of the justice of the peace of said municipality, charging the defendant with the crime of assassination. The complaint alleged that the crime was committed on the 18th day of July, 1925, in said municipality. Upon the presentation of the complaint a warrant of arrest was issued and the defendant was arrested and brought before the court for a preliminary examination. At the close of the preliminary examination the justice of the peace found that there was probable cause for believing that the defendant was guilty of the crime charged, and the cause was remanded to the Court of First Instance for trial.

On the 10th day of September, 1925, the prosecuting attorney of the Province of Laguna presented a complaint, charging the defendant with the crime of assassination. The complaint alleged:

"On or about the 18th day of July, 1925, in the municipality of San Pablo, Province of Laguna, Philippine Islands, the herein accused did voluntarily, illegally, maliciously, and criminally, with treachery and known premeditation, and with the deliberate intention to kill, attack and assault Baldomero Abril with a Smith 38 calibre revolver, which he had in his possession, and with the said revolver fired at Baldomero Abril, mortally wounding him in the left side of the neck, which wound was the direct and sole cause of the death of the said Baldomero Abril."

Upon said complaint the defendant was duly brought to trial, at the close of which and after a careful consideration of the evidence adduced, and in a carefully prepared opinion in which reference is made to all of the important facts proved during the trial of the cause, the Honorable Isidro Paredes, judge, found that the defendant Maximo Capitanía was guilty beyond a reasonable doubt of the crime of assassination of the person of Baldomero Abril, committed with the concurrence of the attenuating circumstance of article 11 of the Penal Code and without any aggravating circumstances, and sentenced him to be imprisoned for a period of seventeen years, four months, and one day of cadena temporal, to suffer the accessory penalties of the law, to indemnify the family of the deceased in the sum of P1,000 and to pay the costs. From that sentence the defendant appealed.

From an examination of the evidence adduced during the trial of the cause, the following facts are established beyond a reasonable doubt: On the 18th day of April, 1925, a number of persons, including the defendant and the deceased were assisting Norberto Flores en la Limpieza del caiñgin. Among the persons who were thus assisting Norberto Flores was his daughter Remedios Flores. In the afternoon of said day Norberto Flores advised his helpers to retire for the day. Said persons left the caiñgin in three groups. The first group was made up of men and women; the second group was made up of Maximo Capitanía—the defendant—Martin de Mesa and Basilio Sanchez; the third group was composed of Gaudencio Eiseo, Jose Cuasay and Baldomero Abril, the deceased. Said persons left the caiñgin in the order of said groups. After the groups had gone some distance from the caiñgin

the second group stopped beside the path or road and waited for the arrival of the third group. Upon the arrival of the third group, without any warning or notice, Baldomero Abril was shot through the neck, from the effect of which wound he died almost immediately. He was shot with a revolver carried by the appellant Maximo Capitania.

The appellant admits that Baldomero Abril was killed by a shot fired by his revolver. He contends, however, that the discharge of the revolver was accidental; that just at the time of the arrival of Baldomero Abril, Basilio Sanchez, a member of his group, desired to possess himself of the revolver in order to fire a shot; that he refused to give his revolver to Basilio Sanchez; that Basilio Sanchez attempted by force to take possession of his revolver, and in the scuffle to secure the possession, the revolver was discharged accidentally and Baldomero Abril was killed by virtue of said discharge.

The alleged scuffle between the appellant and Basilio Sanchez for the possession of the revolver is sustained only by the declaration of the appellant. The record does not disclose where the first group was at the time of the incident described in the complaint. The record does, however, disclose that at the place where the crime was committed the members of the second and third groups were present. The members of the second and third groups who were present, besides the defendant and the deceased, were Martin de Mesa, Basilio Sanchez, Gaudencio Eseo and Jose Cuasay. All of the persons present agree that the alleged scuffle of Basilio Sanchez to obtain the revolver from the possession of the appellant did not take place, and that Basilio Sanchez made no effort to obtain the possession of the revolver. The story told by Gaudencio Eseo, even in his own language during the trial of the cause, concerning the commission of the crime is as follows:

"Q. Do you know that Baldomero Abril is dead?—A. Yes, sir.

"Q. Do you remember the day that he died?—A. Yes, sir, the 18th of July, 1925.

"Q. Do you know what person or persons killed him?— A. Maximo Capitania.

"Q. Where is Maximo Capitania now?—A. He is over there (pointing to the accused).

"Q. Were you in the barrio when Baldomero Abril was killed?—A. Yes, sir.

"Q. Let us see; tell, briefly, what occurred.—A. After breakfast Baldomero Abril invited me to go with him and clean the lot belonging to Norberto Flores, and at about 10 o'clock in the morning, more or less, we arrived at the place where we were going to work, at which moment the accused Maximo Capitania also arrived and the two began talking. During the conversation between Maximo Capitania and Baldomero Abril I heard Maximo Capitania say to Baldomero 'I ask you not to court that girl' to which Baldomero answered, 'but I have already sacrificed a great deal for that girl,' to which Maximo replied, 'I can do nothing if you do not want to listen to me,' and we started to work cleaning the lot. In the afternoon of the same day the owner of the land told us that we could cease cleaning the lot, saying that each one of us had animals to take care of and, consequently, we could leave. We left in three groups. The first was composed of certain men and women; the second group was composed of the accused Maximo Capitania, Martin de Mesa and Basilio Sanchez, and the third group consisted of myself (Gaudencio Eseo), Jose Cuasay and Baldomero Abril.

"Q. In what group was the deceased?—A. In the third group.

"Q. Did you belong to that group also?—A. Yes, sir.

"Q. Very well, now relate what happened?—A. While we were walking along we saw Maximo Capitania, Martin de Mesa and Basilio Sanchez stop in the middle of the field, but we paid no attention to them and continued our way, Baldomero Abril walking about ten varas ahead of us, leaving the two of us, Jose Cuasay and I, behind. On passing the place where Maximo Capitania, Basilio Sanchez, and Martin de Mesa were, the

accused Maximo Capitania, with his revolver, fired at Baldomero Abril.

"Q. Wasn't there even an exchange of words between the two before the shot was fired?—A. No, sir, Baldomero was shot while he was walking.

"Q. Were they in front of you when the killing or shooting took place or were they behind you? You said you were walking;—A. They were in front of me.

"Q. What distance were you from them?—A. About fifteen brazas.

"Q. Did the shot hit Baldomero Abril or not?—A. It hit him.

"Q. In what part of the body did it hit him?—A. In the left side of the neck and he fell.

"Q. How did he fall?—A. Towards the right side.

"Q. Was he stretched out and in what manner?—A. He remained lying on his side.

"Q. Sideways, face down or face up?—A. Sideways.

"Q. Could he talk?—A. No, sir.

"Q. And what else happened?—A. Upon seeing him fall I approached him and Maximo Capitania said to me 'Do not say anything of what you have seen, because if you do I will kill you also.' I started to run up the road because I was afraid.

"Q. Look at the revolver that is here exhibited and say if you recognize this firearm?—A. Yes, sir."

The facts related by Gaudencio Eseo are corroborated by the testimony of other witnesses. The appellant did not take pains even to call Basilio Sanchez to corroborate his statement that the firing of the revolver was accidental.

The real motive for the commission of the crime is difficult to say. There are two theories advanced: First, it appears that the deceased and his father and the appellant had had a dispute concerning the products of a certain piece or parcel of land; second, it is contended that a quarrel existed between the appellant and the deceased concerning their relation with Remedios Flores, a daughter of Norberto Flores. The first theory is supported by the testimony of the father of the deceased. He testified that he and his son and the appellant had had a dispute concerning the products of a parcel of land very soon before the commission of the crime. The other theory as to the motive of the crime and supported by the testimony of two or three witnesses is, that the appellant and the deceased were each giving more or less attention to the daughter of Norberto Flores. Whether one or both of said theories concerning the motive for the commission of the crime, and we are quite sure that one or both constituted the motive for the commission of the crime, the record shows that the crime was committed and the evidence shows beyond a reasonable doubt that the appellant did, with a revolver which he had in his possession at the time, shoot and kill Baldomero Abril.

Whether the killing was premeditated or not is not altogether clear. The fact that the appellant stopped on the path or road and waited for the arrival of Baldomero Abril and his companions is a strong indication that he had premeditated the killing. The fact however, that he waited by the wayside until the arrival of Baldomero Abril, and without warning, without giving Baldomero Abril time to offer resistance, and in a sudden and unexpected attack, under circumstances which rendered Baldomero Abril unable to defend himself by reason of the suddenness and the severity of the attack, in our judgment constitutes the qualifying circumstance of cdevosia in the present case, and is sufficient to qualify the crime as that of assassination. (U. S. vs. Babasa, 2 Phil., 102; Q. S. vs. Cabiling, 7 Phil., 469; U. S. vs. Matanug, 11 Phil., 188; U. S. vs. De Silva, 14 Phil., 413.)

The lower court gave the defendant the benefit of article 11 and reduced the penalty to the minimum of that

prescribed by law. While generally this court abides by the decision of the lower court in matters which are purely within his discretion, yet in the present case we are not inclined so to do. The appellant was the owner of a revolver and had a license for its possession. We cannot bring ourselves to believe that the Constabulary Bureau, which issues licenses for the possession of firearms, issues the same to persons entitled to the benefit of article 11 of the Penal Code. The fact that the appellant had a license issued by the Government for the possession of a firearm would indicate a degree of intelligence and instruction beyond that of persons who are entitled to the benefit of article 11.

Our conclusions are, from all of the foregoing, that the crime committed by the appellant is that of assassination with the qualifying circumstance of alevosia, and that there are neither aggravating nor attenuating circumstances. He must therefore be punished with the penalty prescribed by law or that of cadena perpetua. Therefore, the sentence of the lower court is hereby modified and the appellant is hereby sentenced, in accordance with the recommendation of the Attorney-General, to suffer the penalty of cadena perpetua and to pay to the family of the deceased the sum of P1,000, with the accessory penalties of the law, and to pay the costs. So ordered.

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

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