

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FILEMON CABIGAS AND CIRILO LOFRANCO, DEFENDANTS. FILEMON CABIGAS, APPELLANT.

G. R. No. 26202. December 17, 1926

Ponente: JOHNSON, J.

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JOHNSON, J.:

(NOTE.—The cause relating to the defendant Cirilo Lofranco was dismissed on the 6th day of August, 1926, for the reason that it was made to appear of record that he had died in the provincial jail of Cebu on the 22d day of June, 1926.)

It appears from the record that the prosecuting attorney of the Province of Cebu presented a complaint against the appellant including Cirilo Lofranco in the court of the justice of the peace of the municipality of Cebu, Province of Cebu, on the 26th day of February, 1926, charging said defendants with the crime of robo frustrado con doble homicidio. An amended complaint was presented by said prosecuting attorney in said court of the justice of the peace on the 8th day of March, 1926. Upon said amended complaint the defendants were arrested and given a preliminary hearing before said justice of the peace. It appears that during the preliminary investigation held by said justice of the peace an auto was issued by him on the 18th day of March, 1926, showing that both of said defendants upon arraignment declared that they were guilty. Thereupon the justice of the peace finding that there was probable cause for believing that the defendants were guilty ' of the crime charged, remanded them to the Court of First Instance for trial.

On the 16th day of April, 1926, the following complaint was presented in the Court of First Instance by the prosecuting attorney of the Province of Cebu:

"El que subscribe acusa a Filemon Cabigas y Cirilo Lo franco del delito de robo frustrado con doble homicidio, por cuanto que en o hacia la madrugada del 23 de febrero de 1926, en el barrio de Talamban, Municipio de Cebii, Provincia de Cebu, los acusados arriba mencionados, provistos ambos de punal, bolo y martillo, conspirando entre si y ayudandose mutuamente, con animo de lucro voluntaria, ilegal y criminalniente con violencia, nocturnidad y en despoblado, penetraron en la casa habitaci6n de Florentino Bores con el fin de apoderarse de varios efectos, alhajas y dinero por valor de P500 de la propiedad del mencionado Florentino Bores, practicando todos los actos de ejecucitfn, tendentes a la realizacion del delito de robo, pero sin embargo no lo produjeron por causas independientes de la voluntad de dichos acusados; y en el mismo acto con las mismas armas y con la oeaseidn del robo juntos atacaron y agredieron al easero Florentino Bores que estaba a la sazdn dormido y a Lucio Leyson infiriendo a estos lesiones en diferentes partes del cuerpo que produjeron la muerte instantanea de los mencionados Florentino Bores y Lucio Leyson."

Upon said complaint the defendants were duly arraigned. Upon arraignment they each pleaded not guilty and the cause was brought on for trial. From an examination of the evidence adduced during the trial of said cause, certain facts seem to be proved beyond question. They are:

(1) That the deceased Florentino Bores was a widower; that he was an old man and lived alone in his house in the barrio of Talamban of the municipality of Cebu, Province of Cebu; that he was the owner of five parcels of land which he had rented at a moderate price per year; that in his house he had three trunks in which he kept his clothing, documents and dishes; that in the month of January, 1926, he received the sum of P130 as the proceeds of the sale of some mangoes which he had gathered from his trees,

(2) That the crime was committed sometime during the night of February 22, 1926; that at about 4 o'clock on the afternoon of February 22d the defendant Filemon Cabigas requested a cochero by the name of Perfecto Bolabola to take him and the defendant Cirilo Lofranco to the barrio of Talamban and offered to pay him 60 centavos for his services; that Cirilo Lofranco carried a bottle of wine called masuy; that he knew the cochero Bolabola and when he saw him he called his companion Filemon Cabigas and they went away leaving the vehicle.

(3) That about a week before the commission of the acts described in the complaint a laborer called Felix Remedio passed by the house of Florentino Bores at about 7 o'clock in the evening and was invited by the latter to come into his house to see a person whom he did not know, who was there visiting in the house of Bores; that said person was Cirilo Lofranco; that Felix Remedio entered into a conversation with said stranger (Cirilo Lofranco), who said to him that he had come there to look for a bailarina, at the same time showing him a photograph; that Felix Remedio answered said stranger, that he had not seen that woman in that locality and believed that he would not be able to find her there; that immediately thereafter Felix Remedio left the home of Florentino Bores; that Cirilo Lofranco remained in the house of Florentino Bores during that night.

(4) That at about 4 o'clock in the afternoon of the 22d day of February, 1926, Vicente Villaflor saw the accused Cirilo Lofranco and Filemon Cabigas in the cockpit of Cebu; that he knew Filemon Cabigas and had known him for sometime.

(5) That between 7 and 8 o'clock on the night of the 22d day of February 1926, Felix Remedio saw the two defendants in the house of the deceased Florentino Bores; that Felix Remedio said to Lofranco at that time, "Bay, esta Vd. tambien aqui ?" and Lofranco answered him, "Seguimos buscando a aquella bailarina que hasta ahora no hemos encontrado."

(6) That at about 1.30 on the morning of the 23d day of February 1926, Brigido Leyson, Lucio Leyson, Alberta Oporto, Ciriaco Arcilla, Petra Leyson, the wife of Arcilla, were awakened by cries which they heard in the house of Florentino Bores; that Ciriaco Arcilla opened the window and noted that Florentino Bores had ceased to cry loudly but was then only groaning; that a little later Lucio Leyson, who was sleeping in the kitchen of the house of Ciriaco Arcilla, called Florentino Bores, saying "Tinoy, Tinoy;" that the kitchen from which Lucio Leyson called Florentino Bores was in front of his house; that inasmuch as Florentino Bores did not answer, but continued groaning, Lucio Leyson and Ciriaco Arcilla went down out of their house to arouse Florentino Bores; that Lucio Leyson believed that Florentino Bores had a nightmare (pesadilla); that when Lucio Leyson and Ciriaco Arcilla went down out of their house the former carried a light in a bottle filled with petroleum; that when Ciriaco Arcilla and Lucio Leyson went down out of their house and went close to the fence which surrounded the house of Florentino Bores they made a noise, calling Florentino Bores, but no one answered; that Lucio Leyson suggested that they should come up to see if Florentino Bores was sick; that Lucio loosened the chain which closed the door of the fence surrounding the house of Florentino Bores; that entering the yard they started to go into the house of Florentino Bores; that upon arriving at the third rung of the stairway they saw a man upstairs in the house of Florentino Bores; that said man was going into the kitchen; that Ciriaco Arcilla and Lucio Leyson hastened their steps into the house and once in the house Lucio Leyson, using his light, saw a man dressed in a shirt carrying a hammer and going towards the kitchen; that said person carrying the hammer was the defendant Filemon Cabigas; that Ciriaco Arcilla and Lucio Leyson followed Filemon Cabigas; that when they arrived at the door of the kitchen

there suddenly appeared the other defendant Cirilo Lofranco, who had been hiding in a corner of the house; that immediately Cirilo Lofranco wounded Lucio Leyson on the stomach with a bolo; that when Ciriaco Arcilla saw said aggression against Lucio Leyson he ran towards the stairway, went down out of the house of Florentino Bores and returned to his house, crying "Socorro, socorro; aqui hay bandidos; aqui hay tulisanes, ladrones;" that upon returning to his house he got a bolo; that when he was ready to go down out of his own house he met in the middle of the stairs of his house Lucio Leyson, who said to him, "Socorreme porque estoy herido y mis intestinos estan saliendo;" that Ciriaco Arcilla carried Lucio Leyson up into his house and laid him upon a bed; that Ciriaco Arcilla made an effort to place the intestines of Lucio Leyson in their place but was unable to do so before he died at about 2 o'clock in the morning.

(7) That about 6 o'clock on the morning of the 23d day of February, 1926, a policeman by the name of Benito G. del Mar, who was on guard in the barrio of Talambang, upon receiving notice of what had happened in the house of Florentino Bores, he went there with another policeman and went up into the house; that upon entering the door of the house of Florentino Bores, he saw from the first rung of the stairway "un reguero de sangre;" that upon arriving at the last rung of the stairway he saw in the house behind a door towards the left hand side a bench which was covered with blood; that Benito then went to the kitchen where he saw marks of a hand on the window near the stove; that he passed to the sala, opened the doors which were partly open; that he then found the bed and the petate extended upon the floor and upon the petate a cap, a hat, a bottle of wine called masuy, a dagger with wavy blade and a sheath; that near the petate there were also found two pairs of slippers and a lamp beside the bench near the bed.

(8) That the policeman Vicente Villaflor had seen several times the said cap used by Cirilo Lofranco before that time and that he could identify it as the cap of Cirilo Lofranco.

(9) That a woman called Ines, some days after the occurrence which took place on the night of the 22d day of February, 1926, found in a group of buri trees near the road a bolo; that said bolo was shown to Crisanto Bontuyan, who recognized it as the bolo of Florentino Bores. The said Ines, however, died before the trial of the present cause.

(10) That sometime later Victorino Bontuyan while he was cutting sugar cane found in the field a hammer wrapped in a bloody shirt; that the place where the hammer was found was about 40 brazas from the house of the deceased.

(11) That about 9 o'clock of the 23d day of February, 1926, Juan Bta. Goitia, the health officer of the district, was called and made an examination of the body of Florentino Bores; that he found the deceased sitting upon the floor with his back supported by one of the legs of the bed and his head resting on the side of the same; that the bed, the petate and bed clothing were filled with blood; that he found thirty-five wounds upon the body of Florentino Bores (Exhibit P, p. 72); that wound No. B5 of said exhibit was found upon the right side of his temple and was about 2 inches in diameter and that he believed that the skull had been fractured; that said wound was necessarily fatal; that a great portion of said thirty-five wounds were caused with a blunt instrument in the form of a circle; that the others were produced by a sharp instrument; that the said doctor also held an autopsy upon the cadaver of Lucio Leyson, the other victim of the crime, and found a wound of 11 centimeters long and 5 centimeters wide caused with a sharp instrument, situated transversely across the abdominal region.

(12) That while Filemon Cabigas presented no proof in his exculpation, he did declare outside of court, in an alleged confession or statement, that his co-defendant Cirilo Lofranco was in the house of Florentino Bores and remained in the same during the night of the 22d day of February, 1926, and that he took no part in the aggression against Bores; that Florentino Bores could not cry out because of the threats with a dagger made by Cirilo

Lofranco (Exhibit N, p. 56). In a memorandum prepared by the justice of the peace (p. 10) it appears that Filemon Cabigas declared upon arraignment that he was guilty.

(13) That the accused Cirilo Lofranco also made an extra-judicial declaration to the police, in which he admitted that he had gone to the house of Florentino Bores on the night in question, but that he did not take any part in the commission of the crime (Exhibit O, p. 67). Cirilo Lofranco at the beginning of the preliminary examination declared that he was guilty. During the trial of the cause, however, Cirilo Lofranco stated that he declared that he was guilty of the crime charged before the justice of the peace because he had been abused by the policemen and was promised his liberty providing he declared that he was guilty. During the trial of the cause he testified as a witness and attempted to show that he was not guilty of the crime charged.

(14) The record shows that of the two pairs of slippers which were found in the house of Florentino Bores (Exhibits K and L) one pair fit the feet of Cirilo Lofranco and the other the feet of Filemon Cabigas. The record also shows that the cap (Exhibit F) fit the head of Cirilo Lofranco and was too small for Filemon Cabigas; that the hat which was found in the house of Florentino Bores fit the head of Filemon Cabigas and was too large for the head of Cirilo Lofranco. The bloody shirt mentioned above (Exhibit E) fit the body of Filemon Cabigas more nearly than the body of Lofranco.

During the trial of the case Filemon Cabigas renounced his right to present any proof whatever (p. 99). The only proof which Cirilo Lofranco presented was his own declaration. "He declared that he was a gambler by profession; that he declared that he was guilty before the justice of the peace because the policeman had said to him that he would be given his liberty to be used as a witness. Vicente Villafior, the policeman who, Cirilo Lofranco said, had promised him his liberty, denied positively that he had made any such promises.

After hearing the evidence adduced during the trial of the cause the Honorable Adolph Wislizenus, judge, found the said accused guilty of the crime of frustrated robbery with double assassination, with the qualifying circumstance of alevosia, with the aggravating circumstances of known premeditation, nocturnity and morada, and sentenced each of them with the penalty of death. From that decision an appeal was taken to the Supreme Court. During the pendency of the appeal Cirilo Lofranco died and the appeal as to him was dismissed with one-half of the costs de oficio.

The appellant now contends that the lower court erred in not giving him the benefit of a reasonable doubt. While the proof is more or less circumstantial, there are certain facts which are proved beyond peradventure. They are;

- (a) That Florentino Bores and Lucio Leyson were brutally murdered sometime after midnight of the 22d day of February, 1926;
- (b) That the said Florentino Bores was murdered in his house on said night;
- (c) That Lucio Leyson was wounded in the house of Florentino Bores on said night, from the effects of which he died a few moments after receiving the wound;
- (d) That Filemon Cabigas and Cirilo Lofranco were in the house of Florentino Bores from the early evening of February 22, 1926, until sometime after midnight of the same day, when they surreptitiously escaped;
- (e) That when Filemon Cabigas and Cirilo Lofranco left the house of Florentino Bores, they left behind them certain wearing apparel, which was identified as wearing apparel belonging to them;
- (f) That said defendants were in fact strangers to the said Florentino Bores on the night in question;
- (g) That said defendants had been informed, prior to said 22d day of February, 1926, that Florentino Bores had a large sum of money in his home;

- (h) That the defendant Filemon Cabigas was seen by Ciriaco Arcilla in the house on the night in question at the time he was leaving the room, where Florentino Bores was later found dead, carrying a hammer in his hand;
- (i) That some of the thirty-five wounds which were found upon the body of Florentino Bores, and the one which was fatal, had been caused by a blunt instrument, supposedly a hammer (see doctor's certificate);
- (j) That a hammer belonging to Florentino Bores was found near his house a few days after the murder, which was covered with blood;
- (k) That many of the thirty-five wounds found upon the body of Florentino Bores, according to the doctor's certificate, were caused by a sharp-pointed instrument;
- (l) That a bolo, belonging to Florentino Bores, was found outside of his house after the commission of the crime, covered with blood.

All of the foregoing facts and circumstances, considered in relation with the fact that Filemon Cabigas and Cirilo Lofranco were the only persons in the house of Florentino Bores at the time he was murdered, lead an unprejudiced mind, irresistibly, to the conclusion that they were the real authors of the crime described in the complaint, and that said crime was committed in the manner and form therein stated. The lower court found from the evidence that there existed the qualifying circumstance of alevosia with the aggravating circumstances of premeditation, nocturnity, abuse of superiority, and morada and sentenced the defendants, in accordance with the provisions of article 506 of the Penal Code, with the penalty of death. From that sentence the defendant Filemon Cabigas appealed, and his only contention now is, that the lower court should have given him the benefit of a reasonable doubt.

In reply to the arguments of the appellant the Attorney-General in a well-reasoned brief, in which reference is made to all of the important evidence, recommends that the sentence appealed from should be affirmed. The Attorney-General recommends the confirmation of the sentence of the lower court upon the ground that the evidence shows that the appellant committed the crime described in the complaint with the qualifying circumstance of alevosia, and with the aggravating circumstances of nocturnity, known premeditation and morada. With the recommendation of the Attorney-General we fully agree, except as to some of the aggravating circumstances. We fully agree with the Attorney-General as to the existence of the aggravating circumstance of nocturnity. We have some doubt about the existence of some of the other aggravating circumstances mentioned by the Attorney-General. There being a qualifying circumstance and one aggravating circumstance and no mitigating circumstances, the penalty imposed should be in the maximum degree of that provided for by law. One member of the court, however, is of the opinion that the penalty imposed by the lower court should not be executed.

Therefore, and by virtue of the existence of Act No. 3104, the sentence of the lower court is hereby modified, and it is hereby ordered and decreed, for the reasons hereinbefore stated, that the sentence of the lower court be modified, and that the appellant Filemon Cabigas be sentenced to suffer the penalty of cadena perpetua, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs. It is so ordered.

After a careful examination of the motion for a new trial presented by the appellant during the pendency of the action in this court, the court was of the opinion that the facts stated therein were not sufficient to justify the granting of said motion. The same is therefore hereby denied.

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

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