

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICENTE BANDE, EUGENIO CARTAGENAS AND JESUS OQUIAS, DEFENDANTS AND APPELLANTS.

G.R. No. 26335. March 03, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellants were convicted in the Court of First Instance of Leyte of the crime of double murder by virtue of an information in which it is alleged:

"That on or about January 25, 1926, in the municipality of Ormoc, Province of Leyte, Philippine Islands, the said accused, the first being a merchant and the other two servants of the deceased—the spouses Tan Yuking and Soy Ing—voluntarily, illegally and criminally with treachery and evident premeditation, conspiring and acting upon a previous agreement, and taking advantage of the night and the fact that the dwelling of the deceased was situated in a lonely and isolated place, and with abuse of the confidence which the deceased had reposed in them, the said accused, after the two last named, who had passed the night in question in the dwelling of the deceased where they lived, had broken the wall of the dwelling to enable the first-mentioned to enter the same, cooperating with one another, entered the room of the deceased where they were sleeping, wounding and beating the said Tan Yuking and Soy Ing, inflicting wounds and contusions upon different parts of their bodies, as a result of which they died a few days later. Contrary to law, and with the aggravating circumstances of evident premeditation, treachery, nocturnity, uninhabited place, abuse of confidence and superior strength."

The trial court found that the evidence introduced in this case showed, beyond a reasonable doubt, the following facts:

1. That at dawn on January 25, 1926 while the spouses Tan Yuking and Soy Ing were sleeping in their own house situated in the barrio of Dayhagan, municipality of Ormoc, Leyte, they were treacherously attacked with a bolo, Exhibit G, a pestle, Exhibit H, and a sickle, which is not attached to the record, inflicting upon both the wounds and contusions described in medical certificates Exhibits F and F-1, as a consequence of which said spouses died, Tan Yuking on the night of the 27th and Soy Ing at dawn on the 28th of January, 1926; and
2. That the accused Vicente Bande, Eugenio Cartagenas and Jesus Oquias are responsible, as principals, by direct participation, for the wounds of the deceased, the motive of the robbery being the money which the deceased spouses kept in the trunk Exhibit 1.

The court found the accused guilty of the crime of double murder, with the aggravating circumstances of nocturnity, abuse of confidence, dwelling and scaling, without any extenuating circumstance to offset them, and by virtue thereof imposed upon the accused Vicente Bande and Eugenio Cartagenas the death penalty for each of the crimes, in accordance with article 403 of the Penal Code; and in regard to the accused Jesus Oquias, being but 17 years of age, in accordance with paragraph 2 of article 85 of the same Code, imposed the penalty of presidio mayor in its maximum degree to cadena temporal in its medium degree under rule 3 of article 75, that is, from ten

years and one day to seventeen years and, four months cadena temporal, with the accessories of the law. And in case they are pardoned, the accused Bande and Cartagenas, in addition, are to suffer the accessories of article 53. The court likewise condemned the three accused to indemnify, jointly and severally, the heirs of the deceased in the sum of P1,000 for each crime, and to return to them the P500 robbed from said deceased, with one-third of the costs against each of the accused.

The case was forwarded to this court for review and by virtue of an appeal taken by the defendants. The attorney for the appellants prays for a reversal of the judgment for reasonable doubt, contending in his brief that the trial court should not have given credit to the testimony of Teodora Iwan nor considered Exhibit J of the prosecution.

As will be noted, appellants' contention is based upon the action of the trial court in giving weight to the testimony of the witness Teodora Iwan. While there are some contradictions and discrepancies in the testimony of this witness, yet, in the main, it tends to prove that the accused were in the deceased's room on the night in question, and we find no error in the judgment of the trial court appealed from to warrant its revocation. It is true that the testimony of this witness alone makes us hesitate in declaring the identity of the accused duly proven; but Exhibits A and C, attached to the record, which are the ante mortem declarations of the deceased Soy Ing and Tan Yukiing, leave no doubt that the accused are responsible for the crime charged. It appears that the Chinaman Tan Yukiing, when the justice of the peace of Ormoc went to the deceased's house to make the preliminary investigation, hesitated somewhat when he was asked who was responsible for his wounds, and before giving his answer, asked the doctor, who was present, another question in regard to his wounds, and upon being informed that they were angular wounds, he told the justice of the peace that the accused Vicente Bande was responsible for them, the accused having previously given the latter a weapon capable of producing angular wounds. But when Soy Ing, on being asked by the justice of the peace on that occasion who had wounded her, without hesitation pointed to the accused Vicente Bande, Eugenio Cartagenas and Jesus Oquias. And in this connection, it must be noted that the accused Vicente Bande being then present, faced the woman Soy Ing, saying: "Look well at me, am I the one who wounded you?" and Soy Ing replied, addressing Vicente Bande, "You are the one." And in Exhibit C Tan Yukiing positively states that the accused are responsible for his and his wife's wounds.

In regard to the appellants' second assignment of error which refers to the admission of Exhibit J, the sworn statement of the accused Jesus Oquias against his coaccused, we are of the opinion that said sworn statement or confession is admissible only against the declarant in conformity with the well established doctrine in this jurisdiction that a confession made by one or more accused persons, without the intervention of the others, is admissible only against the declarant. (U. S. vs. Castillo, 2 Phil., 17; U. S. vs. Paete, 6 Phil., 105; People vs. Tabuche, 46 Phil., 28; People vs. Orenciada and Cenita, 47 Phil., 970.)

The error of the trial court, however, in considering said Exhibit J against the accused Bande and Cartagenas does not justify the revocation of the judgment appealed from, because, even striking it out from the record, there is still sufficient proof to show, beyond a reasonable doubt, the guilt of the said accused; and, therefore, its admission has not prejudiced the essential rights of the accused. (U. S. vs. Empeinado, 9 Phil., 613; People vs. Tabuche, supra.)

In regard to the imposition of the death penalty by the court below upon the accused Bande and Cartagenas, Act No. 2726, as amended by Act No. 3104, provides that the death penalty shall be imposed only by the unanimous vote of the justices composing the appellate court. We have extensively deliberated on the present case and the vote of the court was not unanimous as to the imposition of the death penalty, although the majority of the court voted for the affirmation of the judgment appealed from as to the accused Jesus Oquias.

In view of this result, and considering that the evidence introduced in this case, such as the statements made, by

the deceased to the justice of the peace, their ante mortem declarations, corroborated in their more important details by the testimony of Teodora Iwan, the expert opinion of Doctor Serafica, and the sworn statement of Jesus Oquias, supports the findings of fact of the judgment brought to this court for review, we hold that said judgment must be, as it is hereby, modified in the sense that the accused Vicente Bande and Eugenio Cartagenas are each sentenced to life imprisonment for each of the crimes charged, said penalty not to exceed forty years; and said judgment is affirmed as to the accused Jesus Oquias, each to pay one-third of the costs. So ordered.

Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

DISSENTING OPINION

ROMUALDEZ, J.:

I do not believe there is sufficient proof that the accused robbed, nor is there sufficient direct evidence that they assaulted the deceased. In my opinion, they should be acquitted for reasonable doubt.

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