

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FLORENTINO SORIANO, DEFENDANT AND APPELLANT.

G.R. No. 26538. March 30, 1927

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PER CURIAM:

(To comply with the provisions of Act No. 3104, this decision will be headed "Per Curiam," although that term appears to have been used inaccurately in the law, and although it is apparent that a member of the court must have written this decision. See *Fuentes vs. Director of Prisons* [1924], 46 Phil., 22.)

This case has its origin in the Constabulary riot at San Fernando, Pampanga, on the night of May 23, 1926, in which five persons were killed and eleven others were wounded. Specifically, it relates to the charge of murder against Florentino Soriano, a Constabulary soldier, for having caused the death of Faustino Pineda, a municipal policeman. The findings of fact made by Judge of First Instance Reyes held the accused guilty as charged. The judgment was that the accused be condemned to the death penalty, and, in case of pardon, the accessory penalties, and to pay to the heirs of Faustino Pineda the sum of P1,000, and the costs. One of the assessors, who sat with the court, apparently agreed with the trial judge, and the other did not.

From the judgment above-mentioned, Florentino Soriano has appealed, although his case would have had to come before us anyway for review, since it concerns the capital penalty. On his behalf, four errors are assigned and argued. They relate principally to the credibility of the witnesses and to the qualification of the crime. Counsel asks that Florentino Soriano be found guilty only of the crime of homicide, with the mitigating circumstances of provocation, obfuscation and illegitimate aggression.

Florentino Soriano was the Constabulary soldier who, out of obscurity, assumed the leading role in this most unfortunate tragedy. He was the one who, on leaving the dance hall where the trouble began, proceeded directly to the Constabulary barracks. There he secured his gun and ammunition, and returned toward the cabaret. All that he did cannot be proved. It is certain, however, that he discharged his weapon at municipal policemen. On meeting the chief of police, Zacarias Nuguid, and the policeman Faustino Pineda, Soriano from behind a tree fired at them and killed Pineda. The words of Soriano on seeing the policeman were "Quien eres tu?" To which the policeman Pineda replied: "Yo soy Pineda, pero no embisto." The answer to which was two shots from Soriano with a fatal result.

When Lieutenant Juban of the Constabulary conducted an investigation, one of the three soldiers who took one step forward as indicative of participation in the riot was Florentino Soriano. When the equipment of the Constabulary soldiers were examined after the occurrence, it was found that Soriano was lacking seventeen cartridges. While detained in the provincial jail of Pampanga, Soriano voluntarily gave before various witnesses a declaration, Exhibit B, in which he admitted, among other things, that he had shot twice towards a municipal policeman. Later, Soriano wrote in his own handwriting a document, Exhibit M, in which he gave an account of himself on the night in question, and again admitted that he had fired at the police of San Fernando.

The United States Supreme Court applies the rigorous rule in criminal cases that "No matter how severe may be the condemnation which is due to the conduct of a party charged with a criminal offense, it is the imperative duty of a court to see that all the elements of his crime are proved * * *. Only in the exact administration of the law will justice in the long run be done, and the confidence of the public in such administration be maintained." (Clyatt vs. United States [1904], 197 U. S., 207.) Applying that rule to the facts in the instant case, we are yet forced to say that the guilt of the accused has been proved beyond a reasonable doubt.

He is guilty on his own admissions competently corroborated. Among others, the witness Zacarias Bundalian testified to having seen what transpired when the accused met the two policemen. The truthfulness of this statement is attested by the fact that near the place where the firing occurred were found used cartridges and a cartridge not used, which were exclusively intended for the Constabulary. The contention of the accused that his statements were forced from him merits no serious consideration.

It is contended, however, that the lower court erred in admitting and giving credit to the testimony of Umali and Pascua. As to this defense, it suffices to say that under the construction which this court has given to Act No. 2709, the witnesses Umali and Pascua were not improperly included in the array for the Government. With the dissent of some of us, Act No. 2709 has been given a liberal and permissive meaning. (U. S. vs. Abanzado [1918], 37 Phil., 658; U. S. vs. Enriquez [1919], 40 Phil., 603; U. S. vs. Bonete [1920], 40 Phil., 958; People vs. Velazco [1921], 42 Phil., 75.) Reversible error is not shown.

The only difficult question is to determine the appropriate penalty. The trial judge and the Attorney-General are of the opinion that the proven facts constitute two crimes, murder and an attempt against an agent of the authorities. They are right. It is murder because of the presence of the qualifying circumstance of treachery. It is an attempt against an agent of the authorities because the deceased was a municipal policeman. Search as we may and we have given the points prolonged thought, no mitigating circumstance can be noted in favor of the accused. We regret, therefore, to have to add that, under these conditions, the penalty fixed by the law for the complex crime of murder and an attempt against the authorities, is death. The trial judge meted out that penalty, and the Attorney-General assumes the responsibility of recommending affirmance. Sorrowfully and solemnly, we are constrained to agree. (People vs. Cabrera [1022], 43 Phil., 82.) Judgment affirmed, with costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

Chief Justice Avanceña was absent on vacation and did not take part in the consideration or decision of this case.

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