

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALEJO RESABAL, DEFENDANT AND APPELLANT.

G.R. No. 26708. September 29, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The evidence shows, as an indisputable fact, that in the early morning of April 25, 1926, one Primo Ordiz died at his own home in the barrio of Bogo, municipality of Maasin, Leyte, from the effects of an internal hemorrhage caused by a sharp wound in the left lung, as appears from the death certificate, marked Exhibit A.

As a consequence of this, an information was filed with the Court of First Instance of Leyte in Maasin, reading as follows:

"That on or about April 25, 1926, in the municipality of Maasin, Province of Leyte, Philippine Islands, the said accused, willfully, unlawfully and criminally, with treachery and evident premeditation, conspiring amongst themselves and acting in common agreement and taking advantage of nocturnity, mutually aiding each other, opened the window and killed Primo Ordiz by means of a shot from a 'Smith' 38 caliber revolver, inflicting a wound in the upper part of the left nipple, which produced the instant death of said Primo Ordiz.

"Contrary to law."

The judge who tried the case, after having carefully analyzed the evidence, reached the conclusion that the crime committed by the accused Alejo Resabal is that of murder, provided for and penalized in article 403 of the Penal Code, with the aggravating circumstances of evident premeditation, nocturnity and dwelling, and imposed on the accused the death penalty, with the accessories of article 53 in case of pardon, and to pay the deceased's heirs the sum of P1,000 by way of indemnity, with the costs of the action. He also ordered that the present case be brought to this court for review, as provided for in section 50 of General Orders No. 58.

Counsel for the defense alleges that the trial court erred in not ignoring Glicerio Orit's testimony, and in not acquitting the accused Alejo Resabal on the ground of reasonable doubt.

The Attorney-General in turn asks that the judgment rendered, being in accordance with the evidence and the law, be affirmed with the costs against the appellant.

Glicerio Orit testified that on the morning of April 25, 1926, the accused, armed with a revolver, invited him to Primo Ordiz's house in order to kill the latter, and on arriving at said house, the accused went into the grounds, approached one of the windows of the house less than a meter and a half in height, opened it and looked in. At that moment the witness left the place, and at a distance of 15 brazas heard an explosion. Glicerio Orit's testimony as to the explosion is corroborated by the declaration of the boy Jose Ordiz, who slept with his uncle Primo Ordiz, to the effect that early in the morning of that day he was awakened by the noise of an explosion and saw his uncle Primo Ordiz vomiting blood and unable to speak.

It is unquestionable, from the testimony of these two witnesses and the result of the autopsy, and above all from

the finding of the revolver Exhibit B, that the weapon used by the accused to commit the crime, is the revolver exhibited at the trial of the case. This revolver was hidden by the accused on the land cultivated by the witness Carmelo Ordiz, to whom the accused revealed it, and who, through fear of the police, transferred it to the neighboring lot, burying it at the foot of a tree called "mabago." By following the directions of this witness, Carmelo Ordiz, the chief of police, who investigated the case, found the revolver wrapped in two pieces of cloth Exhibits G and C-1. The revolver was loaded with two bullets and an empty shell, and had a rusty barrel. It must be noted that Exhibit C-1 appears to be a piece of cloth from a pair of drawers, and the chief of police who searched the house where the accused lived, found a piece of a pair of drawers in a trunk that was in the kitchen. Upon examination of said Exhibits F and C-1 by this court, it was found that these two pieces of cloth Exhibits F and C-1 made a complete pair of drawers, all of which shows that the accused tore the piece of cloth Exhibit C-1 from an old pair of drawers in order to wrap up the revolver before putting it in the place indicated by the witness Carmelo Ordiz.

This witness testified, furthermore, that on the night of April 24, 1926, the accused believing him to be still an enemy of the deceased Primo Ordiz, and showing him the revolver Exhibit B, invited him to accompany him to do away with Primo Ordiz. On the other hand, the witness Vicente Ambalong corroborates Glicerio Orit's testimony to the effect that early in the morning of April 25, 1926, the accused went to the house where the latter was sleeping to awaken him, and that he then saw the accused on the staircase, calling to said Glicerio Orit.

And what is the motive of the crime? According to the evidence presented by the prosecution, some twenty days before the incident the accused had a disagreement with the deceased because of a carabao that destroyed some coconut trees belonging to the deceased Primo Ordiz. The accused requested the deceased to return the carabao that was under his care, but the deceased refused to do so before he was paid the value of the trees destroyed. This naturally produced resentment, which, among country people, is sufficient cause for the commission of the act charged in the information.

The defense of alibi set up by the accused is not, in our opinion, sufficient to overthrow the evidence of the prosecution; for, taking into consideration the short distance between the deceased's house and that in which the accused slept on the night of the incident, the accused could easily have gone out of his house and returned later, without having been noticed by his companions in the house, namely, his wife, his mother-in-law, and his sister-in-law, aside from the natural interest these have in testifying in the accused's favor.

The defense argues that Glicerio Orit is not a credible witness, because of his having been excluded from the information to be used as a witness for the prosecution; and, because, moreover, of the contradictions in his testimony at the preliminary investigation and during the trial. We are of the opinion that the mere fact of having been excluded from the information to be used as a witness for the Government, does not prevent this witness from telling the truth in this case, especially in the absence of proof showing the interest he might possibly have in testifying against the accused. Neither is the apparent contradiction which may be noted in his declarations before the court of the justice of the peace, and before the court of first instance sufficient to discredit his testimony, for the simple reason that this witness was not given ample opportunity, by a reading to him of his declarations before the court of the justice of the peace, to explain the discrepancies noted by counsel for the accused. The mere presentation of Exhibit 1, without said declaration having been read to the witness while he testified in the Court of First Instance, is no ground for impeaching his testimony. (U. S. vs. Baluyot; 40 Phil., 385, 406.)

The defense also impeaches Carmelo Ordiz's testimony considering the invitation which the accused extended to him as improbable, knowing that he was a cousin of the deceased Primo Ordiz. Under ordinary circumstances, such an attitude would appear improbable, but not so if it is considered that the accused invited the witness in the belief that the latter was still an enemy of the deceased, on account of certain disagreements they had over some

land.

The defense also contends that the conduct of the accused in going with his family to the deceased's house on the morning of April 25, 1926, helping in the preparations for the burial, is incompatible with his being a criminal. It is, indeed, an old belief that the fear of the suspected party to touch the corpse was a sign of guilt. But experience has shown that some criminals have gone to the extreme that the accused did, to avoid all suspicion of guilt.

The evidence in the record shows the guilt of the accused beyond a reasonable doubt, and he deserves the penalty provided for in article 403 of the Penal Code. The crime committed is murder, qualified by treachery for, in the commission of the crime, the accused employed ways, means, and forms that tended directly and especially to assure it, without risk to his person from any defense the assaulted party might make.

The trial court imposed the death penalty on the accused, by reason of the aggravating circumstances of evident premeditation, nocturnity, and dwelling, without any mitigating circumstances to offset them. On this point the opinion of the court is divided, with the result that we cannot impose on the accused the maximum penalty, or death, in accordance with Act No. 3104, because the vote of the members of the court who took part in the discussion of the case, as to the justice of the imposition of the death penalty was not unanimous. And, it being so, it is unnecessary to discuss in detail the presence of the said aggravating circumstances.

In virtue whereof, we are of the opinion, and so hold, that the accused is guilty of the crime of murder, committed with treachery, on the person of Primo Ordiz, and with the modification of the judgment on review, the penalty of cadena perpetua is imposed on the accused, with the accessories of article 54 of the Penal Code, the judgment of the trial court being affirmed in all other respects, with the costs against the appellant. So ordered.

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

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