

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO DUCUSIN, DEFENDANT AND APPELLANT.

G.R. No. 30724. August 08, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the defendant Mariano Ducusin from the judgment of the Court of First Instance of La Union, finding him guilty of murder in accordance with the information, qualified by the circumstance of evident premeditation, and with the aggravating circumstances of treachery and the employment of means to weaken the defense, without any extenuating circumstance to offset them, and sentencing him to the death penalty, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The trial court erred in not giving; due credit to the testimony of the defendant and appellant and the other witnesses for the defense and in giving full faith and credit to the testimony of the witnesses for the prosecution.

"2. The trial court erred in finding the defendant and appellant guilty of the crime of murder, beyond reasonable doubt."

On the date of the crime and prior thereto, the deceased Cesareo Tadea lived with his wife Teodora Vergara in the village of San Jose, municipality of Caba, Province of La Union. The defendant, who was Teodora's first cousin and Cesareo's second cousin, lived in the same village of which he was second lieutenant. The defendant Mariano Ducusin had been making love to Teodora Vergara for about a month before August 12, 1928, but she had rejected him saying: "I cannot accept your love for I am a married woman." The defendant then replied that he would do everything in his power that her husband might die, that she might be able to marry him. Teodora Vergara related to her husband what the defendant had said and he became angry and said: "Why does he do that, being a relative of ours?"

On the morning of August 12, 1928, Cesareo Tadea went to the defendant's house to have his hair cut as usual, free of charge. Cesareo Tadea returned home after mid-day, and as it was time to pasture his carabaos, he led them out to graze in Mariano Ducusin's land.

As Cesareo Tadea failed to return home that night, his wife went to the house of her brother-in-law, Eugenio Domondon, which was a few meters away from her own, and told him that her husband had not returned from pasturing his carabaos. That same night Eugenio Domondon went in search of Cesareo Tadea where Teodora Vergara had pointed out, but failed to find him. Very early the next morning they informed Cesareo Tadea's father of what had happened, and all of them, together with Teodora's mother, went to the field in search of him. They found Cesareo's dead body that same morning on a hillside covered with cogon grass on the defendant's land, a kilometer away from the deceased's house, lying face downwards under an adaan tree with a severed piece

of vine wound about his neck with a slipknot at the back. When the vine was untied, it left a mark on the neck. From one of the branches of the adaan tree, they found a piece of vine dangling, apparently of the same kind as was found around the deceased's neck, one end of which was tied to this branch. No other marks of violence were found upon the corpse, Ceferino Tadea and his companions did not want to touch the corpse and went back to the village to inform the defendant, as second lieutenant of that barrio, that they had found the deceased's body. On hearing the news from Ceferino Tadea, the defendant said to him: "Let us not inform the authorities of this for if we did so, they would not be able to take the body either today or tomorrow, and as decomposition would set in, no one would be willing to help us take it away." On receiving this advice, Ceferino Tadea went to his son-in-law, Eugenio Domondon's house. Later, the defendant also went there and on arriving, said: "Now prepare something in which to carry him and let us take him to town for burial. When the body arrives prepare something in which to take it to town for burial, and I shall advance the funeral expenses and defray the charges for the burial rites of the Church; I shall pay this and secure the required license." Having said this, the relatives of the deceased gave the defendant some money for those expenses.

Upon reaching the town, the defendant sought out the municipal secretary and told him that Cesareo Tadea had died of a headache and fever, and the municipal secretary issued a death certificate stating that the deceased had died of malaria. After the defendant had so informed the authorities, he said to Ceferino Tadea: "It is better that we say that he died of headache."

As Teodora Vergara suspected that the defendant was responsible for her husband's death, she went to San Fernando, La Union, with her father after the funeral novena (novena finebre), that is, about September 17, 1928, and informed the Constabulary of her suspicion. In view thereof, several Constabulary soldiers, together with, the chief of police of Caba and some policemen, went to the village of San Jose on the afternoon of September 17, 1928, in order to make an investigation. On arriving at San Jose, the chief of police and his companions took the defendant Mariano Ducusin from his house to that of Mariano Valdes, and there examined him but without getting any positive results. After having inspected the place where Cesareo Tadea's body was found, and as they suspected that Mariano Ducusin was responsible for his death, they took him to the town of Caba on the following Thursday, September 20, 1928, and confined him in the municipal jail.

At about 4 o'clock that same afternoon the sergeant on guard sent a policeman to call the chief of police because Mariano Ducusin had confessed. At nightfall, the chief of police went to the municipal jail and was alarmed to find everything so quiet in the cell occupied by the defendant. He then went in front of the window of said cell, and called out: "Lieutenant Ano!" Receiving no reply, he called again and again. As no one answered, he opened the little window and saw the defendant on his knees facing southwards, who said to him: "Let me finish my prayer first, chief, and we shall talk afterwards." After praying, he said: "What is this, chief? How serious are the things I hear my enemies are saying about me." The chief of police answered: "Well, think it over. If you really did it, say so; if not, tell us you should not be blamed for it." While the chief of police and the defendant were talking, they brought in the prisoner's food and the chief of police told him to eat it while he went home to get his supper. Later on, the sergeant on guard again sent for the chief of police because the defendant had made a confession. On arriving at the jail, the chief of police said to the defendant: "Why, Lieutenant Ano? Is it true you have confessed that you killed Cesareo Tadea?" The defendant answered: "Yes, sir." Upon being asked what his confession consisted in, Mariano Ducusin related the following: "At about 5 o'clock in the afternoon on Sunday, I saw Cesar eo Tadea going to the pasture. So I took the wine I had bought on purpose and followed him. When I saw him on the north side of the hill grazing his beast, I called him and took him near an adaan tree and there I said to him: 'My brother, I have brought this wine and want you to taste it; and that you may have no misgivings, I shall drink it first,' And I did so, drinking it first. After taking a little I gave it to Cesareo, who drank it, leaving a little. After we had spoken for some time, I again offered him; the remaining wine and he drank it. When I saw

that Cesareo Tadea was drunk and could hardly articulate, I got up and held him by the neck and shook him, until he fell to the ground. When I saw that Cesareo Tadea was about to die I took a vine and bound it tightly around his neck. When I saw that he was already dead, and that thirty minutes had elapsed, I twisted the vine until it broke, tying the severed portion to one of the branches of the adaan tree so as to make it appear that the deceased had hanged himself, breaking the vine and falling to the ground." The defendant made this statement before some Constabulary soldiers and policemen. The chief of police had the statement reduced to writing in document Exhibit C, which defendant signed the next day at about 9 o'clock in the morning in the presence of the justice of the peace of Caba after the latter had read it and asked him whether its contents were his own statement, to which he answered in the affirmative, and whether he had been maltreated by any policeman or received any promise of leniency to which he answered in the negative.

As he had not prepared the defendant's first affidavit, Exhibit C, and as he wished to make sure that the confession was really voluntary, and to ascertain the motive of the crime, the justice of the peace, Ricardo Ordon, had the defendant called in and asked him whether he wished to make any statement before the court. On receiving an affirmative answer, said justice of the peace submitted him to an examination in the presence of the municipal president, Constabulary Lieutenant Bravo, Constabulary Sergeant Orpia, Pastor Dulay, and several other persons, and the defendant answered repeating in greater detail the statement he had made before the chief of police (Exhibit D).

During the preliminary investigation, when the information was read to him and he was asked whether he pleaded guilty or not guilty, he answered: "I admit that I caused the death, but I plead not guilty."

After the preliminary investigation, in the afternoon of September 21, 1928, Lieutenant Bravo of the Constabulary took the defendant to the provincial jail of San Fernando, La Union, in the Constabulary wagon, and on the way, the defendant said that he had three times tried to kill Cesar eo Tadea, but that the opportunity did not arrive until the day of the crime; that he had gone to Aringay to buy a bottle of cognac, and when he saw Cesareo Tadea go to the field between 5 and 6 in the afternoon, he followed him and invited him to drink the wine; that in order to stir up some courage, he first drank it himself, and then offered it to the deceased, who finished it; that his purpose in offering the wine to the deceased was to weaken the latter, so he could easily overpower him; that he tied a vine about the deceased's neck to cause it to appear that the latter had committed suicide; that he had twice had intercourse with the deceased's wife before killing the deceased, but not afterwards.

The defendant, testifying as a witness in his own behalf, said that for the purpose of extorting a confession from him, the Constabulary soldiers tortured him for three days and three nights in the village of San Jose, kicking and punching him in the stomach and the chest; that three times Valdes, a soldier, tortured him by introducing into his urethra a twig of the herb called "amor seco;" and in desperation he told his inquisitors that he had killed Cesareo Tadea, and the soldiers took note of his statements, which later served as the basis for Exhibit C; that on coming to town he signed Exhibits C and D, which had been prepared beforehand, for fear of being tortured again by the Constabularymen, who had told him they would take him from Caba to San Fernando, La Union.

As to the motive which induced the deceased's wife, Teodora Vergara, to accuse the defendant, the latter says that she hated him because on one occasion he gave her some brotherly advice because he had heard that she had illicit relations with Felipe Tadea and Eugenio Domondon.

The defendant explained why he had given false information to the municipal secretary as to the death of Cesareo Tadea saying that the latter's relatives had requested it. He also said that it was very probable that the deceased had committed suicide, because during his lifetime he had been subject to fits of insanity, roaming alone through the fields.

For its evidence in rebuttal, the prosecution submitted some persons as witnesses who had been present when the Constabulary had investigated the defendant, and who testified that they did not see the soldiers committing any act of violence on the defendant, the latter being free to go home.

We have carefully examined the evidence adduced both by the prosecution and by the defence, and have arrived at the conclusion that the facts stated by the witnesses for the prosecution are correct, and corroborated by the defendant's own admissions. There can be no doubt that the defendant's admission that he killed Cesareo Tadeffa was made freely, for though he contends that his statements to the Constabulary soldiers during their investigation were extorted from him by torture, the soldiers and the other persons who were present deny it. The defendant does not pretend that when he signed Exhibit C, when he answered the questions contained in Exhibit D, and when he made the declaration to Lieutenant Bravo of the Constabulary when the latter took him from the municipality of Caba to the provincial jail of San Fernando, La Union, he had been tortured; but he does allege that when he was guarded by Constabularymen, the same fear which had made him admit his guilt before them when they tortured him in San Jose, impelled him to make the same statements before the chief of police, the justice of the peace of Caba, and Lieutenant Bravo of the Constabulary. The said defendant admits that he has no ill feeling towards said agents of authority and there was no reason for any. As barrio lieutenant and as an agent of authority, charged with the preservation of peace and order, he knew he could count on the protection of the justice of the peace, who had nothing to do with the inquiry into the crime. If he had really been tortured, he would have denounced the fact to said authority. Besides, the justice of the peace of Caba, not having drawn up the sworn statement Exhibit C, wherein the defendant made statements incriminating himself, and desiring to assure himself personally of their truth, addressed some questions to the defendant which were reduced to writing in Exhibit D, and which defendant signed under oath, after being, informed of the contents.

Furthermore, if the defendant had really been tortured as he claims, such tortures would have left some marks upon his person, which he could have shown to the justice of the peace during the preliminary investigation, and to the chief municipal and provincial health officer while confined in jail at Caba, and in San Fernando, La Union; especially, on his virile member, for considering the extreme sensitiveness of the urethra, the introduction of a twig of the herb "amor seco" should have produced an irritation that would have caused him great pain in passing urine.

The statements of the defendant contained in Exhibits C and D, and those made by Lieutenant Bravo of the Constabulary as to the place and manner of Cesareo Tadeffa's death, being corroborated by the place where the body was found, by the manner in which his death appears to have been caused, and by the means employed to bring it about,— leave no room for doubt that the herein defendant and appellant committed the murder in question.

In the commission of the crime, the circumstance of evident premeditation, qualifying the crime as murder, must be considered, because, according to his own confession, the defendant three times attempted to take the life of Cesareo Tadeffa in order to be able to marry his widow, with whom he was in love, purchasing cognac in order to facilitate the commission of the crime. The aggravating circumstance defined in article 10, No. 9, of the Penal Code, that is, the employment of means to weaken the defense, consisting in this case, in having made the deceased intoxicated, must be taken into account. This act cannot be juridically considered to give rise to the aggravating circumstance of treachery, because, in order that this circumstance may legally exist, it is necessary that the means employed should tend directly and especially to insure the execution of a crime against persons, without risk to the perpetrator arising from the defense which the offended party might make. The defendant's confession does not furnish sufficient data as to the state of intoxication of the deceased at the moment of strangulation, and the fact that he could not articulate is not sufficient to determine whether, in his intoxicated

state at that time, it was impossible for him to put up any sort of resistance.

The aggravating circumstance of uninhabited place is likewise to be taken into account, inasmuch as the crime was committed in an isolated and unfrequented place overgrown with weeds.

There is no extenuating circumstance that can be taken into account in favor of the criminal.

Wherefore, we are of opinion and so hold, that the defendant and appellant is guilty of the crime of murder defined and penalized in article 403 of the Penal Code, the penalty fixed by law ranging from cadena temporal in its maximum degree to death. Considering the aggravating circumstances that were present in the commission of the crime, with no extenuating circumstance to offset them, the death penalty should legally be imposed upon the defendant; but for lack of unanimity in the vote as to the propriety of imposing the death penalty, in accordance with section 1, paragraph 2, of Act No. 3104 said penalty cannot be imposed, and the one next lower in degree, that is, life imprisonment, must be imposed in conformity with the provisions of section 2 of Act No. 2726. By virtue whereof, and with the sole modification that the defendant is sentenced to life imprisonment instead of death, the sentence appealed from is affirmed in all other respects, with costs against the appellant. So ordered.

Avanceña, C. J., Villamor, and Romualdez, JJ., concur.

Johnson, J., dissents.

CONCURRING

STREET, J.:

I concur, and as it is my vote that stands between this accused and the electrical chair, I wish to point out that the conviction could not have been obtained without the aid of the voluntary confession of the accused. As a matter of public policy, this entitles him, in my opinion, to some consideration. Where several persons are concerned in the perpetration of a crime, the law permits the Government to drop the prosecution against one and use him as a witness to convict the others, and where a voluntary confession is used to convict the person making the confession, the situation is in some degree analogous. It is true that subsection 8 of article 9 of the Penal Code, which permits the court to give the accused the benefit of attenuating circumstances analogous to those enumerated in said article, is not literally applicable; but under the law, as it now stands, relative to the infliction of the death penalty, dissenting members in this court have not held themselves bound to the strictest letter of the law. According to the opinion of the court in this case, the death penalty only attaches to the offense by reason of the aggravating circumstance specified in No. 9 of article 10 of the Penal Code, namely, that means were employed to weaken the defense. Under the circumstances I permit myself to entertain a doubt as to whether the debilitation resulting from the taking of a drink of wine by the deceased in this case was such as materially to weaken his resisting powers.

DISSENTING

JOHNS, J.:

The detailed evidence in the majority opinion is conclusive that the defendant is guilty of one of the most cruel, cowardly murders ever committed in the Philippine Islands; that it was long premeditated; and that the motive was to rob the deceased of his wife and home. The defendant made not one but three voluntary confessions, all of which are fully corroborated in every detail and particular, and by the physical facts. It also appears that after the

crime was discovered, the defendant used his official position to obtain a false certificate as to the cause of the death of the deceased, and advised a hasty burial, so as to conceal the commission of the crime. For such reasons, the lower court rightly and very justly imposed the death penalty, and its judgment should have been affirmed by this court, and in so far as it is modified, I dissent.

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