

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHU NING CO, DEFENDANT AND APPELLANT.

G.R. No. 3418. March 08, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of murder in the Court of First Instance of the city of Manila. He was tried by said court, found guilty, and sentenced to be imprisoned in the public carcel of Bilibid for the period of his natural life (*cadena perpetua*), and to pay the costs. From this sentence the defendant appealed to this court.

An examination of the record brought to this court shows the following facts:

That the defendant was, on the 6th day of July, 1905, occupying a room adjoining another which was occupied by one Ang Man Min; that on the night of the said 6th day of July, 1905, at about 2 o'clock, he entered the room of the said Ang Man Min, armed with a large knife, and, while the deceased was sleeping, stabbed him with said knife, from the effects of which wounds the deceased died within a few hours. The defendant admitted that he inflicted the wounds upon the deceased on the night in question; that he inflicted such wounds because he had been greatly worried because of the relations which he believed were existing between the deceased and his, the defendant's, alleged wife. The defendant admitted that before he entered the room of the deceased, he cut off his queue and shaved his head. The defendant admitted that, on the afternoon of the day in question, he had been greatly angered by the action of the deceased by reason of having seen him with his (the defendant's) alleged wife in a vehicle on the streets of the city of Manila. The defendant stated that, on a former occasion, some days or weeks before the day in question, he had seen his alleged wife in the room of the deceased and on that occasion, and by virtue of what he believed to be the illicit relations between his alleged wife and the deceased, he had made up his mind to kill him. The defendant presented the further excuse for wounding the deceased that he had been hired by another person to inflict such wounds. This statement of the defendant, however, is not supported by sufficient proof to be entitled to any credit. The evidence does not show that the woman in question was the wife of the defendant.

The lower court, after hearing the evidence, decided that the defendant had willfully, wrongfully, maliciously, with malice aforethought and with premeditation, murdered the deceased, Ang Man Min, and that the crime was accompanied by the aggravating circumstances of nocturnity and treachery.

With reference to the circumstances accompanying the crime, we find that there exists the qualifying circumstance of treachery, from the fact that the defendant attacked the deceased while the latter was sleeping. (*United States vs. Rubeta*, 1 Phil. Rep., 331; *United States vs. Tomulac*, 3 Phil. Rep., 728; *United States vs. Macalinao*,^[1] 3 Off. Gaz., 453.) The existence of this circumstance is sufficient to qualify the crime as that of murder.

With reference to the aggravating circumstance of known premeditation, as mentioned in article 403 of the Penal Code, we do not believe that the facts justify the conclusion that it existed. We do not believe that the evidence is

sufficient to show that reflective, persistent deliberation in the commission of the crime, that constitutes premeditation under the Penal Code. There does exist, however, the aggravating circumstance of entering the house of another for the purpose of committing a crime. While the rooms occupied by the defendant and the deceased were apartments of the same house, yet, nevertheless, they were separate and distinct apartments and may be considered, so far as the rights of the parties were concerned, as separate houses.

With reference to the aggravating circumstance of nocturnity, we do not believe that the defendant selected the nighttime for the purpose of committing the crime. The defendant stated, and there is no proof to the contrary, that he went to bed early on the evening of the day in question and tried to sleep; but that he was so annoyed over the relations which he believed the deceased and his alleged wife bore to each other that he could not sleep, and that, late in the night, being unable to sleep, he arose and entered the room of the deceased and wounded him. This statement does not justify the conclusion that the defendant awaited nighttime for the purpose of perpetrating the crime. There being, therefore, the qualifying circumstance of alevosia, and the above-mentioned aggravating circumstance of entering the house of another for the purpose of committing a crime, this being compensated, however, by the extenuating circumstance of paragraph 7 of article 9 of the Penal Code, the defendant must be punished with the medium degree provided for murder, in accordance with paragraph 4 of article 81 of the Penal Code. The lower court imposed the penalty of life imprisonment. This penalty is within the maximum degree. The sentence of the lower court, being supported by the evidence and being within the penalty prescribed by law, the same is hereby affirmed, with costs.

After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter let the record be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

[1] 4 Phil. Rep., 407.

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