

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO SELLANO, DEFENDANT AND APPELLANT.

G.R. No. 3780. March 23, 1908

Ponente: TORRES, J.

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TORRES, J.:

Pedro Sellano the accused, and Hilaria Almero lived for some time as husband and wife, but owing to certain troubles between them they separated, and Sellano left the house in which Hilaria was living with two nieces, one named Faustina Almero, of about 14 years of age, and the other Faustina Urgel, a mere child. At this time Graciano Tinasa, husband of Andrea Sagun, whose house was but a short distance from that of Hilaria Almero, also contracted illicit relations with the latter, and although Pedro Sellano subsequently renewed his relations with his former mistress, Hilaria Almero, and returned to live in her house, still Graciano Tinasa continued to call at the house of Hilaria, sometimes in the daytime and at others at night. Jose Aslarona, a resident of Sanchez Mira, lived in said house in April, 1906.

On the morning of the 21st of said month, Pedro Sellano and Jose Aslarona left the house and went in the direction of the town of Aparri, and on the night of the same day Graciano Tinasa called at the house of Hilaria Almero where he remained until a late hour; Pedro Sellano returning and finding Graciano Tinasa there, a struggle ensued between them and as a consequence the body of Tinasa was found by the authorities on the following day in the house stretched on a mat with pillows and showing four wounds, which, according to the examination made by a practicante had been inflicted with a pointed cutting weapon; one was in the left breast, one in the left costal region, one in the left wrist, and the other in the calf of the left leg, said wounds causing his death. Pedro Sellano was not then found in the house.

After the preliminary proceedings instituted by the justice of the peace of Abulug on the day following the occurrence had been dismissed, the provincial fiscal filed a complaint on the 25th of June, 1906, charging Pedro Sellano with murder, for having committed the crime with known premeditation and treachery; the corresponding proceedings were instituted, and on the 24th of September of the same year the judge rendered a decision declaring that the offense committed only constituted the crime of homicide, and sentenced Pedro Sellano to the penalty of seventeen years and four months of reclusion temporal, to indemnify Andrea Sagun, the widow of Graciano Tinasa, in the sum of P1,000, and to pay the costs of the proceedings. From said judgment the accused has appealed.

The violent death of Graciano Tinasa which occurred between the night of April 21, 1906, and the early morning of the 22d, is an unquestionable fact that has been fully proven, inasmuch as his body with four more or less serious wounds, was found lying on the floor of the house of Hilaria Almero who had intimate relations with the deceased, and lived with Pedro Sellano as his wife. The case does not offer any satisfactory proof as to how and in what manner the deceased Tinasa was killed, for which reason the crime must be only qualified as homicide, on account of the absence of sufficient proof that there were present in the commission of the crime any of the qualifying circumstances enumerated in article 403 of the Penal Code which determine the crime of murder and

the infliction of a heavier penalty.

From the very beginning of the investigation the criminal charge was directed against Pedro Sellano, and, notwithstanding the fact that the first preliminary proceedings instituted by the justice of the peace of Abulug were wrongfully dismissed, a dismissal which was probably due to the action and efforts of the counsel for the accused, he was thereby set at liberty, yet, a complaint having been presented by the provincial fiscal of Cagayan one month and a few days thereafter, at the request of the wife and the sister of the deceased, the present proceedings were instituted wherein not only the existence and reality of the crime, which is at least that of homicide, have been fully proven, but also the culpability of the accused, Pedro Sellano, as the sole principal by direct participation, plainly convicted of the violent death of Graciano Tinasa, has been fully established.

The crime was committed at night and in the interior of a house, and the only two eyewitnesses of the occurrence in the beginning pointed out Pedro Sellano as the only aggressor and the one who killed the deceased, but afterwards retracted their first declarations, given immediately after the occurrence, and accused another person, Jose Aslarona, as principal in said crime. The latter was standing outside of the house and saw the occurrence, and learned of the struggle, the origin of the crime, from the housekeeper, Hilaria Almero, who at the commencement of the affair fled from the house. The case, however, contains conclusive circumstantial evidence of the guilt of the accused, based on actual and fully proven facts from which several grave indications are derived which determine the culpability of the accused, and are: The absence and disappearance of the accused from the house in which he was living with Hilaria Almero shortly after the death of Graciano Tinasa, inasmuch as the two agents of the authorities, who were called by the former, could not find him in the house where the crime was committed and wherein they saw the body of the deceased, no explanation having ever been given as to where he was at the time; the fact that the accused called at the house of Celedonia Jacinto, and also at that where lived Angel Cuntapay and Eduardo Rabang, in Aparri, at daybreak on the 22d of April, on the early morning of which the affray had taken place, and in an excited and nervous manner prayed the former to say, if anyone came there asking for him, that he, the accused, had been in her house during the whole of the previous night, adding that he had caused a misfortune, while the truth is that he was there that night with another man and told her that they had to again cross the river in order to go to Cabulnan on that same night; that the accused revealed to his friends, the two last named, that he had had a quarrel on the previous night in his own house, and did not know whether owing to his well-aimed blows he had killed his antagonist, and prayed them to tell everybody that he had spent the night in the house of the said witnesses; and the fact that the accused and Jose Aslarona had been seen at about midnight on the 21st going in the direction of the barrio of Cabulnan, to the house of Hilaria Almero, by Flaviano Acosta and another.

It is affirmed by Jose Aslarona, Lazaro Castañeda, and Anaeleto Lira, the two last named being lieutenants of the barrio, that they had heard from Hilaria Almero that the accused had quarreled with a man whose name she did not state, uselessly trying to conceal the fact that the deceased was a lover of hers, and that for said reason she, in company with Aslarona, reported the affair to the aforesaid lieutenants.

The fact that the accused confessed extrajudicially to Alejandro Alvarado, the municipal president of Aparri, that he was the author of the death of Graciano Tinasa when the latter reprimanded him for deceiving him (the president), by taking advantage of his good faith and credulity since in the beginning he thought him innocent and that he had spent the night in Aparri, all of which was untrue. At the time when the accused made said confession there were present his brother, Juan Sellano, and the brother of a brother-in-law of the same who testified solely as to the reprimand given by the witness Alvarado to the accused who did not confess the crime, nor did he make any reply.

In the declarations of Hilaria and Faustina Almero a few hours after the affair, Pedro Sellano is accused as the

only author of the crime, which accusation is confirmed by the testimony of Jose Aslarona and the lieutenants Castafieda and Lira, and also by the chief of police of Aparri, Gregorio Litaua, who went to Cabulnan, the place of the crime, to make an investigation by order of the municipal president; said witness learned from Hilaria Al-mero that Pedro Sellano was the author of the death of Graciano Tinasa, with the particularity that, this witness passing afterwards on a certain occasion near the prison where the accused Sellano was confined, the latter called him and begged him to do him the favor of affirming that he had seen him in Aparri on the evening of the 21st of April, and as Litaua declined to accede to his request, the accused then prayed him not to reveal what Hilaria Almero had told him in Cabulnan, which statement was heard by another witness, Marcos Aborde. Moreover, it is presumed that the said declarations of Almero were spontaneous and in accord with those given by the other witnesses of the prosecution, among whom is the justice of the peace of Abulug who for said reason ordered the detention of Pedro Sellano as the undoubted author of the crime.

The retractions by the above-named Hilaria and Faustina Almero and the fact of their subsequently imputing the crime to Jose Aslarona appear as contradicted in the proceedings and have not been confirmed by any proof, or even by circumstantial evidence, and were undoubtedly due to the influence which the accused exercised over them, particularly after he obtained his release on the dismissal of the preliminary proceedings. The record does not contain the least indication of the guilt of Jose Aslarona, because he was not denounced Avhen these proceedings were instituted in spite of the fact that he went in company with Hilaria to report the affair to the lieutenants of the barrio; on the contrary, the whole of the data offered by the prosecution and other merits of the case clearly show the guilt of Pedro Sellano.

Notwithstanding the efforts of the defense and the testimony of its witnesses, the evidence of the prosecution stands and is sustained as has seldom been the case in a proceeding, without having been overcome or destroyed in any manner, as was uselessly attempted; by a careful examination of the numerous data offered by the prosecution, the mind is fully convinced, beyond all reasonable doubt, of the guilt of the accused.

In the commission of the crime no aggravating or mitigating circumstance is to be considered because the darkness and silence of night were not expressly sought for its execution, and the house in which the same was committed was not the dwelling of the deceased, for which reasons the proper penalty for the crime of homicide should be imposed in its medium degree, as has been done by the trial judge.

For the considerations above set forth, and accepting the conclusions of the judgment appealed from, it is our opinion that the same should be affirmed, as we hereby do affirm it, provided, however, that Pedro Sellano shall be further sentenced to suffer the accessory penalties of article 59 of the Penal Code, and to pay the costs of this instance. So ordered.

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

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