

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JANUARIO FRANCISCO, DEFENDANT AND APPELLANT.

G.R. No. 3875. February 19, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of assassination alleged to have been committed as follows:

"That on the 20th of October, 1900, in the barrio of Calios, pueblo of Santa Cruz, Province of La Laguna, toward noon—that is, between the hours of 11 a. m. and 2 p. m.—the accused, Januario Francisco, did, willfully, unlawfully, and feloniously, kill Cristobal Alimbubuyog, by first striking him a violent blow with a heavy tool on the posterior right side of the head, and then fastening a rope around his neck hung him to the branches of a tree called madre-cacao in order to make it appear a suicide, said acts having been committed with treachery, premeditation and cruelty, and contrary to law."

After a consideration of the evidence adduced during the trial of the cause in the lower court, the said court found the defendant guilty of the crime charged and sentenced him with the penalty of death, to indemnify the family of the deceased in the sum of 500, and to pay the costs. From this sentence the defendant appealed to this court.

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

First. That Cristobal Alimbubuyog was a laborer in the employ of the defendant on and before the 20th of October, 1906.

Second. That the deceased was, on said day, laboring in the fields of the defendant and that, at or about 11 o'clock, the defendant was seen at the place where the deceased was working and that said defendant was severely scolding the deceased on account of the manner in which the latter was performing his labor.

Third. That soon after the time when the defendant was chastising the deceased, the accused was seen making a rope out of the stalks of sugar cane, with which, after fastening the same around the neck of the deceased, he hung the body of the deceased to the branches of a tree near the place where the deceased had been laboring.

Fourth. That when the deceased was found so hung to the tree, his feet were touching the ground, and there was found upon his head a severe bruise or wound, which the doctor who made the postmortem examination said was sufficient to cause death.

Fifth. That when the deceased was found it was discovered that the organs of the neck had not been injured in any way from the effects, of the hanging, which was conclusive proof that the deceased had not died from the effects of the said hanging.

The only defense which the defendant offered was that of an alibi. We are persuaded beyond peradventure of doubt that the defendant did, by means of a club or other instrument, strike the deceased upon the head, thereby causing death, and thereafter, in order to hide his crime, suspended the deceased from the tree in the manner

above described, thus hoping to conceal his crime, making it to appear that the deceased had hung himself.

The evidence does not disclose, however, any of the circumstances mentioned in article 403 of the Penal Code, which justifies us in qualifying the crime as that of assassination.

During the trial of the cause in the lower court the fiscal presented evidence showing that the defendant, on or about the 17th day of May, 1900, had been sentenced, for the crime of assassination, with the penalty of death, by a military commission; that this sentence of death had been commuted by the reviewing authorities to imprisonment for twenty years at hard labor; that by virtue of the amnesty proclamation of July 4, 1902, the defendant had been pardoned and released from imprisonment, after having taken the oath of allegiance to the United States Government. The lower court considered the fact that the defendant had been sentenced before for a similar offense with which he was charged in the present case, as an aggravating circumstance. We are not of the opinion that this fact in the present case can be considered as an aggravating circumstance. The complete pardon which had been extended to the defendant by the President of the United States in our opinion had the effect of extinguishing all the effects in law of that crime, so that the same can not be considered against him for the purpose of increasing the penalty in the present case. Therefore, in our opinion, there did not occur in the commission of the crime either aggravating or extenuating circumstances and the defendant must be punished in the medium degree of reclusion temporal, in accordance with the provisions of article 81 of the Penal Code.

It is the judgment of this court, therefore, that the sentence of the lower court be modified and that the defendant be imprisoned for a period of seventeen years and four months of reclusion temporal, with the accessory penalties of the law, to indemnify the family of the deceased in the sum of 500, and to pay the costs. So ordered.

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

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