

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL LORENZANA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4082. November 18, 1908

Ponente: CARSON, J.

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CARSON, J.:

Between 12 and 1 o'clock on the night of the 26th of November, 1906, a number of serenaders were assembled at the house of one Simon Mina, in the town of Tagudin, Province of Ilocos Sur, some of the party standing in the street in front of the house and others in and about the door. Honesto Mina, deceased, one of the party standing in the street, suddenly received one or more severe blows upon the head which crushed his skull, and fell senseless to the ground. The owner of the house, Simon Mina, carried the wounded man inside where he died about day-break the next morning.

The appellants, Manuel Lorenzana and Mariano Lorenzana, were charged with having inflicted the fatal wounds by striking the deceased upon the head with clubs, and the trial court found them guilty of the crime of homicide, and sentenced both and each of them to twelve years and one day of reclusion temporal, together with the accessory penalties prescribed by law.

In support of its charges, the prosecution submitted the testimony of Simon Mina, Mariano Sarmiento, Juan Manzano, Eulalio Valdez, and a medical certificate, purporting to set out the result of an autopsy practiced upon the deceased.

Simon Mina testified that, as he was standing inside the door of his house, he was not present when the deceased received the fatal wounds, but that, hearing the blow, he ran immediately to the place where the wounded man was lying, and found when he arrived there, that the brothers, Manuel and Mariano Lorenzana, were standing close by in a hostile attitude, which led him to believe that they had already struck the wounded man, and were about to do so again; that Mariano Lorenzana, one of the accused, said to the witness, "Let us give him something to bring him to his senses;" that the witness told the accused to leave the wounded man alone, and that he carried him upstairs into his house; that when the wounded man came to his senses later on, he told the witness in answer to his question as to who had wounded him, that it was los dos hermanos (the two brothers), which the witness understood to refer to the accused.

Mariano Sarmiento testified that he was present, and saw the accused Mariano and Manuel Lorenzana beat or strike the deceased with clubs, Mina not being able to defend himself, because at the time he was sitting and fanning his face with his hat.

Juan Manzano testified that at the moment when the wounded man fell, he, the witness, was talking with the wife of the owner of the house, and hearing a disturbance, turned his head, and saw Honesto Mina stretched on the ground, with Simon Mina at his side; and that he saw at the same time the two accused, who were standing near by and endeavoring to strike the wounded man, but were prevented from so doing by Simon Mina; that Mariano had in his hand a piece of wood as thick as the witness's wrist while Manuel carried a club. This witness also

stated that he was present with the wounded man a short time after he had been taken up stairs, and heard him say in an indistinct voice that the persons who had struck him were the accused in this case.

Eulalio Valdez testified in the court of the justice of the peace that he saw both of the accused strike the deceased with clubs, but on cross-examination he stated that at the moment when the attack was made upon the deceased, he, the witness, was sitting talking to Manuel Lorenzana, and noticed that Mariano Lorenzana, who had a club in his hand, was talking with Honesto Mina and that the two had assumed a hostile attitude toward each other; that at that moment Manuel Lorenzana rushed forward toward his brother; that simultaneously he saw the deceased fall to the ground; and that the movements of the brothers were so sudden and unexpected that he would not say positively that Manuel Lorenzana actually struck the deceased. He further testified that Manuel Lorenzana and Mariano Lorenzana had clubs in their hands, but that he did not know what was the occasion of the quarrel or the immediate cause of the attack. With the consent of the accused, a certified copy of the testimony of this witness in the court of the justice of the peace, was introduced in evidence at the trial in the Court of First Instance, the witness being sick and unable to attend the trial.

Counsel for the defense introduced testimony to show that at the time when the deceased received the fatal wounds in his head, stones were being thrown into the crowd assembled on the street, by some person or persons unknown, and counsel for the appellants insists that there is no testimony before this court as to the actual blow struck the wounded man, of sufficient weight to maintain a finding beyond a reasonable doubt that the wounds were inflicted by the accused, and not by one of the stones thrown by some person unknown. In support of this contention, counsel insists that the testimony of Mariano Sarmiento and Juan Manzano is wholly unreliable and untrustworthy, it appearing that Mariano Sarmiento was an avowed enemy of the accused, that Juan Manzano had at one time been convicted of the crime of perjury, and that the declaration of Eulalio Valdez was improperly admitted; and that, aside from the testimony of these three witnesses, there is nothing in the record which tends conclusively to establish the charge of the prosecution that the accused inflicted the fatal wounds upon the deceased.

We agree with counsel for the appellants that the undoubted prejudice and enmity of Mariano Sarmiento and the conviction of Juan Manzano of the crime of perjury, render their uncorroborated testimony of but little value, but we think that the statements of Simon Mina and of Eulalio Valdez, together with the ante-mortem statement of the deceased, to the introduction of which no objection was made, are sufficient in themselves to maintain a finding of the guilt of Mariano Lorenzana beyond a reasonable doubt, and that the testimony of Mariano Sarmiento and Juan Manzano, in so far as it tends to corroborate these statements, was admissible for what it is worth to corroborate the evidence of the other witnesses.

The accused and their counsel, while they at first objected to the introduction of the certified copy of the testimony of Eulalio Valdez in the court of the justice of the peace, formally withdrew this objection, and consented to its introduction. Counsel contends that they did this merely because they desired to avoid delay incident to a continuation of the trial in order to secure the presence of the witness himself in the Court of First Instance. We know of no reason why a continuance, for the purpose of securing the presence of a witness who is absent on account of sickness, should not be granted, unless it appeared that the sickness was an incurable one, or that, under all the circumstances and in the discretion of the trial court, the necessity for the prompt administration of justice forbade the continuance of the trial. The contention of counsel that the agreement to admit this testimony was forced upon the accused by the action of the trial court is not tenable. It is rather to be supposed that the accused and their counsel feared that the testimony of Valdez, if he appeared in the Court of First Instance, would be more damaging than the testimony he had already rendered in the court of the justice of the peace, and that for that reason, they elected to admit this testimony rather than have a continuance for the purpose

of securing his presence in person. At the trial in the court of the justice of the peace, the witness was subjected to cross-examination by the accused, and with their consent, this testimony was properly admitted.

We do not think that the suggestion of the defense that the accused might have come to his death as a result of a wound inflicted by a falling stone has any basis of probability. While it is true that on various occasions prior to the night in question, stones appear to have been thrown, as alleged by the accused, the evidence that they were thrown upon the night in question is not convincing or satisfactory. Certainly the possibility suggested is not sufficient to raise a doubt as to the truth of the facts related by Eulalio Valdez and Simon Mina, and the conduct of all the many persons assembled at the time when the incident occurred was wholly inconsistent with the possibility that the deceased came to his death as a result of a blow from a falling stone.

We think, however, that there may be some doubt as to whether Manuel Lorenzana was a party to the killing of the deceased by Mariano Lorenzana. The evidence of Eulalio Valdez shows that a dispute had arisen between Mariano Lorenzana and the deceased, and that the other accused, his brother Manuel Lorenzana, was not, at that time at least, a party thereto, and did not run up to join his brother until the moment when the fatal blow was struck. It does not appear, therefore, from the testimony of this witness that Manuel Lorenzana did in fact join his brother in the attack, and it may well be that when he interrupted his conversation with Valdez, and ran to his brother's side, he was merely offering his support to his brother, without any knowledge whatever that his brother had any intention to fatally injure his opponent. Indeed it would appear from the facts related by Valdez that there was no time for Manuel Lorenzana to unite himself with his brother in the fatal attack. The testimony of Simon Mina as to the hostile attitude of the brothers is not inconsistent with this theory of the conduct of Manuel Lorenzana upon that occasion, and it will be noticed that it was the brother Mariano Lorenzana who addressed the hostile remark to that witness. Nor is the ante-mortem statement of the deceased necessarily in conflict with the theory that Manuel Lorenzana was in no way a party to the fatal assault, and merely ran to the help of his brother, without any knowledge of the nature of the quarrel or the fact that his brother was about to strike a fatal blow; the wounded man might and naturally would charge both the brothers with having made the attack, knowing as he did that the fatal blow was inflicted by Mariano Lorenzana, and that at that moment Manuel Lorenzana was running up apparently to the assistance of his brother, the injured man not being in position to understand or appreciate the exact motive which drew Manuel Lorenzana to his brother's side. If the testimony of Mariano Sarmiento and Juan Manzano could be accepted without reserve, it would appear that the brothers united in the attack, but we are not prepared to sustain a judgment of conviction upon the testimony of these witnesses, except in so far as it is corroborated by the testimony of witnesses whose character and veracity is unimpeached.

We agree with counsel for the appellants that the trial court erroneously admitted Exhibit A of the prosecution, which purports to be a certificate of the results of an autopsy practiced upon the deceased by the provincial medical officer. The trial court appears to have admitted this document upon the theory that it was one of the official documents which, in accordance with the provisions of subsection 6 of section 313 of the Code of Civil Procedure, may be proved "by the original, or by copy certified by the legal keeper thereof." But, without considering whether the certificate in question is an official document of the class mentioned in that section, it is clear that subsection 6 of section 313 is not intended to relieve the person offering such a document of the necessity of proving the contents thereof in a case where the truth of the facts set out in the document are drawn in question, but merely to relieve the party offering such document of the necessity of proving that the document itself is the official document which it purports to be. The defendant was entitled to call to the witness stand the medical officer who executed the certificate, and cross-examine him as to the truth and accuracy of the statements made therein, for without such examination the accused would be deprived of his right to confront and examine the witnesses against him. We think, nevertheless, that the admission of this document was error without prejudice because the only purpose for which it was introduced was to prove the fact alleged by the prosecution

that the deceased came to his death as a result of the wounds inflicted upon him on the night in question. This fact was established beyond a reasonable doubt by the testimony of record which was properly admitted. It having been proven that the accused Mariano Lorenzana struck the deceased over the head with a club; that the wounded man fell senseless to the ground; and that he died within twelve hours without having recovered consciousness for more than a few minutes during that interval, there can be no question that the blows inflicted upon him by Mariano Lorenzana were the immediate cause of his death, (Bishop on Criminal Procedure, Vol. II, art 638; U. S. vs. Bertucio, 1 Phil. Rep., 47; U. S. vs. Begin, 2 Phil. Rep., 113; U. S. vs. Embate, 3 Phil. Rep., 640; U. S. vs. Navarro, 7 Phil. Rep., 713.)

The Solicitor-General contends that both the accused joined in the attack and asks for the imposition of the penalty in its maximum degree, on the ground that the commission of the offense was marked by the aggravating circumstance "that advantage was taken of superior strength and means to weaken the defense." We do not think that the evidence discloses beyond a reasonable doubt that such advantage was in fact taken by the assailant, nor do we find the existence of any other aggravating or extenuating circumstance, except the fact that the assailant does not appear to have been more than eighteen years of age at the time when the offense was committed. The penalty to be imposed is the medium degree of the penalty of prision mayor, that being the penalty immediately inferior to that of reclusion temporal, the penalty prescribed by law for the crime committed, had the convict been more than eighteen years of age. (Art, 85, Penal Code.)

We, therefore, reverse the judgment and sentence of the trial court, and find the accused Mariano Lorenzana guilty of the crime of homicide, and sentence him to eight years and one day of prision mayor, together with the accessory penalties prescribed by law, to the payment of a civil indemnity of P1,000 to the heirs of the deceased, and to the payment of one-half of the costs in both instances; and we acquit the accused Manuel Lorenzana of the crime with which he is charged, and direct that he be set at liberty forthwith, with his share of the costs in both instances de oficio. So ordered.

Arellano, C. J., Mapa and Willard, JJ., concur.

TORRES, J., dissenting:

I am of opinion that Manuel Lorenzana should be sentenced to the same penalty as that imposed upon his brother Mariano, for the reasons stated by the Attorney General, concerning the crime and responsibility of the accused.

TRACEY, J., dissenting:

The trial was conducted with irregularity. Much of the testimony of the prosecution had to be rejected, on account of the character of the witnesses, and the conviction rests on testimony which would have been inadmissible if properly objected to, and which in many of its incidents is necessarily discredited in acquitting one of the accused. Taking these circumstances into consideration, I think there remains a reasonable doubt as to the guilt of the accused, who should therefore be acquitted.

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