

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUDDAY (BAGOBO), DEFENDANT AND APPELLANT.

G.R. No. 41486. March 07, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant was tried in the Court of First Instance of Davao on a plea of not guilty to an information for the crime of murder, wherein it was alleged:

"Que en o hacia el 15 de noviembre de 1933, en el Barrio de Tibuloy, Distrito Municipal de Guianga, Provincia de Davao, Islas Filipinas, y dentro de la jurisdiction de este Juzgado, el referido acusado, voluntaria, ilegal y criminalmente, con alevosia y premeditacion conocida, con abuso de superioridad, y con un bolo que entonces consigo llevaba, agredio varias veces a Kyoyasu Nagamine, un nino de seis anos de edad, causandole varias heridas en diferentes partes del cuerpo; y que a consecuencia de dichas heridas, el citado Kyoyasu Nagamine murio en el acto."

The lower court found the defendant guilty of murder, the qualifying circumstance being that the defendant in the commission of the crime took advantage of his superior strength, and appreciating in favor of the defendant as a mitigating circumstance his lack of instruction, the court sentenced him to suffer from ten years and one day of prision mayor to seventeen years, four months, and one day of reclusion temporal, to indemnify the heirs of the deceased Kyoyasu Nagamine in the sum of P500, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Defendant appealed from said judgment to this court, but his attorney de oficio is of the opinion that the decision of the lower court is fully sustained by the facts proved.

It appears from the evidence that about five o'clock in the afternoon of November 15, 1933 the deceased Kyoyasu Nagamine, a Japanese boy six years old, who had been playing near a hemp stripping machine in Tibuloy, Guianga, operated by Senko Takara, started home, followed by the defendant, who was carrying a bob and wearing a white undershirt and short khaki trousers. The defendant overtook the boy, and after putting his arm around the shoulder of the boy and walking with him for a short distance drew him into a hemp field. They then disappeared from the sight of Takara, who had been watching them. About forty minutes later the defendant returned to the hemp stripping machine, wearing a striped shirt. He helped Takara in his work. Kameji Nagamine, the father of the deceased boy, came to the place where Takara and the defendant were working and asked Takara where Kyoyasu was. Takara told him that Kyoyasu had gone home with the defendant. A little later Kameji Nagamine returned and said that he could not find his son at home. He then asked the defendant where Kyoyasu was, but the defendant replied that he did not know where Nagamine's son was. Takara stopped work and requested some Japanese to help him look for the child, but they were unable to find the little boy that evening. The next morning Kameji Nagamine and two young Bagobos named Serra and Ende found the dead body of Kyoyasu in the hemp plantation of Tanaguchi in Tibuloy 100 meters from the road and 150 meters from the hemp stripping machine. The place where the body was found was near the trail leading from the public road to

Baracatan. It was concealed by the hemp plants. The deceased had four mortal wounds on the head and neck caused by a cutting instrument.

The authorities were immediately notified, and Lieut. Torrillo of the Constabulary searched defendant's house and found under a petate a bolo which showed fresh stains of blood, and an undershirt With bloodstains hidden under the roof of the house. He also found a pair of rubber-soled covered with mud.

Two Bagobos named Owe and Bansilan testified that between five and six o'clock in the afternoon of November 15th, when they and another Bagobo named Balawag were returning home from work, they saw the defendant running towards the hemp plantation of Tanaguchi; that he indicated to them that they were not to tell anybody that they had seen him; that at that time the defendant had a bolo hanging from his belt and was wearing short khaki trousers and a white undershirt. Owe testified that when they met the defendant, he told them not to tell anybody that they had met him in that place. Bansilan testified that when the defendant saw Balawag, he raised his hand and told them not to say anything; that at that time the defendant was carrying a bolo in his belt and wearing short khaki trousers and a dirty white undershirt. Balawag was not questioned as to whether or not he met the defendant that afternoon.

Shiney Kakasu also testified that when he was crossing the hemp field of Tanaguchi that afternoon he met the defendant between five and half past five and spoke to him; that the defendant ran in the direction of the place called Baracatan; that the defendant was pale.

Although the defendant admitted to Lieut. Torrillo that all the articles found in his house belonged to him, he denied at the trial that the undershirt and the shoes were his. He also denied meeting the three Bagobos and Shiney Kakasu; that he had been at the hemp stripping machine with Takara, or that he had seen the deceased child during the afternoon in question. The defendant attempted to prove that on the morning of November 15th he and a Bagobo named Licawan went to the house of another Bagobo named Maeng to collect a debt because he had received a letter from his attorney requesting payment of certain fees; that they reached the house of Maeng about five o'clock in the afternoon and did not leave until the next morning; that Lieut. Torrillo tried to force him to be a witness for the prosecution; that he was carrying the bolo in his belt when it was taken from him by the Constabulary soldiers; that the blood-stained undershirt was spread over the dead child, and that he never saw it before that time; that he never saw the rubber-soled shoes prior to the trial. We think the trial judge was perfectly right in giving no credit to the story of the defendant in the face of the clear and convincing testimony of the witnesses for the prosecution.

It appears that the defendant resented the fact that the father of the deceased boy refused to pay for some rice planted by the defendant, which was damaged when Kameji Nagamine caused a certain tree to be cut down. This incident occurred three or four months prior to the commission of the crime in question.

The evidence further shows that the defendant and the father of the deceased child were neighbors; that the defendant has a son of about the same age as the deceased boy that these two boys used to play together, and some times come to blows; that three days prior to the death of Kyoyasu Nagamine the two boys had a fight, and Kyoyasu struck defendant's son on the nose, causing it to bleed; that the defendant complained to the father of the deceased boy and requested him not allow Kyoyasu to go to defendant's house.

Defendant asserted that there was no ill feeling between him and the father of the deceased child: That the two boys never played together, and that as to the growing rice, it had been destroyed by locusts before the tree was cut down. Balawag, the lieutenant of the barrio of Catigan, testified, however, that the defendant requested him to intervene in the matter of the palay, but he told the defendant he could not do so because Tibuloy, the place where the controversy arose, was outside of his jurisdiction.

The facts of the case as found by the trial judge show a possible motive for the commission of the crime, especially in view of the fact that the defendant is a non-Christian.

Furthermore, as Wharton says, the presence or absence of motive in cases depending wholly on circumstantial evidence is not a factor that determines either the guilt or the innocence of the accused.

In the case at bar there is no controversy as to the corpus delicti or the fact of the crime.. The only question is whether or not the circumstantial evidence is sufficient to prove beyond a reasonable doubt that it was the defendant that killed the child. To recapitulate, it is proved that the child started home, followed by the defendant, who overtook him and drew into a hemp plantation; that the child was never seen alive again; that the dead body of the child was found next morning in the hemp field one hundred meters from the place where the defendant and the murdered child left the road. Forty minutes after the defendant and the child had gone into the hemp field, the defendant returned to the hemp-stripping machine. During the time that he was away, he was seen by three Bagobos and a Japanese to run out of the hemp field of Tanaguchi in Tibuloy, near the trail to Baracatan. He told the Bagobos not to tell anybody that they had seen him in that place. When he came back, he was wearing a different shirt. When asked where the child was, the defendant said he did not know. An undershirt and a bolo, both stained with blood, were found hidden in defendant's house.

At the trial of the case, the defendant did not attempt to explain these incriminating circumstances, but asserted that he was far away from the scene of the crime during the afternoon in question and that he never saw the murdered boy nor his father nor Takara nor any of the other witnesses for the prosecution on the day the crime was committed.

"No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt." (12 Cyc, 488.)

"A conviction may rest upon circumstantial testimony alone, but the facts and circumstances must be such as are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused." (State vs. Hunter, 50 Kan., 302.)

The four fundamental rules given by Wharton for testing circumstantial evidence are the following: "First, it should be acted upon with caution; second, all the essential facts must be consistent with the hypothesis of guilt, as that is to be compared with all the facts proved; third, the facts must exclude every other theory but that of guilt; fourth, the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense." (Wharton's Crim. Evidence, vol. II, p. 1643.) Judged by the foregoing rules, the circumstantial evidence in this case fully convinces us of the guilt of the accused. It is the only logical inference to be drawn therefrom.

The decision appealed from is affirmed, with the sole modification that the indemnity to be paid by the defendant to the heirs of the deceased is increased to P1,000. The appellant will pay the costs.

Avanceña, C.J., Street, Abad Santos, and Evil, JJ., concur.

Judgment modified.

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