

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHESTER A. DAVIS, DEFENDANT AND APPELLANT.

G.R. No. 4340. August 15, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In the Court of First Instance of the city of Manila, the defendant was convicted of the crime of *asesinato* and sentenced to imprisonment in Bilibid for the term of his natural life.

When the accused, who was a fireman, returned unexpectedly to his house one evening, his wife was missing, and came back at a late hour in a livery calesa. His suspicions had been aroused by her absence, in connection with previous occurrences, and after an altercation he got into the conveyance with her, ordering the coachman to drive them to the place where she had come from. On the way, she confessed to her husband that she had had improper relations on that evening with Charles L. Pitman, the keeper of a livery stable in Paco. When the stable was reached, the coachman stopped, and the accused and his wife disembarked. He ordered her to call Pitman; instead of doing so directly, she spoke to an employee of the stable, who was dozing on a chair, but her voice attracted Pitman's attention. He was sitting writing at his desk in the office, near a window, in view of the street.

At this point the testimony of the witnesses for the prosecution and the defense differs. The stable employee says that the accused walked up to the door and shot Pitman as he sat in his chair, whereas both the accused and his wife swear that Pitman had arisen from his chair at the sound of her voice and was approaching the door, when the men confronted each other, and the accused instantly fired the fatal shot. Pitman was the larger and more powerful man of the two.

From all the circumstances in this case, from the trend of the narrative, and the coherency of the witnesses, we are inclined to accept the version of this incident testified to by the defense. This raises the serious and close question as to whether *alevosia* existed, so as to qualify the crime as *asesinato*, instead of simple homicide. Had there been proof that Pitman had attempted to defend himself, or been put upon his guard, or even been made aware of the approach of his assailant, it would be possible to hold that the crime lacked this qualification. Apparently, however, without warning, he was surprised by the appearance of the accused, who immediately fired, giving him no time for preparation, resistance, or escape.

We have heretofore held that a sudden and unexpected attack upon another is sufficient proof of treachery to constitute *alevosia*. (U. S. vs. Cabiling, 7 Phil. Rep., 469; U. S. vs. Babasa, 2 Phil. Rep., 102.)

It is unnecessary to recapitulate the evidence, which went at great length into the antecedents of the erring wife, the prosecution seeking to prove a previous knowledge on the husband's part of indiscretions with other men. Taking the credibility of these witnesses into consideration, as revealed by their own testimony, we fail to find any such knowledge or acquiescence by the defendant as would deprive him of his partial defense arising out of natural anger on the disclosure of the transaction with Pitman, which led him, while in the heat of his resentful passion, to shoot the offender.

The trial court found an absence of deliberate premeditation, and the presence of jealousy and excitement as extenuating circumstances, counterbalanced by alevosia and nocturnity as aggravation, and imposed the sentence of imprisonment for life. The element of premeditation did not enter into the case, nor should that of nocturnity be considered, because it did not in any aspect affect the nature of the crime, or facilitate its commission. The extenuating circumstances, first, that the deed was prompted proximately, though not immediately, by the desire to chastise and repair the injury to his wife; and second, that sudden excitement produced in him a condition of mental confusion and blindness, which are the particulars specified in the fifth and seventh subdivisions of article 9 of the Penal Code, to be considered separately, are properly allowed. Applying subdivision 5 of article 81 of the code, and imposing the penalty next under that proper to the grade of the crime, we reverse the sentence of the court below, and sentence the accused to ten years and one day of presidio mayor, and to pay the costs of first instance, with an indemnity of P1,000 to the heirs of Charles L. Pitman. So ordered.

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

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