

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO FERNANDEZ (ALIAS INFANTERIA) ET AL, DEFENDANTS AND APPELLANTS.

G.R. No. 4382. August 20, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

By an information filed on the 14th of August, 1907, the following charges were preferred against the defendants herein:

"That on the 30th of June, 1907, the accused broke into the dwelling house of the married couple, Sotero Austria and Arcadia Gendive, with whom they engaged in a fight, demanding that the latter surrender their money, and upon their refusal to give it up, the accused, who were armed with revolvers and pocketknives, assaulted and seriously injured them and took possession of a pair of gold earrings worn by Arcadia. On leaving the house they bound Sotero Austria who, in consequence of his wounds, died about eight or nine hours later."

The commission of the crime has been fully proven, as were also the results thereof; to wit, the death of Sotero Austria and the injuries occasioned to Arcadia Gendive, from whom they took her earrings.

The responsibility of Pedro Fernandez, which is the only point now at issue, has also been proven beyond all reasonable doubt.

Arcadia Gendive testified as follows:

"The man who was waiting below, named Pedro [pointing out one of the accused, Pedro Fernandez], stood on the second step of the staircase which is rather short, and another man [pointing out Victor Aranzazu], who was also downstairs, lighted a match. The match blew out, whereupon he lighted another; at that moment Pedro fired his revolver and hit my husband. Victor again lighted a match and Pedro fired the second time." (P. 2.)

Following this, an unknown man, the first to attack her husband and who was assisted by Pedro and Victor, threw the witness down in the corner of the house, and, covering her with a piece of matting, or petate, put his feet on her neck.

"Afterwards [the witness continued] Victor [who had taken one of the children of the aggrieved parties downstairs with him] came up, lighted our lamp, and searched our house. I lifted a corner of the petate which covered me, and saw Victor turn over all our belongings; then it was that I managed to distinctly see the face of the man who had his foot on my throat, and who said to me: 'Are you moving yet?', and I answered 'No, sir.' He then told me to give him my earrings, to which I replied, 'Here you are, sir; have mercy upon me; spare my life for the sake of my children!' After taking my earrings they questioned me about the location of our money, and I told them that we had none. When I said that, they squeezed my throat and said, Tell us the truth, because the people of the barrio say that you have plenty of money.' I told them that we did not have much money, and,

without loosening the grasp on my neck, they said, 'Tell us how much money you had on you on Thursday afternoon, when your son carried a bundle in his arms; undoubtedly you turned the money over to Lieutenant Colas.' I was suffering a great deal on account of the grip on my throat, and although it was a lie, I said 'yes.' Thereupon, Victor put out the light and the man who was grasping my throat also went down the stairs; I then managed to stand up little by little and get near the door in order to see what had become of my husband; I saw the men below kicking him and questioning him about the money, to which he answered that we had none. They said to him, 'It is said in the barrio that you discovered a treasure on your land in a vase the size of an oil can.' My husband denied it, and they added, 'Then how is it that your wife said that you turned over that money to Lieutenant Colas V and my husband replied, 'no, sir; the money has not been unearthed yet; it is still buried,' and then they left." (P. 4.)

Cayetano Genova, a neighbor who came to their assistance on hearing Arcadia Gendive cry for help, desisted when the shot was fired and went to inform the lieutenant of the barrio of the occurrence. On returning, he found Sotero Austria bound and stretched out on the floor; the latter, on being questioned by the lieutenant as to who had injured him and whether or not he knew the male factors, replied that he recognized Pedro and Victor (P. 40.)

Ambrosio Campaña, a sergeant of police of Imus, to whom the wounded Sotero Austria was taken, testified that Austria had distinctly told him the names of Victor Aranzazu and Pedro Fernandez.

Dalmacio Genova, a roundsman on duty during the night of the occurrence, stated that he was on Ms rounds accompanied for a while by Pedro Fernandez; the latter was dressed in khaki like a Scout soldier, but at about 9 o'clock they separated; that the crime was committed at 11 o'clock, and when he proceeded to the house of Sotero Austria, in the company of the first lieutenant of the barrio, he overheard the lieutenant ask Austria who had broken into the house; Austria gave the names of Pedro Fernandez and Victor, the son of a certain Tito. (P. 29.)

Lucio Camayag testified that he was ordered to Dasmariñas to make a report of the occurrence, and that Pedro Fernandez was assigned as his companion; that when they passed in front of the witness's own house, Fernandez said he would go and take off his khaki suit and leave it in the house, which he did; that, on the arrival of the wounded man, Sotero Austria, at Dasmariñas, the councilor of that town asked Austria if he knew who broke into his house, and Austria replied that he knew Pedro (known as Pedro Olalia in the barrio) and Victor, a son of the constable Tito, and that Pedro was dressed in a khaki shirt; that this khaki shirt having been left by Pedro in the witness's house, the latter began to suspect him, and went for the garment and delivered it to the second lieutenant of the barrio; they found blood stains on the body of it and on one of the sleeves.

Benito Austria, lieutenant of the barrio of Salitran, wherein the crime was committed, testified that soon after receiving the report of the occurrence he ordered that the victim be brought before him, and to his question in regard to the identity of the aggressors, the deceased replied that they were Pedro and Victor, the accused present at the trial. (P. 15.) On cross-examination, the witness was asked to state whether or not Sotero Austria, when answering him, was in a feeble state of mind; he said no, because the victim answered him at once. (P. 17.)

The Court of First Instance of Cavite rightly found the crime in question to be the complex one of robbery with homicide, punished by, article 503 of the Penal Code, and sentenced Pedro Fernandez to imprisonment for life, to indemnify the heirs of the deceased in the sum of P500, and to pay one-half of the costs of the trial.

This case is now before us on appeal taken by Pedro Fernandez. Article 503 of the Penal Code prescribes that a person guilty of robbery with violence and intimidation of the person shall be punished with the penalty of cadena perpetua, to death, if on account of, or on the occasion of the robbery, homicide results.

The second paragraph of article 80 of the same code provides that, where the law prescribes a punishment composed of two indivisible penalties, as in the present case, the following rules shall be observed in the

application thereof:

- "(1) If an aggravating circumstance alone should have attended the deed, the higher penalty shall be applied;
- (2) if neither extenuating nor aggravating circumstances should have attended the deed, the lesser penalty shall be applied."

The lower court has imposed the lesser penalty. Yet it is obvious that two aggravating circumstances have attended the commission of the crime, they being the fifteenth and twentieth circumstances enumerated in article 10 of the code, to wit, the commission of the crime at night and in the dwelling house of the victim, which, according to the first rule quoted above, make it necessary that the highest penalty be imposed.

We, therefore, modify in this point the judgment appealed from, and sentence Pedro Fernandez to suffer the penalty of death, to be carried out in the form recently provided by law, on the date, hour, and place to be properly designated, to the payment of the costs of this instance, and affirm the judgment in all other respects. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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