

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALFREDO REYES AND FORTUNATO DE LA CRUZ, DEFENDANTS AND APPELLANTS.

G.R. No. 4486. September 07, 1908

Ponente: CARSON, J.

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CARSON, J.:

Appellant were charged with the crime of assassination upon the following information:

"That on or about the 27th of August, 1907, in the municipality of Olongapo, Zambales Province, Philippine Islands, the said accused, Alfredo Reyes and Fortunato de la Cruz, conspiring together, assassinated at said time and place, a Chinaman, named Ching-Ching, willfully, unlawfully, criminally, and with deliberate premeditation and treachery (alevosia) : Fortunato de la Cruz laying hold of and embracing the Chinaman Ching-Ching, and fastening his arms to his side; the said Alfredo Reyes wounding the said Chinaman Ching-Ching twice with a deadly weapon—to wit, a knife ordinarily known as a dagger—the first time in the throat penetrating the body as far as the vertebrae, and the second time in the left shoulder, this while the said Fortunato de la Cruz held him in his grasp, inflicting upon the said Ching-Ching mortal wounds from which he there and then died. All this in violation of the law."

The trial court found that at about a quarter past 5 o'clock on the evening of the 27th of August, 1907, in the town of Olongapo, a fight took place between some Chinamen on the one hand and Filipinos on the other, in which fight a Chinaman called Ching-Ching received a fatal dagger wound which resulted in his death in less than fifteen minutes. That the accused Alfredo Reyes and Fortunato de la Cruz took an active part in the fight. That during the fight, De la Cruz, a strong, active man, seized hold of a Chinaman named Ching-Ching from behind, holding his arms tightly by his side, while Reyes inflicted two mortal wounds upon the Chinaman, with a knife or dagger, as a result of which he died in less than fifteen minutes.

We think the evidence of record fully sustains the findings of the trial court. Both the accused denied all knowledge of or participation in the death of the Chinaman Ching-Ching, Reyes setting up an alibi, and De la Cruz, while admitting that he was present when the dispute arose insisting that he was not there for more than three minutes, and that if the Chinaman was killed during the fight, he knew nothing whatever about it. These statements of the defendants were wholly disproved by the testimony of the witnesses for the prosecution, the statements of L. E. Martin, Eng Ton, Yee He, Lim Chac, and Pablo Lindayog, leaving no room for doubt as to the participation of these accused in the fight in the course of which the Chinaman met his death. The testimony of Eng Ton and Yee He, who were eyewitnesses of the killing of the Chinaman, clearly establishes the guilt of the accused of the taking of his life, in the manner and form above set out, and as found by the trial court. Counsel for the appellants insists that the testimony of these witnesses should not be, accepted without reserve, because the parties to the fight were respectively Chinamen and Filipinos, and the statements of the Chinese witnesses may have been colored by race prejudice and animosity. We do not think that the fear that the witnesses may have been prejudiced is sufficient to cast a reasonable doubt upon the truth of their statements, which in all details,

except only as to the actual killing of the deceased, were corroborated by the testimony of wholly reliable and impartial witnesses. Their testimony is consistent, positive, and definite, and carries with it a conviction of its truth and accuracy. The only important evidence in apparent conflict with their statements, was that of Robert M. Saunders, a bar keeper, who stated that he had been an eyewitness of the fight, and that, he observed the conduct of Fortunato de la Cruz throughout, and that the only part which this accused took in the fight was to throw sand at the Chinaman. We do not think, however, that the testimony of this witness puts in doubt the truth of the statements of the witnesses for the prosecution. He states that "when the fight was on in full force, I noticed one Filipino in particular, called Fortunato de la Cruz, instead of getting a stick or bolo, or something to defend himself with, was throwing dirt at those Chinamen." Again he said, "I was standing on the northwest corner of the crossing of Calle Harris and Calle Roxas, when the fight began to get interesting; I ran up to the northwest corner of Calles Harris and Roxas, and was about 15 feet from the fight. I noticed Fortunato de la Cruz standing near the southwest corner of, the crossing of these two streets, and I thought it very amusing that he would be throwing sand in the fight, instead of getting a stick or bolo to protect himself with. Approximately he did not move ten feet from the corner." It will be seen from these statements that this witness's attention was not directed to the conduct of Fortunato de la Cruz until the "fight was on in full force, or as may be taken from his description of the fight, until a considerable number of participants had joined in the melee. The testimony of the witnesses for the prosecution was to the effect that the stabbing of the deceased took place at the very beginning of the fight, and it would appear from their evidence that the general melee between Chinamen and Filipinos was brought on by the attack of these accused upon the man they killed. There is nothing, therefore, necessarily inconsistent in the statements made by the witnesses for the prosecution, and the testimony of this witness, even accepting as true his statement that from the time when he first noticed Fortunato de la Cruz until the end of the fight, De la Cruz did no more than throw sand at the Chinese combatants. An examination of the testimony of this witness leads us to believe that he was by no means impartial, and that he had a strong prejudice in favor of the accused, and was desirous of saying nothing which might tend to incriminate them.

The trial judge found the accused guilty of the crime of homicide being of opinion that the killing was not marked with aggravating or extenuating circumstances, and imposed the penalty of fourteen years eight months and one day imprisonment, with enforced labor in Bilibid Jail. We are of opinion, however, that the offense committed was that of assassination, as charged in the information. It was clearly proven, and so found by the trial judge, that one of the accused seized the Chinaman from behind and bound his hands to his side, while the other struck him with a dagger in the throat, and the evidence further discloses that this occurred before the general melee arose between the Chinamen and Filipinos who later participated in the fight. Manifestly therefore, the accused employed means in the execution of the crime, which "tended directly and especially to insure" them "against risk arising from the defense the injured party might otherwise have made." This circumstance marks the commission of the offense with the aggravating circumstance of treachery (*alevosia*), as defined in subdivision 2 of article 10 of the Penal Code, and brings the offense under the definition of the crime of assassination, as it is defined and penalized in article 403 of the Penal Code. We find no other aggravating or extenuating circumstances, and are of opinion, therefore, that the penalty prescribed should be imposed in its medium degree.

We, therefore, reverse the judgment and sentence of the trial court, and instead thereof, find the accused, Alfredo Reyes and Fortunato de la Cruz, guilty of the crime of assassination, as charged, and sentence them and each of them, to the penalty of imprisonment for life, to the payment jointly and severally of one thousand pesos (P1,000) civil indemnification to the heirs of the deceased, and to the payment of their respective shares of the costs in both instances. So ordered.

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

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