

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GELASIO CASTELLON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4797. December 01, 1908*

Ponente: TORRES, J.

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At about 6 p. m. on the 18th of January, 1907, Gelasio Castellon and Tranquilino Salac were working in a rice field belonging to Hermogenes Tiño. By reason of the ill treatment inflicted by Simon Cubado upon his mistress, Natalia David, the mother of Salac, and of his threats to kill her, the two men first named, Castellon and Salac, agreed to kill Cubado; Salac informed his mother of their determination and she replied that she left it to them to carry out their intention, for if it was not done Cubado would kill everybody. Thereupon, as Simon Cubado was sitting on the ground in conversation with his mistress, near the house wherein he lived in the sitio of Curog, Salac said in a low voice to Gelasio Castellon the word yana, which was the signal agreed upon between them for the commencement of the attack upon Cubado; Castellon then gave the victim a blow in the neck with his bolo which knocked him on his back, and as he immediately tried to get up, Salac stabbed him in the abdomen with a sharp tool called a lilig; at this moment Simon de los Santos made his appearance at the place of the crime and tried to separate them; as soon as Simon Cubado was able to stand up and enter his house, he took a cloth, wrapped it around his neck, and went to the guardhouse of the barrio in order to report the occurrence to the authorities.

As the wounded man was nearing the guardhouse of the barrio of San Roque, municipality of Gapang, at about 8 o'clock in the evening of the said day, two residents of said barrio, Segundo Silvino and Adriano Hernandez, on being informed of the affray and seeing that he was covered with blood, immediately reported it to the lieutenant of the barrio, Numeriano Manuel, who conducted the wounded man to the guardhouse where in a short time he died.

The lieutenant previously ascertained from him that he was wounded at the sitio of Jolo by an individual named Gelasio, the son of Petra. On examination of the body by the municipal president of health, the following wounds were found: a transverse cut in the neck 6 centimeters in length which affected all the soft tissues, muscles, and nerves, and severed the trachea and æsophagus; a scratch on the anterior of the sixth cervical vertebra; a stab in the anterior-lateral region of the abdomen affecting the skin only; another cut in the palm of the right hand near the index finger; another on the little finger of the left hand; another on the fourth and third fingers of the same hand, and on the ball of the last named finger.

At daybreak on the following day, Gelasio Castellon and Tranquilino Salac returned to the house of the former where the agents of the authorities had been looking and waiting for them since the previous night, and when arrested it was seen that Salac had blood stains on his hands, face and shirt, as did also Castellon on his shirt; and, although at first they said that they were unable to account therefor, yet upon being pressed to state the truth, they finally confessed to having assaulted the deceased, Cubado, at the instigation of his paramour. Castellon on being questioned pointed out the place where he had left the bolo with which the crime was committed and which, when found, was stained with blood; Natalia David was also arrested immediately afterwards; the latter was found in

the guardhouse with the body of the deceased lying on her lap, and when interrogated she finally admitted that she knew that the aggressors of the deceased were her son Salac and Castellon, as they had stated to the agents of the authorities.

Thereupon, on the 6th of February, 1907, the provincial fiscal filed a complaint against Lino or Tranquilino Salac, Gelasio Castellon, and Natalia David, charging them with the crime of murder. Proceedings were instituted, and the trial court, in its judgment of the 10th of September of the same year, sentenced Natalia David to the penalty of reclusion perpetua and the accessories of article 55 of the code; Gelasio Castellon and Tranquilino Salac were each sentenced to 15 years of cadena temporal and the accessories of article 56 of the code; all three to pay jointly and severally an indemnity of P1,000 to the heirs of the deceased, and each of them to pay one-third of the costs. From this judgment the accused have appealed, but on the 5th of October last, according to the report of the Director of Prisons, Natalia David died a natural death in Bilibid Prison.

Satisfactory and conclusive proof is furnished by these proceedings of the perpetration of the crime classified in the complaint as murder, and of the culpability of the accused as the authors of the crime in question.

It has been fully proven that, while the deceased was sitting on the ground unarmed, absolutely unprepared, and without the least suspicion of the danger he was incurring, as soon as Salac gave the word *yana* agreed upon as the signal for effecting the violent death agreed upon by the aggressors one hour previously, Castellon, suddenly and abruptly, without uttering a word, struck the deceased with a bolo, wounding him below the nape of the neck, the blow knocking the wounded man backwards to the ground; that when he tried to get up, Salac stabbed him in the abdomen with a pointed tool called a *lilig*; that thereupon Simon de los Santos came to separate them, and without noticing it was also wounded but did not know by whom.

From the facts above set forth there can be no doubt that the violent death of Simon Cubado was effected in a treacherous manner, because Castellon, all ready to strike the victim without exposing himself to any danger, at the first signal from his partner in crime, placed himself behind the deceased and suddenly attacked him in a manner that directly and specially insured the consummation of the crime without any risk to the person of the aggressor from any defense the victim might offer. The crime is thus comprised within article 403 of the Penal Code, for the reason that it was committed with the concurrence of one of the specific circumstances which calls for a heavier penalty than the law imposes for simple homicide.

The culpability of the accused Salac and Castellon as the proven principals of the crime in question has also been demonstrated, for notwithstanding their plea of not guilty and their attempts at vindication, the incriminating data and other merits of the case produce in the mind, beyond all reasonable doubt, the fullest conviction of their guilt.

The statement made a few moments before his death by Simon Cubado to Numeriano Manuel, the lieutenant of the barrio of San Roque, in the presence of Silvino and Hernandez, when pointing out the person who inflicted upon him the wound that shortly afterwards produced his death, that is, the said Gelasio Castellon; and the fact that the witness Hernandez averred that he also heard the wounded man mention the name of Tranquilino; this statement, clearly proven as it was in the proceedings, constitutes at least a grave, conclusive and final indication of the criminality of the persons designated by the dying man, particularly when the said statement is corroborated by other circumstances of a similar nature, inasmuch as, in view of the precarious condition of the wounded man, at a time when he felt he was about to die and without any hope of recovery, it must be assumed that he told the truth, and that he was not impelled by any desire to lie and injure an innocent man by falsely imputing to him a crime which he had not committed.

In the decision rendered in case No. 3000, *United States vs. Montes* (6 Phil. Rep., 443) for homicide, the doctrine was established that hearsay evidence is not admissible; but in criminal proceedings for murder or homicide, the

testimony of a witness who avers that he heard the statements of a seriously wounded person that was in imminent danger of death and without any hope of recovery may be admitted, if in the opinion of the court the injured party was really in such a critical condition when he made such statements.

The declarations by the two surviving accused persons, and the mother of one of them, Natalia David, in the presence of the provincial fiscal, the justice of the peace of Gapan, and of the interpreter, contained in the documents marked Exhibits A, B, and C, offered in evidence by the prosecution and not impugned, confirm the testimony of the three agents of the authorities who made the arrest, relative to the fact that the accused admitted that they attacked the deceased at the instigation of the said David, and all of them taken together constitute positive proof of the guilt of the defendants. Their criminality is further corroborated by the blood stains found upon their clothes at the time of their arrest, as well as upon the face and hands of Salac who, as related, it was that, after Castellon's attack from behind, stabbed the victim in the abdomen with a pointed instrument; this was the reason that his face, hands, and clothes became stained with the blood that spurted from the wound in the neck of the injured person, while the first aggressor, Castellon, who, immediately after the blow must have kept away from the assaulted man, had blood stains on his shirt only. Another fact of importance is that the bolo, upon being found in the place pointed out by Castellon as the site where he had hidden it, was stained with blood.

Against this result and the mass of evidence of their culpability, the subsequent allegation made by the accused that they were maltreated by the police and compelled to confess the crime can not prevail, for the reason that they did not complain of such ill treatment to the provincial fiscal or to the justice of the peace during the preliminary investigation, and the two policemen denied the charge; the assistant lieutenant of the barrio, Feliciano Estanislao, who, as stated by the accused, had taken no part in the ill treatment, also denied that such conduct had ever taken place, and the justice of the peace and his clerk, Faustino Airoso who witnessed and heard the declarations that the accused made before the provincial fiscal, aver that said accused testified freely, spontaneously, and without any coercion, for which reason the allegation is groundless and false as they were not ill treated; said allegation was nothing but a means of defense chosen, as well as the charges against Simon de los Santos who simply endeavored to separate them, believing that they were engaged in a fight, and who, in carrying out his good work, was wounded without knowing how or by which of the aggressors.

In connection with the commission of this murder it is proper to consider the circumstance of deliberate premeditation which, in the present case, should only be taken as a mere aggravating circumstance, on account of the presence of another specific circumstance which qualifies the crime, namely that of treachery, inasmuch as the acts of the accused show in an unquestionable manner that they had previously conspired to kill the deceased, after cool and deliberate meditation upon the execution of the crime wherein they persisted even after more than an hour had transpired; conscience and the sense of duty were unable to overcome the insistent determination of the respective wills of the aggressors. On the other hand there is no extenuating circumstance to be considered beyond the special one prescribed by paragraph 2 of article 9 of the Penal Code, as the accused are under 18 years of age. Hence, the next lower penalty, that is, that of presidio mayor in its maximum degree to cadena temporal in its medium degree, should be imposed in the degree that corresponds with the provisions of article 85, No. 2, of said code; they should therefore be sentenced to the maximum degree of the latter compound penalty, in accordance with article 81, rule 3 of the code. As to the accused Natalia David, who died in jail, the proceedings against her must of course be dismissed.

Therefore, in view of the foregoing, and as the judgment appealed from is in accordance with the law, it is our opinion that the same should be and it is hereby affirmed with respect to the accused Gelasio Castellon and Lino or Tranquilino Salac with one-third of the costs against each of them; the case against the late Natalia David is hereby dismissed with the remaining one-third of the costs of both instances de oficio. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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