

THE UNITED STATES, PLAINTIFF, VS. AUGUSTUS HICKS, DEFENDANT.

G.R. No. 4971. September 23, 1909

Ponente: TORRES, J.

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TORRES, J.:

For about five years, from September, 1902, to November, 1907, Augustus Hicks, an Afro-American, and Agustina Sola, a Christian Moro woman, illicitly lived together in the municipality of Parang, Cotabato, Moro Province, until trouble arising between them in the last-mentioned month of 1907, Agustina quitted Hick's house, and, separating from him, went to live with her brother-in-law, Luis Corrales. A few days later she contracted new relations with another negro named Wallace Current, a corporal in the Army who then went to live with her in the said house.

On the 21st of December following, at about 7.30 p. m., Augustus Hicks together with a soldier named Lloyd Nickens called at said house, and from the sala called out to his old mistress who was in her room with Corporal Current, and after conversing with her in the Moro dialect for a few minutes, asked the corporal to come out of said room; in response thereto the corporal appeared at the door of the room, and after a short conversation, Current approached Hicks and they shook hands, when Hicks asked him the following question: "Did I not tell you to leave this woman alone?," to which Current replied: "That is all right, she told me that she did not want to live with you any longer, but if she wishes, she may quit me, and you can live with her." The accused then replied: "God damn, I have made up my mind;" and as Corporal Current saw that Hicks, when he said this, was drawing a revolver from his trousers' pocket, he caught him by the hand, but the latter, snatching his hand roughly away, said: "Don't do that," whereupon Current jumped into the room, hiding himself behind the partition, just as Hicks drew his revolver and fired at Agustina Sola who was close by in the sala of the house. The bullet struck her in the left side of the breast; she fell to the ground, and died in a little more than an hour later.

Upon hearing the shot Edward Robinson, who was also in the house, went to render assistance and wrested the weapon from the hand of the accused. The latter immediately fled from the house and gave himself up to the chief of police of the town, H. L. Martin, asking him to lock him up in jail; and, when a few minutes later a policeman came running in and reported that Hicks had fired a shot at Agustina, the said chief of police caused Hicks to be arrested. The latter, when once in jail, threw eight revolver cartridges out of the window; these were picked up by a policeman who reported the occurrence and delivered the cartridges to his chief.

In view of the foregoing the provincial fiscal on the 8th of February, 1908, filed a complaint with the Court of First Instance of said province charging Augustus Hicks with the crime of murder. Proceedings were instituted, the trial court, after hearing the evidence adduced, entered judgment on the 10th of September of the same year, sentencing the accused to the penalty of death, to be executed according to the law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. The case has been submitted to this court for review.

The above-stated facts, which have been fully proven in the present case, constitute the crime of murder, defined

and punished by article 403 of the Penal Code, in that the woman Agustina Sola met a violent death, with the qualifying circumstance of treachery (alevosia), she being suddenly and roughly attacked and unexpectedly fired upon with a 45-caliber revolver, at close, if not point blank range, while the injured woman was unarmed and unprepared, and at a time when she was listening to a conversation, in which she was concerned, between her aggressor and a third person, and after usual and customary words had passed between her and her aggressor. From all of the foregoing it is logically inferred that means, manners, and forms were employed in the attack that directly and specially insured the consummation of the crime without such risk to the author thereof as might have been offered by the victim who, owing to the suddenness of the attack, was doubtless unable to flee from the place where she was standing, or even escape or divert the weapon.

The accused, Augustus Hicks, pleaded not guilty, but notwithstanding his exculpatory allegations which were certainly not borne out at the trial, the evidence in the case is absolutely at variance therewith and conclusively establishes, beyond peradventure of doubt, his culpability as the sole fully convicted author of the violent and treacherous death of his former mistress, Agustina Sola.

It is alleged by the accused that when he withdrew his hand from that of Current, who had seized him, he fell backward but managed to support himself on his two hands, and when he got up again the said corporal threatened him with a revolver thrust into his face; whereupon he also drew his revolver, just as Edward Robinson caught him from behind, when his revolver went off, the bullet striking the deceased.

This allegation appears to be at variance with the testimony of the witnesses Wallace Current, Edward Robinson, Luis Corrales, and Lloyd Nickens in their respective declarations, especially with that of the second and third, who witnessed the actual firing of the shot by the aggressor at the deceased, as shown by the fact that Robinson immediately approached the accused in order to take his weapon away from him which he succeeded in doing after a brief struggle, whereupon the aggressor ran out of the house. Thus, the shot that struck the deceased in the breast and caused her death was not due to an accident but to a willful and premeditated act on the part of the aggressor with intent to deprive the victim of her life.

In addition to the qualifying circumstance of treachery, as above referred to, the presence of other aggravating circumstances, such as premeditation, and the fact that the crime was committed in the dwelling of the deceased should be taken into consideration. The last-mentioned circumstance appears proven from the testimony of several witnesses who were examined at the trial of the case.

Inasmuch as in the present case the crime has already been qualified as committed with treachery, the circumstance of premeditation should only be considered as a merely generic one. Premeditation is, however, manifest and evident by reason of the open acts executed by the accused. According to the testimony of Charles Gatchey and Eugenio R. Whited, Hicks asked leave from the former to be absent from the canteen where he was working on the morning of the day when the affray occurred, alleging that his mind was unsettled and that he feared getting into trouble. It is also shown by the fact that Whited, who was in Hicks' house about noon upon the Jatter's invitation, and while both were drinking gin, and while the revolver, the instrument of the crime, was lying on the table on which were also several loaded cartridges, heard the accused repeatedly say, referring to the deceased, that her time had come, adding that he would rather see her dead than in the arms of another man, and when the accused went to bed apparently very much worried, and refusing to answer when called, the witness left him. On the day after the crime the police found on a table in the cuprit's house several loaded cartridges, a bottle of oil and a piece of cloth used undoubtedly for cleaning the revolver.

All the foregoing circumstances conclusively prove that the accused, deliberately and after due reflection had resolved to kill the woman who had left him for another man, and in order to accomplish his perverse intention

with safety, notwithstanding the fact that he was already provided with a clean and well-prepared weapon and carried other loaded cartridges besides those already in his revolver, he entered the house, greeting everyone courteously and conversed with his victim, in what appeared to be a proper manner, disguising his intention and calming her by his apparent repose and tranquillity, doubtless in order to successfully accomplish his criminal design, behaving himself properly as he had planned to do beforehand.

As against the two foregoing aggravating circumstances no mitigating circumstance is present, not even that mentioned in paragraph 7 of article 9 of the Penal Code, to wit, loss of reason and self-control produced by jealousy as alleged by the defense, inasmuch as the only causes which mitigate the criminal responsibility for the loss of self-control are such as originate from legitimate feelings, not those which arise from vicious, unworthy, and immoral passions.

From the foregoing considerations, and as the judgment appealed from is in accordance with the law, it is our opinion that the same should be affirmed, as we do hereby affirm it with costs, provided, however, that the death penalty shall be executed according to the law in force, and that in the event of a pardon being granted, the culprit shall suffer the accessory penalties of article 53 of the Penal Code unless the same be expressly remitted in the pardon. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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