

THE UNITED STATES, PLAINTIFF, VS. FELIX DE JESUS, DEFENDANT.*G.R. No. 5003. September 18, 1909*

Ponente: CARSON, J.

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Felix de Jesus, the defendant in this case, having been sentenced to death in the Court of First Instance of Manila upon conviction of the crime of robo con homicidio (robbery with homicide), the record of the proceedings in the court below was duly submitted to this court en consulta (for revision) in conformity with the provisions of law in such cases.

At about 9 o'clock on the night of the 25th of July, 1908, Faustina Tumali, accompanied by her son, a child 2½ years of age, went on board the boat of the defendant at his invitation, at a point near the Anda Monument in Manila, for the purpose of crossing the Pasig River and returning to her home on Calle San Nicolas, in the district of Binondo. On the following day the dead bodies of the woman and her child were found tied together in the hull of an abandoned vessel, stranded in Manila Bay near the mouth of the Pasig River, at a point distant about 150 yards from the warehouses or godowns of Castle Brothers, Wolf & Sons. A recently inflicted wound was found upon the right forehead of the woman, which, in the opinion of a surgeon and a police officer who examined it, appeared to have been inflicted with an oar, a paddle, a heavy club, or some similar weapon. On the following day, a parasol, which the deceased had with her on the night in question, was found rolled up in the curtain of the defendant's boat. He was arrested upon a charge of murder and upon examination at the police station, voluntarily admitted that he had killed the woman and her child. In the course of this examination, he admitted also that he had pawned the jewelry which the woman wore at the time when he killed her, and accompanied the police officers to the pawnshop, where they recovered three rings and a pair of earrings, which it was proven at the trial she wore on the night when she came to her death. At the time of his arrest there were found upon his breast the marks of recently inflicted scratches such as might have been made by the nails of some person with whom he had had a struggle.

Testifying in his own behalf at the trial, the defendant swore that on the night in question the woman and her child came on board his boat at the Anda Monument landing, on the Pasig, and that he undertook to take them to the other side of the river; that he took advantage of the opportunity to attempt to renew amorous relations which had formerly existed between himself and the woman, but that when he took hold of her hand, she suddenly leaped overboard, with her child in her arms; that she immediately sank beneath the surface of the river, and that he then rowed to shore and stayed all night in the boat; that in the morning he found the woman's rings and earrings upon the floor of the boat and took them to the pawnshop; and that he told no one what occurred because he feared that an investigation might involve him in trouble.

The witnesses who found the bodies swore that it was impossible that they could have floated in to the position in which they were discovered, because the sides of the vessel were well above high-water mark; and in view of the fact that the body of the woman and child when found were tied together; of the pawning of the jewelry of the deceased by the accused; and of his voluntary confession made at the time when he was arrested, we are satisfied

that the trial court properly declined to believe his testimony, except in so far as he admits having rowed the woman and child out into the river upon the night on which they were killed, and having pawned her jewelry upon the following morning.

In our opinion, there can be no doubt of the guilt of the defendant of the crime of robo con homicidio (robbery with homicide) with which he was charged, and that the trial court properly found that the commission of the crime was marked with the aggravating circumstances of alevosia (treachery) in so far as the taking of the life of the infant child was concerned, this homicide involving no risk to the person of the offender arising from any defense the child could have made (U. S. vs. Larion, 2 Phil. Rep., 476; sentences of the supreme court of Spain, January 26, 1877; November 15, 1895; July 13, 1897), of nocturnity and the commission of the offense in a deserted place, and of the abuse of the confidence reposed in him by the deceased in intrusting" herself to his care for the purpose of taking her across the river. The finding of the trial court of the existence of alevosia (treachery) in connection with the murder of the woman can not be sustained, as there is no evidence as to the precise form and manner in which the crime was committed, and it is impossible to determine whether the attack upon her was or was not made in such a way as to sustain a finding of the existence of alevosia (treachery); nor can we sustain the contention of the Solicitor-General that the crime was committed with insult to or lack of respect for the sex of the deceased, as the mere fact that the victim was a woman does not in itself constitute the aggravating circumstance set out in subsection 20 of article 10 of the Penal Code, and there is nothing in the evidence which discloses that aside from the unlawful taking of her life, there was any insult or disrespect shown her as a woman.

The commission of the crime of robo con homicidio (robbery with homicide), of which the accused was convicted, having been marked by several aggravating and no extenuating circumstances, the trial court properly imposed the penalty prescribed for that crime in its maximum degree, and sentenced the accused to death, and the judgment of conviction, modified by the commission of the finding as to alevosia (treachery) in taking the life of the woman, and the sentence of death imposed by the trial court should be and are hereby affirmed, with the costs of this instance against the defendant.

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

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