

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO DOMINGO ET AL., DEFENDANTS, SEGUNDO OROZCO, DEFENDANT AND APPELLANT.*G.R. No. 5385. December 04, 1909*

Ponente: ELLIOTT, J.

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The information in this case charged the defendants, Gregorio Domingo, Segundo Orozco, Rafael de la Cruz, Santos Andres, and Lope Deang, with the crime of robbery with homicide. When the case came to trial, and after a witness had been sworn, Santos Andres, sometimes referred to in the record as Santos Amares, and Lope Deang were dismissed in order that they might be used as witnesses for the Government, as authorized by section 34, General Orders No. 58. The court found:

1. That at the time and place mentioned in the complaint herein Coa Sin and Lim Ping, Chinese persons, conducted a retail business and lived in a small frame building near the Intendencia Building within the Walled City of Manila; and at about 4 o'clock in the morning of said day while still dark, the said two persons, Coa Sin and Lim Ping, were murdered, their bodies being hacked, chopped, and cut up in a most brutal manner, from which they immediately died. All the drawers, shelves, boxes, and trunks used by the said two Chinaman in said store and building were searched, opened, and ransacked, and the contents thereof, including cigars, cigarettes, money, and merchandise, were then and there carried away, without the consent of anyone in authority. Up to this point in the case there is no controversy whatever.
2. The two defendants, discharged as aforesaid, have testified as witnesses in behalf of the Government upon the trial of the cause,—first, that no promise of protection has been made to them, and, second, that they went to said store building with the defendants, Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz, and that upon arrival at said building the said two discharged defendants remained outside thereof as guards while the said three defendants, Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz, entered said building in a surreptitious manner, killed the said two Chinamen in the manner aforesaid, and immediately thereafter retired from said building, carrying with them cigars, cigarettes, merchandise, and money found therein, all of which they divided, or offered to divide, with the said two discharged defendants.
3. That the said three defendants, Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz, since their arrest in this case, have voluntarily admitted their presence at and during the commission of said crime.
4. That said crime was committed during the darkness of the night, in order that the same might be more easily accomplished, and to avoid pursuit and discovery of the defendants participating therein; and that the act of surprising said two Chinamen and the use of bolos and sharp instruments to overcome them and the cutting, hacking, and chopping of their bodies in the barbarous manner aforesaid were committed with treachery.

The defendants, Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz, are natives of the Philippine Islands, above 25 years of age, and men of very ordinary intelligence. This fact is considered and determined by the court

as an extenuating circumstance.

5. That the two discharged defendants are very young, inexperienced men and not possessed of sufficient intelligence to resist the influence of older men, such as the defendants, Domingo, Orozco, and De la Cruz.

The court therefore finds, from the evidence and beyond a reasonable doubt, the defendants Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz each guilty of the crime charged in the complaint in this cause, and the aggravating circumstances being counterbalanced by the said extenuating circumstance, the court sentences the said defendants, Gregorio Domingo, Segundo Orozco, and Rafael de la Cruz, each to imprisonment for their natural life (*cadena perpetua*), in the public carcel at Bilibid, in the city of Manila, Philippine Islands, from and including this date, and each of said defendants to pay one-sixth of the costs of this case.

This sentence was pronounced December 1, 1908. Domingo and Cruz did not appeal from the judgment, and as to them the sentence is being executed. The defendant Orozco appealed, and while the appeal was pending he moved in this court for a new trial, on the ground of newly discovered evidence. The motion was directed to be heard and determined when the case came on for hearing on the merits.

Without reference to the so-called newly discovered evidence, the question is whether the evidence produced at the trial is sufficient to justify the conviction of Orozco of the crime of robbery with homicide.

1. On the early morning of September 24, 1908, the dead bodies of two Chinese, Coa Sin and Lim Ping, were found in a tienda near the Intendencia Building at the Santo Domingo gate of the Walled City. The bodies were covered with wounds and the inside room where the men slept was in confusion. Boxes and trunks were broken open, the cash drawer was open and empty, and clothing, cigars, and cigarettes were scattered about the floor. Within a short time thereafter these defendants were brought or came before the authorities, and all made statements with reference to their connection with the crime. Deang and Andres made full confessions, and subsequently testified for the Government. Domingo, according to the testimony of the witness Marshall, first denied any connection with the crime, but after hearing the statements of Deang and Andres, agreed to go with the officers and show where Orozco and Cruz, who had been named by Deang and Andres, lived. Cruz and Orozco, when identified by Domingo, were arrested. On the following day when confronted by these men, Domingo stated that they were with him, and that he wanted to tell the truth about the matter. He then said that he was out fishing near the Elks' Club when Orozco and Cruz, with Deang, Andres, and another man by the name of Leon, invited him to go to the Walled City; that after some talk and threats he went with them down Calle Palacio and along the car line to the Intendencia Building and the Chinese store. This statement seems to have been made on the 7th of November, and on the following morning the witness Marshall, with Domingo and other secret-service men, got into a *carretela*, and the *cochero* was directed by Domingo to the tienda where the Chinamen had been killed. When asked to show how the entrance to the tienda was effected, Domingo stated "that he was standing outside of the tienda; that Segundo (Orozco) 'was the first man in, and when he entered he had a kris and knife, and that it was he who met the Chinamen at the door. The first blow that was struck was on the left side of the neck.'" Marshall says that he "asked him what the Chinaman had in his hand, and he stated he had a little light—*alamp*. I asked him where the body of the other Chinaman was lying, and he pointed to the place where the body was lying when I found it. I asked him if this Chinaman had anything in his hand, and he saw a little candlestick on top of the shelf there, and said, 'this is the candlestick that this Chinaman had in his hand.' Then I had him go outside to show us how the door was opened. On going outside, he says, 'this door is changed; there used to be a place right here where you could get your hand through; they have nailed a board on.' We then had that board taken off, and he put his hand inside and showed how the bolt was pulled, and illustrated on me the way that the first blow was struck to the Chinaman; that after the Chinaman had fallen behind the door Segundo (Orozco) stabbed him in the back, at the same time saying, 'Where is your money; where is your money?' And then he turned to Rafael (Cruz)

and says, 'Come on in here and get busy and search the house;' and he, Gregorio (Domingo) stated that he did not go in the tienda, that he stayed outside, he was afraid to go in." A shirt which was found in the tienda was identified by Domingo as belonging to Orozco. He also said that Deang, Andres, and the man named Leon were also with him outside of the tienda on guard; that after Orozco came out, he found Domingo standing there, and said to him, "You needn't wait here any longer. Get out." When asked how much money they got, Domingo said he could not say; that he saw Orozco give Rafael de la Cruz something, saying, "This is yours," and that he then went home.

After Domingo made this statement at the tienda, he was taken home and confronted with Orozco. The statements were there repeated, and Orozco denied having had any connection with the transaction. He claimed, however, that the shirt which had been found in the tienda belonged to Domingo. On one of the occasions when Domingo and Orozco were being questioned they quarreled, and Orozco charged Domingo with killing the Chinese, and when asked how he knew it, replied that he saw Domingo do it. When asked, "How did you see him?" Orozco replied, "I was passing by there going to the market, coming or going, and saw Domingo at the tienda." When asked to take the officer there Orozco quieted down, and said, "I didn't mean that, I just became angry because he was accusing me, and I just said that for that." When Orozco was on the stand testifying in his own behalf, he admitted having made this statement, and gave the same explanation.

The witness Hartpence, who was present when Domingo made his statement, testified at the trial, and in all substantial respects corroborated the evidence given by Marshall as above recited. He said that Domingo stated that Orozco, Cruz, and Leon all went inside the tienda.

Lope Deang testified that he had been working for the Atlantic Gulf Company for nine months prior to the time of the murder; that he knew Domingo; Cruz, and Orozco; that about 5 o'clock on September 23 Domingo asked him and Andres where they worked, and was told that they worked for the Atlantic Gulf Company at the sewer. He then asked them how much they got a day, and on being told that they received 80 centavos, he told them to go with him, and he would give them work at P1 a day. Sometime during the night Domingo came to the house of Deang and asked him to come down, as it was late. Deang responded and was sent by Domingo to find Andres, and instructed to bring him to Calle Carolina. Upon arriving there they found Domingo, Cruz, and the man called Leon. They then went together to the Intendencia Building. When they came opposite the tienda they stopped, and Domingo told them to wait awhile, as he was going to get some bread. The tienda was closed, and at that moment the bread wagon arrived and the baker knocked at the door of the tienda and asked the Chinaman to come out and get the bread. After the Chinaman got the bread he closed the window (door) again, as it was very early. Domingo then asked the Chinaman to open the window again, as he wanted to buy some bread. The Chinaman opened the door to Domingo "and suddenly we noticed that the lights of the tienda were put out, and that there was some noise inside of the tienda, as if there was some fighting in the tienda, and I heard then Domingo saying, 'Rafael, Leon, come inside and help me,' and Santos Andres and myself stayed there at a distance, watching them near a post." After a while they came out. One of them was carrying some cigars, and the other had cigarettes in his hand. Domingo had some money, and offered some to Deang, who did not take it. Domingo then threatened to kill them if they told what had occurred. After that Deang and Andres went away, and did not know where the others went. Domingo entered the tienda first, and Orozco next. When they came out, Domingo's hands were bloody.

In the tienda there was found a shirt which Domingo testified was worn by Orozco on the night of the murder. Orozco denied that it was his, and claimed that it belonged to Domingo. The evidence tends to show that it was the property of Orozco.

Santos Andres told substantially the same story, in every essential matter corroborating the evidence given by

Deang. Neither of the witnesses claimed to have seen Orozco kill the Chinaman, but both testified that they saw him enter the tienda, evidently going to the assistance of Domingo. We have then the testimony of Marshall and Hartpence as to the statements made by Domingo, and the direct testimony of Deang and Andres, which make Orozco a principal in the crime. Orozco testified in his own behalf, stating that he spent the night in question at home, until about 5 o'clock in the morning, when he went out to get fish. He denied that the shirt belonged to him, but admitted that when he was being examined before the officers he told Domingo that he saw him kill the Chinamen. The explanation of this statement has already been referred to. Orozco's wife and another witness corroborated his statement as to his whereabouts on the night in question. The evidence of Deang and Andres impressed the trial court as true, and we have received the same impression from a careful reading of the record. The slight differences therein are such as would naturally occur, and are indicia of truth rather than falsehood. We are satisfied that the evidence establishes the guilt of these men, and that the court properly found them guilty as charged in the information.

2. We then come to the question of the right of Orozco to a new trial on the ground of newly discovered evidence. The affidavits presented tell a remarkable story. Orozco and the other defendants were sentenced December 1, 1908, and about the 24th of December, 1908, a person by the name of Alberto David made a so-called confession in which he stated that he, in company with Gregorio Medrano and Crisanto Magalindan, robbed this tienda and killed the Chinamen. The circumstances of the crime were related in detail by David, and on its face the story might well tend to shake our confidence in the guilt of the men who had been convicted. David gave a description of the property which he and his companions stole from the tienda, and told what had been done with each article. It did not appear that any of the articles had ever been in the tienda of the Chinamen, but the fact that they were subsequently found where David stated that he had sold or disposed of them tended to confirm his story. The confession was made in the presence of Gregorio Panlequi, presidente of Floridablanca, Pampanga, and others. Gregorio Medrano was arrested and he also promptly and without hesitation confessed that he had participated in the robbery and murder. The other alleged murderer was never found. But this elaborate structure suddenly collapsed. David retracted his confession, and in doing so told an even more sensational story. As in the beginning, Gregorio Medrano promptly followed David and retracted his confession. On January 5, 1909 David, in the presence of certain officials and Assemblyman Mercado, made the following statements:

"Q. What is your name, age, residence, occupation, etc. ?—A. Alberto David y Ocampo; 21 years of age; occupation, casquero; residence, barrio of Baruya, municipality of Lubao, Province of Pampanga; single, born in Macabebe, Pampanga.

"Q. Did you ever work in Manila?—A. Yes; I worked from September, 1907, to October, 1908, as a casquero on a casco owned by Eligio Naval.

"Q. Who was the patron of that casco?—A. At first the patron was Dionisio Bernal, and later Bonifacio Gabriel was the patron.

"Q. Why did you make the statement to me that you, in company with Gregorio Medrano and Crisanto Magalindan, murdered and robbed the two Chinamen in their tienda at the Santo Domingo gate during the month of September, 1908?—A. When I was in Baruya a man named Juan Rivera warned me that an American and a Filipino of the secret service were coming after me. The teniente of the barrio, whose name is Felipe Turla heard of this, and they arrested me and delivered me to Gregorio Panlequi, presidente of Floridablanca. While I was at the presidente's house he taught me what I should say when brought to Manila. The presidente told me to say that I had been invited by Gregorio Medrano and Crisanto Magalindan to go with them to the Chinese tienda at the Santo Domingo gate to buy cigarettes, and then state that I saw Gregorio and Crisanto enter the Chinese store and kill the Chinamen, while I watched outside.

"Q. What promise did the presidente make to you to induce you to make this statement?—A. He told me not to

be afraid of going to jail as he would take care of me, and also that I would receive a reward. He did not say how much the reward would be.

"Q. What did he tell you to state about those watches and rings?—A. He did not tell me to state anything about them, as they are mine.

"Q. Then all you stated to me was false and you only stated it because you were instructed to do so by the presidente of Floridablanca and the teniente of Baruya?—A. Yes.

"Q. Do you made this statement voluntarily?—A. Yes."

About the same time Gregorio Medrano on being again examined, made the following statement:

"Q. Why did you state to me in the presence of Captain Opperman in Sexntoan at the time of your arrest that you went with Alberto David and Crisanto Magalindan and robbed a Chinese tienda at Sto. Domingo Gate (Intramuros), and murdered the two Chinamen there?—A. I only stated to you that I got the watch, which you showed me, from Alberto.

"Q. Did Alberto tell you what to state if you were arrested?—A. Yes, sir. He told me a few days before Christmas in my house in Sexmoan, if I should get arrested to say 'Yes.' I am guilty of anything I am asked.

"Q. Who was with Alberto at that time?—A. The other men—

"Q. Why did Alberto tell you to say you are guilty if you are not?—A. He only told me to say 'I am guilty' and he would get P1,000, and he would give my sisters some money, and that he would get a lawyer for me and get me out of prison. And since we have been arrested Alberto said to me, 'Why did you not say you are guilty? Now I can not get the money, because you do not still say you are guilty.'

"Q. Then all that you first stated about killing the two Chinamen and robbing their store at Santo Domingo gate was false?—A. Yes, sir. Alberto also told me that since I have not told the same story as I did at first, he will tell the same one, no matter what happens to him, and also get me into trouble with him.

"Q. Do you make this statement voluntarily and of your own free will and without promise of reward or immunity?—A. Yes, sir."

It is proper to state also that because of all these events the defendant Gregorio Domingo was on January 4, 1909, brought from Bilibid and questioned by the prosecuting attorney and the judge of the Court of First Instance, and that he then told substantially the story which the witnesses Marshall and Hartpence testified that he told when examined by them shortly after the robbery and murder. The statements appear in the affidavit presented on the affidavit upon motion for a new trial for Orozco.

Further comment seems unnecessary. The motion of the defendant Orozco for a new trial is denied, and the judgment and sentence imposed upon him is in all things affirmed. So ordered.

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

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