

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN PICO, DEFENDANT AND APPELLANT.

G.R. No. 5487. March 21, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant was convicted in the Court of First Instance of the Province of Isabela de Luzon of the crime of murder and sentenced to life imprisonment, accessories, indemnification, and costs. He appealed.

The court below found the following facts to have been established by the proofs :

"It appears from the evidence in this case that about 11 o'clock on the night of March 1, 1909, the accused, Juan Pico, accompanied by Fernando Rustant, Maximo Teves, Francisco Baquiran, Hermogenes Ramos, and a deaf-mute, named Jose Balayan, all employees of the hacienda of 'Maluno,' of which the accused is administrator, went to the house of Eulogio Castellanes, which is situated on the said hacienda of 'Maluno;' that, on arriving at the house of the said Eulogio Castellanes, the accused fired two shots from a gun which he carried; that he then called to Eulogio Castellanes to awake and to open the door; that Eulogio Castellanes obeyed, and when the door was opened the accused, Maximo Teves, and Francisco Baquiran entered the house; that the accused asked Eulogio Castellanes if he had any guests in his house and that Castellanes answered that there was a Chinaman sleeping in another room; that the accused then entered the room where the Chinaman, whose name appears to have been Go-Siengco, was sleeping and called him three times, and the Chinaman failing to get up as directed, the accused struck him with the gun which he carried; that the Chinaman then awoke, and the accused attempting to strike him again with the gun, the Chinaman caught the gun and held it until Francisco Baquiran, coming between the accused and the Chinaman, separated them; that the accused then ordered Francisco Baquiran to bring the Chinaman outside, and Baquiran brought the Chinaman downstairs and out of the house; that the accused then ordered the deaf-mute Jose Balayan and Hermogenes Ramos to tie the arms of the Chinaman, which they did, and the Chinaman refusing to walk in the direction of the casa-hacienda where the accused lived, the accused struck him several times with his gun, and that, on arriving at the said casa-hacienda, the Chinaman was in a state of collapse and could not speak as the result of the blows inflicted on him by the accused, and that the accused was obliged to awaken other employees and servants of the hacienda named Anacleto Duarte and Bienvenido Duarte and one Guillermo to help carry the deceased up the stairs of the casa-hacienda; that the said Hermogenes Ramos, the man name&Ouillermo, Bienvenido Duarte, Anacleto Duarte, and the deaf-mute carried the Chinaman upstairs and into the room of the said casa-hacienda, which is called the cuarto de orden, where the Chinaman died about four hours later, or at about 4 o'clock on the morning of March 2; that at 8 o'clock on the morning of the said 2d of March, by direction of the accused, the deceased Chinaman was buried on the hacienda of 'Maluno,' and on the 5th of March the body was exhumed by order of the justice of the peace of the municipality of Ilagan, and Nicasio Claravall, president of the board of health of the said municipality, assisted by a practicante named Jose Banta, made a post-mortem examination of the body; that the body showed plainly the marks of the violent treatment to which the deceased man had been subjected at the hands of the accused on the night in question."

The only question presented by the defense on this appeal is one of fact. The constant assertion of the accused is that the Government has not proved its case against him. It is conceded in effect, however, that if the testimony of the witnesses for the prosecution is true the defendant is guilty. That he is guilty if the witnesses of the Government are to be believed is beyond possibility of doubt. The real question resolves itself ultimately, then, into the question of the credibility of the witnesses. We have said in a recent case that where there is a conflict in the testimony of witnesses the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, this court will assume that he acted fairly, justly, and legally in the exercise of that function. We have read the evidence adduced on the trial with great care. The testimony of the witnesses Castellanes, Baquiran, Bienvenido Duarte, Anacleto Duarte, Magas, Balayan, Claravall, Banta, Bayad, and Bugenio, produced by the prosecution, is clear, direct, unequivocal, and powerful, disclosing no elements of untruth. Their probative force is overwhelming. They support in the very clearest and most forcible manner the findings of the trial court.

We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration in favor of the accused the extenuating circumstance described in article 9, subdivision 3, of the Penal Code, namely, that "the delinquent had no intention of committing so grave an injury as that which he inflicted." There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree.

The judgment of the court below is hereby modified, and the defendant is hereby sentenced to seventeen years four months and one day of cadena temporal, to the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the trial. So modified the judgment is affirmed, with the costs of this instance against the appellant.

The defendant makes a motion for a new trial, alleging the discovery of new and material evidence which could not have been discovered before the trial in the court below by the exercise of reasonable diligence and which is of such a character as probably to change the result. In support of his motion he presents his own affidavit and the affidavits of Hermogenes Ramos and Maria del Pilar. In his statement Ramos swears that on the night in question he was riding a carabao upon the road along which the Chinaman, Go-Siengco, was being conducted from the house of Castellanes to that of the accused; that the Chinaman walked well; that he saw Balayan, the deaf-mute, a witness for the prosecution, suddenly strike the Chinaman three heavy blows with the butt of a gun, on receiving which the Chinaman fell to the ground; that Balayan picked him up and they passed on toward defendant's house; that affiant approached closer and Balayan told him that he had struck the Chinaman three blows with his gun; that soon thereafter Balayan again struck the Chinaman in the right side with his gun, causing the Chinaman to cry out with pain; that the next morning Balayan told him that the Chinaman was dead, having succumbed to the blows which he had given him the night before. Maria del Pilar states in her affidavit that she is the mother of Balayan and that she heard him tell the wife of the accused after the trial, in response to the question why he had sworn against her husband at the hearing of the cause, that he had sworn against the accused for fear of some Chinamen and the sergeant of police of Ilagan, who told him that they would shoot him and hang him unless he so testified.

We do not believe that the motion for a new trial ought in justice to be granted. It has been held by this court that a new trial will not be granted "unless the following conditions exist: (1) The evidence must have been discovered since the trial; (2) it must be such that with the use of reasonable diligence on the part of the defendant it could not have been secured on the former trial; (3) it must be material and not merely collateral or cumulative or corroborative or impeaching; (4) it must be such as ought to produce a different result on the merits on another trial; (5) it must go to the merits, and not rest on a merely technical defense." (U. S. vs. Luzon, 4 Phil. Rep., 343.)

In the case at bar it was fully known to the defendant that Hermogenes Ramos was a very material and important witness since he was one of those, according to the defendant's own proof, who accompanied the Chinaman from the house of Castellanes to that of the accused. No effort whatever was made by the defendant to secure the attendance of this man as a witness on the trial. Moreover the evidence which the defendant offers to present on the occasion of a new trial is contradictory in the extreme to the evidence which he actually presented on trial at which he was convicted. There it was contended stoutly, and evidence was adduced by him to support that contention, that the Chinaman was not assaulted or struck by any person in any way from the time he left the house of Castellanes until he reached that of the accused. In corroboration of this the defense presented evidence tending to show that the Chinaman died a natural and not a violent death. In addition, while Hermogenes, in his affidavit, states that he joined those who were conducting the Chinaman only after they had progressed a considerable distance on the way to the house of the accused, having inadvertently come upon them while he, mounted upon a carabao, was traveling upon his own affairs, nevertheless it appears from the testimony of defendant's witness on the trial that he, Hermogenes, was present as one of the companions of the accused from the time he left the casa-hacienda search of several malhechores until he returned there with one lone Chinaman roughly dragged from peaceful slumber.

The motion for a new trial is denied. So ordered.

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

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