

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SILVESTRE QUILLO, DEFENDANT AND APPELLANT.

G.R. No. 5560. March 14, 1910

Ponente: TORRES, J.

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TORRES, J.:

On the night of February 3, 1909, Antonio Serrano, living at No. 194 Calle Magallanes, Intramuros, left his house in company with his wife to go to the Carnival, leaving his two servants, Alberto Concepcion and Eulogio Pena, in the house and locking the gate. At about 11 o'clock of the same night, Patrolman Charles G. Smith received information that there was a wounded man in the house; he immediately proceeded to the place and found a man covered with blood lying on the ground in the interior patio; he was obliged to force open the locked gate in order to remove the wounded man, who proved to be Alberto Concepcion, one of the house boys, and to conduct him to the hospital of San Juan de Dios, where he died within an hour after arrival.

An examination of the body of the deceased showed many wounds: one about 10 centimeters long and half a centimeter deep on the forehead; another of similar size on the right side of the forehead; another about 12 centimeters long over the left ear; another over the superficial temporal artery, which was severed; another in the left occipital region; another at the back of the neck which penetrated the spinal vertebrae, severing all the muscles of the neck; two wounds of 5 centimeters in length on the right forearm; another on the left wrist; two other wounds in the right forearm, and one wound on the little finger of the right hand. According to the surgeon who made the examination, the majority of the above-described wounds were necessarily fatal and sufficient to have caused death; there were other wounds of less importance on the body. The doctor who examined the body testified to these wounds at the trial.

According to Eulogio Pena, the only eyewitness of the affray, the violent death of the victim occurred as follows: Pena that night was waiting at the grated door of the house for the newspaper, after the departure of his masters, when Silvestre Quillo approached him from the street, asking if his employers had gone out, to which he answered in the affirmative. After this Quillo left and the servant Pena went upstairs to the dining room, from whence he saw that Quillo, by means of a ladder, had climbed over the fence and with a bolo in his hand was going in the direction of the servants' quarters on the ground floor of the house; Alberto Concepcion was there at the time, sitting on a trunk and reading a book; there was a light in the room, and when the witness went to the window of the kitchen, he saw that Quillo was attacking his fellow-servant Concepcion, but notwithstanding the cries of the latter he dared not go to assist him as he wanted to do, because the aggressor had threatened to kill him if he came near; being afraid, he went back to the dining room and from there he saw Silvestre Quillo place a ladder against the wall and climb over the fence and out of the house; at about 11.30 p. m. his master arrived with several policemen, he being asleep through fear at the time.

In view of the foregoing facts, as alleged, a complaint was filed with the Court of First Instance of Manila charging Silvestre Quillo, who was later on arrested, with the crime of murder, and these proceedings were instituted; on the 13th of February, 1909, the trial court rendered judgment therein sentencing the defendant to the

penalty of cadena perpetua, with costs, from which judgment he appealed.

From the above-stated facts, fully proven in this case, it appears beyond a doubt, that the crime of murder was committed, inasmuch as Alberto Concepcion was attacked with a sharp, cutting weapon, at a time when he had his back turned to the aggressor and while sitting on a trunk with his body bent over his knees reading a book by means of a light in the room. Patrolman Hartpence, who was the first to enter the room, found the book open upon the floor with blood stains on page 45, which detail confirms the statement by Peña, the other servant in the house and the only eyewitness of the occurrence. And even though doubts were entertained as to the latter's statement, that the aggressor attacked his victim from behind, considering the report of the surgeon who examined the wounds of the deceased at the hospital of San Juan de Dios, yet it is undeniable that, being seated and busy reading, entirely unaware and unarmed, he was suddenly attacked by the aggressor who was carrying a bolo, and in view of the numerous wounds inflicted on him, some of them of a serious character and necessarily mortal, it appears that the deceased was attacked treacherously, because the aggressor employed ways and means in the commission of the crime tending directly and particularly to insure its consummation without any risk to his person which might arise from a defense by the injured party who, unquestionably, was unable to execute any such act or even to flee because, being seriously wounded in the back of the neck, as stated by the witness Peña, or in the forehead and left side of the face as the said surgeon believed, the assaulted man was at once incapacitated and could not defend himself, and the aggressor, by the superiority and advantage he had obtained, was free to continue his acts until he left the assaulted man almost dead.

The crime therefore falls within the provisions of article 403 of the Penal Code. The defendant, Silvestre Quillo, pleaded not guilty, and although he did not testify in the case, his counsel presented Maria Rodriguez as a witness to prove an alibi, and the latter declared that the said defendant was in her house and slept in it, although he did not usually do so, from 8 o'clock on the night of the affair until 4 o'clock of the following morning, when he left to return to his own dwelling.

The foregoing testimony, which is insufficient of itself, has been contradicted by Patrolman Hartpence, who had a conversation with her regarding the hour at which the defendant Quillo arrived at her house; Rodriguez assured the policeman that she could not fix the hour at which the defendant reached her house because she did not have a clock, and she then said nothing about having heard bells strike, which she thought indicated 8 o'clock, when the defendant arrived at her house. At any rate the testimony of the said Maria Rodriguez is not at all sufficient to destroy the testimony of the eyewitness to the crime, Eulogio Pena, the only person who was in the house where it took place; the testimony of the aforesaid eyewitness is corroborated by other circumstantial evidence which, together with that of the said eyewitness, produce in the mind a full conviction, beyond all doubt, of the guilt of Silvestre Quillo as the sole principal in the murder herein prosecuted.

In fact, it is proven that at 4 o'clock of the morning following the night when the murder was committed, the defendant appeared at the door of the house of Gaspar Justinbaste situated in Calle Magallanes, 151, close to that where the affair happened, wherein he lived, and when trying to enter it, after cautiously looking all around, he saw Policeman Catalino Fernandez who was there seated on a bench awaiting his return; that he then tried to escape, but the policeman cautioned him not to run away and caught him by the arm and asked him his name; that he first said his name was Pedro, and later on that it was Juan, and only when Eulogio Pena was brought before him in order to identify him, did he give his true name; that the bolo, which the defendant used in the assault, was afterwards found in a box outside of the room where the crime was committed, and upon its being presented to Gaspar Justinbaste, in whose house the accused lived, it was recognized as the one that he had and which disappeared three weeks previously, for which reason he had given it up for lost; said witness called attention to the fact that the bolo, upon examination, proved to be sharper than before its disappearance; that, according to the

declaration of Policeman Hartpence, the interior of the room where the crime was committed could be seen and examined from the window of the kitchen on the upper floor of the house, which confirms the statement of witness Pena; that the latter asserted that on the night of the murder the accused wore black trousers, and as a result of the search made by Policeman Catalino Fernandez in the house where the defendant lived, the black trousers were found with blood stains on them, and were identified by Pena and by Antonio Serrano, who formerly owned the trousers and gave the same to his servants, although he did not know which one had secured them, but supposed that it was the accused Quillo, who was in his employ at the time, and was one of the servants of the house, from which he afterwards departed.

With respect to the motive that gave rise to the attack upon the unfortunate Alberto Concepcion, none can be found in the record, with the exception of the facts stated by Eulogio Pena, a fellow-servant of the deceased, who says that, a few days before, some trouble had arisen between the deceased and the defendant, because the former had not given the latter certain money that Quillo had requested from Concepcion; such a motive was too insignificant to warrant the killing of the latter, and it shows the degree of perversity of the murderer.

In the commission of the crime the presence of aggravating circumstances Nos. 15 and 20 of article 10 of the Penal Code must be considered, inasmuch as the defendant undoubtedly and expressly selected and waited for the darkness of night in order to successfully carry out his criminal intent, and perpetrated the crime in the dwelling of the victim. These two circumstances are counteracted by the special circumstance established by article 11 of the Penal Code, for the reason that Silvestre Quillo is a native of these Islands and of hardly any education, which circumstance may properly be considered because the present case is not one of robbery with homicide, or of murder and robbery, and the complaint only charges the accused with the crime of murder. And, notwithstanding the fact that in the room where the murder occurred a trunk was found open with all the clothing therein mixed up and with blood stains thereon, it has not been shown that the crime of robbery was committed, and whether beyond the two P5 bills found inside a piece of red paper among the clothes, money or other goods had been stolen; therefore it can not be concluded with certainty that the crime of robbery was committed.

Therefore, it is our opinion that the judgment appealed from should be and is hereby affirmed with the costs against the appellant, provided, however, that he shall further be sentenced to suffer the accessory penalties Nos. 2 and 3 of article 54 of the Penal Code, and to indemnify the heirs of the deceased in the sum of P1,000 and that the two P5 bills shall be delivered to the latter if it has not already been done. So ordered.

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

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