

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE ORO, DEFENDANT AND APPELLANT.

G.R. No. 5781. August 14, 1911

Ponente: MAPA, J.

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MAPA, J.:

The defendant in this case is charged with the murder of Carolina of Carola Oribiada, a female infant 11 months old, and the court, in view of the evidence presented at the trial, sentenced him to the death penalty, to the payment of an indemnity of P500 to the mother of the deceased, and to pay the costs of the case. From this judgment the defendant has appealed to this court.

The judgment appealed from contains an exact and detailed account of the facts that were proved by the evidence, as follows:

"Joaquina Oribiada, single, about 18 years of age, maintained carnal relations with one Eduardo Ibañez, as a result whereof she had a daughter, named Carolina Oribiada, who was born on April 30, 1908, and died on April 24, 1909, about six days before she would have been one year old. The child's mother lived in the municipality of Guinobatan, of this province, and the child died in the same district. Joaquina maintained the said relations with Ibañez for more than two years and when she discontinued them, she began to have relations or to live with the defendant, Vicente Oro, in the month of January of this year, and lived with him until the occurrence of the crime charged against him in this case.

"At about 10 o'clock, Thursday morning, April 22 of this year, Joaquina went out of her house to bathe, leaving the defendant therein with the child. She returned to her house at about noon that same day, after an absence of approximately two hours. When she entered the house, she found the child with burns; thereupon she inquired of the defendant how the child had burnt itself, and he replied that she had fallen: then the mother, according to her testimony found on page 3 of the record, held the following conversation with the defendant: She said, after she had found that the little girl had burns, 'I am going to take the girl to my mother.' The defendant replied, 'Why are you going to take her there?' and then she said, 'I am going to the pueblo,' and the defendant replied, 'What are you going to do in the pueblo?' thereupon, according to the child's mother, the defendant scolded her and she took the girl into the small room of the house, from which room the defendant would not permit her to go out. When the mother arrived at the house, the defendant had the little girl in his arms. The child died, as aforesaid, on the 24th of April, as a result of the burns, and the corpse was, on the same day, taken to the pueblo and was there examined by Doctor Limkako, on the morning of the next day, the 25th.

"The defendant did not testify as a witness in this case. It is well established that the court can not take this fact as a circumstance against the accused. Notwithstanding the fact that he did not testify as a witness, we may set up the premises, as a theory of the defense, that the child received the burns accidentally by having fallen, or, more specifically, that she fell out of the house through a hole in the floor and in the fall landed upon some live coals that had been placed under the house to keep the mosquitos away from it at night.

"If the defendant actually burned the child and caused her death, he is guilty of a most serious crime. He is apparently a person of considerable intelligence and good physique, and the child, by reason of her age, could

in no manner have defended herself; so that, if the defendant committed this crime, he did so with the absolute certainty that the child could make no defense, and that he was not exposing either his body or his life to danger from any act she might perform.

"For the proper determination of this cause, the testimony of Catalina Olasso, Pedro Olayres, and Doctor Limkako, a physician, merits due consideration and careful study.

"The witness Catalina Olasso is an old woman of about 60 years of age and lived at an approximate distance of 40 brazas from the house of the defendant and Joaquina. She testified that, on the 22d of April of this year, she went down out of her house to a spot some 40 brazas from Joaquina's, and that she then saw that the child had fire in her mouth; that her attention was called to the house by the child's crying; that the little girl was lying, face up, on the floor of the house, while Vicente Oro, the defendant, was sitting beside her, and that Vicente Oro and the child were the only persons in the house at that time. This witness, according to her testimony, saw the child and the defendant, from the side of the house where there was no wall of any kind or anything that might hinder their being seen. Witness retired to her house and did nothing in the matter, nor did she report to any authority what she had seen. She explained that she made no report, for the reason that there was no other person in her house. She had known the defendant but a short while before the occurrence of the crime, and had had no dealings with him.

"The witness Pedro Olayres testified that he lived at a distance of about 30 brazas from the house of the crime, and that, on the morning of the 22d of April, he went out of his house and into the coconut grove in front of it; that while there he saw the child on the floor of the house, face down, and with fire just below her waist; that the defendant was near the child; that witness was then about 17 brazas from the house; and that he could see inside the defendant's house for the reason that there was no wall of any kind or anything on that side of the house that might prevent the defendant and the child from being seen. This witness did not denounce what he had seen, because, according to his testimony, the child's mother arrived a very short while afterwards.

"For the purpose of refuting the testimony of these two witnesses for the prosecution, the defense presented the defendant's mother, who testified that Joaquina had called her on the morning of April 22, telling her that the child had fallen into the fire; that she went there at about 8 o'clock in the morning, helped the mother and the defendant to attend to the child, and that witness took the latter to her own house.

"The defense also presented Sr. Mercader, the justice of the peace who officially visited the scene of the crime. This witness testified that the defendant's said house was entirely open, that is it had no wall on the east side; that the floor of the house was intact; that the house stood over a canal; that it was impossible for the child to have fallen into the canal through a hole in the floor of the house, but that if she had fallen out of the house, she necessarily must have fallen in front of the house and on level ground. When the justice of the peace made the inspection, there was no fire under the house nor was there any sign whatever to indicate that there had been a fire there, but in the vicinity of the house and within a short distance from it there were signs of a fire.

"Doctor Limkako described the burns that he found on the child's body (pp. 11 and 12 of the record). It had very serious burns around the mouth and on both buttocks. It is quite certain that the direct cause of the child's death was her inhaling the fire while she was crying, which affected her heart and one of her lungs. If these internal organs had not been affected, it may be that the burns might have been cured. It is fully proven that the child did not fall down out of the house and below it, through a hole in the floor of the same, into the canal, for the reason that there was no such hole and it is impossible that she could have fallen in the manner alleged. If the child had fallen out of the house, she would have landed in front of it and on level ground, and the house was quite low. In my opinion, judging from the extent and seriousness of the burns, as described by Doctor Limkako, it would have been impossible for the child to have burned herself so seriously, had she fallen accidentally. If the child had fallen buttocks first, onto the fire accidentally, she must, in order to cause a burn affecting the entire thickness of the skin and a part of the muscular tissue, necessarily have remained on the fire some time, at least one or two minutes, and the natural instinct of the child would have been to get out of that

position and she would not have remained there the length of time necessary to produce such serious burns. It is also difficult to understand how the child could have received the burns only in her mouth and on her buttocks, if she had fallen accidentally.

"It is true, as stated by the counsel for the accused, that the court should take into account the fact that none of the eyewitnesses for the prosecution reported to the authorities what they had seen, nor did anything to rescue the child from the danger. It is somewhat unusual, also, that these two witnesses should have seen, almost at the same moment, the acts performed by the accused; but the woman, Catalina Olasso, was in her own garden, and the man, Pedro Olayres, had entered a coconut grove, and these things could have occurred. The fact that no enmity exists, nor did exist, between these two witnesses and the defendant, tends to establish the veracity of the former's testimony, especially when considered jointly with that of. Doctor Limkako and the justice of the peace, Sr. Mercader.

"The attorney for the defendant argued, with considerable force, that no motive whatever existed on the part of the defendant to induce him to cause the death of this child.

"It is true that the prosecution has not clearly proved the motive that prompted the defendant to commit these acts. Neither does the record disclose any direct and positive evidence whatever that the defendant had any resentment against the child or had threatened her mother. Speaking of the motives that the defendant may have had to kill the child, the latter's mother testified (pp. 5 and 6 of the record) that 'apparently, Vicente grumbled at me because he had heard that the child's father was to return;' that witness had desired to separate from the defendant and asked the latter's permission to do so, and that on several occasions she had endeavored to sever her relations with the defendant, but he objected to her carrying out her intention. She also testified that the defendant knew that the child was by another man. As I stated, the defendant and the mother of the child were not married, nor were the real parents of the child, and, according to the mother's testimony, the defendant desired to continue his relations with her indefinitely, that is to say, he wished to continue to live with Joaquina, and it is not strange that the defendant, not being the father of the child, might have thought that it was very likely that the father of this little girl loved her very much and might want to return to care for the child and to renew his relations with Joaquina, and, naturally, if the child did not exist, her father's desire to return to Joaquina would not be so strong. The child's father has not appeared before this court and we can say nothing about his physical condition or age; but the defendant and Joaquina, among people of their class, might pass for quite good-looking persons. If the child's father had returned to take the little girl away, naturally the mother would have followed the daughter and the father, leaving the defendant alone, and, as the latter very much desired to continue his relations with Joaquina, he committed this very serious crime.

"The qualifying circumstance of alevosia enters into the commission of this crime, since the defendant caused the death of the child without any risk whatever to himself; it is also qualified by the circumstance of extreme cruelty, for the reason that, if the desires of the defendant had been only to kill the child, he could have carried out his purpose in some other more expeditious manner, without compelling the victim to undergo such great suffering and for so long a time. These two qualifying circumstances raise the crime to the degree of murder, and, as there is no extenuating circumstance whatever and there also exists the aggravating circumstance of abuse of superiority, the penalty must be imposed in its maximum degree.

"Therefore, I find the defendant, Vicente Oro, guilty of the crime of asesinato, as above set forth, and sentence him to be hanged by the neck until dead, in the manner and form required by law. I sentence him, furthermore, to pay an indemnity of P500 to the mother of the child, or to her heirs, and to pay the costs of this case.

"This case shall be forwarded to the Supreme Court of these Islands, for such purposes as the law requires.

"So ordered, in Albay, Albay, this 8th day of October, 1909.

(Sgd.) "GRANT TRENT,
"Judge of the Eighth District"

We concur in the findings of fact set forth in the judgment appealed from. The evidence unquestionably shows the defendant's guilt. Besides the facts related in the said judgment, the witness Catalina Olaso positively averred, in one part of her testimony, that she saw the defendant when he was burning the child's mouth.

The findings of law are also correct, with the exception of the one relative to the determination of the aggravating circumstance of abuse of superiority; this circumstance is comprised in that of alevosia, considered in the judgment as qualifying the crime of murder, because, as the Attorney-General well says in his brief, freedom from all danger to the person of the defendant especially depended on the superior strength of the aggressor and the weakness of the victim, due to her tender age - an absence from danger which is essential for the existence of the circumstance of alevosia. The said crime being classified by this circumstance, that of extreme cruelty, which the trial court also held to be a qualifying circumstance which without doubt concurred in the perpetration of the crime, should be considered as an aggravating circumstance. The concurrence of such aggravating circumstance, without any extenuating one in the defendant's favor, requires that the penalty provided by law be imposed in its maximum degree, which is that of death.

The judgment appealed from is affirmed with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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