

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISAAC FERNANDEZ, DEFENDANT AND APPELLANT.***G.R. No. 6067. December 21, 1910*

Ponente: TORRES, J.

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This cause was forwarded to this court for review of the judgment rendered therein, whereby the defendant was sentenced to the death penalty.

At a late hour of the night of February 26, 1909, an assault was made upon the house of the spouses Anastasio Gadacho and Juliana Gadon, situated in the barrio of Despujol, Odiongan, while they were soundly sleeping, in which condition they were attacked by one or two men who struck them with the weapons with which the said aggressor or aggressors were provided. As a result of the noise made, the girl of about 11 years of age, named Pilar Falsario, the daughter of Juliana Gadon, awoke and, being very much frightened, instead of going to the place where the victims were, leaped out of the house and climbed up a nearby tree, from where she saw a man go out of the house, wherein her mother was calling her by name and asking for help. The girl did not recognize the man who went out of the house, nor did she see his face, and shortly afterwards she went to her grandmother's house, where she remained until the morning of the following day, when she returned to her parents' house, and, as she saw blood on the ground under it, she screamed for help, but no one responded; she therefore ran to the house of the teniente of the barrio, Maximo Soliven, who repaired to the house where the crime was committed and where the spouses Gadacho and Gadon, already dead, were then found lying on the floor on a mat. The body of Juliana Gadon presented several wounds in the nasal cavity, in the occipital region, a part of the cranium with the chignon being separated from the head. Anastasio Gadacho's body also bore a number of wounds on the right cheek, in the frontal region, on the right arm and the fingers of the same hand. No witness was present at the commission of the crime except the perpetrator or perpetrators thereof, for the girl, Pilar Falsario, on perceiving the disturbance raised by the aggression, from the separate place where she was sleeping, jumped out of the house, in the manner aforesaid.

On the examination of the said girl, she stated that at 8 o'clock in the evening of the day of the crime, Isaac Fernandez was at her mother's house conversing with the latter in regard to a certain gratuity for the purchase of a carabao by Juliana Gadon, and that, after a slight discussion in which her mother said to Fernandez that he should arrange with her husband, Gadacho, her mother left the house and Fernandez remained therein; that the accused questioned the witness as to who slept behind a curtain which there was in the house, to which she replied that her mother and her stepfather, Gadacho, usually slept there; that Fernandez thereupon asked her where she slept, and she replied that she generally slept in the kitchen of the house; that after Fernandez had gone out of the house he reentered it a few moments afterwards to inquire of the witness where one could get into the house in case the main door should be closed, the girl Pilar told him that there was a hole in the kitchen through which a person could pass; that while Fernandez was making these inquiries, he was examining the inside of the house, and immediately thereafter went out without saying anything.

The witness added that, before her mother's burial and after Fernandez had succeeded in escaping from the place where he was detained, the accused came near her house and, with a blow with a bolo, killed the carabao before referred to, the only one which her mother had when she died.

For the foregoing reasons, the provincial fiscal filed a separate complaint in the Court of First Instance of Capiz, on the 3d of July of the year aforementioned, charging Isaac Fernandez, alone, with the crime of murder. The case having come to trial, the court, upon the evidence adduced, pronounced judgment on September 8, 1909, and sentenced the defendant Fernandez to the death penalty to be executed in accordance with the law, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs. From this judgment the defendant appealed.

This cause concerns a double murder, committed at a late hour of the night of February 26, 1909, the victims being the spouses Anastasio Gadacho and Juliana Gadon, and while they were sound asleep in their house in the barrio of Despujol of the pueblo of Odiongan, Romblon, Province of Capiz a crime provided for and punished by article 403 of the Penal Code, inasmuch as its execution was attended by the qualifying circumstance of alevosia.

A separate cause was prosecuted in the same Court of First Instance, under No. 253, and registered in this Supreme Court as No. 6069,[1] for the same crime, against Marcos Ambrosio and Alvaro Falsario, who were condemned by the trial court to the penalty of death, as the perpetrators of the said double murder, which sentence was confirmed by this court in its decision of November 12 of the present.

Isaac Fernandez was arrested and prosecuted in this cause as another of the supposed perpetrators of the crime alleged, upon the circumstantial evidence derived from the said testimony of the girl Pilar Falsario who, as it appears thereby, was not actually present at the time of the attack upon her mother and stepfather and only perceived the noise occasioned by the same, and that after she had gone out of the house and climbed up into a tree, from which point she heard her mother's voice calling her and asking for help, but she did not recognize the man who afterwards went out of the house.

The aforementioned circumstantial evidence was not corroborated by other data to conclusively prove the participation of the said defendant in the crimes under prosecution, for the said girl, who was not present during their commission, was unable to say that the man who came out of the house, in the darkness of night after she had heard her mother's cries, was Isaac Fernandez, for she did not recognize the man from the tree where she was perched.

The confession of having taken part in the perpetration of the double murder, said to have been made by the defendant Fernandez before the justice of the peace of Odiongan, according to the statements of this official and other witnesses who testified that they heard the confession in the Aglipayan chapel of the barrio of Despujol, can not be admitted as conclusive and decisive proof of the defendant's guilt, since other witnesses who were present at the preliminary investigation held in the said chapel testified that the accused Fernandez, who had been apprehended a few moments before, manacled and handcuffed, was lying face down on the floor and suffering from pain and an abundant hemorrhage of blood from his wounds, especially from one in his head, of a serious nature, vomiting the food he had eaten, was dizzy, faint, very weak and not entirely conscious, according to the curandero or medical practitioner who applied petroleum to his serious wound; so that, according to this witness and two others who were present, the defendant, notwithstanding his being put face up at the time he was questioned by the justice of the peace, only answered by grunts and unintelligible words. Any statement which the accused may have made while in such a condition and situation can not be deemed by the courts to constitute proof of his guilt, although it be considered jointly with the circumstantial evidence based on the aforesaid testimony of the girl Pilar Falsario, and with that deduced from his flight, denied in turn by the accused; nor can it serve to support a conclusion sufficiently well founded for the imposition of an irreparable penalty like that of

death.

Moreover, the accused Fernandez denied the charge and pleaded not guilty to having taken part in the double murder laid to him, and, as against his denial and allegation of having left the counselor's house, where he was detained, with the permission of the police corporal who with others was guarding him, to eat, the cause does not present meritorious and sufficient proof, expressly introduced, to produce in the mind beyond all doubt a full conviction of his guilt as an undoubted coprincipal of the double murder which is the subject of this prosecution, for it is not shown how and in what manner he escaped while under guard if it be untrue that he obtained the permission mentioned.

The attempt, arms in hand, and the tenacious resistance which the accused made against the local authority and his agents, when the latter tried to capture him after he had freed himself from his previous detention, a punishable act which should be the subject of separate prosecution and proceedings, must have biased the minds of the residents who exercised public authority, owing to the personal danger which some of them must have run and to the disorder which the said accused produced in the town; but such acts should in no wise be taken into account in an equitable judgment, according to the rules of sound reasoning upon the evidence, considered as an entirety and which has been adduced in this cause.

Section 57 of General Orders, No. 58, provides:

"A defendant in a criminal action shall be presumed to be innocent until the contrary is proved, and in case of a reasonable doubt that his guilt is satisfactorily shown he shall be entitled to an acquittal."

For the foregoing reasons, and inasmuch as absolute and positive proof is lacking to show that Isaac Fernandez participated in the said murders, and the fact that his innocence is doubtful, not being sufficient to warrant his conviction, it is proper, in our opinion, with a reversal of the judgment submitted for review, to acquit and we hereby do acquit the defendant, with the costs of both instances de oficio. Let the defendant be released from custody. So ordered.

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

Trent, J., dissents.

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[1] Page 295, *supra*.

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