

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CATALINO MERCOLETA, DEFENDANT AND APPELLANT.

G.R. No. 6073. November 15, 1910

Ponente: TRENT, J.

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TRENT, J.:

The accused, Catalino Mercoleta, was tried, convicted, and sentenced to the extreme penalty of death by the Court of First Instance of the Province of Leyte for the crime of assassination. The complaint is as follows:

"That the said accused, within the jurisdiction of the municipality of Carigara, Province of Leyte, Philippine Islands, on the 31st day of January, 1910, voluntarily, criminally and maliciously, and with a bolo which he was carrying, by means of known premeditation, treachery, vindictiveness and in an uninhabited place, struck the Chinaman Go-Siaco alias Tiago, a human person, giving the said Chinaman a cut with said bolo on the left side of the neck, which blow almost severed the head from the body of the said Chinaman, who, as a consequence of said wound, died immediately. In violation of law."

It is admitted that the accused killed this Chinaman on the 31st of January, 1910, by striking him on the left side of the neck with a bolo, nearly severing the head.

The accused testifying in his own behalf stated that some time prior to the time he killed the Chinaman he had sold to him (the Chinaman) a certain amount of hemp; that the deceased Chinaman had deceived him in the weight of this hemp, thereby defrauding him out of a part of its value; that on the morning of the 31st of January, 1910, he borrowed a bolo for the purpose of gathering some coconuts; that after he had gathered the coconuts and concealed them in the grass, and while on his way to return the bolo, he met the deceased and asked him for the value of that part of the hemp for which the deceased had failed to pay him. The Chinaman replied: "I do not owe you anything," took out his penknife, opened it, and raised his hand in the attitude of striking; that at this moment he, the accused, inflicted the fatal wound. The accused further testified that he did not know that the Chinaman was going to pass that place on that day; that he killed the Chinaman in order to defend himself and because he was tired of asking him to pay for the hemp; that he borrowed the bolo with which he killed the Chinaman from his grandfather, and further that Villarino was not present when he borrowed this bolo.

Basilio Riel, who was near by when this killing occurred, testified that he heard somebody cry "juapia" three times; that on hearing this cry he arose and saw the two men walking, one behind the other, the Chinaman being in front; that just at that moment he saw the Chinaman fall forward on his face, the cry and the fall of the Chinaman occurring almost at the same time. This witness then ran away.

Zacarias Villarino, uncle of the accused and owner of the bolo with which the accused killed the Chinaman, testified that the accused came to his house about 8 o'clock on the morning of January 31 to borrow the bolo; that he refused to loan it to him, and that the accused thereupon took the bolo without his knowledge or consent, returning it that same afternoon; that at the time it was returned it had blood stains on the blade. He further testified that the accused is a left-handed person.

The accused was arrested on March 8, 1910, and taken before the auxiliary justice of the peace of the municipality of Carigara for a preliminary investigation. After the complaint, charging him with the murder of this Chinaman, had been read and interpreted to him, he pleaded guilty to the charge. After entering this plea of guilty he, according to the testimony of the auxiliary justice of the peace and another witness who was present, gave a detailed statement of how the killing occurred, stating that he had sold the Chinaman a certain amount of hemp; that the deceased Chinaman had defrauded him in the weight of this hemp; that on this account he held a grudge against the Chinaman and longed for an opportunity to meet him alone; that on the morning of the killing he learned that the Chinaman was going to pass along the beach; that he, after receiving this information, borrowed the bolo from Villarino and hid himself near the path where the deceased would pass and remained there until he came along; that he allowed the Chinaman to pass him about three steps when he then sprang out behind him and struck him a blow on the left side of the neck. During the trial in the Court of First Instance the accused denied having made these statements to the auxiliary justice of the peace.

The testimony of the auxiliary justice of the peace is corroborated in every detail by Urbano Banez, a lieutenant of Constabulary, who was present during this preliminary investigation. Both of these witnesses testified that these statements of the accused were made freely and voluntarily. This confession, made by the accused during the preliminary investigation, is corroborated in part by the witness Basilio Riel who heard the Chinaman cry out, saw the accused immediately behind the Chinaman, and saw him (the Chinaman) fall. The accused himself admitted on the trial that he killed the Chinaman partly on account of his refusal to pay him, the accused, for the hemp. He is a left-handed person and could not have very easily inflicted this wound while facing the deceased, the wound being on the left side of the neck. This fact is a strong circumstance showing that the accused was actually behind the Chinaman when he dealt the fatal blow. We think the testimony fully establishes the fact that the accused, feeling himself aggrieved by having been, as he thought, defrauded out of a part of the value of his hemp by the deceased, and having learned that the deceased was going to pass alone along the beach that day, secured the bolo, secreted himself, and awaited the coming of the Chinaman, and that immediately after the Chinaman passed him he sprang out and dealt the blow from behind the Chinaman. The deceased evidently did not know that the accused was in that vicinity and had no opportunity to defend himself. In killing this Chinaman the accused employed means which directly secured the death of the deceased without any risk on his part. These facts clearly establish the qualifying circumstance of *alevosia*, which raises the crime to murder. In the commission of this crime the aggravating circumstance of known premeditation has also been established, inasmuch as the accused deliberately formulated the plan to kill this Chinaman, having borrowed the bolo early in the morning and secreting himself near the path where the Chinaman would pass, remained there until he came along. The aggravating circumstance of *despoblado* has not been established, inasmuch as it has not been clearly shown that there were no houses in that vicinity or people living near by. We think the entire record demonstrates that the provisions of article 11 of the Penal Code should be applied in this case.

For the above reasons, and applying the provisions of article 11 of the Penal Code, the accused is hereby sentenced to *cadena perpetua*. With this modification the judgment of the lower court is affirmed, with costs against the appellant.

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

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