

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO LEVENTE, DEFENDANT AND APPELLANT.

G.R. No. 6385. February 24, 1911

Ponente: TRENT, J.

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TRENT, J.:

The information filed in this case is as follows:

"That on or about the 4th day of May, 1910, in the municipality of Silay of this province, in the Tenth Judicial District, Philippine Islands, the said Ciriaco Levente entered the house of Petra Magallon, situated in the municipality of Silay, and unlawfully, maliciously and criminally, with the intent of gain, took possession of various effects and of the sum of P300, all contained in a trunk, which the said accused broke open, and did, with the exercise of violence against the person of Petra Magallon, by striking her with a cane of fan-palm wood, clutching her by the throat and strangling her, kill the said Petra Magallon, thereby committing robbery and homicide of the said Petra Magallon; in violation of article 503, paragraph 1, in relation with article 404, of the Penal Code."

Upon this complaint the defendant, Ciriaco Levente, was tried, found guilty, and sentenced to life imprisonment (cadena perpetua), to indemnify the heirs of Petra Magallon in the sum of P1,000 as damages and P300 for the value of the property taken, and to pay the costs. From this judgment the defendant appealed.

Before the 4th of May, 1910, Petra Magallon, 70 years of age, lived with her son and servant girl in the town of Silay, Province of Occidental Negros. About daylight on the morning of that day, the 4th of May, her son, Ignacio Ferrero, left the house for the purpose of going to a place called Dos Hermanos, leaving his mother, Petra, alone, the servant girl having already gone to visit her brother [mother]. Ignacio returned about 6 o'clock that afternoon and on arriving at the house found that it was closed and fastened on the outside. After some difficulty he succeeded in forcing his way into the house and there found his mother, Petra, lying on the floor dead. According to an examination of the body made by the doctor, this old lady met her death by a blow on the head, and by strangulation. After Ignacio discovered that his mother was dead he noticed that his trunk had been broken open and on further examination found that P300, together with his hat and a pair of trousers, were missing from the trunk. These facts stand undisputed. That this old lady was murdered and robbed is not questioned. No one saw this crime committed.

Ignacio Ferrero, 24 years of age, single, a merchant, was the first witness called by the prosecution. After stating the time he left his house on the morning of May 4, what he found on his return, the amount of money, hat and trousers taken, and that he left his mother alone on that morning, he testified further in substance as follows: That he had known the defendant for about a year; that the defendant visited his house frequently; that the last time defendant was in his house was about 8.30 p. m. on May 3, just the day before the murder; that the defendant came to his house then to invite him to go to Iloilo the following day; that he told the defendant he was going to Dos Hermanos on the following morning; that defendant was at his house on the night of May 1 and also on April 28; that when he came on April 28 he saw him, witness, counting his money and asked to borrow P5; that he

refused to loan the defendant this money; that he recognized as his a certain hat which was exhibited in court; that this hat was in the same trunk with the money, and that it was also taken on May 4.

Marciano Castellanes testified that he knew the defendant well; that the defendant's brother was his (witness's) compadre; that the defendant on the 28th of April, 1910, came to the hacienda where he was working and had a short conversation with him; that the following was said in that conversation:

"The defendant asked me if I knew Apolinar and Angel. I answered no, that I did not know them, and then asked him 'What reason have you that you are asking for these men?' and he answered, 'I would like to know that because I was intending to go to a house where there is some money. His name is Ignacio, a merchant.' The conversation continued, and the accused said, 'I need those two men because they know Ignacio, and even if I do not know Ignacio I can do the business myself/ I said to him, 'Why, are you not afraid?' And the accused said, 'I am not afraid because only Ignacio and his mother and a little girl live in that house,' and he then said to me that Ignacio, the merchant, had some money and he said to me that he saw when Ignacio was counting the money. He said, 'I was hunting those men, Angel and Apolinar, because I would like, to catch Ignacio because he has some money and is trying to go to Iloilo,' I told him that I thought it was not a good thing and as the house is within the municipality I thought the business was risky and he said to me, 'Although that house is within the town there are no houses near and it is separated from the other houses,' and then he bid me good-by and went to Silay."

The next witness was Mr. Barber, a captain in the Constabulary, who identified the trunk and the basket, and their contents, which were taken from the defendant at Iloilo.

Guillermo Julayco testified that he knew the defendant; that the last time he saw him was about 9 o'clock on the morning of May 4, 1910, coming out of the house of Ignacio Ferrero, walking toward the street, with his hand under his coat pocket as if he were carrying something heavy in it.

Severina Apao testified that the defendant and his querida were living in her house; that early on the morning of the day when Petra Magallon was murdered the defendant left her house, saying that he was going to the house of one Cesar to get some money; that he came back about noon, bringing some money wrapped in a handkerchief which he turned over to his querida Lucia; that on that same afternoon the defendant and his querida left for Iloilo on a lorch.

Filomena de la Roma (alias Lucia), the defendant's querida, was called as a witness for the prosecution and testified that she had lived with the defendant before he was married, but that after he got married they separated and she went to Iloilo; that they again began living together in April; that the defendant left the house where they were living about 5 o'clock on the morning of the day Petra Magallon was murdered and returned about 11 o'clock of the same day; that on his return he brought a little less than P100 in cash and turned it over to her and told her to keep it in the trunk; that she put this money in the trunk without counting it; that on the same afternoon about 2 o'clock, they left for Iloilo on a lorch, taking the money with them; that while in Iloilo they bought the trunk which had been exhibited in court, and also the following articles.

"A new pair of men's patent leather American make Regal shoes; one pair of ladies' shoes, new; a new Roskopf watch and chain; a set of two cuff buttons and two shirt buttons, new; two collars, new; two men's shirts, new; one pair of ladies' stockings, new? two men's new neckties; one pair of socks, new, for men; new necktie scarf pin; woolen cloth for man's pants, new; a piece of white muslin, new; cloth for woman's shirt, new; six pieces of lace embroidery, new, and a pair of armlets, new."

She testified further that this hat (the one which was exhibited and identified as belonging to Ignacio) was bought in Iloilo, but that she could not state the shape of it because they bought it at night, and that the defendant never wore this hat at any time.

The witnesses presented by the defense were the father and wife of the defendant, Florentino Lastimoso, and the defendant himself. According to the testimony of defendant's father he, the defendant, owned, at the time of this trial, four carabaos and had gathered in April, 1910, from sugar fields which he had rented, 380 piculs of sugar. This witness also testified that his son came to his house (the defendant and witness were living together) on Wednesday, May 4, to get some money; that on that day he gave the defendant P50; that on the same day he, defendant, got P15 from Florentino Lastimoso, and that he also got P20 from his wife the day before. Lastimoso corroborates the testimony of this witness with reference to the P15 turned over to the defendant by him, and so does the wife of the defendant with reference to the P20 which she claims she gave the defendant.

Ciriaco Levente, the defendant, married, and about 26 years of age, testifying in his own behalf, stated that he and his querida, Filomena (alias Lucia), left Silay on a lorchá on the afternoon of May 4 for Iloilo, arriving at their destination about 4 p. m. on the following day; that he took with him on this trip P85 which he had received from his wife, his father, and Florentino; that he and his concubine bought in Iloilo the articles, including the hat, mentioned by the witness Ferrero and enumerated by Filomena; that when he was arrested in Iloilo on May 6 he had these articles in his possession; that he did go to the house of Ferrero, at about 7.30 p. m. on May 3, to get a drink of water and that he was also there on May 1, but he denied having tried to borrow P5 from Ferrero on April 28, and also denied that he was in the church in Silay on the morning of the 4th of May; that he did not have a conversation with Marciano Castellanes on April 28. On being asked about the 380 piculs of sugar which Ms father testified he, defendant, had gathered from his fields, he stated that he did not receive this sugar.

After his arrest and return to the town of Silay the justice of the peace held a preliminary investigation and the accused, at his own request, testified as a witness in his own behalf. His testimony then taken was reduced to writing and duly presented at the trial of this cause. In this preliminary investigation the defendant testified that the woman Filomena (alias Lucia) was his wife and that the money which they spent in Iloilo belonged to this woman, she having received same from her former husband, a Chinaman, some two and a half years before; and that he did not leave the house where he was stopping at any time on Wednesday morning, May 4. While on the trial of this case in the Court of First Instance he testified that the money with which he bought the trunk and other articles in Iloilo, and also the money which he lost in gambling in that city, was money which he had received from his wife, his father, and from Florentino.

That Petra Magallon was murdered in her house on the 4th of May and robbed there can be no question. She was left alone on that morning by her son. There was P300 in the trunk in her house at that time. The defendant is a comparatively young man and had abandoned his wife and was then living with another woman. He knew that there was money in Ferrero's house as he had seen him counting it on the 28th of April, just six days before the murder occurred. He had no money and attempted to borrow some from Ferrero. He was in Ferrero's house again on the 1st and 3d of May. He knew that Ferrero would not be at home on the morning of the 4th of May, and he was seen on that morning coming out of the house of Ferrero holding his pocket as if he were carrying something of some weight. On the 28th of April he was seeking two men to assist him in securing Ferrero's money. He returned on May 4th to the house where he and his concubine were stopping with a certain amount of money which he turned over to his querida. He, in company with his querida, left that afternoon for Iloilo, and while in Iloilo purchased various articles of value, which he had not been accustomed to using. He also lost some money at gambling. When arrested in that city, aside from these various articles, there was found in his possession the hat of Ignacio Ferrero. Ferrero identified this hat as his and showed that it was in the trunk along with the money. According to the defense the defendant had not used this hat, but the court below, on examining the same, found that it had been used. The defendant stated in the preliminary investigation that Filomena was his wife and that the money spent by them in Iloilo belonged to her and that he did not leave the house where they were stopping at any time on the morning of the 4th of May. In the Court of First Instance he told an entirely different story. No one

saw the defendant enter the house, murder the old woman, nor take the money. All of the testimony is circumstantial, but it is strong and convincing. It allows the mind to rest easily upon the certainty of his guilt. All the facts are consistent with each other and with the main fact established (guilt of the defendant), and the circumstances taken together are of a conclusive nature. All produce a reasonable and moral certainty that the defendant, and no other person, committed this crime.

"No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. (12 Cyc, 488.)

"A conviction may rest upon circumstantial testimony alone, but the facts and circumstances must be such as are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused." (State vs. Hunter, 50 Kan., 302.)

Article 503 of the Penal Code provides as follows:

"A person guilty of robbery with violence or intimidation of the person shall be punished:

"1. With the penalty of cadena perpetua to death, if on account or on the occasion of the robbery there results homicide."

The trial court found the defendant guilty of a violation of this article, without any aggravating or extenuating circumstances. This crime was committed in the dwelling house of the deceased and without any provocation, and also without respect for the age and sex of the deceased. These facts must be considered as aggravating circumstances, as provided for in No. 20 of article 10 of the Penal Code. (U. S. vs. Saadlucap, 3 Phil. Rep., 437.) No extenuating circumstances were present.

The judgment of the court below is hereby reversed and it is adjudged and decreed that the defendant is guilty of the crime of robbery with homicide, with the aggravating circumstances above set forth, and we hereby sentence him to the extreme penalty of death, to the accessories provided by law, and to pay the costs. So ordered.

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

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