

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. POLICARPO GAVARLAN, DEFENDANT AND APPELLANT.*G.R. No. 6510. March 02, 1911*

Ponente: MORELAND, J.

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This case comes before the court from a judgment of the Court of First Instance of the Province of Iloilo, Hon. J. S. Powell presiding, convicting the accused of murder and sentencing him to life imprisonment.

There is no question whatever about the fact that the accused caused the death of Susana de Ocampo. It appears from the record that about the middle of August, 1910, the remains of a dead person were found by the lieutenant of the barrio in a dry creek bed in the municipality of Guimbal, Province of Iloilo. Prior to the finding of the body, Susana de Ocampo had been missing from her home for more than two weeks. The police of Guimbal had known of the disappearance of the woman but had made no search for her for the reason that it was not suspected that she was the victim of foul play, but it was believed by them, and generally understood by all, that she had gone on a visit. When the remains were found it was noticed that a scarf was tied tightly around the neck, while a patadion enveloped the body below the waist. The camisa and underwaist, however, had substantially disappeared. Members of the family of Susana de Ocampo were sent for, especially a young woman, a cousin of the deceased, named Justa de Ocampo, who immediately recognized the scarf and patadion as belonging to the deceased Susana.

For some reason which does not appear in the record, the accused in this case was suspected of having murdered the person whose body was found. Upon this suspicion he was arrested and upon being interrogated made a full and complete confession of his participation in the crime to various policemen and finally to the chief of police. When the preliminary investigation was held he pleaded guilty. At no time did he make any concealment whatever of the fact that he killed Susana. It was known before his arrest that he had been illicitly intimate with her and that she had become pregnant thereby. In his confession he admitted this and stated further that on the night of August 1 he went to her house and asked her to be on the beach at a certain hour as he had something to say to her. Having met on the beach according to arrangement, she began to upbraid him for deserting her for another girl whom she asserted he wished to marry. He admitted the truth of her accusation. After some further talk he asked her if she was pregnant. She replied that she was and told him that if he did not wish to marry her he would have to make some sort of provision for the child or else she would send him to Bilibid. He told her that he preferred to die rather than go to Bilibid, whereupon she replied that he need not die, that he could kill her instead. He thereupon with her consent took her scarf, tied it around her neck and choked her to death. He then picked up her body and deposited it in the dry creek bed, where it was later found.

This confession was fully corroborated by the finding of the body exactly where he confessed that he had placed it, by finding the scarf tied tightly around her neck as he asserted it would be, and by the fact that she had met her death in the manner described.

The defendant refused to make any statement in his own behalf on the trial and presented no witnesses.

We are in entire accord with the learned trial court upon the facts. We are of the opinion, however, that his characterization of the crime is wrong. He found that the crime was murder, qualifying it by alevosia. There is no evidence of any kind showing how the deceased woman met her death except that presented by the accused himself. The story as detailed by him discloses none of the attributes of treachery. The death of Susana was accomplished under an agreement between the two that her life should be taken. As a general rule, one part of a confession can not be taken and the other part rejected unless there are proofs in the record which justify such a course. While the story of the accused has, in some respects, the marks of improbability, yet there is absolutely nothing substantial in the case which justifies the acceptance of one portion of the confession and the rejection of the balance. We regard the crime as homicide. (U. S. vs. Sellano, 10 Phil. Rep., 498.)

For these reasons the judgment of the court below is modified and the accused is hereby convicted of the crime of homicide and sentenced to fourteen years eight months and one day of reclusion temporal, to indemnify the heirs of the deceased Susana de Ocampo in the sum of P1,000, and to pay the costs of the trial. As so modified, the judgment of the court below is affirmed, with costs de oficio.

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

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