

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. THE MORO JAKAN TUCKO, DEFENDANT AND APPELLANT.

G.R. No. 6635. September 14, 1911

Ponente: TORRES, J.

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TORRES, J.:

The judgment in this cause, imposing the death penalty, has been submitted to us for review.

Notwithstanding that the Moro Jakan Tucko was courting the Moro woman Dahu, the latter finally married the Moro Maalum. After Maalum and Dahu had been married, Tucko, who was living in a distant place, removed his residence to the sitio of Guiti, settlement of Bacun, Island of Basilan, where the house of the said spouses was situated, near which he took up his abode. On the morning of June 9, 1910, while the woman Dahu was in the field engaged in planting sweet potatoes, she was approached by Jakan Tucko who asked her what she was doing, to which Dahu replied that she was planting camotes, or sweet potatoes, in order to have something to eat; thereupon Tucko said to her: "Although you are planting camotes, you will not eat them, because pretty soon there will be a heavy shower."

At a very late hour of the night of the same day, the 9th, while the spouses Maalum and DaM, and the latter's brother, named Saali, were asleep in their house, the husband suddenly awakened his wife, telling her that he had been wounded. When Dahu and Saali awoke they saw that Maalum was seriously wounded in the stomach, and when he was asked how he had been hurt he replied that he had been assaulted by the Moro Tucko, who must have gained entrance to the house by passing through the door, which had been closed before they went to sleep that night. Maalum died a few moments after he had been wounded. These facts took place one month after the marriage of the said spouses, and were disclosed by the testimony presented and by the confession of the perpetrator of the crime.

For the foregoing reasons, on August 6, 1910, the assistant prosecuting attorney of the Moro Province filed an information in the Court of First Instance of Zamboanga, charging Jakan Tucko with the crime of murder, and, this cause having been instituted, the court in view of the evidence adduced, rendered judgment, on November 1, 1910, sentencing the defendant to be hanged, to the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the trial. It was ordered in the judgment that the said death penalty should be executed at the very place where the crime was committed and on a date to be fixed after the judgment should have been reviewed by the Supreme Court when all the other penalties imposed should be carried out.

It is held that the foregoing facts, which were perfectly proven at the trial of this cause, constitute in fact the serious crime of murder, provided for and punished by article 403 of the Penal Code, inasmuch as the deceased Moro, Maalum, was, on the night of June 9, 1910, violently killed in his house while he was asleep, and the aggressor employed ways and means in the commission of the crime tending directly and specially to insure its consummation, without his having run any risk from such defense the victim might offer in protecting himself, the crime therefore being committed perfidiously, with absolute security on the part of the perpetrator, and with

manifest treachery.

Notwithstanding that the defendant Jakan Tucko pleaded not guilty, yet he stated under oath in the preliminary examination before the judge of the tribal ward court, F. T. Winters, that, on the night of the crime he entered Maalum's house and with a bolo called a lahut assaulted the latter while he was asleep, inflicting a serious wound in the stomach; that in so doing he was actuated by revenge, for the reason that the deceased Haalum abducted and married Dahu, his betrothed, and because a feud existed between his family and that of Maalum, on account of a brother of the deceased Mudhajilon, having a year before killed a cousin of the defendant's, named Botong-botong.

Aside from this confession, made frankly and of his own will and accord by the accused before a competent authority during the preliminary investigation, the trial record also offers other irrefutable proof, which is the statement made by the deceased in articulo mortis, before the latter's wife and his brother-in-law, Saali, a few moments before he expired, while he was in a precarious condition, for, according to the testimony of these relatives, Maalum, a few moments before he died, said that his wound had been inflicted by the defendant Jakan Tucko.

The statement, made by the deceased when he was in a serious condition and death seemed imminent, is legitimate and admissible as a ground for a judgment of conviction, and with all the more reason when, as in the present case, such last statement in articulo mortis is shown to have been corroborated by the confession of the assailant and by other circumstantial evidence which, united and combined, produce in the mind the perfect and full conviction of the accused's guilt as the sole proved perpetrator by direct participation of the crime of murder under prosecution.

In *United States vs. Castellon et al.* (12 Phil. Rep., 160), the following principle was laid down:

"1. Evidence; hearsay; dying declarations. - Notwithstanding the fact that hearsay evidence is not admissible at a trial, the statements made by an individual who is seriously wounded, at a moment when he was dying, being convinced that there was no hope of recovery, constitute per se at least a grave, conclusive and decisive indication of the culpability of the persons designated by the dying man, inasmuch as it must be assumed that he, being in so precarious a condition, spoke truthfully, and that he was not induced by a desire to tell a lie and to injure an innocent person."

The defendant, overwhelmed with spite and resentment, on account of Dahu marrying the deceased instead of him, she preferring the former and rejecting the latter's proposal to marry her, and for the purpose of carrying into effect the revenge that he had premeditated, removed his residence from the sitio of Cobengbeng, a distant point, to that of Guiu, not far from the house of the deceased; and on the morning of the day of the crime, while Dahu was engaged in planting camotes in a field nearby, she was accosted by the defendant, Tucko, who said to her: "Although you are planting camotes, you will not eat them," and when she asked him why, he replied saying: "Because pretty soon there will be a heavy shower," by which Dahu, and her father-in-law when he had been informed of the incident, understood that a homicide or murder was meant. These facts constitute circumstantial evidence, logically derived from the conduct, acts and words of the defendant and corroborate the other evidence herein above mentioned, all of which, united and combined, demonstrate the defendant's guilt as the unquestionable aggressor of the deceased Maalum.

In the commission of the murder the presence of the circumstance of known premeditation, as well as that of its having been perpetrated in the dwelling of the deceased, must be considered as mere aggravating circumstances, and it is improper to give weight to the circumstance of nocturnity, on account of its being included in that of treachery which classifies the crime. No circumstance of wrongful entry was attendant, for it was not proved that

the aggressor entered the house through any other way than that intended as an entry, and he must have entered and gone out through the door of the house, which was afterwards found open. The said two aggravating circumstances are counterbalanced in their effects by the special circumstance established in article 11 of the penal Code, in consideration of the race to which the defendant belongs, his barbarous and savage customs, and his absolute lack of education and culture. This special circumstance is with greater reason applicable to the Moros, as shown by the explanations of the code committee, which precede the Penal Code, among which are the following statements:

"It is absolutely impossible, in accord with the principles of justice and in harmony with the necessary social guarantees, to establish penalties applicable to each separate particular case, considering the various grades of civilization and culture of the different races, their moral and religious education, and their capacity to support all the weight of a perfectly well-defined criminal responsibility. * * * This committee has not hesitated a single moment, in the framing of this proposed legislation, in basing its provisions on the principle of equality before the law, however, it has recognized the advisability that the courts of the Philippines wisely continue the practice uninterruptedly observed by them of applying lesser penalties than those prescribed for the crimes specified in the code, by taking into account, when reason and justice demand, the conditions of the native race or those of its members in all cases where a strict enforcement of a penal provision might result in an aggravation far from the intention of the legislator."

With respect to the admissibility of the record of the proceedings had by the judge of the tribal ward court, in the form of a preliminary investigation of the crime charged in this case, Exhibit A, it must be taken into account that this document was through mistake sent to the office of the prosecuting attorney of the province, instead of being transmitted to the clerk of the Court of First Instance, for which reason the trial judge, thinking that the records of the office of the fiscal of the Moro Province, in all matters relative to criminal cases, formed a part of those of the Court of First Instance, admitted the said document, which contains the defendant's confession and other statements taken in the aforementioned preliminary investigation, the record of which proceedings was afterwards exhibited at the trial as an integral part of the record of the case, and overruled the objection made by the defense to the admission in evidence of the said Exhibit A.

For the foregoing reasons, and the first two errors attributed to the judgment of the lower court by the defendant's counsel being refuted, it is proper, in our opinion, to reverse the judgment reviewed, and to sentence the defendant, Jakan Tucko, as we do hereby, to the penalty of life imprisonment, to the accessories 2 and 3 of article 54 of the Penal Code, and, though he should obtain a remission of the principal penalty, to those of absolute perpetual disqualification and surveillance by the authorities during the remainder of his life, should these accessory penalties be not remitted on the remission of the principal penalty, to indemnify the widow and heirs of the deceased in the sum of P1,000, and to pay the costs of both instances. So ordered.

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

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