

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAMON BUNCAD, DEFENDANT AND APPELLANT.

G.R. No. 7638. October 14, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by Ramon Buncad from a judgment of the Court of First Instance of Cagayan Province convicting him of the crime of murder, and sentencing him to suffer the death penalty. The information charges:

"That the said Ramon Buncad, on or about the night of August 4, 1911, in the municipality of Tuguegarao, Province of Cagayan, P. I., willfully, unlawfully, and criminally, with the deliberate, meditated, and persistent purpose of killing Francisco Paguirigan, when the latter was passing and while his back turned in a place where the accused had lain in wait for him under cover of the darkness of the night, did suddenly and treacherously fire at said Paguirigan two successive shots from a revolver, with which he was then provided, inflicting upon the former two mortal wounds in his back which caused his instantaneous death."

Zoila Aquino, being duly sworn, testified substantially as follows: "I am 22 years of age, married, and a resident of Anafunan, Cagayan Province. My husband's name was Francisco Paguirigan; he is now dead. My husband was killed by Ramon Buncad one Friday night in the tobacco field north of our house. I was informed of this by my 8-year-old son, Juan Paguirigan. I did not see my husband's body because when I approached the place where it lay Ramon warned me not to come near, stating that he would shoot me if I did the same as he had Francisco. On the day before this occurred Ramon came to our house and quarreled with Francisco about a pig; Ramon insisted on buying the pig and Francisco did not agree to the price offered. The day of his death my husband left the house about dark accompanied by Gabina Tuiiao and Juan Paguirigan to catch frogs. On this occasion my husband carried a small lamp and a pillowcase; he was not armed, I heard shots fired about 8 o'clock and looked out of the window, and shortly afterwards my son came running and said: 'Mother! Mother! Ramon has shot father.' I immediately called to my brother and sister, who lived close by, and, accompanied by them and my son Juan, went to the place where my son directed. When we drew near Ramon threatened to shoot us if we approached the place. The moon shone dimly that night. I went to the lieutenant of Constabulary and reported this matter that night. I saw my husband's body the following morning in Capitulan, where it had been taken by a policeman" (pp. 69-77).

Juan Paguirigan, being duly sworn, testified substantially as follows: "I am 8 years old and live in Anafunan, Cagayan Province. My father's name is Francisco Paguirigan, and mother's name Zoila Aquino. I do not go to school. My father is dead; he was shot by Ramon. My father and Gabina Tuiiao and I had gone to catch frogs, and on our return home Ramon came out of a cornfield and followed along after my father for a little way and then shot him twice with a revolver. The shots were fired in rapid succession. My father was not looking toward Ramon when the latter shot him; they had not spoken to each other that night. After the shots were fired Gabina started to run away and I also ran" (pp. 77-83).

The record shows that the defense objected to the testimony of this witness on the ground that he was not old

enough to comprehend the meaning of an oath; but the court, after examining¹ the boy, allowed him to testify. A number of questions were asked this witness by the fiscal and the court for the purpose of testing and determining his intelligence, education, and memory.

Gabina Tuliao, being duly sworn, testified substantially as follows: "I am 12 years of age and a resident of Tuguegarao, Cagayan Province. I was acquainted with Francisco Paguirigan; his wife is my aunt. I never accompanied Francisco at any time to catch frogs. Francisco is now dead; they say that he was shot. I was in my house when the shots were fired; our house is about 150 yards from the place where Francisco was killed. I did not go with Francisco and Juan to catch frogs that night, and I do not know of anything that happened except what I was told by Juan" (pp. 83-87).

Mariano Aquino, being duly sworn, testified substantially as follows: "I am 32 years of age, married, a laborer, and a resident of Tuguegarao, Cagayan Valley. I am acquainted with Francisco Paguirigan and Ramon Buncad; they are both relatives of mine. Francisco is now dead. I live very near the house of Zoila Aquino. On the day before Francisco's death my attention was attracted by loud talking in his house, and I went there to see who was making the noise and found that Ramon and Francisco were quarreling about the purchase price of a pig; Francisco asked P4 for the pig and Ramon wanted to buy it for P2. I was in my house when Francisco was killed; I heard the shots fired. I heard Juan report the death of his father to his mother and saw her weeping. I went with them to the place where Ramon was and he prevented us from approaching, stating that he would kill us if we came there. I reported this matter that night to the lieutenant of Constabulary in Tuguegarao" (pp. 87-90).

Vicente Aquino, being duly sworn, testified substantially as follows: "I am 33 years of age, married, a laborer, and live in Anafunan, Cagayan Province. I live with Zoila Aquino, the widow of Francisco Paguirigan. On the day before Francisco's death I heard a commotion in his house and went in there, and found Francisco and Ramon quarreling. They were disputing about the price of a pig which Ramon wished to buy from Francisco. I was in my house on the night that Francisco was killed; I heard the shots fired. Zoila called to me after I heard the shots" (pp. 91-93).

R. H. Rissler, being duly Sworn, testified substantially as follows: "I am 29 years of age, married, a native of the United States, and am serving as district health officer in Tuguegarao. The document marked Exhibit A was written by me, and is a report of an autopsy made in the case of a Filipino whose body was brought here from Anafunan during the first days of August. From the examination made of the body I am of the opinion that the assailant was standing to the right and a little in front when he fired the first shot, and that the deceased had his back toward him when the second shot was fired. One of the shots, undoubtedly the latter, completely severed the large arteries, and the deceased must have fallen immediately. The shots were fired at close range, in my opinion within 2 to 4 feet of the deceased, as there were powder burns on both wounds" (pp. 93-96).

Mariano Mapagu, being duly sworn, testified substantially as follows: "I am 24 years of age, a Constabulary soldier, and a resident of Tuguegarao, Cagayan Province, On August 5, 1911, Lieutenant Me Adams asked me to accompany him to make an investigation in regard to the killing of Francisco Paguirigan of the barrio of Anafunan. Lieutenant Me Adams talked with the wife of Francisco Paguirigan and her son through me as interpreter. The boy stated to Lieutenant McAdams that they had gone to catch frogs on that night; that while his father was catching frogs he saw Ramon Buncad come from the cornfield walking in a stooping position; and that Ramon went between them and shot his father" (pp. 96-97).

Carlos Maguigad, being duly sworn, testified substantially as follows: "I am 44 years of age and am serving as municipal president of Tuguegarao. I am acquainted with the defendant; he was formerly a municipal policeman. He was serving as a policeman in the barrio of Anafunan in the month of August, 1911. The policemen here are

all armed with revolvers, and Ramon Buncad had a revolver on August 4, 1911, as he was then on duty. The revolver he had is now in the police department. On the night of the occurrence policemen were sent to arrest the defendant, and early the following morning they brought the defendant and the body of the deceased to the municipal building. The policemen found the defendant in the same place where the dead body was found" (pp. 97-99).

Ramon Valdez, being duly sworn, testified substantially as follows: "I am 34 years of age, married, and am serving as justice of the peace of Tuguegarao. Some time ago I informed this court verbally that certain effects had been placed in my possession as the result of a preliminary investigation held in this case. Two hens, a rice sack, and a piece of rope were delivered to me by the municipal police, who stated that they found these effects at the place where the body of the deceased lay. I held the preliminary investigation in this case. When arraigned before me the defendant entered a plea of not guilty" (pp. 100-101).

Luis Taguinod, being duly sworn, testified substantially as follows: "I am serving as a municipal policeman of Tuguegarao. On August 4, 1911, I was sent by the municipal president to investigate the killing of Francisco Paguirigan and made a report to him upon the case. I went to the place where the body lay at about 11 o'clock at night; I found the defendant there. The defendant told me that he was holding the deceased, but that in spite of this the deceased turned against him in the attitude of striking him. I found a sack, a rope, and a bolo by the body of the deceased" (pp. 101-102).

The defense introduced no evidence.

The trial court found the defendant guilty as charged in the information, that there were several aggravating circumstances and no mitigating circumstances in the commission of the crime, and sentenced him to suffer the death penalty, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

The appellant claims that the lower court erred (1) in giving credit to the declarations of the child Juan Paguirigan, the only eyewitness that testified for the prosecution; (2) in not acquitting the defendant, or at any rate finding him guilty only of the crime of homicide.

The appellant's principal contention is that the testimony of the witness Juan Paguirigan is unreliable because of his tender age. The boy's age is given at 8 years. The law in this jurisdiction does not disqualify any person for serving as a witness on account of age; and there is no presumption of incapacity at 8 years of age. Section 55 of General Orders, No. 58, and section 382 of the Code of Civil Procedure provide that all persons, without exception, who having organs of sense, can perceive, and perceiving can make known their perceptions to others, may be witnesses.

Professor Wigmore, after referring to the common-law precedents upon this point, says: "But this much may be taken as settled, that no rule defines any particular age as conclusive of incapacity; in each instance the capacity of the particular child is to be investigated." (Wigmore on Evidence, Vol. I, p. 638.)

In the case of *Wheeler vs. United States* (159 XL S., 523), the Supreme Court, speaking through Mr. Justice Brewer, said: "The decision of this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous."

In speaking of the witness, Juan Paguirigan, the trial court said: "A serious effort was made by the defense to discredit the evidence of the witness Juan Paguirigan, who was only 8 years old, but after careful examination of

the mental capacity of this witness the court finds it to be a fact that this small boy is an unusually intelligent child for his age, gave his evidence in a straightforward and unembarrassed manner, and was on the whole as satisfactory as about half the witnesses that appear in this court. In addition to this, the fact is that this child told almost identically the same story early in the morning following the homicide, at which time, owing to the excitement prevailing at such a time and owing to the absence of the elder members of his family, it is extremely improbable that this child could have been taught the story which he told upon the stand in this case."

A review of the testimony of this boy, as it appears of record, discloses nothing which would justify us in holding that the trial judge erred in arriving at his conclusions as to the ability of the lad to testify intelligently. Counsel for appellant undertook to discredit the testimony of the boy by an attempt to ascribe his ability to tell the story of the killing of his father in the form and manner in which it appears in the record to hypnosis. But there is not a shred of evidence in the record in support of this theory of the defense, and if the contention of counsel as to the possibility that the testimony of this witness may have been procured or influenced by hypnotic suggestion should be deemed of sufficient force to raise a reasonable doubt as to his credibility, no reason appears why like contentions should not put in doubt the truth and accuracy of the testimony of any and every witness called to testify in a judicial proceeding.

We think the evidence of record conclusively establishes the allegations of the information except as to the existence of premeditation *conocida* (deliberate premeditation).

There is no evidence in the record which discloses when or where the accused first made up his mind to take the life of the deceased. There is evidence of a squabble between them the day before the murder, but there is nothing to show that the accused made up his mind to kill the deceased at that time. The mere fact that he did kill him on the night of the day following is not sufficient ground to justify that inference. The killing may have been the direct outcome of the quarrel. We do not know as to that. But something may have occurred, and we are inclined to think did occur, between the time of the quarrel and the murder which inflamed the anger of the accused to the point of resolving to kill his adversary. The quarrel may have been renewed during the progress of the frog-hunt, before the deceased and his son set out for home, for it does not appear from the record whether the accused did or did not meet the deceased on the night of the crime before the time when he attacked and killed him. It is absolutely impossible, therefore, for us to determine that the period of time which elapsed between the time when the accused resolved to commit the crime and the moment of its commission was, in the language of a former decision, "sufficient in a judicial sense to afford a full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desired to hearken to its warnings." (U. S. vs. Gil, 13 Phil, Rep., 530.)

While this court has never undertaken to fix any definite period of time, the lapse of which between the taking of the resolution to commit a crime and its commission would justify the inference that the crime when committed, was committed with deliberate premeditation (*premeditation conocida*), nevertheless such an inference has never been sustained in the absence of proof of the lapse of a substantial interval of time clearly sufficient to bring the case within the above-cited rule laid down in the case of *United States vs. Gil*. The mere fact that it appears that the accused was lying in wait for his victim just before the attack is not sufficient, in itself, to sustain a finding of deliberate premeditation, in the absence of proof that he had been lying in wait for a substantial period of time. In the case of *United States vs. Mercoleta* (17 Phil. Rep., 317), wherein proof that the defendant lay in wait for his victim was held sufficient to establish the existence of deliberate premeditation, it was shown that the accused borrowed a bolo for the purpose of committing the crime early in the morning and was lying in wait for some time before he attacked his victim. In the case at bar, it is impossible to say how long the accused may have been lying in wait, There is nothing in the record which would justify us in holding that he did not step into the undergrowth

where he was hiding a few minutes or even seconds before his victim passed by; or that he had not had a quarrel with his victim a few minutes before the attack, and then and there having resolved to kill him, went at once to the place of ambush.

We are of opinion that the record does not disclose any qualifying or aggravating circumstances marking the unlawful killing of the deceased other than that of alevosia (treachery)—the fact that the attack was made at night constituting, under the circumstances of this case, one of the elements which must be taken into consideration in holding that it was made con alevosia (with treachery). The penalty which should therefore have been imposed is the medium degree of that prescribed for the crime of asesinato (murder).

The sentence imposed by the trial court should therefore be modified by substituting the penalty of cadena perpetua (life imprisonment), together with the accessory penalties prescribed by law, for so much thereof as imposes the penalty of death,' and thus modified the penalty imposed by the trial court should be and is hereby affirmed, with the costs of this instance against the appellant.

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

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