

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENIGNO SALAS, DEFENDANT AND APPELLANT.

G.R. No. 8295. September 20, 1913

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant was convicted in the court below of the crime of homicidio (homicide) and sentenced to fourteen years eight months and one day of reclusion temporal, together with the accessory penalties prescribed by law.

On the night of January 12, 1912, the dead body of a Chinaman named Chan Que was found in his store in a state of partial putrefaction. An autopsy, which was had then and there by the municipal medical officer, disclosed that the deceased had come to his death as the result of five wounds inflicted upon him with a sharp-pointed weapon, two of which, one in the throat and one in the abdomen, were mortal. In the opinion of the medical officer, the deceased came to his death about forty hours before the body was discovered.

In the store there were found indications of a struggle and a bloody footprint on the brick floor. Suspicion of guilt of the crime having been directed toward the defendant and appellant, an ink impression was taken upon paper from his foot, and this impression was found to be exactly the same size as that of the bloody footprint on the brick floor in length, and in breadth at the heel and at the ball of the foot.

One of the witnesses named Sanchez testified that on the 10th of January, 1912, the accused, accompanied by one Vicente Dungca, approached him at the storehouse of Gregorio Hizon in the barrio of Calulut where the witness was working, and asked him to accompany them to the store of the Chinaman and rob him; and that when he declined to do so the accused, who carried a dagger, threatened him with death if he would reveal anything that had been said. This witness was corroborated by another who swore that on the 10th of January, 1912, the accused accompanied by Dungca went to the storehouse of Hizon and there talked with Sanchez, though this witness could not testify as to the subject of the conversation. Two other witnesses testified that some time after 7 o'clock on the night of January 10, 1912, they went to the deceased Chinaman's store to buy wine, and there saw three persons leaning on the table, one of whom was the accused. These witnesses also testified that about 8 o'clock on the same night they passed by the store and saw three persons, one of whom was the accused, leaving the store, in which the lights had been put out, and closing the door behind them. Two other witnesses testified that they passed the store about 8 o'clock on the night of January 10, 1912, and that they saw the accused holding the Chinaman by the arms and heard the Chinaman crying "guapelo," which was shown to be a Chinese expression of distress or fear. Another witness, who lived about 50 meters from the store of the deceased, testified that he observed that the store was closed and the lights extinguished not long after 8 o'clock on the night of January 10, 1912, and that it continued closed until the night of the 12th, when the local officials entered and found the dead body of the Chinaman.

Testifying in his own behalf, the accused set up an alibi, alleging that he had passed the night in question in the

house of one Catalina in the town of Angeles. The prosecution introduced evidence to show that at the time of his arrest the accused informed the arresting officers that he had spent the night in Dau; that an investigation having been made and it appearing that the accused had not in fact been in Dau upon the night in question, the accused then stated that he had spent the night in Angeles. The defense failed utterly to sustain the alibi set up on behalf of the accused, and indeed the woman Catalina flatly contradicted the statement: of the accused in this connection.

Counsel for appellant lays considerable stress upon the inherent improbability of the testimony of the witnesses for the prosecution, especially those who testified that they saw the accused holding the Chinaman by his arms and heard the Chinaman crying out in distress. These witnesses also testified that although they saw the incident they passed on without paying any attention and had no further knowledge as to what occurred. Counsel for the accused insists that it is impossible to believe that natural curiosity would not have induced them to stop and see the rest of the quarrel had they in fact seen as much of it as they claim to have seen. Counsel for the accused also point to some apparent differences between the impression of the foot of the accused as made in ink and the bloody footprint on the brick floor of the store of the deceased Chinaman. Photographs of the bloody footprint and of the impression of the foot made in ink are included in the record, and while both are sufficiently distinct to justify the acceptance of the evidence as to the size, we doubt if the impression of the bloody footprint is clear enough to treat it as an absolute identification of the accused. At the same time the very slight differences in form to which attention is directed by counsel for the appellant may well be accounted for by the fact that in one instance the bloody footprint may have been made while the accused was in motion, while the impression in ink was taken while he was standing still.

It may be admitted that the testimony of the two witnesses who claim to have seen the accused holding the deceased at the precise hour at which the crime appears from the other evidence in the record to have been committed is not wholly satisfactory, but we think that even if this evidence be rejected, the testimony as to the proposition made by the accused to one of the witnesses to join him in robbing the Chinaman, and the testimony showing that the accused with two others was in the store about the time when the crime must have been committed and left it with his companions after the lights had been extinguished, taken together with the proof as to the identity in length and breadth of his foot with that of the bloody footprint found in the store, leaves no reasonable doubt as to his guilt. This conclusion is confirmed by the evidence which tends almost conclusively to establish the falsity of the alibi which he undertook to set up in his own defense.

The trial court properly acquitted the defendant of the crime of assassination with which he was charged, because of the lack of evidence upon which to base a finding as to the existence of any of the qualifying circumstances necessary to raise the degree of guilt of the accused from that of homicide to assassination. We think, however, that the trial court should have found the existence of one aggravating circumstance, in that the crime was committed in the house of the deceased. The penalty should have been imposed in the maximum degree, that is to say, from seventeen years four months and one day to twenty years of reclusion temporal.

The judgment of conviction by the trial court is affirmed, but the sentence should be modified by substituting for so much thereof as imposes the penalty of fourteen years eight months and one day of reclusion temporal the penalty of twenty years of reclusion temporal, and thus modified the sentence imposed by the trial court should be and is hereby affirmed, with the costs of this instance against the appellant. So ordered.

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

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