

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FABIO SORIANO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 8799. October 22, 1913

Ponente: CARSON, J.

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CARSON, J.:

The defendants and appellants Fabio Soriano, Aniceto de la Cruz, Benigno Madriga and Felicisimo Soliven were charged with the crime of asesinato (murder in the first degree), alleged to have been committed as follows:

"On or about the 12th or the early morning of the 13th of September of this year, the said accused, conspiring together and all being armed with bolos, maliciously and criminally went to the house of Otto Lemke, and when he came out to meet them attacked him and killed him by bolo slashes, with treachery, premeditation and abuse of numerical superiority. The motive was a quarrel between the victim and the first of the accused.

"The affair took place in the municipality of San Juan de Guimba, Province of Nueva Ecija, P. I., in violation of law."

Upon the proofs adduced at the trial the appellants were found guilty as charged in the information. Aniceto de la Cruz, Benigno Madriga and Felicisimo Soliven were sentenced to cadena perpetua together with the corresponding accessory penalties; Fabio Soriano was sentenced to suffer the death penalty; and all of the accused were condemned jointly and severally to indemnify the family of the deceased in the sum of P2,000, and to pay their respective shares of the costs of the proceedings.

On the night of September 12, 1912, one Otto Lemke, a machinist employed on the hacienda of a Mr. Davis, in the municipality of San Juan de Guimba, Nueva Ecija, was brutally murdered. Information received by the Constabulary authorities indicated that the accused were implicated in the crime, and their arrest followed. In the preliminary investigation held by the justice of the peace two of the accused, Felicisimo Soliven and Aniceto de la Cruz, confessed that they were members of the band that had murdered Lemke. However, upon the trial of the case in the Court of First Instance they entered a plea of "not guilty" and denied that they had taken any part in the commission of the crime.

The four appellants and the three principal witnesses for the Government, Gregorio Inepto, Felix and Patricio Medrano, all lived on the same hacienda with Lemke and only a short distance from his house. On the day following the murder the body of Lemke was found not far from his house and it showed that the deceased had received a number of wounds on his face and shoulders and about his head; the skull was fractured and the condition of the body generally indicated that the deceased had been brutally assaulted and literally hacked to death with bolos or similar sharp cutting instruments.

The accused and the three principal witnesses for the Government were all tenants or laborers on the hacienda and were to some extent under the authority and control of Lemke. The accused, Fabio Soriano, appears to have been a sort of overseer on the hacienda. It was shown that a bitter feeling of resentment existed between him and Lemke. This feeling of resentment and dislike appears to have been shared by the other laborers on the hacienda

and on various occasions threats were made against the life of Lemke. Fabio Soriano complained to the owner of the hacienda as to certain alleged abusive acts on the part of Lemke. Lemke had a shotgun with which he used to shoot chickens and dogs that came about his house, and on one occasion he discharged his gun against the house of Felicísimo Soliven. The ill feeling and hostility which some of the laborers on the hacienda entertained against Lemke are conclusively established, and the record shows that Fabio Soriano and Felicísimo Soliven had both given expression to their resentment on numerous occasions and had made open threats against Lemke's life. The motive for the crime is fully and conclusively established.

Patricio Medrano, 16 years of age, testified that on the afternoon of September 12th he saw the four accused on the bank of the river drinking vino; that they invited him to drink with them and to go with them to kill the German, but that he declined the invitation; that about midnight of the same night they came to his father's house and bound him and his father and then proceeded in the direction of Lemke's house; that the men were armed with bolos and had their faces partly covered with their handkerchiefs, but that he was able to recognize them because their disguise was not complete.

Felix Medrano, the father, corroborated the boy in regard to the coming of the accused to their house. He stated that shortly after the men left and went in the direction of Lemke's house he heard cries for help.

Gregorio Inepto, a witness for the Government, admitted that he was a member of the party that murdered Lemke. He stated that the four accused came to his house and ordered him to go with them to carry a light; that they proceeded to Lemke's house and upon arriving there three of the accused went into the house and made a demand for money and rice; that Lemke refused to give them either and said "God damn you," whereupon Aniceto de la Cruz struck at him with his bolo; that Benigno Madriga came to Aniceto's assistance, whereupon Lemke ran out of the house and tried to get away; that Lemke was pursued by Fabio Soriano and two other persons and was overtaken and killed not far from the house; that the four accused then returned to the house and made a search for money and rice, after which they left and he returned to his home.

Fabio Soriano and Felicísimo Soliven lived in the same house only a short distance from the house in which Lemke lived. Felicísimo Soliven testified that on the night of the murder a band of robbers entered their house, tied them up and made a search for money and rice. Nothing was said by this witness as to what occurred thereafter, and his story of the alleged robbery is in the highest degree unsatisfactory. Fabio Soriano likewise testified that robbers came to the house and bound him and Felicísimo, but he went into very much more detail as to what happened on that occasion. He testified that after the robbers left, his wife unbound him; that he then saw a light in Lemke's house; that he called Lemke and his wife, and not receiving a reply he and his companion (Felicísimo) went over there; that upon arriving at Lemke's house he met Berta (wife of Lemke) and Gregorio Inepto (one of the witnesses for the Government), and that Lemke's wife told him that Lemke had been murdered by the robbers.

Benigno Madriga and Aniceto de la Cruz, the other two accused, denied that they had any participation in the crime or knew anything of it until they were arrested.

Felicísimo Soliven and Aniceto de la Cruz admitted that they confessed their guilt to the Constabulary authorities and at the preliminary investigation held before the justice of the peace, but upon the trial of the case in the Court of First Instance they maintained that their confession had been made through fear for their lives and because of the ill treatment which they received at the hands of the Constabulary authorities. The ill treatment alleged by the two accused is positively denied by the Constabulary officers, and the justice of the peace testified that when the two accused were brought before him he fully informed them of the serious aspect of the charge against them, and that after being fully apprised of their rights they voluntarily confessed their guilt. The other accused, who were

arrested at the same time stated that they had not been maltreated in any way, and that no attempt had been made to -force them to make a confession. We think the evidence clearly establishes the fact that the confessions were made voluntarily, and were not extorted by violence or threats.

After a careful review of the whole record we are of opinion that the evidence adduced at the trial sustains the findings of the trial judge, and leaves no room for reasonable doubt of the guilt of these appellants of the crime with which they are charged.

Counsel for appellants, in a very carefully prepared brief, makes an exhaustive comparative analysis of the testimony of the witnesses for the prosecution, and insists that because of certain contradictory and inconsistent statements made by them, and because of the alleged inherent improbability of the stories told by them, their testimony should not be accepted as true beyond a reasonable doubt. The Attorney-General in his brief undertakes to show that there are no substantial contradictions or inconsistencies in the testimony of the witnesses for the prosecution, and that there is nothing inherently improbable in the various stories of the incidents to which they testified.

We think it must be admitted that certain discrepancies and inconsistencies are to be found in the statements of the three principal witnesses for the prosecution; but, for the most part, these conflicts in the testimony do not exceed in degree the natural variations which must be expected in the account of the incidents connected with a bloody and murderous night attack as given by different observers; and none of these discrepancies or inconsistencies amount to a substantial variance in the story of the principal incidents to which the witnesses testified. We do not deem it necessary to examine the evidence in detail in this connection, and it is sufficient to say that we find nothing in the record which would justify us in disturbing the findings of the trial judge as to the substantial truth of the story told by the witnesses for the prosecution.

It may be admitted also that there are some statements made by the witnesses for the prosecution which appear to justify the contention of counsel for the appellant as to the inherent improbability of some of the incidents related by them. One of these witnesses admitted that he was with the attacking party, and there is good ground for suspicion that all of them had more to do with the plot to murder Lemke than they were willing to admit. If they did in fact voluntarily share in the conspiracy to commit the crime, there can be no doubt that they attempted to color their statements so as to avoid making any admissions of guilty complicity in the commission of the crime. We are satisfied however, that, if as counsel for appellant contends, there are any apparent and inherent improbabilities in their testimony, these are limited to so much of their stories as directly tends to maintain their denials of any guilty complicity with the accused in the commission of the crime. Whatever their real connection with the commission of the crime, may have been, they well knew the circumstances surrounding its commission, and we are convinced that they related them truly so far as they tend to establish the guilt of these accused. The trial judge, who saw and heard them testify, could not have been unaware of the possibility that they themselves may have had a guilty participation in the commission of the crime, but he was satisfied as to the truth of the story told by them in so far as it implicated these defendants, and as we have said, there is nothing in the record which would justify us in disturbing his findings in this regard. As the Attorney-General well says, the testimony of these witnesses is corroborated by the confession of two of the accused, and in the absence of any evidence worthy of the name tending to put it in doubt it conclusively establishes the guilt of these appellants. The story told by the defendants Soriano and Soliven is so palpably and manifestly untrue, that it confirms rather than weakens the force of the testimony of the prosecution. As to the other two defendants we find no evidence in the record in support of the alibi which they undertook to set up, and nothing which in any wise raises a doubt as to their guilty participation in the commission of the crime.

In regard to the criticisms of counsel for the appellants directed to the action of the trial court in accepting and

acting upon the testimony of the three principal witnesses for the prosecution, who, counsel intimates, were accomplices in the commission of the crime if there is any truth in their testimony; it is sufficient to say that we have frequently held that, "the testimony of confederates or accomplices is competent and admissible, but should be received with great caution." (United States vs. Ocampo, 5 Phil. Rep., 339; U. S. vs. Butardo, 9 Phil. Rep., 246); and that "evidence by accomplices or confederates, although subject to grave suspicion, is nevertheless admissible and competent. The lack of corroboration affects the credibility only. If such testimony satisfies the court beyond a reasonable doubt, it is sufficient." (United States vs. Ocampo, 4 Phil. Rep., 400; U. S. vs. Granados, 16 Phil. Rep., 419); and that "while the testimony of an accomplice, or of a principal, against a fellow criminal, is to be taken with caution and weighed with care, it is, nevertheless, true that such testimony may, in a proper case, be used as the basis of a conviction." (U. S. vs. Bernales, 18 Phil. Rep., 525.)

The trial judge gave Soliven, Madriga and De la Cruz the benefit of the extenuating circumstance defined in article 11 of the Penal Code as amended by Act No. 2142, and imposed upon them the penalty of life imprisonment. The death penalty was imposed on Fabio Soriano. In view of all the circumstances of the case we think that the same leniency should have been shown to Soriano as was shown his codefendants, and that giving him the benefits of article 11 of the Code as amended, the penalty imposed upon him should have been fixed at life imprisonment instead of death.

The judgment of the trial court convicting and sentencing these appellants should therefore be modified by substituting the penalty of cadena perpetua together with the subsidiary penalties prescribed by law for that of death imposed on Fabio Soriano, and thus modified the judgment appealed from should be and is hereby affirmed, with the costs of this instance against the appellants.

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

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