

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANASTASIO HUDIERES AND LAMBERTO SAGUN, DEFENDANTS AND APPELLANTS.*G.R. No. 9066. March 07, 1914*

Ponente: CARSON, J.

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The defendants, and appellants, together with two other Unknown persons, were charged with the crime of asesinato and also with the crime of asesinato frustrado, in two separate informations. Upon the motion of the fiscal and with the approval of the court the two cases were called for ferial and heard together.

Early on the evening of April 29, 1913, between the hours of 7 and 10 o'clock, Isidoro Montana, the justice of the peace of Santa Barbara, Iloilo Province, was seated in his house conversing with three visitors named Pedro Sosteguer, Lucio Sumbang, and Nicasio Soguera. Suddenly two men armed with bolos entered the sala, one of whom seized the justice of the peace by the hand and struck him across the forehead with a bolo. The justice of the peace picked up a chair and attempted to ward off the repeated blows of his assailants, and in retreating stumbled over another chair and fell to the ground. At this juncture Pedro Sosteguer came to his rescue and seizing his assailant by the leg, threw him on the floor, whereupon the other intruder struck Sosteguer across the stomach with his bolo. In the meantime the justice of the peace had managed to make his escape by one of the windows. Before the intruders left, one of them struck and wounded in the back a boy who had been sleeping on a bench in the kitchen and was awakened by the melee. The evidence conclusively establishes the prosecution's contention that the men who entered the house and committed the assault were the defendants and appellants, who appear to have been well known personally to the justice of the peace and the other witnesses called for the prosecution. Ill-will engendered by litigation over a disputed boundary was shown to have been the motive which led the accused to attack the justice of the peace; the dispute between the defendant Hudieres and Montano, the justice of the peace, having gone to such lengths that Hudieres had been arrested and confined in the municipal jail because of certain threats made by him against Montano.

The defendants attempted to prove an alibi and called several witnesses who testified that they had seen them in the town of Cabatuan between the hours of 6 and 9 o'clock on the night of the assault. Without reviewing in detail the testimony of the witnesses for the defense, it is sufficient for us to say that we think the trial judge properly held it to be unworthy of credence. In itself it is neither satisfactory nor convincing, and it is wholly insufficient to put in doubt the clear, explicit, and positive identification of the defendants by the witnesses for the prosecution.

Counsel for appellants contends that the trial court erred:

(1) In the method employed in the examination of witnesses for the defense, thus depriving the defendants, of a fair and impartial trial; (2) in trying the defendants on three separate and distinct charges without the consent of the defendants; (3) in sentencing the defendants to the punishment of cadena perpetua without specifying to which particular charge the penalty applies; (4) in sentencing the defendants without rendering a final judgment on all of the charges and in construing the alleged acts as one act under article 89 of the Penal Code.

The first assignment of error has its basis in the claim of counsel that the trial judge went to unjustifiable lengths in examining some of the witnesses called for the defense. It is very clear, however, from a review of the whole proceedings that the only object of the trial judge in propounding these questions was to endeavor as far as possible to get at the truth as to the facts to which the witnesses were testifying. The right of a trial judge to question the witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides is too well established to need discussion. The trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material fact upon which the judgment in the case should turn. So in a case where a trial judge sees that the degree of credit which he is to give the testimony of a given witness may have an important bearing upon the outcome, there can be no question that in the exercise of a sound discretion he may put such questions to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. The questions asked by the trial judge in the case at bar were in our opinion entirely proper, their only purpose being to clarify certain obscure phases of the case; and while we are inclined to agree with counsel that some of the observations of the trial judge in the course of his examination might well have been omitted, there is no reason whatever to believe that the substantial rights of the defendants were in anywise prejudiced thereby.

The second assignment of error is sufficiently disposed of by a reference to the doctrine laid down in the case of the United States vs. Lampano (13 Phil. Rep., 409, 412).

The third assignment of error we think is wholly without merit, because a reading of the opinion and the judgment of the trial court clearly discloses that he found the defendants and appellants guilty of the acts charged in both informations, committed with treachery (*alevosia*), that is to say, of the crimes of assassination and frustrated assassination.

As to the fourth assignment of error it must be admitted that the trial judge erred in failing to impose upon the defendants a separate penalty for the crime of frustrated assassination of which he found the defendants guilty in addition to the penalty of *cadena perpetua*, which is the medium degree of the penalty prescribed for the crime of assassination, of which he also found the defendants guilty. It appears that the trial judge regarded the acts committed by the defendants in killing one victim and in wounding the other two as a single offense, merged in the highest offense with which they were charged, all having been committed at one and the same time.

The trial judge evidently had in mind the provisions of article 89 of the Penal Code, which prescribes that where a single act constitutes two or more crimes, or where one crime is committed as a necessary means to commit the other, the penalty imposed for the more serious offense will be applied in its maximum degree. In imposing sentence he says, "These two crimes committed in one act will be considered as one act and of the highest crime committed."

In the case at bar, however, the murder and the two separate assaults were manifestly separate and distinct offenses for each of which the accused were liable to trial and punishment. (*U. S. vs. Flemister*, 1 Phil. Rep., 317, 354; 4 Phil. Rep., 300; 5 Phil. Rep., 650; 207 U. S., 372; *U. S. vs. Beecham*, 15 Phil. Rep., 272, 336, 671, 672.) The cases contemplated in the eighty-ninth article of the Penal Code are of a wholly different character. (*U. S. vs. Ferrer*, 1 Phil. Rep., 56, 62.; *U. S. vs. Abijan*, 1 Phil. Rep., 83, 85; *U. S. vs. Tanjuan*, 1 Phil. Rep., 117; *U. S. vs. Llames*, 1 Phil. Rep., 130, 132; *U. S. vs. Pascua*, 1 Phil. Rep., 631, 632; *U. S. vs. Paraiso*, 5 Phil. Rep., 149, 153; *U. S. vs. Maza*, 5 Phil. Rep., 346, 349; *U. S. vs. Montiel*, 9 Phil. Rep., 162, 167.)

The penalty imposed by the trial judge, which was that of *cadena perpetua*, being the medium degree of the penalty prescribed for the crime of assassination, is manifestly the penalty which should have been imposed upon

the accused upon conviction of the unlawful taking of the life of Sosteguer, marked with the qualifying circumstance of treachery, and should therefore be affirmed. The failure of the trial judge to impose a separate penalty on account of the crime of frustrated assassination cannot be said to prejudice the defendants and appellants. The principal penalty imposed being that of cadena perpetua, we do not deem it necessary to return the record merely for the purpose of having an additional and smaller penalty imposed upon the defendants, nor to review the record ourselves with a view to determining the precise penalty which should be imposed.

The judgment of the trial court convicting the defendants and appellants of the crime of assassination without extenuating or aggravating circumstances, and sentencing them to cadena perpetua together with the accessory penalties prescribed by law should be and is hereby affirmed, with the costs of this instance against the appellants.

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

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