

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIX LUSTRADA, DEFENDANT AND APPELLANT.

G.R. No. 9511. March 25, 1915

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant, Felix Lustrada, was convicted in the court below of the crime of parricidio (parricide) and sentenced to suffer the penalty of death.

For some six years prior to the occurrences which gave rise to this prosecution, the accused was a member of the military organization known as the Philippine Scouts and, from time to time, had been stationed at different military posts throughout the Islands. While in Mindanao he met Maria Cortez, a Moro girl, whom he brought with him to Bayambang, Pangasinan, where they were married on the 8th of June, 1909. Subsequently he was transferred to Corregidor and thereafter to several other stations, to which his wife did not accompany him.

In 1912 he was stationed at Calbayog, Samar, for a period of about four months and there contracted a second marriage with a woman named Barbara Bueno, his lawful wife being then alive and residing in Manila. On May 19 he was transferred to Tacloban, Leyte. Maria Cortez, having heard in some way that her husband had married another woman, left Manila and went to Tacloban, arriving there on June 7, 1912. Apparently the accused was not expecting her, but on her arrival he procured a place for her to stay and made arrangements for her support. At the same time he was maintaining another establishment for Barbara Bueno. It does not affirmatively appear that either of the women knew of the presence of the other in Tacloban, and the accused stated that he kept the two women apart because he was afraid they would fight and create a scandal. Soon after the arrival of Maria Cortez in Tacloban, Barbara Bueno went to her home in Leyte where she stayed until June 24, when she returned to Tacloban.

While it does not conclusively appear that Maria Cortez was aware of the presence of Barbara Bueno in Tacloban, or that she knew definitely of the relations existing between this woman and the defendant at the time, the record conclusively shows that it was upon information regarding the relations of her husband with this woman that she left Manila and went to Tacloban; and there is some evidence tending to show that at that time she appeared to be sad and depressed, the accused himself testifying that she was not in a happy frame of mind, which he attributed to her knowledge or suspicion of his relations with the other woman, Barbara Bueno.

On June 21, the accused learned that his company was to change station to Iloilo on the 26th of that month.

On the evening of Sunday, June 23, the accused and Maria Cortez left the house of Juana Cahindoy, where Maria boarded, and went out ostensibly for a walk. Maria told Sinforosa Villones, a daughter of Juana Cahindoy (Kahindo) to wait supper for her, as she would be back later on. About 10 o'clock the defendant returned to the house without Maria and reported that she had gone aboard a steamer which was to sail at 4 o'clock the next morning. On the next morning, Monday, June 24, the defendant returned to the house of Juana Cahindoy and got the effects which Maria had left there, consisting of a "tampipe" containing some clothes, and a "petate," and had

them sent to the house of Gregorio Luna, where they were found several days later. On the same day he paid Juana Cahindoy the rent for the room which had been occupied by Maria.

On the morning of June 26 the body of Maria Cortez was found floating in the bay of Tacloban; a rope was tied around the neck and a heavy iron weight was attached to the other end of the rope. The autopsy showed that the deceased had received a blow on the head from some blunt instrument. When the corpse was first discovered only the lower half of the body was visible, the head and trunk being held submerged by means of the rope and the iron weight.

Doctor Llorca, president of the provincial board of health, testified that the condition of the corpse indicated that the body had been in the water two or three days. Isidoro Velardes, who was present when the body was recovered from the water, testified that he knew Maria Cortez in life, and had frequently seen her in Tacloban. He identified the corpse as that of Maria Cortez. The clothes and jewelry found on the body were also identified as those belonging to Maria Cortez, the witness Sinforosa Villones, a daughter of Juana Cahindoy, testifying that the clothes found on the corpse were the clothes worn by Maria Cortez when she left her mother's house on the evening of June 23 in company with the accused.

Felix Yumang, a Scout soldier, testified that on the afternoon of June 21 the accused, who was first sergeant of his company, ordered him to carry a heavy piece of iron from the camp to a place down near the beach; that in compliance with these orders he took this piece of iron to a place near a clump of bamboo trees, where he left it covered with dry leaves; that he was cautioned by the accused not to say anything about what he had done, and that the weight found attached to the body of Maria Cortez was the identical piece of iron carried by him to the beach by direction of the accused. Rafael Kagang, another Scout soldier, stated that he was at work on the camp grounds on the afternoon of June 21 and saw the accused and Felix Yumang going in the direction of the beach; that Yumang was carrying something on his shoulder, which he did not have with him on his return later on.

Ambrosio Doyola, a fisherman, testified that he was guarding his fish corral on the night of June 23, 1912, when he saw two men and a woman on the beach; that the night was clear and that he was able to distinguish these persons sufficiently to be able to say that one of the men was dressed, in military uniform. Just how far the witness was from the persons he claims to have seen, the record does not clearly disclose; but he swore that he saw them going in the direction of a clump of bamboo trees and that later they came down on the beach; that he heard the woman cry out in dialect: "Pardon, Felix, my life;" that they then went down toward the sea; and that later he saw a boat put out into the bay.

The defendant, testifying on his own behalf, stated that he and Maria Cortez left the house of Juana Cahindoy about 7 o'clock on the evening of June 23, and went out for a walk; that about 9 o'clock they went to a house near the cuartel (barracks) and remained there all night; that they arose early the next morning and that arrangements were then made for her departure on the steamer Sontua which was due to sail about 11 o'clock; that he got her "tampipe" and "petate" from the house of Juana Cahindoy and had them sent to the house of Gregorio Luna, which was near the dock; that he saw Maria for the last time about 8 o'clock that morning and told her where he had left her things, but that he was so busy making preparations for the expected change of station of his company to Iloilo that he was unable to wait to see her aboard the steamer.

Two witnesses were called by the defense, who testified that they saw the accused talking to a woman on the street on the morning of June 24. One of these witnesses, a muchacho in the house of Gregorio Luna, said that when he saw them the accused was pointing toward Luna's house. The evident purpose of this testimony was to corroborate defendant's statements as to his conversation with Maria that morning, before the hour of departure of the Sontua.

The testimony of the accused in his own behalf is not convincing, and, indeed, we are satisfied beyond a reasonable doubt that he did his lawful wife to death on the night of June 23, in the manner and form set forth in the information.

In a carefully prepared brief, counsel for appellant vigorously attacks the testimony of some of the witnesses for the prosecution, especially that of the two soldiers and the fisherman referred to above. He lays much stress upon the claim of the accused that these soldiers were jealous of him because of his promotion to the rank of first sergeant, and insists that their testimony as well as that of the fisherman is wholly unworthy of credence because of certain alleged inconsistent and contradictory statements made by them, and because of the inherent improbability of some of the facts in regard to which they testified.

It may be admitted that the testimony of the fisherman is not wholly satisfactory, and that it is vague and uncertain with regard to some details as to which it might be expected to be definite and certain, while as to some other matters, the witness spoke with a degree of assurance which the surrounding circumstances hardly seem to justify. The witness, however, was an ignorant fisherman, with no apparent motive to induce him to testify falsely against this accused, and we are satisfied that some such incident took place as he endeavored to describe on the witness stand. Judging by his testimony he did not take a very lively or active interest in the occurrence on the night of the murder, and doubtless it was only after the dead body was discovered that he began to appreciate the true meaning of all that he saw and heard.

It is not impossible or improbable that, in giving his testimony, this witness was influenced more or less by the rumors he may have heard as to the guilty complicity of the accused in the commission of the crime, and that the details of the incident which he attempted to describe on the witness stand are colored by an unconscious or even a conscious endeavor to make his testimony support the case for the prosecution. We are satisfied, however, that some such incident as he described actually took place; and that the substance of his testimony was true to the best of his recollection and belief.

It may be admitted also that, if we accept as true the evidence in regard to the jealousy, ill-will and unfriendly relations which the defense insists existed between the accused and the Scout soldiers who testified against him, it would seem strange and even improbable that he should have made use of one of them in concealing the piece of iron near the shore of the bay, or that he would have laid his plans for the commission of the crime so openly that these unfriendly witnesses would be able to connect him directly with the piece of iron used by the murderer to sink the body of his victim. It must not be forgotten, however, that the murderer had no thought that any one would ever see the iron sinker again, after it had been thrown into the sea; and if the accused did, in fact, make use of one of the soldiers in hiding the piece of iron near the beach, he did so in the belief that the soldier would never have any reason to suspect the use which he intended to make of it.

We might, nevertheless, have some hesitation in affirming a judgment imposing a death penalty upon the accused, if it rested wholly upon the testimony of the fisherman and these Scout soldiers, in view of the possibility that this testimony might have been fabricated by these soldiers for the purpose of getting rid of the accused and wreaking their vengeance upon him for fancied or real wrongs which they had suffered at his hands. But the guilt of the accused is conclusively established by other evidence in the record, even if we wholly disregard the testimony of these witnesses, for no one can entertain a reasonable doubt as to his guilt after reading the unimpeached and disinterested testimony of the witnesses by whom the prosecution established the discovery of the body of the murdered woman; the fact that she was the lawful wife of the accused; the circumstances under which she was last seen in his company; the manifest falsity of his account of her whereabouts on the night of her disappearance and of her alleged departure from Tacloban on the following morning; and finally the motive for the commission of the crime as disclosed by the embarrassing situation in which he found himself with both his lawful wife, and

the other woman with whom he had contracted marriage, in Tacloban just prior to the contemplated change of station of his company to Iloilo.

We find no errors in the proceedings prejudicial to the rights of the accused, and we conclude therefore that the judgment entered in the court below, convicting him of the crime of parricidio and sentencing him to death, should be affirmed, with the costs of this instance against him. So ordered.

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

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