

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN LANSANGAN, DEFENDANT AND APPELLANT.

G.R. No. 9781. July 30, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of assassination, alleged to have been committed as follows: "That the said Agustin Lansangan, on or about the 6th day of December, 1913, in the municipality of Concepcion, Province of Tarlac, willfully, maliciously, and criminally, with premeditation and treachery, did kill one Marcelino Tipay, a child of 7 years of age; contrary to law."

The defendant was duly arrested, arraigned, tried, found guilty of the crime of homicide in the Court of First Instance of the Province of Tarlac, and sentenced to be imprisoned for a period of fourteen years eight months and one day of reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs. From that sentence the defendant appealed to this court. Here the appellant was represented by an attorney de officio. The only defense made by the appellant is that the proof adduced during the trial of the cause does not justify, beyond a reasonable doubt, the conclusions of the lower court.

From an examination of the evidence brought here we find that the following facts are sustained beyond a reasonable doubt:

That for a long time before the death of the said Marcelino Tipay, the defendant and Maria Bautista, the mother of the deceased, had been living and cohabiting together; that a short time before the 6th day of December, 1913, the defendant and the said Maria Bautista had a quarrel and the defendant left the house where he had been living with Maria Bautista, threatening to kill her or some of her children; that a few days after the defendant had left the house of Maria Bautista, the deceased Marcelino Tipay and one of the other children of the said Maria Bautista were playing in the highway on the afternoon of the 6th day of December, 1913; that the defendant passed by where the children were playing and, for some reason or other, induced the said Marcelino Tipay to accompany him in the direction of an estero; that later on the same day, the child (Marcelino Tipay) riot having returned home, a search was made for it; that late in the evening one of the children met the defendant in the highway or road, leaving the estero, and at that time the clothing of the defendant was wet up to his waist; that inquiry was made of him concerning the whereabouts of the said Marcelino Tipay, whereupon he immediately returned to the estero, went into the water and picked up the dead body of the child from the bottom of the estero and brought it ashore; that upon an examination of the body of the said Marcelino Tipay, it was found that the cervical vertebra had been dislocated. Suspicion was at once directed to the said defendant as the person who had caused the death of the said Marcelino. Tipay and the next day (the 7th of December, 1913) a complaint was presented against him in the court of the justice of the peace of the municipality of Concepcion, Province of Tarlac, and a preliminary examination was held by the said justice of the peace, who found that there was probable cause to believe that the defendant was guilty of the crime and ordered him to be held for trial in the Court of First Instance of said province. Later the case was brought to trial in the Court of First Instance.

After hearing the evidence the Honorable Julio Llorente, judge, in a carefully prepared opinion, in which he makes an extensive summary of the evidence adduced during the trial of the cause, reached the conclusion that the evidence showed, beyond a reasonable doubt, that the defendant was guilty of the crime of homicide. The lower court found that there were no circumstances upon which he could qualify the crime as assassination.

The defendant, at the time of the trial, was a man of forty years of age. The deceased was a child of seven years of age. The supreme court of Spain has held in numerous decisions, and those decisions have been followed by this court, that the qualifying circumstance of treachery exists whenever one person employs means, methods and forms which insure the execution or commission of the crime without any danger arising or resulting to himself from the acts of the person attacked. 1 Alcubilla, 444. Decision of the supreme court of Spain of July 13, 1897; U. S. vs. De Leon (1 Phil. Rep., 163); U. S. vs. Ricafor (1 Phil. Rep., 173); U. S. vs. Rubeta (1 Phil. Rep., 331); U. S. vs. Abelinde (1 Phil. Rep., 568); U. S. vs. Abaigar (2 Phil. Rep., 417); U. S. vs. Santos (2 Phil. Rep., 453); U. S. vs. Alvarez (3 Phil. Rep., 24).

The supreme court of Spain has also held (and this court has followed said decisions) in considering alevosia as a qualifying circumstance of the crime of assassination, that when an adult person illegally attacks a child of tender years and causes its death, that he runs no risk whatever of personal injury to himself from such attack and that therefore in such a case alevosia should be considered as a qualifying circumstance of the crime, and the same should be qualified as assassination. In the present case the child was of tender years, being but seven years old. Whatever method the defendant employed, in causing the death of the deceased, the same was done without any possibility of danger resulting to himself from the child. The crime, therefore, in the present case should be qualified as that of assassination. Decisions of the supreme court of Spain: January 26, 1877 (where the child was 30 months old); October 29, 1879 (where the child was 11 years old); October 10, 1883 (a child of tender years); November 15, 1895 (where the child was 3 years old); July 13, 1897 (a young child). U. S. vs. Irarion (2 Phil. Rep., 476) ; U. S. vs. De Jesus (14 Phil. Rep., 190).

From the record we find no aggravating circumstances accompanying the commission of the crime. Considering all of the facts and circumstances, however, and the ignorance of the defendant, we are disposed to give him the benefit of article 11 of the Penal Code as an extenuating circumstance, and impose upon him the minimum penalty provided for the crime of assassination. The sentence of the lower court is therefore hereby reversed and it is hereby ordered and decreed that a sentence be entered declaring that the defendant is guilty of the crime of assassination, with the qualifying circumstance of alevosia, and the extenuating circumstance of article 11 of the Penal Code, and sentencing the defendant to be imprisoned for a period of twenty years of cadena temporal, to suffer the accessory penalties provided for by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

Arellano, C. J., Torres, Carson, Moreland, and Araullo, JJ., concur.

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