

G.R. No. 20472

[G.R. No. 20472. September 05, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
FAUSTO CHA Y MISAL AND POLICARPIO MILAGROSA Y PASCUAL, DEFENDANTS
AND APPELLANTS.**

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellants, Fausto Cha y Misal and Policarpio Milagrosa y Pascual, guilty of the offence of double homicide, and sentencing each of them to undergo imprisonment for eighteen years, *reclusion temporal*, with the accessories prescribed by law; to indemnify jointly and severally the heirs of the persons slain, in the amount of P500; and to pay each one-half the costs.

It appears in evidence that on and prior to December 16, 1922, an aged Chino, named Lim Siam, with his wife, Ki Chio, maintained a *tienda* at No. 525 Calle Sagat, in the district of Paco, Manila. The couple were accustomed to sleep in the *tienda*; and in the loft they accommodated their employee, a boy named Ing Si. At between 2 and 3 o'clock in the morning of the date stated, two malefactors effected an entrance into this place by removing one or more boards from the back of the house, after which the door was opened by one or the other from the inside, in order of course to make possible a prompt escape in case of emergency. Lim Siam was the first person to awake who lived to tell the tale, and he was aroused by a shriek from his wife. The *tienda* at the time was lighted by an electric light, and what was then occurring was clearly visible to Lim Siam's eyes. Looking in the direction of the cot where his wife was sleeping, Lim Siam saw a little man, whom he afterwards identified as Fausto Cha, stabbing his wife, and blood spurting from her body. Lim Siam attempted to

catch the assailant, who at once turned and cut Lim Siam on the foot, after which he resumed the assault on the wife, striking her in the neck while on the floor. He then turned again upon Lim Siam and, stabbing him in the side, fled from the room.

While this scene was being enacted Policarpio Milagrosa stood at the bed-room door on the lower floor of the store, observing what was being done inside; and after Lim Siam had been wounded, as above stated, he emitted a cry for help. Policarpio Milagrosa then fled from the house by the front door, followed by Fausto Cha.

Meanwhile, Ing Si, the lodger above, had heard the noise and started down the ladder leading to the lower floor. He got down just in time to see Fausto Cha running away from the house. He found Ki Chfo stretched upon the floor, dead from the many and fatal wounds which she had received, and Lim Siam badly slashed in half a dozen places. From the effect of these wounds he died five days later in the Philippine General Hospital in Manila.

The police force of the city arrested the two appellants as suspects and carried them in company with a number of other persons into the presence of Lim Siam, who immediately and without hesitation identified the two appellants as the persons who had perpetrated the outrage. Upon this occasion Lim Siam made a written *ante mortem* statement in which, after stating that he realized that death was certain, described the scene of the tragedy substantially as above given, and explained his reasons for recognizing Fausto Cha as the person who had killed Ki Chio and inflicted mortal wounds upon the declarant.

In this connection he pointed out that Fausto Cha is a little man and owing to the light that was burning in the *tienda* the declarant was able to see his features plainly. He also stated that he recognized Policarpio Milagrosa as being without doubt the individual who stood at the door, looking into the room while Fausto Cha committed the homicides.

The identification of the two appellants as the persons concerned in this deadly assault is in our opinion complete; and no one reading the *ante mortem* statement of Lim Siam can entertain for a moment any doubt that the two appellants are the guilty persons.

Fausto Cha is further identified by Ing Si, who saw the back of this appellant as he ran away. Still another circumstance which, though not weighty, is of some value as corroborating the case against Fausto Cha, is that when he was arrested one of his slippers (*chinelas*) had blood stains such as might have received at the time of the homicides, and which exhibited signs of attempt at effacement.

As against Policarpio Milagrosa the identification rests exclusively upon the *ante mortem* statement of Lim Siam, but when it is considered that a light was burning and that this accused was looking directly into the little room where the deadly assault was made, it will be seen that Lim Siam had perfect opportunity to observe this appellant's features. We are entirely satisfied that he also was rightly apprehended.

Fausto Cha gave his age as twenty-three years, and Policarpio Milagrosa said he was twenty-seven at the time of the trial. Notwithstanding their comparative youthfulness, both are seasoned criminals; and it was admitted by them at the trial that Fausto Cha had been previously convicted for theft and again for *estafa*, while Policarpio Milagrosa admitted having been convicted once for theft and twice for robbery. One Que Siong, a son of Lim Siam, said at the trial that these two individuals had already once robbed his father's establishment in the year 1918, though he did not give any precise date upon this point.

The external indications would seem to show that the two accused intended to commit robbery; but in his dying declaration Lim Siam said that he did not know whether they took anything or not. It appears in evidence that a number of articles, such as milk, sardines, and cigarettes, were, after the incident, found in the *tienda* in a sack, where they had possibly been put with a view to being taken away; and a drawer which may have contained some money was found open, and the place was otherwise in disorder. Notwithstanding these indications of a design to rob, the trial judge was in our opinion right in ignoring the charge of robbery, for the reason that the proof does not afford any convincing demonstration of the fact that the crime of robbery, frustrated robbery, or attempt to rob, was committed. It follows that in estimating the character of the offense and fixing the penalty, or penalties, incident thereto, account can be taken only of the two homicides.

The information in this case alleges that the crime was committed with treachery (*alevosia*), in that the victims were attacked while asleep; but this circumstance is alleged as a generic aggravating circumstance only and not as a qualifying circumstance such as would raise the homicides to murder. It is evident that the charge of treachery was put in this form in view of the fact that the information proceeds on the idea that the complex offence of robbery with homicide was committed. We are of the opinion, however, that the presence of *alevosia* as a factor in any form is not demonstrated in this case beyond a reasonable doubt. It is certain that Lim Siam was not asleep when assaulted, he having intervened in order to save his wife. Furthermore, it is a probable conjecture that Ki Chio herself was killed because she awoke from her sleep, thereby interrupting the robbery which had been planned.

In the commission of each of the offenses of homicide two aggravating circumstances were undoubtedly present, namely, nocturnity and that the offenders had been previously punished for two or more crimes to which the law attaches a lighter penalty than to homicide.

The trial judge, as we have seen, imposed the penalty appropriate to homicide in its maximum degree, but failed to take account of the fact that two persons were killed by separate acts. In this we think his Honor was in error. The case is one that should be governed by the rule stated in *United States vs. Balaba* (37 Phil., 260), and the penalty appropriate to each of the two homicides should have been imposed, as was done in that case. It is undoubtedly true that where the complex crime of robbery with homicide is committed, the circumstance that more than one homicide may have been committed does not destroy the essential nature of the crime, where otherwise there would be only one. In the complex offence the number of victims is immaterial (*People vs. Manuel*, 44 Phil., 333). But when it occurs, as here, that the robbery, upon a charge of the complex offence, is not proved, the offence is resolved into its constituent elements; and if more than one homicide appears to have been committed, the penalties appropriate to each should be accumulated, in conformity with the provisions of article 87 of the Penal Code, in relation with No. 2 of article 88 of the same Code. This was done in *United States vs. Lahoylahoy and Madanlog* (38 Phil., 330), where four homicides were committed in connection with a robbery, but the conviction for the robbery could not be sustained.

In view of the aggravating circumstances present in this case the period of imprisonment for each homicide must be fixed in the maximum degree of *reclusion temporal*, and we think it will suffice to fix this period at seventeen years four months and one day for each offence.

The judgment appealed from will therefore be modified by imposing upon each of the appellants imprisonment for seventeen years four months and one day, *reclusion temporal*, for the homicide committed upon the person of Ki Chio, and the further period of seventeen years four months and one day, for the homicide committed upon the person of Lim Siam, making in all thirty-four years eight months and two days, *reclusion temporal*. In other respects the judgment is affirmed, with proportionate costs against the appellants. So ordered.

Araullo, C.J., Johnson, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.
