

[G. R. No. 18816. August 31, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
MARIANO CALEBOSO, DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

The information charges that on or about April 12, 1921, in the municipality of Sinait, Province of Ilocos Sur, Philippine Islands, the defendant voluntarily, maliciously and criminally, and with known premeditation treacherously struck with a stick Justo Tabale while he was sleeping in his own home, causing the fracture of his skull, of which he died a few hours later.

The defendant entered a plea of not guilty. The trial court found him guilty of the crime charged, and sentenced him to twenty years of *cadena temporal*, to suffer the accessory penalties provided by article 56 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs, from which the defendant appeals, claiming that the trial court erred in the admission of the testimony of Juan Tabale as a witness for the prosecution, and in considering Exhibit A, known in the record as defendant's confession.

Johns, J.:

Juan Tabale testified that on the night of April 11, 1921, Albino Bermudes, the defendant and the witness went to a *fiesta* in the house of Gaspar Ines. Returning to their homes after midnight, the defendant told him that he would kill Justo Tabale because of a letter which he received in Hawaii from him in which Justo Tabale stated that the defendant's wife was his mistress. Nearing the house of Justo Tabale, who was then sleeping with his head lying in the doorway on the threshold of the house, the defendant took a rice pestle with which he struck and fractured the head of Justo Tabale, who died from the injury received in the

afternoon of

E. Encarnacion, a practicing physician, held an autopsy upon the body of the deceased, and testified that he found his skull sunken and fractured, and that the indenture was about 3 inches long and 1 inch in diameter, and that "the fracture was the effect of a blow aimed downward by a blunt instrument, which may be a rice pestle."

Donato Bringas, a corporal of the Philippine Constabulary, testified that he heard the confession of the defendant made before Lieutenant Torres, in and by which the defendant said it was agreed that Lucio Caleboso, Juan Tabale and the defendant should kill Justo Tabale on the morning of April 12, and that they did kill him by blows upon his head. This confession was made in the presence of the chief of police of Sinait, corporal Calixto Pajarilla, and the clerk of the justice of the peace of Sinait, and was reduced to writing, and after it was read to the defendant, he signed it in the presence of two witnesses, who subscribed their names as witnesses.

In all things and respects, the confession, with the testimony of the parties present, has every appearance of being authentic. It is true there is an apparent discrepancy between this and the testimony of Juan Tabale given in open court as to which one of them struck the blow, or whether it was done by the defendant alone. But in either case, the testimony is conclusive that the defendant is guilty of the crime charged. The defendant's claim that he was induced to sign the confession by threats and coercion and a promise of immunity is not sustained by the evidence. It has all the appearances of a voluntary confession.

The defense also introduced witnesses who testified that the deceased came to his death by falling off the porch of his house while he was asleep, and another that he fell from a bamboo in coming down from a roof which he was repairing. These different theories of the defense are not plausible, and they are inconsistent. It is not probable or even possible that the deceased sustained his injury by falling off the porch of his house, or by falling from a bamboo.

The evidence for the prosecution establishes the guilt of the defendant, beyond a reasonable doubt. The judgment of the lower court is affirmed, with costs. So ordered,

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

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