7 Phil. 469

[G.R. No. 3070. February 11, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN CABILING, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The defendant was charged in the court below with the murder of Clarence T. Allen on the 22d of November, 1905. He was convicted of that crime and sentenced to life imprisonment. From that judgment he appealed.

The evidence in the court below was contradictory. The substance of the testimony of Levina F. Allen, widow of the deceased, and a witness for the Government, as stated in the Attorney-General's brief, is as follows:

> "The defendant, Juan Cabiling, was a student of the Government school at Ormoc, and the deceased was the principal of said school. On the morning of November 22, 1905, a normal school was opened at Ormoc for the training of teachers from the various towns on the western coast of Leyte. Mr. Allen was authorized to select from the students those who were to be promoted to said school. The defendant was one of those who desired to attend said school, and on the morning in question as soon as the class under the direction of Mrs. Allen assembled the defendant, who was one of the students of said class, inquired of Mrs. Allen if he was not going to be in said normal class, and upon being answered 'no' he stated that he was not satisfied. Mrs. Allen went on with the recitation with which she was then engaged, and while she was thus engaged the defendant kept talking in a very rude manner, grumbled, and refused to study, wherefore she told him two or three times to stop because she must hear the recitation; a little later, as soon as the recitation in class four was over, and Mrs. Allen desired to turn back to part second of the book for review, because they

> had no other books, the defendant told her that grammars must be available and that he was not satisfied, as there arrived a supply of same, and upon being answered that the grammars were for the normal school teachers, the defendant got up and said to Mrs. Allen that she had told a lie by telling him that he could go into the normal school and now he was held back in the lower grade. In view of this behavior of the defendant, Mrs. Allen said that she would go to talk with Mr. Allen and have him settle the matter. Mrs. Allen left the room in the direction of the library, where Mr. Allen was, and told him that it would be better to send the defendant home and tell him to come back at 2 p. m. The deceased gave his assent and followed Mrs. Allen into the room, where the defendant was, and coming to the place where the latter sat, Mr. Allen said to him: 'What is the matter with you this morning, Juan? If you are not satisfied here you may go away.' The defendant upon hearing these words, rushed upon the deceased and stabbed him in the stomach; the deceased pushed him back a distance of about 4 feet, and then the defendant gave deceased a second blow in the same place, whereupon the deceased caught the defendant by the right hand wherein he had the knife, and by the neck. At this stage of the struggle the lieutenant of the municipal police arrived and pointing his revolver at the defendant separated them and took the knife away from defendant."

Her evidence is corroborated by that of Wilbur Chamberlain, another eyewitness, and by that of James F. Godward, who witnessed the termination of the struggle.

The facts which the evidence for the defense tended to establish are stated in the brief of the Attorney-General as follows:

> "* * * That on the morning in question, after Mrs. Allen had distributed some paper for the lesson in arithmetic, she left the room and shortly afterwards the deceased came and, taking the defendant by one ear, caused him to stand up and then kicked him, took him by the arms with both hands and shook him against a table, which fell down, and again advancing to where the defendant was standing took him by the neck and tried to throw him upon the floor; then the police arrived and took Cabiling to the municipal building. All the witnesses for the defendant admitted that when the deceased arrived the defendant had a knife in his hands and was sharpening a pencil with it, but they stated positively that they

> had not seen him assail the deceased nor strike him with said knife. The defendant himself flatly denied this fact."

The substance of the evidence on both sides is correctly stated in the quotations above made. Allen died as a result of these wounds.

After a careful and somewhat lengthy analysis of the testimony of the witnesses on both sides, the Attorney-General says:

> "We find in the records sufficient data to lead us to the belief that the testimony of the witnesses for the prosecution is more reliable than that of the witnesses for the defense. * * *
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> "Upon the apparent improbability of the testimony of the witnesses for the defense, we have stated that there was a marked sign of conspiracy between them. We need only to add, at this time, that the testimony of the defendant lends strength to our belief in this matter. He emphatically denied having inflicted, either designedly or undesignedly, any of the wounds shown on the body of the deceased, and asserted that he could not possibly have inflicted such wounds, nor did he know how they were inflicted. We can not believe the truth of this testimony of the defendant, for to do so it would be necessary to presume that he was unconscious at the time in question. The absolute denial made by the defendant clearly shows his well-planned and decided purpose of concealing everything that might be damaging to him. * * * He and the deceased were the only parties to the difficulty, the defendant alone carried a knife and no one except the latter could have inflicted the wounds on the deceased. If said wounds were caused as he alleged while he defended himself against assault, there was no reason whatever for attempting to conceal such fact, because this circumstance would be a sufficient ground for finding him not guilty; but having so concealed the fact and having shielded himself behind an absurd and incredible denial, there arises in the mind the conviction that he is in fact guilty of the crime in question, and that he perpetrated the same in the manner testified to by the witnesses for the prosecution. As against such a lack of veracity on the part of the defendant and his witnesses, we have to admit as legal truth the evidence of the witnesses for the prosecution given with evident frankness and sincerity to the effect that said defendant assailed the deceased in

> the manner recited by them, and inflicted the wounds that caused his death."

Our examination of the evidence has lead us to the same conclusion which the Attorney-General has reached, and we are satisfied beyond any doubt that the testimony of the Government's witnesses is true; that there was no aggression on the part of the deceased, and that the first attack came from the defendant. He is accordingly criminally liable for the death of Allen.

The next question to be considered is whether the crime committed was that of homicide or murder. In order to raise the guilt of a person to the grade of murder it is necessary that one of the elements specified in article 403 of the Penal Code be proven. The Attorney-General is of the opinion that no one of these requisites was proven, and that the crime committed was homicide. With this conclusion we can not agree. Among the circumstances which qualify the act, there is mentioned in article 403 "treachery" (*alevosia*). The killing was done with a pocketknife. It is very apparent from the evidence that Allen had no suspicion that the defendant intended to make any attack upon him, and there is nothing to show that Allen knew that the defendant had this knife in his possession; in fact, Mrs. Allen, who was standing near her husband, testified that she did not see the knife until the second blow was struck. It has been held in the supreme court of Spain that a sudden and unexpected attack upon another is proof of treachery, and we have repeatedly made the same ruling In the case of the United States *vs*. Babasa (2 Phil. Rep., 102) the following statement is made in the syllabus:

> "One who kills another by suddenly and unexpectedly inflicting a mortal wound with a knife is guilty of murder, as the means used in the commission of the crime constitute *alevosia*."

The punishment for the crime of murder consists of three degrees. The minimum degree, which is the maximum degree of the penalty known as *cadena temporal*, is imprisonment from seventeen years four months and one day to twenty years, the medium degree is life imprisonment, and the maximum degree is death.

In the case at bar it was proven that the defendant was born on the 12th day of September, 1888, and was, therefore, at the time the offense was committed 17 years and 2 months old. The penalty above mentioned for the crime of murder is, by the terms of the Penal Code,

inflicted only upon those persons who are more than 18 years old. By the provisions of article 85 of the said code, if the defendant is more than 15 years and less than 18 years of age, the penalty provided in article 403 can not be inflicted, but in its place there must be inflicted the penalty immediately inferior to the one indicated by that article. The highest of the common crimes known to our law are parricide and robbery with homicide, but if the person who commits either one of these crimes is under 18 years of age, the greatest punishment which can be inflicted upon him is imprisonment for twenty years. In this case the punishment to be imposed upon the defendant is the penalty immediately inferior to that provided in article 403. That penalty consists of two indivisible penalties, namely, death and life imprisonment; and the maximum degree of a divisible penalty, namely, *cadena temporal*. By article 75, paragraph 3, of the Penal Code it is provided, that the penalty immediately inferior to such penalty, as the one named in article 403 shall be the medium and minimum degrees of the divisible penalty and the maximum degree of the penalty which follows the divisible penalty in the general scale. Applying that article to the case at bar, it results that the penalty applicable is the maximum degree of *presidio mayor* to the medium degree of *cadena temporal*; that is to say, imprisonment from ten years and one day to seventeen years and four months.

If none of the extenuating circumstances mentioned in article 9 of the Penal Code, nor any of the aggravating circumstances mentioned in article 10 are proven, the penalty should be inflicted in the medium degree; that is, from twelve years and one day to fourteen years and eight months.

The Attorney-General is of the opinion that article 11 of the Penal Code should be considered as an extenuating circumstance. That article is as follows:

> "The circumstance of the culprit being a native, mestizo, or Chinese shall be taken into consideration by the judges and courts for the purpose of increasing or reducing the penalties according to the degree of respective intention, the nature of the act, and the conditions of the person offended, which shall be left to the judgment of the former."

We can not agree with this conclusion. The evidence shows that the defendant, so far from being an ignorant boy, was one of the most, if not the most, intelligent in his class, and in such cases we have never considered article 11 as an extenuating circumstance.

As to the aggravating circumstance, we agree with the Attorney-General that that of known premeditation was not proven, and that circumstance 20 of article 10 was proven. That provision of article 10 is as follows:

> "When the act is committed with insult or in disregard for the respect which may be due the aggrieved party on account of his rank, age, or sex, or when it is committed in his dwelling, if he has not given provocation."

It is applicable to this case because the person attacked was the teacher and the person attacking was the pupil.

There being one aggravating circumstance and no extenuating circumstance, the penalty must according to the law, be imposed in the maximum degree and we fix it at fourteen years eight months and one day of imprisonment (*cadena temporal*).

The judgment of the court below is modified by imposing instead of life imprisonment the penalty of fourteen years eight months and one day of *cadena temporal*, and the payment of 1,000 pesos, Philippine currency, to the heirs of the deceased as indemnity. In all other respects the judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case remanded to the lower court for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and *Tracey, JJ.,* concur.

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