

4 Phil. 309

[G.R. No. 1749. March 21, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FORTUNATO ODICTA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a complaint dated October 16, 1903, the provincial fiscal of Capiz charged Fortunato Odicta with the crime of parricide. The complaint stated that on the morning of the 4th of said month the defendant, without any reason therefor, killed his wife, Juliana Obafial, his two children, Honorato and Maria, and the young man named Martin Abuna, 15 years of age, who lived in the house of defendant, in the barrio of Matangcong, town of Sigma, Province of Capiz; all contrary to law.

The trial was had in pursuance of the aforesaid complaint, and as a result of the evidence adduced in same the court sentenced the defendant to the death penalty, without stating anything as regards the costs. Notwithstanding the fact that the defendant did not appeal, this case has been brought here *en consulta* in accordance with the law.

From the evidence adduced during the trial, it is fully proven that Fortunato Odicta, between 3 and 4 o'clock on the morning of said day, killed his wife, Juliana Obafial, his two children, Honorato and Maria, and the young man, Martin Abuna; that the bodies of the two children and this young man were found inside of the defendant's house, and also three fighting cocks which had been killed; that outside of the house, and near the kitchen of the adjoining house, the corpse of his wife, Juliana, was found, due to the fact that before her death she ran from

her house to call for help at the adjoining house of Nicasio Castillo and there fell dead near the kitchen; that, according to the autopsy held by the physician on the body of Juliana, there was a large and deep wound below the left armpit; that the wound was of a serious nature and was a mortal wound; that the one wound in the neck of the child Honorato, and the two wounds on the neck of the child Maria and the one on the right shoulder, and the wound found on the neck of the young man, Martin Abuna, were also of a serious and mortal nature; that these wounds were inflicted with a bolo; and that two bolos stained with blood were found on the floor of the house.

The owner of the adjoining house, Nicasio Castillo, awoke on the morning of that day because of cries coming from Juliana Obafial, who was asking for help because her husband had attacked her and her children. Nicasio Castillo, because of fear, did not open the door of his house, but, on the contrary, fastened it and then through a crack in the door he saw the defendant with a bolo in his hand and heard him address to his wife the following words, "That one you have received is enough and then the woman fell down dead. He stated that he did not know the reason why the defendant committed the murders; that the defendant was not in the habit of getting drunk and he did not notice that he was drunk that morning; that he did not notice that the defendant left his house the night before, nor did he hear any quarrel between the husband and wife; that his house was very near the house of defendant and that through fear the latter would try to come into his house he cried out for help to the other residents of the barrio; that the inhabitants of the barrio came immediately in reply to his cries.

The defendant was turned over to three physicians for examination and these doctors in their report (folio 58) stated that the defendant was 28 years of age and that his constitution, although well organized, was lymphatic; that his body and head were normal, without any defects; that the functions of his circulatory, digestive, and nervous systems were also normal; that he was somewhat emaciated as a result of the crime which he committed; that he did not have any direct hereditary antecedents of insanity; that from their examination they did not find any symptoms of mental derangement, and that they therefore believed

that Fortunato Odicta in the commission of the crime was not actuated by insanity but from other motives, which they could not specify, which any sane person might have in committing such a crime, as, for instance, intoxication.

By these facts duly proven in the case and from the testimony of the eyewitnesses the execution of the grave crime of triple parricide and murder becomes evident.

“He who shall kill his father, mother, child, whether legitimate or illegitimate, or any other of his ascendants or descendants, or his spouse, shall be punished as a parricide with the penalty of *cadena perpetua* to death.” (Art. 402 of the Penal Code.) Taking for granted that the young man, Martin Abana, was killed while asleep, because the attack was made between 3 and 4 o'clock in the morning, it is undeniable that the crime was accompanied by the circumstance of treachery and must be designated as murder, as defined by article 404 of the Penal Code. This designation, however, does not appear in the complaint.

The defendant, Fortunato Odicta, is the sole principal in the commission of these crimes and was found guilty of said crimes. When he was asked if he was guilty of the crimes charged against him he answered that he pleaded guilty to any crime which they might charge him with, because he committed it while he was drunk and without knowing what he was doing. In a sworn statement the defendant declared that he drank too much tuba, perhaps fifteen glasses; that he drank first in his own house and then in the fields among the cocoanut plantations, and for this reason he became intoxicated and did not know what he was doing, but that he was not in his right mind. He did not know whether, when he returned to his house, he slept there or not; he stated, however, that when he arrived at his house he did not find his wife there; that on account of the state which he was in he lay face downward and wept over the death of his children.

Against the statements of the accused to the effect that he was drunk on the morning of the occurrence there are the statements of the municipal president, Nicasio Castillo, Atanasio Sarmiento, Dionisio

Navarra, and the physician, Mariano Venecio. Some of these witnesses state that they saw and spoke to the defendant after the occurrence and they affirm that he was not drunk then, and that he was not in the habit of getting drunk at all. These statements are very contradictory to the statements of the defendant.

It being evident that the defendant was the sole principal in the commission of these crimes, there remains only the question as to whether in the case there is any circumstance which should exempt him from liability, since the reason for the commission of said horrible crimes does not appear. From the evidence adduced during the trial it appears that the defendant was in a healthy condition; that his mental condition was normal, and the legal presumption, therefore, is that he acted in his right mind, and it was the duty of the defense to show that he was suffering from mental derangement or in a fit of insanity. This has not been shown, however, and therefore the defendant must be considered guilty and criminally liable for the crime of parricide. The attorney for the defense asks that the defendant be acquitted, because he is exempt from liability. He bases this petition on the ground that the crimes were committed while Fortunato Odicta was in a state of somnambulism, akin to insanity, If it had been proven in the case that the defendant when he committed these crimes was really asleep, or in a state of somnambulism, or unconscious of his acts, then instead of coming under paragraph 1 of article 8 of the Penal Code this case would come under the provisions of article 1 of the Penal Code, because a somnambulist does not act voluntarily and therefore his acts do not constitute a crime. But nothing of this appears proven in the case, and therefore we must take into consideration that the defendant, while in his right mind and reason, willfully killed all the members of his own family.

In the commission of the crime we must consider the presence of the aggravating circumstance of superior force provided for in paragraph 9 of article 10 of the Penal Code. This aggravating circumstance is, however, counterbalanced by the special extenuating circumstance provided for in article 11 of the Penal Code, because of the low grade of intelligence of the deceased. We must also take into consideration

the circumstance of intoxication, not habitual, provided for in paragraph 6 of article 9 of the same code, since the defendant affirmed when he pleaded guilty that he was drunk at the time he killed the members of his family and did not know what he was doing, and there is no legal reason why this statement should not be taken into consideration as against the statement of the other witnesses who saw him several hours after the crime had been committed and who assert that this defendant was not drunk and that he was not in the habit of getting drunk. These statements show that the intoxication, which to a degree dominated and influenced the defendant to commit the crime, was not habitual with him. Therefore the lesser of the two indivisible penalties provided by law should be imposed on him.

By virtue, then, of the reasons above stated, we are of the opinion that with a reversal of the judgment below Fortunate Odicta should be sentenced to the penalty of *cadena perpetua* with the accessories two and three of article 54 of the Penal Code, without having to pay any indemnification on account of the relationship which the defendant bore to the deceased, and to pay the costs in both instances.

This case to be returned to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.
