

[G.R. No. 980. February 20, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EUGENIO BARBOSA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The following facts were satisfactorily established by the evidence in the present case: That on the evening of the 13th of January, 1902, Eugenio Barbosa, a sergeant of Scouts, went to the house of Jose Baldosano in Bangued, head town of the district, where his wife, Ana Baldosano, the landlord's daughter, lived. That no sooner had he arrived at the house than he again recriminated his wife, thinking that she was not faithful to him. That his father-in-law, in order to put an end to the dispute, told them to go settle their grievances in court, whereupon the defendant, Barbosa, replied that he alone was enough to judge himself and his wife too. That some time after 10 o'clock that night both husband and wife had supper and then went to bed. That about 2 o'clock next morning defendant got up and invited his wife to go downstairs in order to bid good-bye to an aunt of his, which they did, because he intended to take his wife the next day to the town where the company to which defendant belonged was stationed. That two hours after they had left the house, apparently on good terms, the defendant returned alone to the house and told the family, all of whom were in the house at the time, and which consisted of the parents, Guillermo Baldosano and Arcadia Veloso; their children, Guillermo and Antonio; Antero Flores, Felipa Veloso, and several others who were then present, that his wife, Ana, Baldosano, had died and that they could go to get her body if they wished to; that the body was lying within a fenced piece of ground on the other side of the street near by and remarked to them that they would meet the same fate if they should attribute her death to any cause other than a disease of the stomach. His statements were heard by all the people in the house. That Guillermo Baldosano and Antero Flores immediately left the house and went in search of the body which they found at the place designated by the defendant, at the foot of a tree and about 20 or 30 yards from the

house, to which the body was conveyed the same night. That when they were carrying the body away they noticed about the neck and throat indications that she had been choked, which led them to think that Barbosa had strangled his wife. That the body presented some dark spots about the throat caused by the pressure of his fingers. That the body was buried on the afternoon of the following day, the 14th of January, at the parish cemetery as per certificate (record, p. 52).

The offense in question has been duly established by competent and conclusive circumstantial evidence sufficient to define the crime as parricide as denned and punished under article 402 of the Penal Code.

Although the defendant pleaded not guilty to the crime with which he stands charged, the case, however, furnishes sufficient grounds upon which to base his conviction as the party responsible by direct participation for the death of his wife, Ana Baldosano.

The record satisfactorily shows that early in the evening of the 13th of January, 1902, the defendant upon his arrival at the house where his wife lived had been recriminating her on account of his jealousy; that late that night and about 2 o'clock defendant invited his wife to go downstairs, which they did, upon the unexplained pretext of bidding good-bye to an aunt of his; that two hours later defendant returned to the house alone and notified the parents of the girl as well as the rest of the people in the house that his wife had died, and told them to go to get the body if they wished to and which was to be found at the place designated by him; that instead of showing his grief and sorrow on account of the death of his wife, who he claimed had died of a disease of the stomach, he expressed himself unconcernedly and told those within his hearing that they were liable to be killed likewise should they attribute the death of his wife to any cause other than the said disease of the stomach. The finger marks found about the throat and neck of the victim also indicated that she had been choked.

The foregoing facts were properly established by the testimony of competent witnesses and constitute as many circumstances which taken together with the other merits of the case, considered in accordance with the principles of a sound discretion, and combined with each other, convince us of the guilt of the accused as the convicted author of the crime in question. Apart from the fact that it has not been proved that the deceased, who, previous to her death and at the time she left the house accompanied by her husband, was in good health, was taken with a pain in the stomach shortly afterwards and when she had walked for about 20 or 30 yards, it is impossible to conceive, and we are not inclined to believe that the death was due to a disease of the stomach. If this was true it seems natural that

defendant and his wife should have returned to the house or that the husband should have endeavored to carry his sick wife to the house of her parents, which was but a short distance away, or, if this was not possible, he could have called on the relatives to aid his wife, who could have been left alone while he did so. But the accused did nothing of the kind and has not been able to explain at the trial this strange conduct, not at all consistent with the duties which a husband owes his wife. It does appear, however, that the defendant acted in such an unfeeling way toward the deceased that it may be safely inferred from the antecedents and other circumstances of the case that he was the murderer of his wife, having been actuated by the passion of jealousy and the hatred he felt toward his wife, whom he thought was untrue to him.

It can not be said that the circumstantial evidence referred to has been contradicted at all by the witnesses to the alibi presented by the defense. The testimony of the witnesses who testified that defendant had been at the barracks all night is not worthy of credence since some of them were absent from the building dancing at a house from about 9 to 12 o'clock that night and others were asleep and therefore could not know positively whether the accused had been absent from his quarters or not. The barracks had three doors and there was a sentry at one of them only. It can not be held as having been established by the evidence that on the morning of the 14th of January he was notified that his wife had died of a disease of the stomach, because the brother of the victim denies having made such a report to him, and further because the true author of the crime and the one who informed and threatened the family of the deceased did not require such notice.

It must be finally remarked that the contradictions which appear in the testimony of witnesses for the defendant discredit their own statements, which could not be properly accepted. The fact that a majority of the witnesses for the Government are near relatives of the deceased does not lessen in the least the weight of their testimony. The statements of these witnesses, far from evincing any falseness, corroborate facts which coincide with other undeniable ones, all of which are conclusive circumstantial evidence tending to show the existence of the crime and the criminal responsibility of its author.

As respects the certificate of the burial of the body, it may be said that the probatory force of this document is confined only to the fact of the death and burial of Ana Baldosano, and the information as to the cause of her death, given by the person or persons who carried the body, was mere hearsay. And if it is certain that against all truth and reality the brother of the deceased had told the priest and the parish sexton that she had died of a disease of the stomach, is it not also probable that the said brother acted under the influence of the

threats made by defendant shortly after the commission of the crime? This is not improbable, nor is it likewise impossible that the accused, taking advantage of his rank as sergeant of Scouts, should have himself instructed the party how to draft the certificate of burial in the same manner as he secured and prepared the evidence of his alibi.

From a careful examination of the record and from the statements of the parents and brothers of the deceased, as well as from the testimony of the accused, it appears that while the unfortunate family of the deceased was overcome with fear, the accused evinced unusual boldness and forwardness, trusting, as he had repeatedly said during the trial, that his superior officers would defend him, basing his statements also on certain unfounded privileges he claimed he had in the organization to which he belonged, he having been defended by the governor of the province, an unusual occurrence in a criminal case.

In the commission of so grave a crime there should be appreciated the attendance of the aggravating circumstance of nocturnity, article 10, No. 5, of the Code, and that defined in article 11 of the same as mitigating, since it clearly appears that the accused took advantage of the darkness and stillness of the night, at a time when all the neighbors were in bed, in order to commit the crime; also that the defendant by reason of his personal circumstances of race and lack of education allowed himself to be influenced by the overpowering passion of jealousy which originated the crime. These two circumstances compensate each other in their effects, and for this reason the penalty applicable to the crime would be the less severe of the two indivisible ones prescribed in article 402 of the Penal Code.

Beyond these we think that no other should be considered, not even those of premeditation and treachery, appreciated by the court below in its judgment, since the case does not furnish any evidence to the effect that Barbosa had formed the deliberate, premeditated intention to take the life of his wife, and there was no eyewitness as to the manner in which the deceased was strangled; consequently there is no provision of law under which we can hold that the crime was committed with treachery, and it must be borne in mind that the qualifying circumstances of a crime in its commission, in order to be considered, must be established by competent evidence as well as the crime to which they relate.

The other points made by the defense were that the testimony of the witnesses for the Government was elicited by leading questions, and that the investigation at the trial was not directed in the first place to determining whether or not a crime had been committed. In this behalf it must be observed that the witnesses in their replies to these questions gave an

explanation of the facts and occurrences to which they testified, and that the same facts and occurrences were also affirmed in the two preliminary investigations held. These matters were affirmed without contradiction at the trial, in which both the commission of the crime and the identity of the criminal were proven. The law of criminal procedure does not require that the investigation be conducted in the order which counsel for the accused considers to have been committed in this case. It is true that the existence of a crime is a condition precedent to that of the liability of the supposed criminal, but it is also unquestionably true that the investigation can not be limited to the fact of the crime in the abstract without regard to the guilty agent, inasmuch as the proof of the crime necessarily involves the personality of the agent to such a degree that it is not possible to separate them. The concept of the crime is always subjective and not objective, and it is not possible to conceive the existence of a punishable act or omission without that of the guilty agent: Such has been the procedure in this case in which the investigation of the cause of the decease of Ana Baldosano has resulted in the proof showing that she met a violent death willfully caused by her own husband.

For the foregoing reasons this court finds: (1) That the offense as established by the evidence constitutes the crime of parricide in the commission of which there must be appreciated the attendance of the aggravating circumstance of nocturnity and the mitigating circumstance defined in article 11 of the Penal Code. (2) That the defendant Eugenio Barbosa as convicted is the only party responsible therefor by direct participation. (3) That he has incurred the lower of the two indivisible penalties prescribed in article 402 of the Code and the accessory penalties Nos. 2 and 3 of article 54. (4) That he has likewise incurred civil liability without subsidiary personal responsibility, with costs.

Wherefore in our opinion the judgment consulted and appealed from should be reversed and the defendant, Eugenio Barbosa, sentenced to life imprisonment with the accessory penalties of civil interdiction, being subject to the vigilance of the authorities during the period of his life; and should the principal penalty be remitted he shall in any event suffer the accessory penalties of perpetual absolute disqualification and shall further be subject to the surveillance of the authorities during the term of his natural life if the same should have not been remitted together with the principal penalty; and we further sentence him to pay an indemnification in the sum of \$1,000, Mexican, to the heirs of the deceased, with costs of both instances. The judge shall proceed in accordance with law in regard to the embargoed property of the defendant. It is so ordered and adjudged.

Arellano, C. J., Cooper, and Mapa, JJ., concur.

DISSENTING

WILLARD, J.:

It was plainly proven at the trial that Guillermo Baldosano, the most intelligent of the witnesses for the Government, on the morning after the death of his sister notified the parish sexton that she had died of a disease of the stomach. Nothing was said by any of the family to the contrary, and no complaint was made to the public authorities until the 26th day of January. It is said that this action of Guillermo and this silence of the family were due to the threats alleged to have been made by the defendant on the night of the 13th. There would be some force to this claim were it not for the facts which lead up to the complaint made on January 26. It appears from this complaint that on this day the defendant went to the house of his father-in-law and asked for his trunk; that he was told that it had been pawned to pay the expenses of his wife's funeral; that he then threatened to kill the family if it was not delivered to him in two hours. It appears that the trunk was worth 4 pesos. In this complaint the killing of the woman is only incidentally mentioned. The petition is that the defendant be prevented from carrying out his threats in regard to the trunk.

The threats of the defendant seem to have been efficacious when the matter involved was his prosecution for the murder of his wife, but to have lost their effects when the matter involved was the payment by the family of 4 pesos.

Four witnesses for the defendant testified that as the company was about to march away on the morning of the 14th a person, whom the defendant then told them was his brother-in-law, Guillermo Baldosano, came to the barracks and notified the defendant of the death of his wife. If this testimony is true, it is impossible to believe that the occurrence testified to by the witnesses of the Government ever took place.

It is also strange that the five witnesses for the Government should all have been awake at 2 o'clock in the morning, when they say that the defendant and his wife left the house.

It is, of course, possible that this testimony is true, but I have such serious doubts as to whether the defendant was at the house at all after 7 o'clock that evening that I can not agree to a judgment of conviction.

LADD, J.:

I concur with the dissenting opinion.

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