

COURT OF CRIMINAL APPEALS OF TEXAS

Guzman v. State

281 S.W. 865 (Tex. Crim. App. 1926) · Decided February 10, 1926

OPINION

BAKER, J.

Appellant was convicted in the district court of Atascosa County for the offense of murder and his punishment assessed at fifty years in the penitentiary. The record in this case discloses that the deceased, Manuel Granado, and appellant were both Mexicans, and were attending a dance or Mexican gathering, and the deceased put his hand upon the appellant, or caught him by the arm, and asked him for a drink, at which time the appellant jerked loose from the deceased, and shot and killed him.

It was the contention of the state that said homicide was with malice and without cause or provocation on the part of the deceased. The appellant's defense was based upon insulting remarks alleged to have been made by the deceased relative to his daughter prior to the date of the homicide and self defense.

The state introduced the confession made by the appellant shortly after the homicide, in which he stated and admitted that at the time of the killing he did not see deceased have in his hands any knife, gun or other weapon. It was also shown that after he had been informed of said insulting remarks, that both of them had been at the dance together from some time in the early part of the night until about 4 o'clock in the morning, when the homicide occurred.

The court in his charge properly submitted all phases of the law raised by the testimony to the jury, and without any objection thereto by appellant's counsel. The appellant contends that the testimony is insufficient to sustain the verdict, and that the court should have granted him a new trial on that account; and also alleged misconduct of the jury. It was contended on motion for new trial by appellant that the jury discussed other homicides while considering their verdict, without any evidence thereon, and that same was detrimental to him.

The record discloses that this contention was contested by the state, and the jurors or the larger portion of same were introduced as witnesses, some of whom testified they did not hear the matters complained of mentioned in the jury room, and some of said jurors testified that after they had retired and all agreed the defendant was guilty, but had not reached a decision as to the amount of his punishment, that either during the night thereafter or next morning, that some mention was made in the jury room about there being too many killings in that county, and unless it was stopped they would not have any Mexican cotton pickers.

Some of the other jurors testified that they heard *Page 595 such a remark, but were not sure whether it was made after the jury's discharge, or whether it was made during their attendance at that term of court; while others testified they heard no such remarks, and the juror who it was claimed made such statement, denied any knowledge of making or hearing it made.

The record discloses that the remarks as to other killings, if made in the jury room at all, were only mentioned in a casual way and no particulars were discussed, and after a careful examination of the entire testimony as shown by this bill, it appears that the issue raised became an issue of fact for the trial court, and we are unable to say that in his action overruling said motion, he abused his discretion thereby.

This court has frequently held that such matters as herein complained of, necessarily have to be left largely to the discretion of the trial court, and in the absence of a showing of an abuse of such discretion, this court would be unauthorized to interfere with his ruling.

We are also unable to reach the conclusion that the evidence in this case is insufficient to warrant a conviction for murder. After a careful examination of the entire record, we are of the opinion that the judgment of the trial court should be affirmed, and it is accordingly so ordered. Affirmed.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Judges. ON MOTION FOR REHEARING.