

MARY M. HALL (U.S.A.) *v.* UNITED MEXICAN STATES

(*May 17, 1929, concurring opinion by American Commissioner, May 17, 1929. Pages 318-324.*)

The Presiding Commissioner, Dr. Sindballe, for the Commission :

In this case claim in the sum of \$25,000.00, United States currency, is made against the United Mexican States by the United States of America on behalf of Mrs. Mary M. Hall, an American citizen, for failure on the part of the Mexican authorities to prosecute and punish one Remigio Ruelas, who is alleged to have stoned and killed the son of the claimant, Charles J. Hall.

The facts out of which the claim arises are the following:

On the morning of March 22, 1926, Charles J. Hall, who was employed in the engineering department of the Southern Pacific Railroad Company, was proceeding down the railroad from a station named Cutla toward the station of Ixtlán, State of Nayarit, Mexico, operating a track motor car and following up a train which had preceded him. The train arrived at the station of Ixtlán at eight o'clock in the morning, and stopped there. About half an hour later, Hall's car was seen coming down the railroad and approaching the caboose of the train, Hall lying motionless face down over the motor. In order to avoid a collision between the caboose of the train and Hall's car, signal was given for the train to go ahead, but before the brakes could be released and the train put in motion, Hall's car collided with the caboose and was thrown off the track. Hall was picked up by an American friend. An eye-witness later testified that he saw Hall gasp when he was picked up, but immediately after it appeared that Hall was dead.

The assumption arose among the onlookers that Hall had been stoned. Therefore, the train was immediately ordered to back up the track for the purpose of obtaining information with regard to Hall's death, and four soldiers were ordered to mount the caboose. At the town of Méxpan Hall's hat was turned over to the investigating party by one Florencio Carmona, who had picked it up. On a street corner of the same town two individuals, who later turned out to be Remigio Ruelas and Jesús Flores, were seen. One of the trainmen pointed at these individuals, who immediately started to run. The soldiers pursued them and fired two shots at them, but without hitting any of them, and without succeeding in capturing them. Later Ruelas was found hiding in a mill and was arrested.

Two boys were found who testified that Ruelas had thrown a stone at Hall when he passed Méxpan, and that Ruelas was accompanied by Flores at the time.

The Municipal President of Ixtlán went to the station of the town as soon as he learned of the incident. He informed the *Ministerio Público* of what had happened, stating that Ruelas was captured and mentioning the testimony of the two boys, one of whom was Jesús Machuca, it not being possible to ascertain the name of the other. Ruelas was brought before the judge of first instance. He denied having thrown a stone and endeavored to establish an alibi, involving himself in certain contradictory statements. Some witnesses testified as to the movements of Ruelas on the day in question and his character. The legal medical expert attached to the Court was ordered to make a description and autopsy of Hall's corpse. According to the opinion rendered by him Hall had a weak heart and his death was caused by heart failure. Besides two small excoriations on the left thumb Hall's body showed three wounds, one near the right temporal region, one on the left temporal region, and one on the upper part of the helix of the left ear. The three wounds were superficial, and not such as to endanger a normal man's life. Excepting the one first described, the wounds were produced after death. With regard to the first described wound, it could not be said whether it was produced during life or a short time after death. In case it was produced during life, it might have occasioned the heart failure.

Hall's body was also examined by the surgeon of the Southern Pacific Railroad Company, Dr. Fuller, who arrived at substantially the same conclusion as the medical expert of the court.

On March 26, 1926, at the recommendation of the *Ministerio Público*, Ruelas was released, as the Constitutional period within which to determine the release or the formal imprisonment of a prisoner was about to expire, and as it was found that there did not appear data sufficient to establish a *corpus delicti* of homicide or to indicate the probable guilt of the accused.

On March 27, Florencio Carmona, the man who picked up Hall's hat, and who had been arrested and turned over to the Court by the Chief of Military Operations of the State, was examined by the judge and confronted with several witnesses. On March 29, Carmona was released. No further action appears to have been taken by the Court. Flores was never captured, and the two boys who testified that they had seen Ruelas throw a stone were not brought before the Court.

The United States contends that the failure to take the testimony of the children and the finding that no *corpus delicti* of homicide had been established constitute a denial of justice for which Mexico must be responsible under international law.

The contention of the United States might be justified if it could be assumed that the court record reflects all the activity displayed by the Mexican authorities on the occasion of Hall's death. From a letter written by the Mexican Minister of Foreign Affairs to the American Ambassador at Mexico City it appears, however, that this is not the case. It appears that the authorities questioned both of the boys who had seen Ruelas throw a stone, and in view of the fact that the boys were very young—José Machuca, who made the most detailed statements, was 6 years of age—the taking of their testimony outside of the Court for the purpose of deciding whether or not a formal trial should be instituted can hardly be censured. It is mentioned in the said letter that José Machuca did not say "in any of his statements" that he had seen Ruelas hit Hall. It is further mentioned that the place from which the children claimed to have seen Ruelas throw a

stone was the top of an embankment, which was about three meters above the railroad track, that a wound produced by a rock thrown from this height would have certain characteristics, and that the medical expert verbally reported that the wound presented by Hall had different characteristics giving the appearance of having been produced by something sharp, and that individuals who saw Hall's motor collide with the caboose of the train had stated that Hall's head struck some metal. From these and certain other particulars regarding Hall's hat the conclusion is drawn that "even had Remigio Ruelas thrown a stone, it could not possibly have occasioned the death of Mr. Hall."

The Commission is not called upon to decide whether the conclusion thus arrived at by the Mexican authorities is right or wrong. At any rate, it is not so clearly wrong that a denial of justice can be predicated thereon. Neither can it be said that the failure to bring Ruelas to trial constituted a denial of justice. It would seem that, with the exception of Flores' testimony the authorities had such evidence of importance as might be expected to be available. The report of the medical expert tended to exculpate Ruelas. That the latter had fled and hid and afterwards tried to establish an alibi could hardly be conclusive against him, especially in view of the fact that he, who was only 18 years of age, was pursued and shot at by soldiers.

Nielsen, Commissioner :

While I am not disposed to dissent from the views of my associates to the extent of expressing the opinion that a pecuniary award should be rendered in this case, I do not agree with the conclusions expressed in the opinion written by the Presiding Commissioner.

It should be borne in mind that the claim is grounded on contentions that there was a failure of Mexican authorities to take proper steps to apprehend and punish the persons responsible for the death of the claimant's son. I think that there is strong evidence that some one was responsible for the death of Hall. In any event, although there was no trial of anyone against whom evidence directed suspicion, and therefore are no records such as a trial would develop, it seems to me that even the investigation conducted with respect to the tragedy strongly indicated that a crime had been committed. In the absence of a trial of anyone, it is useless in the light of the information now available to speculate as to what the precise character of the crime may have been—whether Hall was killed by a stone thrown at him or whether he was disabled, so that he lost control of the car which he was driving and consequently lost his life.

In a case of this kind I do not consider that a proper solution of issues can be reached by picking out this or that detail and formulating a conclusion as to whether some particular act resulted in a denial of justice as that term is understood in international law and practice. We must examine all the acts against which complaint is made and ascertain whether or not in the light of the record it may be concluded that there was a failure to meet the requirements of the rule of international law that prompt and effective measures shall be taken to apprehend and punish persons guilty of crimes against aliens.

Reference is made in the opinion of the Presiding Commissioner to a note addressed to the American Ambassador by the Mexican Foreign Office and to the conclusion therein stated that even if Ruelas had thrown a stone it could not possibly have occasioned the death of Hall. It is stated in the opinion that the Commission is not called upon to decide whether this

conclusion is right or wrong; that in any event it is not so clearly wrong that a denial of justice can be predicated thereon. In cases of this kind the Commission has applied the test whether there is convincing evidence of a pronounced degree of improper governmental administration. It may be true that we are not called upon to determine whether the conclusions set forth in the Mexican note are right or wrong; and also technically correct that no denial of justice can be predicated on those conclusions. But of course we are called upon to determine whether or not the action of the local Mexican authorities in this case was right or wrong. If we are of the opinion in the light of the evidence and the applicable law that it was obviously wrong, then we should render a pecuniary award, and if we reach a conclusion to the contrary, then the claim should be dismissed. However, it seems to me that an answer to the question whether a stone could have occasioned the death of Hall would be far from being conclusive with respect to the issues in the case. If a stone disabled Hall and was the primary cause of his death, then, I take it, a crime was committed by the person who threw the stone.

That an adequate investigation was not conducted seems to me to be revealed by the record of the investigation which did take place. That record was filed as Annex 1 with the Mexican Answer. That Ruelas sought to establish an alibi would of course not be "conclusive against him" as observed in the Presiding Commissioner's opinion. But the fact that he was only eighteen years of age would not in my opinion have any bearing on his guilt. That he clearly made conflicting statements, that he sought to escape capture, and that he hid are facts which to my mind create strong suspicion of guilt. According to the record the soldiers did not shoot until after he started to run when he saw them.

If Ruelas threw a stone at Hall, which it seems to me to be clear that he did, there evidently were three eye-witnesses to this act. From the record of investigation it appears that none of these three was called, and what seems to be more striking, it appears that not even an order of arrest was given for the apprehension of Flores who evidently accompanied Ruelas. The children, who it appears saw Ruelas throw a stone, may have been young, but it does not appear that the law prevented their giving testimony. And since besides them there evidently was but one eye-witness, their testimony was important. That they could give intelligible testimony can seemingly be inferred from the communication sent by the Municipal President to the *Ministerio Público*. Had the former not been convinced of this it would seem that he would not have communicated, as he did, to the *Ministerio Público* the positive information that Ruelas hit Hall "in the head with a rock, producing instant death". The information furnished by these children is borne out by the damaging conduct of Ruelas and by the disappearance of Flores whom the children evidently related they saw in company with Ruelas.

It is said in the opinion of the Presiding Commissioner that with the exception of Flores' testimony the authorities who made the investigation has such evidence as might be expected to be available. I do not think that we can reach any sound conclusion from the meagre record before us as to what evidence might have been produced at a trial conducted with energetic prosecution and defense. Moreover, it seems to me that even in the preliminary investigation clearly further facts might have been developed. And certainly the testimony of Flores, the young man who accompanied

Ruelas, would have been important both in the preliminary investigation and in any trial that might have been held.

Without undertaking to specify the precise nature of the charge that should have been made against Ruelas, I am of the opinion that it may be concluded from the record that he and probably Flores should have been tried on some charge.

Certain observations made in the unanimous opinion of the Commission in the *Roper* case, *Opinions of the Commissioners, Washington, 1927*, p. 205, pp. 209-210, seem to me to be very apposite to the instant case. After a reference in that opinion to a person said to have been an eye-witness to important occurrences it was said by the Commission:

“From testimony given by Mexicans it appears that the half-naked American who had so persistently sought to obtain the arrest of negroes who had assaulted him, suddenly disappeared at the time when his presence would have been most important for the consummation of his purpose of obtaining redress. It is strange that such an important witness should not have been located by Mexican authorities. There would seem to be good reason to suppose that he could easily have been found if he were a reality. He was strikingly identified by several persons who gave testimony before the Mexican Judge, and it was testified that he could speak some Spanish.

“The Commission believes that it has mentioned enough things shown by the record upon which to ground the conclusion that the occurrences in relation to the death of these American seamen were of such a character that the persons directly concerned with them should have been prosecuted and brought to trial to determine their innocence or guilt with respect to the death of the Americans. The conclusions of the Judge at Tampico with respect to the investigation conducted by him were treated in oral and in written arguments advanced in behalf of the Mexican Government as the judgment of a judicial tribunal. And the well-known declarations of international tribunals and of authorities on international law with regard to the respect that is due to a nation's judiciary were invoked to support the argument that the Commission could not, in the light of the record in the case, question the propriety of the Judge's finding. In considering that contention we believe that we should look to matters of substance rather than form. We do not consider the functions exercised by a Judge in making an investigation whether there should be a prosecution as judicial functions in the sense in which the term judicial is generally used in opinions of tribunals or in writings dealing with denial of justice growing out of judicial proceedings. It may readily be conceded that actions of the Judge should not be characterized by this Commission as improper in the absence of clear evidence of their impropriety. Obviously, however, the application of rules or principles asserted by this Commission in the past with respect to denials of justice will involve widely varying problems. To undertake to pick flaws in the solemn judgments of a nation's highest tribunal is something very different from passing upon the merits of an investigation conducted by an official—whether he be a judge or a police magistrate—having for its purpose the apprehension or possible prosecution of persons who may appear to be guilty of crime.”

Decision

The claim of the United States of America on behalf of Mrs. Mary M. Hall is disallowed.