



Official Memorandum

By

DOLPH BRISCOE

Governor of Texas

GREETINGS:

AUSTIN, TEXAS

Chipita (Josefa) Rodriguez, a Mexican-American female, and her family lived in San Patricio, Texas.

In August, 1863, Chipita Rodriguez was accused of killing a horse trader. On October 7, 1863, a grand jury indicted Chipita Rodriguez and Juan Silvera for murder. A trial jury was formed October 9, 1863, and the defendants entered a plea of not guilty. That same day the jury returned a verdict of guilty against Chipita Rodriguez for murder of the first degree, but recommended her to the mercy of the Court because of her advanced age and the mere circumstantial evidence against her. Juan Silvera was found guilty of second degree murder and was assessed a penalty of five years confinement in the penitentiary.

On October 10, 1863, Chipita Rodriguez was sentenced to be hung by the neck until she was dead.

Chipita Rodriguez was hung November 13, 1863.

Court records appear to support the conclusion that Chipita Rodriguez was a victim of selective prosecution. While the same Court gave one person indicted for murder a ten year continuance, Chipita Rodriguez was indicted, convicted, and sentenced only 44 days after the alleged killing took place.

Although the trial record refers to the presence of prosecuting attorneys, the record is silent as to the defense attorney, leaving no conclusion but that Chipita Rodriguez did not have the benefit of defense counsel.

In addition, court records impune the composition of the juries which indicted and then convicted Chipita Rodriguez. Three of the persons who served on the grand jury that indicted Chipita Rodriguez also served on the trial jury that brought in the guilty verdict holding Chipita Rodriguez guilty of first degree murder. Three other names listed in the indicting grand jury match the names of three county officials. Names on the grand jury list also match the names of other persons who were the parties as plaintiffs or defendants in lawsuits pending before the same Court in which the defendant, Chipita Rodriguez, was tried.

The record of the minutes in the case indicate that there was a Motion for New Trial for Chipita Rodriguez but that such motion was withdrawn. No reason was specified for the withdrawal; however, Chipita's plea from the start was a plea of innocent, not guilty.

I can only conclude from the information available to me that the trial of Chipita Rodriguez was procedurally improper and deprived her of life without proper due process of law, as guaranteed by both the Texas and United States Constitutions.

Repeated requests by concerned citizens have been presented to me asking that a full and unconditional pardon be granted to Chipita (Josefa) Rodriguez under the authority vested in this Office by the Constitution of the State of Texas.

In an effort to take all steps to rectify an undoubtedly gross miscarriage of justice, the Secretary of State requested an opinion from the Attorney General of Texas citing all preexisting statutes which control my authority as Governor to grant a pardon to a deceased person. Based on Hunnicut v. State, 18 Tx.Ct. App. 498 (1885), and as stated in Attorney General Opinion Number C-471, July 28, 1965, the question of granting a pardon to a deceased person was found to be legally foreclosed.

As held in this opinion, I have no authority to grant a posthumous full pardon to a deceased convicted felon on application of a relative or other interested party. As stated by the Texas Court of Appeals, a pardon, in order to be complete, must in contemplation of law, be delivered and accepted by the felon in question. Exhaustive research has disclosed that this principle has been unchanged since 1885, and all court decisions involving similar questions or posthumous pardons have adhered to the principle stated by the appellate court, the most recent being in 1957.

It is indeed most unfortunate, and, in my opinion, regrettable that as Governor of the State of Texas I am prohibited by existing law from acting in behalf of Chipita Rodriguez to grant her a full pardon. However, I wish to take this opportunity to exercise my prerogative as Governor of the State of Texas to recognize the injustices that were perpetrated against Chipita Rodriguez and to bring attention to the apparent lack of due process of law in her case by which she was denied the basic, fundamental right of each citizen of our great Country and State to a fair and impartial trial by a jury of her own peers.

I express the hope that this action will restore to the descendants of the family of Chipita (Josefa) Rodriguez all the dignity properly accorded such a person had I been able to pardon her.



In official recognition whereof, I hereby affix my
signature this 16th day of Jan, 1979

W. W. Bush
Governor of Texas