

[ G.R. No. 528. October 15, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SANTIAGO BOLAR ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**COOPER, J.:**

The defendants, Jose Cabbadol and Santiago Bolar, were accused of the murder of Claudio Maglignay, and each sentenced to the punishment of fourteen years and one day of *reclusion temporal*, under article 404 of the Penal Code. The defendants appeal from this judgment.

It appears that the deceased, Claudio Maglignay, disappeared from the place of his residence about the 8th of July, and that his body was found floating in an *estero* called Allanigan.

The conviction is sustained chiefly on the testimony of the defendants themselves. Santiago Bolar testifies that about 12 o'clock at night, in the month of July last, on returning toward his house after having made watch on his land, he accidentally met Claudio Maglignay, who was coming in an opposite direction; that the witness asked Claudio if he still had resentment and jealousy against him for having formerly been the lover of Baldomera Cabalse, and as a reply the deceased gave the witness a blow with a stick on the left shoulder, which caused the witness to fall to the ground; that upon getting up the defendant answered, giving the deceased a blow which struck him on the head.

Baldomera Cabalse states that some time ago Santiago Bolar asked for her hand; that there afterwards resulted intimate relations; that from these relations a child was born, and that afterwards Santiago withdrew from her his affections by reason of having fallen in love with another woman, and the witness entered into new relations with Claudio Maglignay, with whom she was to marry; that on the night of the killing Claudio left her house at a late hour.

Agapito Palos y Cortalos testified that the body of the deceased when found contained a wound in the breast and that the body was almost decapitated.

Jose Cabbadol y Torres, one of the defendants, states that two weeks before the crime occurred the defendant Santiago Bolar said to witness that he had to kill Claudio Maglignay; the witness states that Baldomera Cabalse was the querida of Claudio and Santiago wished to renew his relations with the woman and that this was the cause of the enmity which Santiago bore against the deceased; that one night when the witness and Santiago Bolar were returning from watching their land, about 12 o'clock at night, the witness, being a little behind Santiago, saw that the latter met Claudio Maglignay, who was coming in the opposite direction, and that upon such meeting Claudio struck Santiago a blow with a stick, the latter falling to the ground; that Santiago immediately got up and in turn struck a like blow on the head of the deceased, who then took to his heels, and meeting the witness a short way off Claudio also struck him with the stick, whereupon, in self-defense, the witness stabbed Claudio, killing him; that afterwards the witness and Santiago took the body and placed it in a large basket and threw it into the river.

In weighing the testimony given by a defendant in a criminal case the same rules are observed as prevail in considering the testimony of other witnesses. That part which is consistent and generates belief will be accepted, and such parts as are inconsistent and produce an opposite effect may be rejected.

We discredit the statement made by the defendants that the deceased was the aggressor. There is an entire lack of probability that such should have been the case. This view is based upon a reasonable deduction from the evidence and by considering the previous statement made by Santiago Bolar to Jose Cabbadol that the deceased must be killed; the jealousy and resentment of Santiago toward the deceased; the lack of any such feeling on the part of the deceased, so far as the record discloses; that the defendants were found at a late hour of the night without satisfactory explanation near the residence of Baldomera Cabalse, where the deceased was; that the body of the deceased was mutilated by the defendants, placed in a basket, and thrown into the river, showing strong feelings of hate and a purpose to conceal the crime not consistent with innocence; also the improbability that the deceased, who was unarmed and alone, should have provoked the difficulty and attacked the defendants. We think it more probable that the defendants, knowing that the deceased was in the house of Baldomera Cabalse, were lying in wait there, and that Santiago, with the aid of Jose Cabbadol, sought the occasion with a heart full of hatred to wreak bloody vengeance upon the deceased.

Under the most favorable view that can be taken the defendants must be found guilty of homicide, punishable under article 404 of the Penal Code, with the aggravating circumstances existing of nocturnity as defined in paragraph 15 of article 10 of the Penal Code.

The judgment of the Court of First Instance will be reversed and judgment rendered against the defendants, Santiago Bolar and Jose Cabbadol, sentencing each of them to the penalty of *reclusion temporal*, punishable by imprisonment for the period of seventeen years four months and one day, with indemnification in the sum of 1,000 pesos, Mexican, with costs of suit adjudged against the defendants.

*Arellano, C. J., Torres, Willard, and Ladd, JJ.*, concur.

*Smith and Mapa, JJ.*, did not sit in this case.