

1 Phil. 568

[ G. R. No. 945. December 19, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MELCHOR ABELINDE ET AL., DEFENDANTS AND APPELLANTS.**

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

**ARELLANO, C.J.:**

The defendants were convicted at first instance and condemned to the penalty of death for the crime of the murder of Antonio, Juan, Julian, Nicomedes, Lucio, Severo, and Isabel Echevarria, of Candida de los Reyes, of one Dionisio, and of Antonio Caldevilla. The case has been sent to this court in consultation of the judgment by which this penalty was imposed upon them.

In the night of the 14th or 15th (the exact date does not appear) of the month of August, 1900, the house occupied by the Echevarria family, situated in the hamlet of Naro, then corresponding to the town of Uson and now to the township of Palanas, Province of Masbate, was assaulted by a band composed of some forty men. The malefactors fired two or three shots upon arriving at the house, and then told the people who were living there to come down one at a time. They having done so, the assailants took from them their arms, consisting of guns and revolvers, and tied them elbow to elbow. In this condition the prisoners were killed by being shot or stabbed with bolos. The bodies were subsequently sewn in sacks and thrown in the sea. All the persons named in the complaint were killed in this manner.

These facts are fully established by the testimony of the eyewitnesses Patricia Arma and Diego Atigera. The latter was kidnaped by the malefactors the night before and taken as a prisoner to the place where the crime was committed because, as the malefactors themselves told him, he was a relative of the Echevarrias.

Elvira Clemente, the wife of the deceased Juan Echevarria, corroborates the testimony of

the witness above mentioned, except as to the manner and form in which the victims were killed. She was not present at this, because she did not leave the house, although she testifies that she knew of the death of the victims because she heard the malefactors themselves state that they had killed them, shortly after the occurrence, and because they were not seen again after that time. She further testified that the malefactors demanded the delivery of the arms which the Echevarrias had, promising not to do them any injury. The witness Patricia Arma apparently intends to convey the same idea by the statement made by her that the Echevarrias did not defend themselves, notwithstanding the fact that they were provided with guns and revolvers, because they did not know what was going to be done to them.

The shots fired by the malefactors were also heard by Tomas Atigera, Policarpia Arisola, and Victoria Garcia, who became so frightened upon hearing the shots that they ran away and hid in the woods. Victoria saw the bodies of all the deceased on the beach, and Policarpia saw the bodies of five of them on the day after the occurrence.

The same witnesses, Patricia Arma and Diego Atigera, testified to having seen Melchor Abelinde at the time the crime was committed, and that he was one of the men who formed part of the band which made the assault. Patricia Arma testified further that she saw him take direct part in the killing of the Echevarrias.

From an examination of the record the conclusion is reached that the malefactors remained at the hamlet of Naro during the night in question; that part of them went away early in the morning of the day following, the others remaining there in the custody of the house while removing the money, rice, and other goods found therein, Melchor Abelinde must have been one of those who remained, and hence it was that he was seen on the morning in question by Tomas Atigera and Camilo Afable, and by Victoria Garcia on the afternoon of the same day, while standing guard at the door of the said house, armed with a saber and a gun. Policarpia Arisola also saw him the same day among the malefactors, although this witness could not testify precisely as to the place where she saw him.

With respect to the other defendant, Leon Arco, nobody saw him on the night in question at the place where the crime was committed. Nevertheless, circumstantial evidence points strongly against him. When part of the band which had committed the assault and killed the Echevarrias was leaving the hamlet of Naro, between 8 and 9 o'clock on the morning following, Arco was seen forming part of this band and armed with a bolo. So testified Martin Atin and Bernardo Legaspi, who were kidnaped by the band on the road on that

occasion. This witness, while in the hands of the malefactors, heard them say *that they were coming from the hamlet of Naro, where they had killed the Echevarria family the night before*. According to Martin Atin, it was Arco himself, assisted by another member of the gang, who captured him, telling him that *if he did not keep quiet they would kill him as they did the people in Naro*. This witness also testifies that he noted spots of blood on the sheath of the bolo carried by Arco. It also appears from the testimony of Mariano Santos that when this band was in his house, having come there for the purpose of getting rice, some days after the event in question, the defendant Arco was one of the gang; that the bolo he carried was stained with blood; that one of the party stated in a loud voice that *they had killed the Echevarrias at the hamlet of Naro*, and that Arco heard this statement and did not deny it.

These proofs in themselves are sufficiently conclusive to produce a full conviction of the guilt of the defendants, and they have still greater force in connection with their own testimony at the trial. They confessed that it was true that they were present at the hamlet of Naro, together with the slayers of the Echevarrias family on the occasion in question. The force of this confession is not overcome by the fact that they alleged that they had been kidnaped and taken there forcibly by the malefactors, and that the latter left them, the defendants, tied to some trees at some distance from the house of the Echevarrias while they committed the crime herein prosecuted, and only set them at liberty afterwards; because not only have they failed to prove in any degree the truth of this alleged kidnaping, but the merits of the case, which have been briefly analyzed, prove precisely the contrary.

It is a matter of absolute indifference whether the accused did or did not kill the deceased by their own hands. Although they might not have done so—and there is proof to the contrary with respect to Melchor Abelinde—it is sufficient that they were present as a part of the band of murderers at the time and place of the occurrence, thus contributing by their presence to augment the power of the band and to aid in the successful realization of their purposes in order to become responsible by direct participation for the death of the victims, in accordance with article 13 of the Penal Code.

The fact that the deceased were killed while tied elbow to elbow, and therefore prevented from making any defense, constitutes the circumstance of *alevosia*, defined in paragraph 2 of article 10 of the Penal Code. Hence, the crime prosecuted in this case was properly classified in the court below in its judgment as that of murder, defined and punished by article 403 of the Penal Code.

There is absolutely nothing in the record to indicate that the defendants have done anything

which might tend to add ignominy to the effects peculiar to the crime committed, or that they had any intention to affront the age and sex of any of the deceased. Consequently the court below erred in considering against the defendants aggravating circumstances Nos. 12 and 20 of article 10 of the Code. With respect to the circumstance of the commission of the crime in the nighttime and in a gang, which the court below also considered as aggravating circumstances, these circumstances must be regarded as involved in the circumstance of *alevosia*, inasmuch as in the daytime, and if the malefactors had been less than four, the minimum number necessary, under article 505, to constitute a gang, it would not have been possible for them to have overcome so many victims, to the extent of allowing themselves to be tied without making the slightest resistance, having, as they did, guns and revolvers with which they might defend themselves, and not without certain advantages from a position of defense in the house. It is to be supposed that they would have done so had the gang which made the assault been less numerous, and had they been able to expect the assistance of their neighbors, which might naturally be more readily counted upon in the daytime than in the nighttime. Hence the circumstance of nocturnity and the circumstance of the commission of the crime by a gang were principal and doubtless necessary elements which made possible the existence of *alevosia* which consisted in the killing of the deceased while tied elbow to elbow, as otherwise the result of the attack might perhaps have been different, in view of the peculiar circumstances surrounding the case.

What appears to be unquestionable is that the slayers of the Echevarrias acted upon premeditation. The agreement between them to form the numerous gang which perpetrated the crime prosecuted is an agreement which must necessarily have been preceded by a mutual and a reiterated communication of ideas, intentions, and plans relative to the commission of the said crime; the fact that Diego Atigera was kidnaped twenty-four hours before the occurrence, for the sole reason, as stated by the defendants themselves, that he was a relative of the Echevarrias, and that he was not restored to liberty until after the murder of the latter had been accomplished, and doubtless with the purpose—as there is no other which can be imagined—of preventing him from warning the Echevarrias of the danger which threatened them and of which Atigera must doubtless have had some information, all demonstrates that since the preceding day they had taken precautions tending to insure the success of their criminal enterprise, and constitute facts which give evidence of a *reflexive and persistent* deliberation upon the commission of the crime. This it m which constitutes known premeditation within the meaning of the Penal Code. This aggravating circumstance must therefore be considered against the defendants, by virtue of paragraph 7 of article 10 of the said Code.

Aggravating circumstance No. 8 of the same article must also be considered, because the malefactors made use of fraud in the commission of the crime, deceiving the deceased with the false promise that no harm would be done them if they would peaceably give up the guns and revolvers in their possession, and then killing them after so obtaining the weapons. There is good reason to believe that, as the victims were so numerous and were so well prepared for defense, they would not have surrendered at the first intimation without the slightest resistance had they not confided in good faith in the sincerity of that promise.

Counsel for the defense, during the pendency of the appeal, has moved the court to apply in favor of the defendants the amnesty of July 4 last, alleging that the deceased belonged to a Spanish family and were killed by reason of the political feuds and hatreds arising from the fact that the deceased had formerly been caciques of the town in which they lived.

The merits of the defense do not support this allegation. It does not appear, in any manner whatsoever, that the slayers of the Echevarrias had taken part in the insurrection against Spain or against the United States, or that they had committed the crime to advance the interests of the said insurrection, or that it was due to motives more or less connected therewith. The mere fact that the deceased were Spaniards is not sufficient to authorize the conclusion that their death was due to political hatred or dissensions, there being absolutely no evidence upon which to support such a supposition. There is no way in which the conclusion can be legally drawn from the record that the defendants committed the crime of which they are charged with any political purpose or motive. On the contrary, it appears perfectly clear and evident from the testimony of all the witnesses in the case that their principal object was that of robbery, and this purpose was effected, they having stolen everything there was in the house of the Echevarrias. No charge of robbery was, however, included in the information, and therefore can not be passed upon in our decision. These facts, however, invest the murder of the Echevarrias with all the characteristics of a common crime, and therefore not embraced by the amnesty proclamation invoked by the defense.

For the reasons above expressed we overrule the motion of the defendants for the application of the amnesty, and affirm the judgment below, with the modifications above indicated with respect to the aggravating circumstances which should be considered against the said defendants, with the costs of this instance against them. So ordered.

*Torres, Cooper, Smith, Willard, and Ladd, JJ., concur.*

*Mapa, J.*, did not sit in this case.

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