

[G.R. No. 1010. March 19, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN FERIA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

About midday on the 12th of November, 1901, Evaristo Perez, a member of the municipal police of San Isidro, accompanied by Valentin Ramos, a young man 15 or 16 years of age, was going through Cabalantian, of the town of Jaen, with an official letter which he was taking from San Isidro to Jaen. They were met at this point of the road by two men, who subsequently proved to be Juan Feria and Dionisio Velasquez. Feria suddenly seized the policeman, Perez, while the other endeavored to seize the boy, Ramos. The latter immediately fled, and although pursued by Velasquez was not overtaken by him. Velasquez then returned to the place where his companion, Feria, was holding Perez, and attacked the latter with a long bolo, inflicting upon him a wound in the neck and two in the back. As a result of these wounds Perez fell senseless to the ground, mortally wounded, and thereupon the defendants, Feria and Velasquez, possessed themselves of the Colt revolver carried by Perez, together with the sheath and belt.

The lad, Ramos, after making his escape from Velasquez, at once proceeded to the municipal presidencia of San Isidro; where he reported the occurrence. Several of the municipal officers immediately went to the place in question, and found the policeman, Evaristo Perez, in so serious a condition that he expired on the road before arriving at the town. From an examination of the body of Perez made by the municipal physician it was found that he had received a severe wound on the upper left side of the neck, and that two of the larger arteries had been severed. Another penetrating wound was found on the left side, which pierced the thorax and wounded the lung. The third wound had penetrated the back on the right side. The first wound was inflicted with a bolo and the latter two with a

dagger. The burial certificate of the deceased is in the record (p. 15). The facts stated, charged in the complaint as murder, constitute this crime as defined and punished by article 403 of the Penal Code. When the policeman, Evaristo Perez, was attacked by one of the defendants, he was being held by the other, who prevented him from defending himself or making his escape, and therefore the deceased was killed treacherously, the defendants having availed themselves of a method which directly and specially tended to insure the consummation of their common criminal purpose without risk to themselves arising from any defense which their victim might have made. One of the defendants succeeded in inflicting upon the deceased three wounds, all of them mortal, without danger to himself, as his companion was preventing any act of defense on the part of the victim, or even his flight.

The two defendants, Feria and Velasquez, pleaded not guilty to the charge. In their testimony at the trial they stated that by orders of three men whom they met at the place where the murder occurred they seized the policeman, Evaristo Perez; that then these three men, called Apolonio, Eustaquio, and Anacleto, attacked and killed the deceased. These assertions, however, are unsupported by evidence and contradict former statements made by the accused before the justice of the peace of Jaen, who conducted the preliminary investigation. In this investigation, and in the presence of seven witnesses, both the accused confessed to their respective participation in the crime, although Feria alleged that he had simply held Perez and that it was Velasquez who wounded him, while Velasquez on the other hand asserted that the contrary was the case.

The testimony of the witnesses for the prosecution is corroborated by the testimony of the principal witness, Valentin Ramos. Ramos was an eyewitness to the beginning of the aggression, and both in the preliminary investigation and at the trial unhesitatingly identified Feria as the man who seized and held the deceased and Velasquez as the man who had pursued him. This witness had given the description of each one of the defendants before their arrest. It is therefore to be believed that the statements made by the defendants in the presence of the witnesses of the prosecution were true as alleged by these witnesses. Their subsequent statements can not prevail to overcome their former confession. The statement made by Feria that they testified under coercion can not be believed, as there is no evidence in support of it. Furthermore, no proof exists as to the truth of the subsequent statement that Perez was killed by three other men unknown.

The guilt of the defendants Feria and Velasquez as the authors, by direct participation, of the murder of Evaristo Perez is unquestionable. Apart from their confession in the justice's court of Jaen, which concurs with the testimony of the eyewitness, Valentin Ramos, the testimony of the accused themselves at the trial plainly demonstrates their-direct

participation in the violent and treacherous killing of the policeman, Perez. The record discloses not the slightest evidence that any other persons participated in the commission of the crime. Another fact to be considered is that the Colt revolver which the deceased was carrying was subsequently found in the possession of the defendant Francisco Donato, who received it from Velasquez, by whom this weapon was taken. In the commission of the crime no generic extenuating or aggravating circumstance is present. It was not sufficiently proven at the trial that the place where Perez was attacked was unpopulated, or that it was purposely selected for the execution of the crime. Neither does it appear that the long bolo taken from one of the defendants was a prohibited weapon, or that this bolo was really the instrument by which the crime was committed. Consequently the only circumstance which can be considered is the qualifying circumstance of treachery (*alevosia*), which determines the classification and legal character of the crime committed. The fact that the deceased was at that time provided with a revolver is not an obstacle to the consideration of the concurrence of the circumstance of treachery (*alevosia*), as it does not appear from the record that he was able to make use of this weapon, or that he defended himself with it, but on the contrary, it was fully demonstrated that by reason of the suddenness of the attack the deceased was from the beginning absolutely prevented from defending himself or from making an escape.

The taking of the revolver which the deceased was carrying in his belt possibly constitutes the crime of theft, as it was effected at a time when its possessor was unconscious and in a dying condition. But this has not been made the subject of the information and therefore can not be passed upon in this decision. Nor can we determine the question of the guilt or innocence of the defendant Francisco Donato, acquitted by a judgment which, as to him, has become final.

By virtue, therefore, of the reasons above stated, the penalty prescribed by article 403 of the Penal Code should be inflicted in its medium degree, and we are of the opinion that the judgment below should be reversed and that each one of the defendants, Juan Feria and Dionisio Velasquez, should be condemned to the penalty of life imprisonment (*cadena perpetua*) with the accessories of civil interdiction and subjection to the vigilance of the authorities during their lifetime. Should they be pardoned as to the principal penalty they shall continue to suffer the penalties of perpetual disqualification and subjection to the vigilance of the authorities during their respective lives, unless these accessories shall have been expressly remitted in the pardon of the principal penalty. They are also condemned to pay jointly and severally, an indemnity of 2,000 Mexican pesos to the heirs of the deceased, Perez, and to the payment each of one-half of the costs of this instance. All other rulings of

the judgment appealed, with respect to the accused, the costs of the first instance, and the confiscation and disposal of the weapons, are affirmed. So ordered.

Arellano, C.J., Hooper, Willard, Mapa, and Ladd, JJ., concur.

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