

2 Phil. 570

[ G.R. No. 981. October 08, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EMILIANO CAJAYON ET AL., DEFENDANTS AND APPELLANTS.**

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

### **TORRES, J.:**

Between 11 and 12 o'clock at night on the 21st of March, 1901, twelve men, armed with guns and bolos, assaulted the house of Dona Ana Muriel in the tOAvn of Lubang, Cavite Province, and stole jewelry, clothing, documents, and some \$120 in cash. After having bound Tranquilino Torres, who lived in that house, the assailants took him with them to the barrio of Maliig, near the house of Pedro Villaflores, where they killed him and buried him in a hole dug for that purpose. About five or six days afterwards notices were posted in different parts of the town and on the door of the house which had been assaulted, stating that in the barrio mentioned the body of Tranquilino Torres could be found, disinterred and devoured by the dogs. Upon this notice, the municipal president, Toribio Aguilar, accompanied by his assistants and some of the townspeople, including Manuel Torres, the son of the dead man, went to the place designated. A skull, a number of bones, and other human remains were found scattered about near a grave, together Avith some clothing, a hat, and a piece of rope about 3 yards in length. The son of the deceased and Gumersindo Abeleda and Mariano Tularino, inhabitants of the town, identified the clothing and hat as those worn by the deceased in his lifetime. His son furthermore stated that his father had lost a tooth from the upper jaw, and a similar defect was observed in the skull found. The conclusion was reached by all that these human remains were those of Tranquilino Torres.

The violent killing of a human being with the presence of any of the live qualifying circumstances enumerated in article 403 of the Penal Code constitutes the crime of murder, punishable by penalties ranging from *cadena temporal* in its maximum grade to death.

The facts above related with respect to the killing of Tranquilino Torres in the barrio of

Maliig, town of Lubang, on the night of the 21st of March, 1901, which are fully established by the testimony of eyewitnesses and by circumstantial evidence, constitute the crime of murder because of the presence, in its commission, of the qualifying circumstance of *alevosia*. The deceased was bound elbow to elbow and was carried away by some twelve malefactors, and, while unarmed and in such a situation that it was impossible for him to defend himself against his assailants, was killed by them. This being so, the latter in committing the crime availed themselves of means which unquestionably directly and specially tended to insure its consummation without any risk to themselves arising from an attempt at defense on the part of the deceased.

Although the information charges the defendants with only the crime of murder, the evidence adduced at the trial also shows that before the perpetration of this crime, the defendants had committed the crime of robbery in the house from which the deceased was taken. The facts shown by the evidence might therefore have been classified as constituting the double crime of robbery in a band and murder. However, limiting ourselves to the latter, which is all the complaint charges, we reach the conclusion that the evidence is such as to establish beyond doubt the guilt of the defendants Emiliano Cajayon, Felix Aguilar, Domingo Castillo, Quintin de Lemos, Tomas Ramirez, Pioquinto Cajayon, Gregorio Tria, Candido Aguilar, and Mariano Aguilar, as principals, together with other persons unknown, of the crime of murder.

The complaining witness, Ana Muriel, designated Felix Aguilar, Emiliano Cajayon, Quintin de Lemos, Tomas Ramirez, and Candido Aguilar as the malefactors who, with two other persons unknown, entered her house on the night in question, stole jewelry and money therefrom, and carried off with them Tranquilino Torres. She stated that she had known these five men designated by her before the night in question, and that she recognized them when they struck a light. At the same time she observed that three of them had guns and that the others carried revolvers. The witnesses Gumersindo Abeleda, Antonio Orayani, Mariano Tularino, Tomas Sanchez, and Cornelio Tamayosa, inhabitants of the town, some of whom lived in houses close to the one in which the robbery was committed, corroborated this statement, saying that there was a disturbance in the town because of the assault on the house of Ana Muriel. The witness Abeleda added that as he was at that time justice of the peace, he went with the president to the house where the occurrence had taken place and was there informed that Emiliano Cajayon, Quintin de Lemos, Gregorio Tria, Pioquinto Cajayon, and Tomas Ramirez were among the assailants. This witness also states that he was present when the remains and clothing of Tranquilino Torres were found, and that he believes the woman Muriel had some jewelry and money. The witness Antonio Orayani also

stated that he knew Gandido Aguilar, Emiliano Cajayon, Domingo Castillo, and one Pantenople were with the robbers. Simeon Villaluz, another neighbor, testified that he saw the malefactors from the window of his house and that among them he recognized Emiliano Cajayon, Quintin de Lemos, and Candido Aguilar. He stated that these, accompanied by some others, entered the house in question, which was about 8 yards distant from that of the witness, and that the others, whom he did not recognize, stationed themselves around the outside of the building. Mariano Tularino, who lived in another house about 25 yards distant from the one assaulted, states that among the 10 or 12 malefactors he also recognized Emiliano Cajayon, Gregorio Tria, and Pioquinto Cajayon. Tomas Sanchez, another neighbor who witnessed the assault from his house, testified to having recognized among the malefactors Emiliano Cajayon, Candido Aguilar, Domingo Castillo, Felix Aguilar, Pioquinto Cajayon, Juan Sales, and one Pantenople, and that they, upon leaving the house with other persons unknown to him, carried with them Tranquilino Torres, who was bound at the time.

The witness Cornelio Tamayosa states that on the night of the occurrence while he was returning to the town of Lubang from the barrio of Vigo he met a number of armed malefactors on the road in the barrio of Maliig. He says that they were carrying with them Tranquilino Torres, who was bound, and testifies that among these malefactors he recognized Mariano Aguilar, Emiliano Cajayon, Felix Aguilar, Tomas Ramirez, Juan Sales, and the men called Andres Teodoro and Pantenople. The witness said that he subsequently heard about the robbery and the recovery of the remains of Tranquilino Torres. Pedro Villaflores, an inhabitant of Maliig, near whose house the remains were found, said that one night he saw in the vicinity of his house Emiliano Oajayon, Felix Aguilar, Quintin de Lemos, Gandido Aguilar, and Tomas Ramirez and some other men, armed with rifles and bolos. Manuel Torres, the son of the deceased, states that he was in the house of Nazaria Villagracia when he heard the voice of his father calling to him from the street through which he was passing, conducted by several armed men, but that he did not leave the house, as he was afraid. He testified that this was the last time he saw his parent, and that about five days afterwards human remains were found together with clothing and a hat which he recognized as being his father's, and that he was able to identify the skull because one of the teeth was missing. He stated further that Pedro Malabanan, Pedro Torredisa, Juan Villamar, and Tomas Sanchez had told him that his father had been kidnaped by the malefactors.

It appears, therefore, that the evidence in the record fully establishes the fact that on the night of March 21, 1901, Tranquilino Torres was taken from the house in which he lived in

the town of Lubang by a band of ten or twelve armed malefactors; that they tied him elbow to elbow and carried him away, several credible witnesses having seen him carried from the house in this condition and through the streets of the town toward the barrio of Maliig, where they were also seen by the witness Tamayosa, who was at that time returning to the town; that at the expiration of five or six days it was learned from placards which had been posted at various places in the town, including the house where the witness had lived, that in the barrio of Maliig a disinterred body, devoured by the dogs, might be found; that a number of the inhabitants who had known Torres in his lifetime, and also his son, Manuel Torres, recognized the clothing and the hat found, together with a piece of rope, near the hole in which the body had been buried, as having belonged to the deceased; that his son was also able to identify the remains as his father's, owing to the fact that one tooth was missing from the upper jaw of the skull found, and that since that time the said Tranquilino Torres has not returned to the house of Ana Muriel and has not since been seen in the town of Lubang.

Upon this evidence we reach the conclusion that Tranquilino Torres was murdered on the night of March 21, 1901, when he was kidnaped by the nine defendants above named, in the house of Ana Muriel; and that they, notwithstanding their denial, together with other persons still at large, were unquestionably guilty of the murder, because five or six days after they had kidnaped the deceased his remains were found in the barrio where he had been seen in their custody. Another fact which indicates the guilt of the defendants is that Candido Aguilar, Domingo Castillo, Mariano Aguilar, Quintin de Lemos, Gregorio Tria, and Emiliano Cajayon lived in the barrio of Tilig, which was about four hours' walk from the town of Lubang and far beyond the barrio of Maliig, through which the road from Lubang to Tilig passes, and that, nevertheless, between 3 and 4 o'clock in the morning of the day following the occurrence, these defendants, according to the statements of Candido Aguilar and Domingo Castillo, were aroused by the excitement among the people of the barrio caused by the robbery in question and the kidnaping of the deceased. These defendants state that when they left their house they met Quintin de Lemos, Gregorio Tria, Emiliano Cajayon, Mariano Aguilar, and several others in the street discussing the occurrence. It is incredible that in the ordinary course of events this news should have been known so soon in the barrio, and it is inexplicable how it could have spread so rapidly to that distant barrio unless we infer that the defendants, who gathered together in the street for the purpose of talking, as they say, about the crime, had just arrived in the barrio from Maliig where Tranquilino Torres had been murdered by them.

It is unquestionable that they all took part in the capture of the deceased and in his

conveyance to the barrio of Maliig and to the place where the murder was committed. Although it does not appear which of the defendants actually killed the deceased, until the contrary shall be made to appear it must be held that each and every one of them performed acts tending to bring about the consummation of the crime; that is, in the absence of evidence showing that one or more of them did not aid in the commission of the crime, it must be presumed that all were implicated in its execution, as it was for this purpose that Torres was kidnaped; and his captors therefore all contributed and conspired to effect their common object, the death of the deceased. It does not appear from the record that the defendants made any attempt to prove their innocence or to impugn the veracity of the witnesses for the prosecution. These witnesses testified in the presence of the defendants and identified them at the trial without any protest on the part of the latter.

The provisions of article 244 of the Penal Code were erroneously applied by the court below in this case. The rebellion of the inhabitants of the Island of Lubang against the Spanish Government resulted in the expulsion of the Spanish officials from the island and the establishment by the inhabitants of a local government therein, and although the nine defendants were in fact at the time members of the insurrectionary forces, it is, nevertheless, certain that at the time of the murder the island was governed by insurrectionary authorities. Although the accused, therefore, were revolutionists, Emilio Cajayon with the rank of captain, some of the others with that of lieutenant, and the others being merely soldiers, the fact remains that they committed the crime, not on the occasion of any act of rebellion or sedition but independently. On the night in question they performed no act of a political character, and therefore article 244 of the Penal Code can not be applied.

In the commission of this crime we must consider present I the aggravating circumstance of nocturnity, established by paragraph 15, article 10, of the Penal Code, the defendants having availed themselves of the darkness of night for the consummation of the crime. This circumstance is, however, offset as to its effects by the special mitigating J circumstance established in article 11 of the Code. In consideration of the character of the crime and the personal status of the deceased and of his assailants, and more especially in consideration of the abnormal conditions then prevailing in the town of Lubang, there being no lawfully constituted authorities there at that time, the penalty prescribed in article 403 of the Code should be imposed upon the nine convicted defendants in its medium grade. This decision will not affect the two defendants who were acquitted by the court below, no appeal having been taken against the judgment of acquittal.

In the information upon which the prosecution is based some deficiency is to be observed in the statement of the facts constituting the crime of murder with which the defendants were charged, and on this account the Solicitor-General asks that the proceedings be set aside, that the judgment be reversed, and that the court direct the filing of a new information for the crime of murder, the commission of which is disclosed by the evidence.

No objection was made to the information by the defendants or by their attorney, either in the court below or in this court. They failed to register any exception or protest on the ground of the nullity of the information or of the trial, nor has any application been made for a new trial because of such deficiency. For this reason, in view of the result of the proceedings, and in view of the fact that the offense charged has been properly defined and designated in the information in question, the petition of the Solicitor-General must be denied.

With respect to the motion of eight of the defendants that they be given the benefits of the amnesty proclamation of July 4 last, inasmuch as it does not appear from the record that the murder herein prosecuted is of a political character, or that it was committed for political motives or in consequence of feuds or hatred of a political character between the deceased and the accused, we are of the opinion that there is no ground upon which the defendants can be given the benefits of the proclamation referred to.

For the reasons stated we are, therefore, of the opinion that the judgment of the court below dated July 12, 1902, must be reversed in so far as the defendants Felix Aguilar, Domingo Castillo, Quintin de Lemos, Pioquinto Cajayon, Tomas Ramirez, Gregorio Tria, Candido Aguilar, and Mariano Aguilar are condemned to twelve years of cadena temporal, reserving to the family of the deceased their action against the defendants for damages. The motion of the Solicitor-General is denied, as is also that of the defendants, that they be given the benefit of the amnesty proclamation of July 4, 1902. We accordingly condemn each of the eight defendants named, as well as Emiliano Cajayon, to the penalty of life imprisonment, with the accessories of civil interdiction and subjection to the vigilance of the authorities during the period of their respective lives. In case of the pardon of the principal penalty, they shall suffer absolute, perpetual disqualification and subjection to the vigilance of the authorities during the remainder of their lives, unless these accessory penalties shall be specially remitted in the pardon of the principal penalty. The defendants are also condemned to the payment, *pro rata* or *in solidum*, of 1,000 Insular pesos to the heirs of the deceased, and each to the payment of one-thirteenth part of the costs of both instances.

The case will be remanded to the court below, with a copy of this decision, for its execution.

*Arellano, C. J., Willard and Mapa, JJ., concur.*

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DISSENTING

**COOPER, J.:**

The Solicitor-General, in his brief requests the annulment of the judgment of the Court of First Instance and asks that the case be remanded to the lower court, with instructions that the court direct the presentation of a new complaint for the crime of asesinato or murder. He is of opinion that the complaint upon which the defendants have been convicted is insufficient to sustain a conviction for this offense. In this view I concur.

The complaint reads as follows:

“The undersigned charges Emiliano Cajayon, Candido Aguilar, Felix Aguilar, Mariano Aguilar, Domingo Castillo, Pioquinto Cajayon, Quintm de Lemos, Tomas Ramirez, and Gregorio Tria, of the town of Salinas, and Pantenople, of the Province of Batangas. of the crime of murder, committed as follows:

“That the said Emiliano Cajayon and his companions above named, armed with guns, on the night of the 21st of March, 1901, in the town of Lubang, of this province, entered the house of Doña Ana Muriel, seized Tranquilino Torres, and, after having tied his hands, carried him toward the beach; four days later the remains of the body of Tranquilino Torres were found on the said beach; this against the statute in the case made and provided.”

The complaint does not comply with the requirements of section 6 of General Orders, No. 58. In defining the requisites of a complaint or information, it is provided in paragraph 3 that “the complaint should show the acts or omissions complained of as constituting the crime or public offense in ordinary and concise language.”

It does not appear from the complaint that the defendants did anything more than to seize and carry off the deceased, and that his body was afterwards found. This would not

constitute the offense of murder.

While there may be a strong inference, from the circumstances set forth in the indictment, that the defendants did actually kill the deceased, yet the complaint wholly fails to state this most important element.

It is to be further observed that the complaint does not state that the offense was committed with *alevosia* or with premeditation. These are qualifying circumstances of the offense of murder and have the effect of raising ordinary homicide to that of murder. Had it been directly alleged in the complaint that the defendants killed the deceased, this would not constitute murder in the absence of the qualifying circumstance either of *alevosia* or premeditation.

Article 404, Penal Code, provides that he who shall kill another without the attendance of these circumstances is guilty of homicide and is punishable with the penalty of *reclusion temporal*, under which the highest penalty that can be assessed is twenty years of *reclusion temporal*.

The court in its decision has not only held the complaint sufficient to show a killing by inference, but entirely ignores the omission to state that the killing was with premeditation or *alevosia*. The defendants have been found guilty not only of the killing of the deceased but of its having been done with *alevosia*, and the penalty of life imprisonment has been assessed—the penalty fixed by article 403 for the crime of murder.

It is immaterial in my opinion whether there was an objection or demurrer made to the complaint in the lower court or whether objections have been made in this court. The complaint is fatally defective.

It must be further taken into consideration that the court has imposed a different and a higher penalty upon all of the defendants except Emiliano Cajayon than that imposed by the sentence of the Court of First Instance. The sentence of the lower court upon all of the defendants, except Cajayon, was for a period of twelve years, while under the decision now made these defendants are sentenced to imprisonment for life.

At least to the extent of the additional penalty which has been imposed by this sentence beyond that imposed by the judgment of the lower court, the defendants have had no opportunity to make objection to the complaint.



For the reasons above stated the judgment should be reversed.

**MCDONOUGH, J.**, dissenting:

I dissent. I think that the judgment of the court below should be affirmed.

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