

3 Phil. 102

[G. R. No. 1247. December 22, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PABLO JAMINO ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

This case was tried in the Court of First Instance of Iloilo, upon the charge of murder.. It was brought to this court en consult a and on the appeal taken by counsel for three of the defendants from the judgment, dated February 2 of this year, by which Pablo Jamino, Emeterio Alcala, and Anselmo Toledo were condemned to the death penalty, to the payment, each of one-third part of the costs, and to the accessory penalties.

Between 9 and 10 on the morning of September 29, 1902, Rufino de la Cara, a sanitary inspector, was making an inspection of the barrio of Baybay, of the township of Molo, district of Iloilo, on the lookrout for cholera cases. Pablo Jamino, a resident of that barrio, saw the inspector going along the street in front of his house and ordered two of the five laborers employed by him in the construction of fish corrals, by name Clemente Belarmino and Emeterio Alcala, to seize Inspector Cara. This they did and after having bound him elbow to elbow with a piece of rattan took him into the presence of the owner of the corral, Pablo Jamino. The latter asked the inspector for what, purpose he was in the barrio, to which Cara replied that he was there in the performance of his duty, and that he had come to look after any sick people who might, he found there, Jamino then told him that there were some sick people in a mangrove swamp near at hand and ordered his men to take the inspector to this plaee, sqme 400 yards distant.

Upon arriving at the foot of a coc.oanut tree in the swamp, Jamino, who accompanied the party, ordered his men to kill Inspector Cara. Custodio N. and Anselnio Toledo tlien attacked the deceased, striking him several blows with their bolos on the head, neck, and face, as a result of which Cara fell to the ground and soon after expired. After Jamino had

assured himself that the inspector was quite dead the men threw the body into a ditch, covering it with cocoanut and nipa-palm leaves. On the night, of the same day, the defendants, Custodio N. and Antonio N. (who have not been arrested) returned to the place where the crime was committed, put the body into a rice sack, and, after having fastened to the foot of it another sack filled with sand, they cast the body into a small boat, carried it some little distance from the shore, and threw it into the sea. This was done in obedience to the orders, or at least with the knowledge, of Pablo Jamino, for the latter subsequently related to his codefendant, Toledo, the manner in which the body was disposed of.

Early in the morning of October 1, 1902, the body of the deceased was found floating near the beach close to the light-house of the port of Iloilo. The fishermen who found it pushed it in toward the beach and reported the matter to the light-house keeper, who in turn notified the justice of the peace. "The justice accordingly went down to the beach, accompanied by his assistants and the president of the board of health, Don Cornelio Mapa. The result of the examination of the body showed that it was very much swollen: that there was a wound on the forehead, another on the face, one on the left side of the head, and one on the left side of the neck; and that the arms were bound elbow to elbow. A sack covered the lower portion of the body, to the feel of which was fastened another sack containing some sand. The physician was of the opinion that the deceased had died from drownina¹. as his wounds were not. in themselves sufficient to cause death and might have healed if proper and timely assistance had been given. He stated further that he believed the body must have been in the water some two or three days.

The body was recognized and identified by Graciano Amparo and Mr. George Bauner. The first of these men was a friend of Inspector Oara and the owner of the house in which he had lived. He stated that the deceased left his house on the morning of the 29th of September referred to, for the purpose of performing the duties incumbent upon him as sanitary inspector, and that he had never returned, and, up to the time his body was shown the witness and Bauner near the cemetery, had not been seen by the witness. Furthermore, on the left sleeve of the shirt worn by the deceased was found a red cross, by which he was identified by Amadeo Malhabour, the chief of police. The latter also testified to the fact that when the body was found the elbows were bound together with a piece of rattan, of the kind used in constructing fish corrals.

The facts above related, which are fully proven by the evidence in the case, constitute the crime of murder, defined and punished in article 403 of the Penal Code, since at the time of the assault Cara was bound elbow to elbow and wholly unable to defend himself against his

assailants. The latter, furthermore, acted with the assistance of their four companions, who were there ready to render any aid which might be necessary. Consequently it is unquestionable that for the purpose of killing the deceased the assailants availed themselves of means which directly and specially tended to insure the consummation of the crime without risk to themselves and their companions arising from an attempt at self-defense on the part of the victim.

There can be no doubt that the sanitary inspector Rufino de la Cara, whose body, partly enveloped in a sack, was found floating in the sea near the Iloilo light-house, the arms bound elbow to elbow, and the feet tied to another sack filled with sand, was the victim of a murder, not only because of the serious wounds shown on the neck, face, and skull of the body, but also because, according to the result of the examination conducted by the doctor, the deceased must have died by drowning, for his wounds might perhaps have been cured if he had received timely assistance. Hence it is unquestionable that the deceased died a violent death and that the corpse found was that of the sanitary inspector, Rufino de la Cara, as affirmed by witnesses who knew him in his lifetime, the identification having been made complete by the fact that the distinctive insignia of the Corps, was found on the person of the deceased.

The four defendants, Pablo Jamino, Anselmo Toledo, Emeterio Aloala, and Clemente Belarmino, pleaded not guilty to the charge contained in the amended information filed on December 10, 1902 (p. 4). After the trial commenced the prosecuting attorney filed a *nolle prosequi* as to Clemente Belarmino, so that he might be used as a witness for the prosecution, and this defendant was accordingly at once discharged (p. 89).

This man in his sworn testimony corroborated the facts stated and added that the capture and killing of Rufino de la Cara were in compliance with orders given by Pablo Jamino. The latter, Belarmino testified, told the other accused that the sanitary inspectors were going about poisoning the wells and that they, could kill such men with impunity. Upon returning to Jamino's house on a subsequent day, the witness heard from Custodio K. that on the night of the same day on which the assault was committed the body was thrown into the sea. When the witness was arrested by the Constabulary officer, the latter, he states, only told him to tell the truth, and did not illtreat or threaten him, although Mr. Cotton, the assistant prosecuting attorney, told him that if he would tell the truth he would ask to have him discharged, so that he might testify as a witness for the Government.

The witnesses Damian Madrono and Simplicio Minerva testified that when the former was

arrested as the presumptive author of the death of Inspector Rufino, he told the officers that, he had had nothing to do with it, but pointed out Anselmo Toledo as one of the men who had done the killing. Constabulary Inspector Orwig and these two witnesses accordingly made search for Anselmo. Upon being found and interrogated upon the subject, he stated that he had done the killing with a bolo which he got from his house and which he exhibited, and that this had been effected by him in company with Custodio N., Antonio N., Clemente Belarmino, and Emeterio Alcala in a mangrove swamp, to which they had led the deceased in obedience to orders which they had received from Pablo Jamino. He stated further that Clemente and Emeterio were those who captured the sanitary inspector, Rufino de la Cara; that the latter two, having been arrested by the Constabulary and taken, together with Anselmo, to the place where the crime was committed, they all knelt down, including the officer, who thereupon urged them to tell the truth; that then Anselmo, Clemente, and Emeterio confessed that they had killed the sanitary inspector at that place, by order of Pablo Jamino; and that this confession was made in the presence of the witnesses Damian Madrono and Simplicio Minerva, unaccompanied by any violence, intimidation, threat, or promise to the prisoners. The witness Minerva stated that he knew that on the night of the day in question Antonio and Custodio put the body in a sack and threw it into the sea, and that on this occasion, Custodio said, Jamino had assured them that they need have no fear, as he would be responsible for their lives; that at about 10 o'clock on the morning of the 29th of September Sanitary Inspector Rufino passed in front of the witness's house, going toward the place where Jamino lived, and since that time he had not seen him.

Notwithstanding Pablo Jamino's plea of not guilty and the fact that Emeterio Alcala retracted the statements made in the presence of his captors and of several witnesses, the evidence is nevertheless sufficient to authorize the conviction of the three defendants, Pablo Jamino, Emeterio Alcala, and Anselmo Toledo, as well as of Antonio N. and Custodio Is., who were not arrested. The extra judicial confession of Anselmo Toledo and Emeterio Alcala, repeated on different occasions in the presence of different persons and made freely and spontaneously, without intimidation or coercion, shows unquestionably the fact of the commission of the crime and the guilt of those who made the confession, notwithstanding Alcala's subsequent retraction.

The confession of Anselmo Toledo, made in the presence of the persons who arrested him, as well as of several other witnesses, and which gave the details of the crime and which is corroborated by the testimony of Clemente Belarmino and Emeterio Alcala, constitutes conclusive proof of Toledo's guilt. With respect to Pablo Jamino, whom Clemente Belarmino

charges with having induced the others to commit the murder, he gave no testimony in his own behalf, but simply denied the charge. Nothing appears, however, in the evidence introduced from which it may be inferred that the charge is false or that it is due to revenge or any other reprehensible motive.

The testimony of Clemente Belannino, Damian Madrono, and Simplicio Minerva is confirmed by that of Maj. H. B. Orwig, Inspector Charles B. Compton, and Policemen Fernando Dolindo and Pantaleon Valencia. Therefore, considering the evidence for the prosecution as a whole, there can be no doubt as to the guilt of the three defendants as principals of the said murder as stated in the confessions of Toledo and Alcala and in the testimony of the witness Belannino.

The three defendants, Jamino, Toledo, and Alcala, are all coprincipals. Those who seized the victim and were subsequently present at the commission of the crime, as well as those who actually killed the deceased by order of Pablo Jamino, were participants in the crime, and all are criminally responsible therefor. All participated in the intent and purpose of killing Inspector Rufino de la Cara, and although it may be true that only two of them actually did the killing, it is none the less true that the others were present and remained until the crime was consummated. Consequently, each of the defendants herein prosecuted, including the absentees Antonio N. and Custodio N., is equally guilty.

It is improper to regard as present the aggravating circumstances of premeditation, the commission of the crime in an uninhabited place, and abuse of superiority. Nothing appears in the record to show that the commission of the crime had been contemplated before the defendants saw Inspector Rufino de la Cam pass by; nor does it appear that there were no houses near the mangrove swamp where the deceased was killed. As to the circumstance of abuse of superiority, this must be regarded as merged in the qualifying circumstance of alcvosia present in the perpetration of the crime.

From the evidence introduced it appears that the motive which led to the commission of the crime was the erroneous belief, due to ignorance, that sanitary inspectors, of whom the deceased was one, were at the time of the occurrence engaged in poisoning wells. This being so, the present is a case in which "the special circumstance established in article 11 of the Penal Code may properly be applied in mitigation. The defendants must, therefore, be sentenced to the minimum penalty assigned in article 403 of the Penal Code for the punishment, of the crime of murder.

It is our opinion, therefore, that the judgment of the court below should be reversed and the defendants Pablo Jaiuino, Anselmo Toledo, and Emeterio Alcala condemned each to the penalty of twenty years of *cadena temporal* with the accessories of civil interdiction and subjection to the vigilance of the authorities during the period of their respective lives. . In case the principal penalty should be remitted, they should be condemned to suffer absolute perpetual disqualification and subjection to the vigilance of the authorities during the remainder of their lives, unless these accessory penalties should be remitted in the pardon of the principal penalty. They should also be condemned to pay *pro rata* or *in solidum* an indemnification of 1,000 Insular pesos to the heirs of the deceased, as well as to the payment each of a third of the costs of both instances. The record will be duly returned to the court below with a certified copy of the decision and judgment to be entered thereon, for execution thereof. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
