

3 Phil. 234

[G.R. No. 1304. January 22, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, PETRONILO DONOSO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

The judgment of the court below, dated March 26, 1903, which is before us for review and on appeal, condemned the defendants Petronilo Donoso, Gregorio Calin, Felix Ballos, and Timoteo Ladores to the penalty of death with the accessories and costs, as guilty of the crime of murder. By the same decision the defendant Antipatro Ada was acquitted and his discharge was ordered and the same action was taken with respect to the defendants Baldonido, Balaizuche, Ciego, and Aquiatan, the evidence as to them being insufficient to support a conviction.

On February 17, 1903, the provincial fiscal of Samar filed an information in the Court of First Instance of that province charging the nine defendants with the crime of murder, in that on the 24th of April, 1902, willfully, feloniously, with *alevosia* and premeditation, they attacked one Pedro Almasan, inflicting upon him various wounds which caused his death, and that after killing him they decapitated his corpse. This in an uninhabited place in the township of Tubig and contrary to the statute in the case made and provided.

From the evidence taken at the trial it appears that the municipal president of the town of Tubig, by name Petronilo Donoso, acting under instructions of Lieutenant Collins, commanding the American

troops stationed in the neighboring town of Dolores, on the Island of Samar, and in conjunction with Sergeant Leo Gross, commanding the military detachment at Tubig, on the 24th and 25th of April, 1902, directed several policemen of the town and members of the volunteer corps to make an expedition into the neighboring forest for the purpose of compelling the townspeople who had taken refuge there to return to the village. Among others, the expedition was composed of Gregorio Calin, Felix Ballos, Timoteo Ladores, Antipatro Ada, Alberto Aquiatan, Rufino Ciego, Gavino Balaizuche, and Pablo Baldonado, who were armed with bolos and lances. About 2 o'clock on the afternoon of the same day the expedition arrived at the forest of Amansurao, where they found Pedro Almasan in his house with his wife, Perpetua Balmes, her sister, Cristeta Balmes, and some seven other persons, men and women, apparently relatives and friends of Almasan. They immediately arrested Almasan and bound him elbow to elbow. Gregorio Calin, a policeman who was commanding the expedition, immediately directed that the inhabitants of the house should be removed from it and taken toward the town, which order was obeyed, the people in question being conducted by the members of the expedition. While on the road, suspecting Calin's evil intentions, Almasan's wife begged him on her knees not to kill her husband, who had been the best man at Calin's wedding, but the latter pushed her away and told her to walk along, and get out of the way, and immediately after Calin attacked Pedro Almasan, wounding him in the back with a lance, which pierced him to the stomach. Felix Ballos and Timoteo Ladores also took part in the assault, the deceased being at that time bound elbow to elbow and consequently unable to escape or ward off the blow. Seeing this attack, the wife of the deceased fainted, falling to the ground. Subsequently she heard Calin say, after the commission of the crime, that he had killed her husband because, in the time of the Spanish Government, his father had been exiled by orders of the deceased.

Shortly after, while the wife of the deceased was walking along with the other prisoners, she saw that Timoteo Ladores was carrying her husband's head, which had been separated from the trunk by Calin's orders. The head, which was subsequently presented to

President Donoso, was, on the following day, upon the arrival of the party in the town, exhibited in the public square impaled upon the point of a lance held by the defendant Gregorio Calin, while President Donoso, in a loud tone, informed the crowd which had gathered that this was the head of Capt. Pedro Almasan, a disobedient man, a thief, and a brigand, and then asked whether he had done right or wrong in having ordered that the head of the deceased be brought to the town square, to which the crowd responded that he had done well. It further appears that the members of this expedition took possession of all the money, jewels, and other property belonging to the deceased, and before leaving set fire to the house in which he was arrested. Subsequently, 500 of the 650 pesos which had been found in the house of the deceased were returned by President Donoso to the widow, who also succeeded in recovering some of the stolen jewelry. The evidence shows that, with the exception of the defendants Calin, Ballos, and Ladores, no other members of the expedition took any part in the murder of the deceased.

In the course of the trial and after the prosecution had rested, counsel for the defendants moved that Petronilo Donoso, Antipatro Ada, Alberto Aquiatan, Rufino Ciego, Gavino Balaizuche, and Pablo Baldonado be discharged, there being no evidence against them, and also moved that all the defendants be discharged upon the ground that they were entitled to the benefits of the amnesty proclamation of July 4, 1902.

The court below granted the motion of counsel for the defense in part and directed that Pablo Baldonado, Gavino Balaizuche, Rufino Ciego, and Alberto Aquiatan be discharged. The provincial fiscal excepted to this ruling and the attorney for the defense excepted to the ruling with respect to the other five defendants. The record contains a writing filed by the provincial fiscal giving notice of appeal from a judgment of acquittal of the court in favor of the four defendants above named.

Upon the termination of the trial and in view of the evidence

adduced, the court below rendered judgment on March 26, 1903, acquitting the defendant Antipatro Ada and condemning the others, Petronilo Donoso, Gregorio Calin, Felix Ballos, and Timoteo Ladores, to the death penalty, accessories, and costs, directing that they be executed by garrote in such a manner and at such a time and place as the court might designate, and directed that the said Ada be immediately discharged.

The violent killing of a human being, committed with *alevosia* by reason of the employment by the assailants of means and forms which tend directly and especially to insure the consummation of the crime without any risk to themselves which might arise from an attempt at self-defense on the part of the person attacked, constitutes the crime of murder, defined and punished by article 403 of the Penal Code, as the circumstance of *alevosia* qualifies the crime and requires the imposition of a heavier penalty than that corresponding to the crime of homicide.

There can be no doubt whatever as to the existence of the crime, for Pedro Almasan was killed in the presence of a number of witnesses, and some hours afterwards his head, separated from the trunk, was exhibited in the public square of the town of Tubig, where it was seen by all the inhabitants. Furthermore Gregorio Calin, one of the defendants, confesses the commission of the crime.

The accused all plead not guilty. The defendant Gregorio Calin, testifying as a witness in his own behalf, said that he killed Pedro Almasan because the latter refused to go back to the town and to accompany the party as directed; that as night was falling and the return of the party was being delayed, and as the prisoner Almasan even offered him money if he would release him, and he was furthermore afraid that the partisans of Almasan might fall upon them, he decided to kill him, and ordered his companion in the expedition, Timoteo Ladores, to decapitate the corpse in order that the head might be presented to the municipal president, because the dead man was the leader of the thieves who were wont to invade the town of Tubig and rob the inhabitants, this being a notorious fact in

the said town; that before the expedition under his orders left the town, President Donoso told him that if the leader of the thieves or any of the thieves themselves should refuse to return to the town he was to kill them; that the president did not at that time mention the name of Pedro Almasan, although he subsequently said that he ordered him to kill Pedro Almasan, the chief of the brigands; that for this reason, upon returning to the town, he reported to the president that he had killed the said Almasan, and that he had brought the latter's head with him; that the president expressed neither approval nor disapproval of the deed; that the commanding officer of the town of Tubig also gave him the same orders, to the effect that if he met Pedro Almasan, the leader of the thieves, he need not bring him back to the town, because all the members of Almasan's band had been robbing the inhabitants. This defendant in his testimony denies that he killed Almasan on account of enmity or because the latter had deported his father, but insists that he did so because he was so instructed by the president and by the commanding officer in case Almasan should refuse to accompany him to the town.

Petronilo Donoso, testifying as a witness, stated under oath that when he surrendered to the American military authorities in January, 1902, he was by them appointed municipal president of Tubig, which office he held until the time of his arrest; that Pedro Almasan in April, 1902, was the leader of the people still in the hills, and was engaged in stealing carabaos belonging to people who had surrendered to the authorities and that, according to statements made by the police, Almasan was the man who ordered these robberies; that these statements were corroborated by people who came into the town from the forests; that in the month of March preceding he had heard that the thieves had cut the telephone wire and had carried it to the forest; that on the 3d of April three men engaged in cutting nipa leaves at a place called Palangui were surprised by the thieves, who destroyed the leaves which they had cut, beat these men, and carried two of them away; that on the 10th of the said month the said thieves captured a girl who was out in the country gathering *pili* fruit, and killed another woman, her companion, because she screamed;

that on the following night they entered the town and thrust their lances through the walls of some of the houses where the people were lying asleep; that on the 18th of the month while three persons were engaged in cutting rattan by orders of the witness, at a place called Bananacón, they were surprised and two of them were killed, and that the survivor, by name Catalino, came in and reported the occurrence; that on this account Lieutenant Collins ordered the witness to direct that the police and volunteers go into the mountains for the purpose of gathering in all the people they might find there so that they might go on with the work to be done, and also directed that this expeditionary force should endeavor to run down the thieves and robbers, the leader of whom, according to information received, was Pedro Almasan; that on a former expedition by the police and volunteers the witness instructed the leader, Gregorio Calin, that in case he should meet any thieves who refused to surrender and submit to the military authorities he was to kill them; that the same order had been given from time to time by the commanding military officer at Tubig; that he did not repeat the order at the time of the last expedition of the 24th or 25th of April, but simply told Calin to try and get all the people in hiding in the forest to come into the town so that they might dispose of the public work there pending, and told him that if they did not want to come to let them stay; that when he saw the head of the deceased, which had been brought in by orders of Gregorio Calin, he asked the latter why he had brought it, to which Calin replied that it was in order that the commanding officer of the town might know that he had killed Pedro Almasan, the chief of the brigands, who was no personal enemy of his; that when the head was exposed in the public square of the town, he, the witness, asked the crowd if they knew whose head that was, to which they replied in the affirmative and added that when they were in the forests the deceased tried to prevent them from coming into the town to surrender; that Sergeant Gross returned the jewels which had been found in the dead man's house to the latter's family and took charge of the cash there, which amounted to some 500 pesos; that after the death of Almasan a number of the leading men came into the town, as also some of the members of the band of brigands and a number of revolutionists who

had not responded to General Guevara's call upon them to surrender.

The witnesses Mariano Docena, Escolastico Balanong, Manuel Balmes, and Alberto Aquiatan, who accompanied the expedition to the woods, corroborated the statements of President Donoso and denied that they had heard him give any instructions that any person was to be killed, and stated that the orders were that the expeditionary force was to require persons in hiding in the forests to return to the town, although the witnesses were unable to say whether or not Calin had received any private instructions. They testified further that they were not present when Almasan was killed, as the first three witnesses named were in another squad of the expedition, and the last-named witness was in advance in charge of the persons who had been arrested in Almasan's house. Alberto Aquiatan also testified that on the occasion of a former expedition they had arrested five men who were subsequently recaptured from them by the thieves while on the way to the town, and that their information was that these men belonged to the gang led by the deceased Almasan.

Claro Guevara, the so-called commander in chief of the revolutionists in the Island of Samar, testified that on April 25, 1902, Pedro Almasan was the municipal president of the town of Tubig and at the same time a captain of infantry in the revolutionary army; that he had never received any complaints against Almasan, and that his reputation was that of an honest man who performed his duties in good faith, even in the time of the Spanish Government ; that he had been twice reflected municipal president of Tubig; that in consequence of conferences between himself and General Smith an armistice had been agreed upon from the middle of March to the 27th of April, 1902; that Pedro Almasan knew that this armistice existed, as appears from two letters which the witness had received from Almasan and which he exhibited. (Record, pp. 140, 141.)

The evidence clearly shows the guilt of the defendants Pedro Caliu, Felix Ballos, and Timoteo Ladores, of whom Calin was the first one to run the deceased through with a lance, his attack being seconded by the other two defendants named. This was done in the

presence of eyewitnesses to the crime and Avhile the deceased was unarmed, bound elbow to elbow, and unable to defend himself. Consequently there can be no doubt as to the guilt of the three defendants as principals.

The evidence in the record does not show sufficiently that Almasan was in fact the leader of a band of brigands engaged in pillage, for the witnesses who make this statement testify by hearsay only. Even if he were such, as the facts established by the evidence are that the deceased when found by the policemen and volunteers gave himself up and allowed himself to be bound without making any resistance whatever at the time of his arrest or while on the road, and that he made no attempt to escape from his captors, there can be no justification for the murder of a man who surrenders without resistance, no matter how great a criminal he may have been.

It is a legal principle universally recognized in all civilized countries that the power to apply the laws in criminal cases, to judge and to carry the judgment into execution, pertains exclusively to the courts and the judges, and that no penalty can be imposed for criminal acts except in accordance with the laws and by virtue of judgments rendered by competent courts and judges.

No matter how severe the laws of war may be, some investigation, if only the summary proceeding of a drumhead court-martial, is required before a delinquent can legally be made to suffer the death penalty. Consequently the killing of Pedro Almasan can not be justified as a lawful act.

In the perpetration of this murder no aggravating circumstance appears to be present. The circumstance of premeditation does not exist because it does not appear that when Calin left the town of Tubig in command of the expedition he had formed the premeditated idea and determination to murder Almasan, for his overt acts up to the moment of the commission of the crime do not show such an intention. The circumstance established by article 11 of the Penal Code must be applied in favor of the three defendants in mitigation

of the penalty by reason of their racial characteristics and ignorance. Doubtless it was under the belief, which may or may not have been erroneous, that Almasan was in fact the leader of a band of brigands and they thought in good faith that they were justified in killing him for the benefit of the town of Tubig, the inhabitants of which had been victims of the crimes of the deceased. For these reasons the penalty of the law must be imposed in its minimum degree.

With respect to Petronilo Donoso, there is not sufficient evidence to convince us beyond a reasonable doubt that he had any participation in the murder in question. His plea of not guilty is not overcome by the sole testimony of Pedro Calin, unsupported by any other evidence, apart from the fact that his testimony is that of a codefendant and that he made self-contradictory statements. Furthermore, Calin's own explanation that they killed Almasan in order that he might not delay them and that they might not be overtaken by nightfall and because they were afraid of the prisoner's partisans is in itself sufficient to condemn him and is the best demonstration of his guilt—that is, that in the commission of the crime he acted upon his own spontaneous determination, and that he was not acting on the suggestion or inducement of any other person. Consequently Donoso must be acquitted.

The evidence does not show that Alberto Aquiatan, Rufino Ciego, Gavino Balaizuche, Pablo Baldonado, and Anti patro Ada were in any way participants in the crime, and consequently the judgment of the court below by which they are acquitted must be affirmed.

For the reasons stated we are of the opinion that the judgment of the court below must be reversed and the defendant Gregorio Calin condemned to the penalty of twenty years *cadena temporal* and the defendants Felix Ballos and Timoteo Ladores to the penalty of seventeen years four months and one day of *cadena temporal*, all three of them to the accessories of civil interdiction during the penalty and absolute perpetual disqualification and subjection to the vigilance of the authorities during their lifetime and the indemnification of 1,000 Insular pesos pro rata or *in solidum*

to the widow and heirs of the deceased and to the payment by each one of one-fifth part of the costs of both instances. The other defendants Antipatro Ada, Alberto Aquiatan, Rufino Ciego, Gavino Balaizuche, and Pablo Baldonado are acquitted with the remainder of the costs *de officio*. So ordered.

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

DISSENTING

COOPER and McDONOUGH, JJ.,

We dissent from the opinion of the majority, as we believe that the defendants are entitled to the benefits of the amnesty proclamation of the States promulgated July 4, 1902.
