

4 Phil. 110

[G.R. No. 1287. January 04, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO BAGUIAO AND
JANUARIO BERMUDEZ, DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

On February 12, 1903, a complaint was filed by the provincial fiscal of the Province of Abra, charging the individuals Januario Bermudez (alias) Gabat, Pedro Baguiao, Rafael Princena (alias) Peru, Ignacio Bennudez, and Emiliano Berido with the crime of murder and robbery, in that on a Friday evening, about the end of November, 1901, said individuals broke into a house situated in a lonely and out-of-the-way place called Narnara, in the town of Pilar, which house was occupied by Mariano Valera and his wife, Agatona Barbadillo, and robbed the said husband and wife of all their money and jewelry, and wounded and killed them with cutting weapons, contrary to the statutes in such case.

The case having come for trial as to the said Januario and Pedro (the other three having been arraigned separately), these two individuals pleaded not guilty, and the case having been heard with all the formalities required by law, the court found each of these defendants guilty of the crime they were charged with, and sentenced each of them to the penalty of death, to be executed in the capital of the province. From this judgment the defendants appealed.

It has been fully proved in the case by the testimony of competent witnesses that on a Monday morning in the month of November, 1901, the bodies of Mariano Valera and his wife, Agatona Barbadillo, were found in the house aforesaid, with several wounds, which undoubtedly caused

their death.

These facts only tend to prove a homicide, and not murder, since it does not appear in a direct and conclusive way in the case that the violent death of said husband and wife was perpetrated with the concurrence of any one of the five circumstances enumerated in article 403 of the Penal Code. As this court has said in several of its decisions, in accordance with the doctrine of the tribunals as regarding the application of the principles of the Penal Code in cases analogous to this one, these circumstances, as specific and qualifying the act of killing a human being, must be proved in an evident and incontestable manner, mere presumptions or deductions from hypothetical facts not being sufficient to consider them justified.

The motive which prompted the commission of the crime remains a mystery. Nobody was present at the time it was committed, and the details and circumstances of the act are wholly unknown. It does not appear in the case that any signs were found that might show how and in what positions the victims were when they were killed, since the finding of the bodies and the result of the inspection of the house where they were found were not duly recorded, and for this reason the facts can only be considered as constitutive of homicide and in nowise of murder.

Again the case does not furnish sufficient proof of the commission of the crime of robbery since, in spite of the statement of Emeteria Barbadillo, sister of the deceased Agatona, to the effect that after the death of the husband and wife the money and horses belonging to them disappeared, and only some of the jewelry, gold, and clothes was found, yet the truth is that Isidro Borgona, the justice of the peace who made the preliminary investigation of the case, affirms that the two defendants, Bermudez and Baguiao, only confessed and declared themselves guilty of the murder, without giving the motive that induced them to commit it, or giving the details of the occurrence, or confessing the presumed robbery attributed to them. Considering the fact that the case does not furnish sufficient proof of the reality and existence of the crime of robbery there is no way in law to sentence

the defendants as guilty of the complex crime of robbery with homicide. The case does not show conclusively on its merits that the homicide had been committed in order to commit robbery, since this last crime has not been proved, and therefore a mere presumption that the homicide was committed to rob the victims is not sufficient.

Notwithstanding the denial of the two defendants, Januario Bermudez and Pedro Baguiao, the case, however, shows sufficient proof of the fact that they, together with some others, were the authors of the violent deaths for which they are now prosecuted. It so appears from the testimony of several witnesses before whom the accused made several statements, voluntarily confessing the crime of homicide consisting in said violent deaths executed on the persons of the husband and wife aforesaid.

It is to be noticed that Juan Villamor, governor of the province, and a witness in this case, on affirming that the two defendants, Januario and Pedro, confessed to him to be themselves the authors of the crime, and as to the motive that prompted them to commit it, he affirms that both of them stated that they found no money or jewelry belonging to the deceased, a detail which coincides with the statement made by the justice of the peace, that the two defendants confessed themselves guilty of the crime of murder, now qualified in this decision as homicide only, for the reasons above stated; and it can be affirmed that the witnesses, including Andrei Agcaoili, who testified to having heard the statements or confessions made by the defendants as regards their guilt of the crime now prosecuted, must refer only to the homicide which is qualified in the process as murder.

It must be taken into consideration that in the commission of the said crime there is the aggravating circumstance of its having been committed in the house of the deceased, without the concurrence of any extenuating circumstance that might neutralize the effects of said aggravation, for which reason the corresponding penalty must be imposed in its maximum degree, the circumstance that the defendants have been charged with the crime of murder in the complaint being no obstacle to it, since in the act qualified as murder a homicide is necessarily

included, and therefore, according to section 29 of General Orders, No. 58, it is proper to declare the defendant guilty of the crime of homicide only.

By virtue of the reasons above stated, we believe that with the reversal of the judgment of the court below the defendants, Januario Bermudez (alias) Gabat and Pedro Baguiao should each be sentenced to twenty years of *reclusion*, with the accessory penalties of temporary absolute disqualification in its maximum degree and subjection to the vigilance of the authorities during the time serving the sentence, and for an equal period after it has been served, to indemnify the heirs of each one of the deceased in the sum of P1,000, Philippine currency, without subsidiary imprisonment, and to pay the costs in both instances, one-half each. Let the case be remanded to the court of origin with a certified copy of this decision and of the judgment that shall be rendered in compliance herewith. So ordered.

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