

[G.R. No. 1692. January 18, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ADRIANO PERDON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The defendant is charged with the crime of murder committed on the person of Gregorio Ugalde, and the Court of First Instance found him guilty of homicide and sentenced him to seventeen years and four months of *reclusion temporal* and the accessories and to pay P1,000, Philippine currency, to the heirs of the deceased, and the costs.

The guilt of the accused has been plainly demonstrated in the record. A witness was present when the accused was inflicting blows with a bolo upon the deceased; another saw him with a blood-stained shirt a moment after the event; and, finally, another witness saw stains of blood on his body, head, hands, and feet when the former returned to his house on that occasion. This last witness states further that the accused then said to his wife and to him that he had killed Gregorio Ugalde, enjoining them not to tell it to anybody. The same statement was made by the accused to another witness a week later, telling him confidentially that he had killed the said Ugalde.

The motives which seemed to have promoted the accused to commit the crime were the illicit relations which the accused had with the deceased's wife, as affirmed by a witness. This appreciation is corroborated by the fact that the accused was seen in the company of the said wife by a witness of the prosecution shortly after the execution of the crime.

This very fact accounts for the attitude adopted by the said wife of the deceased testifying on behalf of the accused and trying to charge two unknown parties with the killing of her husband, evidently for the purpose of saving the defendant. On account of the foregoing statement we can not give any credit to the testimony of this woman. There is, moreover, a detail which shows the falsity of her statement. She says that when her husband was killed no one else was with him but herself and her two infant sons, whereas a witness also saw the defendant, Adriano Perdon, accompanying them on that occasion.

The alibi established by the latter lacks importance if it is considered that he only called his own wife as a witness. And even she contradicts him in an important point of his statement. In truth, when the accused was placed on the witness stand he said that from the early hours of the morning until noon of the day in question he was on a farm of his property together with his wife and his daughter, named Fausta, engaged in scaring away locusts. Well, then, according to his wife, only herself and the accused were there; it was not therefore true that his daughter Fausta was there also.

The prosecution in this instance holds that the facts in the case should be considered as constituting murder, owing, in his opinion, to the fact that the crime was committed with the concurrence of the qualifying circumstance of treachery (*alevosia*).

The evidence in the records does not justify this conclusion sufficiently. The only witness who saw the commission of the crime from a certain distance states nothing more than that when he turned his face at the cries of the deceased's infant sons who were with the latter, he saw the defendant inflicting blows with a bolo upon the said deceased, and he then hastened his steps lest the defendant should also kill him. Neither this witness nor any other gives any particulars whatever as to the manner in which the aggression was made, nor how the act which resulted in the death of the deceased began and developed; and this being the case, it can not be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that the accused had employed means tending to insure its

success without any danger to his person, which constitutes treachery (*alevosia*) as denned by the Penal Code. The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and can not produce the effect of aggravating the condition of the defendant.

Neither is the fact that one of the wounds of the deceased was in the back conclusive enough to establish that supposition in this concrete case; the deceased having received several wounds, it can not be known which one of them was the first inflicted by his aggressor, and the one in the back might have possibly been, the last inflicted for the purpose of finishing more quickly and at once with the deceased, or it might have been inflicted by accident during the course of the fight, pressed by the circumstances of the same, in the possible event, since there is no evidence to the contrary, that a fight really took place between the aggressor and the deceased before the latter succumbed in consequence of the wounds which he received.

For the reasons above stated, we consider the qualification of murder made by the court below of the offense charged in the complaint according to law, as well as the penalty imposed upon the defendant in the judgment below.

By virtue thereof, we affirm the said sentence in all its parts with the costs of this instance to be charged against the defendant. So ordered.

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