

[ G.R. No. 1611. March 13, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MODESTO CABAYA CRUZ ET AL., DEFENDANTS AND APPELLANTS.**

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

**ARELLANO, C.J.:**

The judgment has been rendered against Modesto Cabaya Cruz and Geronimo Pedro. Casiano Graciano, who was charged in the complaint, has been eliminated from the case. The judgment has become final as regards Geronimo Pedro on account of his not having appealed there- from, and as regards Modesto Cabaya Cruz this case is brought here *en consulta* on account of the death penalty imposed upon him.

The complaint charged murder. According to it, the crime was committed with treachery and known premeditation, accompanied by the aggravating circumstances of uninhabited place, abuse of confidence, and use of craftiness and fraud. The crime consists of the killing of Frank Helm by Modesto Cabaya Cruz. The following conclusions of facts which appear in the judgment conform to the proofs, except in one detail:

(1) That the death of Frank Helm was caused by a gunshot which pierced his heart, the bullet coming out of the back.

(2)

That the two defendants and several more, among whom was Casiano Graciano, went to the house of Frank Helm apparently looking for work, and the latter gave them food and tools and sent them to work in his mines on the day of the occurrence.

(3) That on that day

Modesto Cabaya Cruz remained in the house with Helm while his companions went to work in the neighborhood of the mine.

(4)

That Modesto Cabaya Cruz had in his possession a gun, and remained behind the house where the deceased lived; he was the one appointed to hunt some wild pigs for the meal of the workmen.

(5) That

the workmen had scarcely gone to work when a gunshot was heard in the direction of the house and where Modesto Cabaya and the other were. For this reason Casiano Graciano, who was one of the workmen, went to the house together with two other men to see what had happened, and passing in front of it he saw the defendant Modesto Cabaya Cruz and his companion, Geronimo Pedro, ransacking the house.

(6) That

Modesto Cabaya Cruz had gone to the mountains under the pretext of looking for gutta-percha; and that he gave out the impression that his motive in going to the mountains was to discharge a commission, although it is true that he at first; did not say what the commission was, but when he came back he said to one of the witnesses that the commission was to kill the American miners. The following conclusions are also in accordance with the law:

(1)

That although it has not been fully proven that the defendant Modesto Cabaya Cruz was the one who had fired the shot by which Frank Helm was killed, yet the circumstances very conclusively indicate that he, and only he, is the sole author of the crime.

(2) That the

circumstance of premeditation was proven when he states that some days previously he had gone to the mountains with the commission of

killing  
the Americans.

The second of these two conclusions of law is well formulated. The criminal purpose which Cabaya had when he went to the mountains constitutes known premeditation and in this case is a circumstance qualifying the crime of murder. As to the first conclusion of law, however, the consideration of the aggravating circumstance of treachery (*alevosia*) is not well founded, because it has been affirmed that it is not proven that Modesto Cabaya Cruz was the one who had fired the shot. That is to say, there is no proof as to how the shot which killed Helm was fired, and it is the long-established doctrine of criminal law and jurisprudence that when there is no proof to justify the manner in which the crime was committed it can not be insisted that the circumstance of treachery was present.

The facts set out in the fourth conclusion of fact, to the effect that Modesto Cabaya Cruz remained behind the house where the deceased lived, is not correct. The fact of Cabaya having simulated friendship and desire for work, together with the companions who went with him, and the fact that he received food and work immediately upon being accepted by the Americans to work in the mines, is not, as stated in the judgment, a degree of treachery, according to law, sufficient to constitute the aggravating circumstance of abuse of confidence. It may, however, be argued as unworthy conduct and ingratitude, but not as abuse of confidence. It is necessary first to show what has been the confidence granted or given in order to determine whether there was or was not an abuse of it, and in the present case there is nothing to show what the confidence given or conceded to Cabaya was, that could facilitate the commission of the crime.

As to the other aggravating circumstances considered in the judgment, only the one of the crime having been executed in an uninhabited place can be considered, for, although it was in the miners' house, there was a storehouse near it where Cabaya and his

companions slept the night previous. It, however, does not appear that there were any more buildings or houses, and of course at the time of the occurrence Cabaya's companions were absent from the house, and he was in or near the house with Frank Helm in reality making it an uninhabited place. But against this aggravating circumstance must be weighed that of article 11 of the Penal Code, which we can do no less than take into consideration, the results of the investigation made by the court as to the belief among those people that the general mortality was not the result of the cholera, but of intentional poisoning, which at first seemed to be the cause of the death of Frank Helm, charged against Eduardo Alvarez and the municipal president, Isidro Medel. These imputations are refuted by the judge in one of his conclusions.

With these considerations, the penalty is imposed in the medium degree, and therefore we sentence Modesto Cabaya Cruz to *cadena perpetua*, to indemnify the heirs of the deceased in the sum of P1,000, without subsidiary imprisonment in case of insolvency, and with the costs in both instances. So ordered.

*Torres, Mapa, Johnson, and Carson, JJ., concur.*

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