

[G.R. No. 3038. October 02, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CENON ANGELES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the 1st of September, 1905, a written complaint was filed by the provincial fiscal of Cavite, charging the defendants, Cenon Angeles and Severino Mariano, with the crime of murder, in that on or about the 16th of August, 1905, with premeditation and treachery, they killed one W. Rogers in a boat in the bay off Sangley Point, near Cañacao, in the said province, by striking him with clubs and with the oars of the boat, and thereafter threw his body into the sea, which was found four days later on the beach of the Isthmus of Rosario, in said province.

The court, after hearing the evidence introduced at the trial had upon the said complaint, entered judgment on the 20th of the same month, sentencing the defendant Cenon Angeles to the penalty of death and Severino Mariano to four years' imprisonment (*presidio correccional*), both to indemnify the family of the deceased in the amount of 5,000 pesos and to pay the costs. The case was thereafter sent to this court for review of the sentence of death thus imposed by the court below. The defendant Severino Mariano did not appeal.

It appears conclusively from the evidence of record that W. Rogers, a customs broker and a resident of this city, went to the city of Cavite, where he remained with several friends until after 9 o'clock on the night of the 16th of August, 1905; that it being necessary for him to be in the city of Manila at 7 o'clock next morning, he decided to return the same night, and accordingly hired a boat, the property of Andrea Lorenzana, rowed by the defendants Angeles and Mariano; that when they arrived Off Sangley Point, near the middle of the bay, Angeles, who was at the bow, struck the unfortunate Rogers, who was then lying on the bottom of the boat near him, a severe blow with an oar; that they immediately proceeded to

take his watch, pocketbook, and keys which they found in his pocket, and then threw his body into the sea, returning immediately thereafter to the port of Cavite; that when they landed they informed those who were there present that Rogers had landed at Cañacao.

On the 17th of August, the day following the evening upon which the murder was committed, the deceased Rogers was missed in the city of Manila, all efforts to locate him having failed. Three days later, however, a body was found on the beach of the Isthmus of Rosario in Cavite and identified as that of Rogers by the shoes and socks he wore, which were very similar to those left by him. at the New Oriente Hotel, where he lived in Manila, and by marks on his body.

It was also proved that one Saturday afternoon after the recovery of the body of the deceased, and while E. Gill, assistant chief of police of the city of Cavite, was at the dock of that port, he noticed that a man, who was later found to be Cenon Angeles, took a watch out of his pocket and made a motion which attracted his attention, whereupon he approached him and noticed that it was a gold watch, and inquiring of this man where he got it, the latter stated that it belonged to a cousin. The police officer not being satisfied with this reply, took the watch and made an investigation as to where the defendant got the same. Several keys were found at the house of this man, Angeles, among them a duplicate of the key to Roger's post-office box in Manila. It was further found that Angeles and Severino Mariano were the parties who took the deceased in the boat across the bay on the evening in question.

There is no doubt that the body found by the authorities was that of the deceased Rogers, and that the watch and keys found in the possession of the defendant Angeles belonged to the said Rogers.

These facts were fully proved at the trial. They constitute the crime of robbery with homicide or murder, as defined and punished in paragraph 1, article 503 of the Penal Code, there being no doubt that W. Rogers was killed on the night in question, aboard the boat in which he intended to return to Manila, for the purpose of robbing him of his personal property, as it appears from the record.

The court, however, confining itself to the concrete fact of the killing of the deceased, which according to the complaint constituted the crime of murder, found that such crime had, in fact, been committed, it having been proved that W. Rogers was assaulted while he was lying on the bottom of the boat resting and was unmindful of the fact that he was in danger

of being killed by the two men in the boat, who were absolutely unknown to him, and who voluntarily undertook to take him across the bay to Manila.

There is no evidence of any previous ill feeling between the defendants and the deceased which could have caused the assault, nor that any fight between them ensued after he was first struck. Therefore there is no doubt that the deceased was absolutely defenseless, lying on the bottom of the boat and probably half asleep, and that he had no chance to defend himself from such a sudden and unexpected assault, nor even an opportunity to get up. The crime committed by the defendants should consequently be qualified as murder, the killing having been done with treachery. This requires the imposition of the penalty provided for the crime in article 403 of the Penal Code.

The defendants, in order to commit the crime, employed means, manners, and forms which tended directly to insure its commission without any risk which might have arisen from any defense the deceased might have made. (Par. 2, art. 10 of the Penal Code.) There is no doubt that the deceased Rogers was treacherously and cowardly killed.

The evidence of record against the defendant Cenon Angeles, the only one to whom this decision relates, shows conclusively and beyond a reasonable? doubt that he was the author, by direct participation, of the crime in question of which he had been fully convicted.

The statements voluntarily made by the defendants in the presence of certain members of the police force of Cavite and Manila, there being no evidence to the effect that any unlawful means were employed to secure such statements, and the testimony given at the trial by the other defendant, Severino Mariano, notwithstanding the unsupported allegations made by both of them, show conclusively that the defendants struck the deceased with their oars and that after the latter died, or had at least lost consciousness, they threw him into the sea, where he would doubtless have been drowned had he not been dead. The fact that the watch and the keys of the deceased were found in the possession of the defendant, Cenon Angeles, there being among such keys one belonging to his post-office box which, according to the testimony of H. E. Albert, an employee of the Bureau of Posts, was used by the deceased during his lifetime, taken together with the other evidence in the case, shows the guilt of the defendant Angeles.

There should be taken into consideration in this case as being present in the commission of the crime the aggravating circumstances of nocturnity and that of having been committed in an uninhabited place (par. 15, art. 10 of the Penal Code), the defendants having the

advantage of the stillness and darkness of the night, almost in the middle of the bay, far from the beach, and from the vessels then anchored in the harbor, and on board a boat where there was no hope for help, and from which it was impossible to escape except by jumping into the sea and running the risk of drowning. Premeditation can not be considered, because it does not appear that the defendants had deliberately planned beforehand the killing of the deceased. The proposition which the defendant Severino Mariano claims was made to him to kill the deceased was nothing but an expression of his own determination to commit the crime, which is entirely distinct from the premeditation which the law requires must be well-defined and established to aggravate the criminal liability of the defendant.

There is no extenuating circumstance to be considered and the penalty prescribed by law should be inflicted in its maximum degree.

We accordingly affirm the judgment of the trial court of the 20th of September with the costs of this instance against the defendant Cenon Angeles, the defendants to pay the indemnification required by the court below, jointly and severally, and in case the penalty of death is commuted he shall suffer the accessory penalty prescribed by article 53 of the Penal Code. After the expiration of ten days from the date of final judgment, let the case be remanded to the Court of First Instance for execution. So ordered.

Arellano, C. J., Johnson, Carson, Willard, and Tracey, JJ., concur.
