7 Phil. 120

[G.R. No. 2923. December 04, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO PALMADRES , DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

The complaint in this case is as follows:

> "That on or about the 29th day of May, 1904, in the barrio of Isabang, of the municipality of Lucena, Province of Tayabas, P. I., the said Pedro Palmadres, and two others, armed with bolos, robbed one Jose Alconaba and a certain boy of a small sum of money, and that for this purpose they killed the said Jose Alconaba."

As to the two companions of the defendant Palmadres, it appears that Florentino Desembrana was found dead on the same day in question a short distance from the body of the deceased Jose Alconaba, the bodies being identified by the *cedulas* that were found upon their persons, Desembrana's head having been severed from his body.

The boy referred to in the complaint was a nephew of the deceased, Alconaba, named Licerio Alconaba, a student of 16 years of age. He testified that on the morning of the day in question he and his uncle, while together, were attacked, taken to the mountains, tied to a tree, blind-folded, and robbed of the money they had in their possession, amounting1 to 2 *reales* and 4 *cuartos*; that they managed to free themselves, and while on their way to Lucena they were again attacked hj the defendants; that his uncle who carried a pocket-knife resisted the attack, while the witness hid himself in the grass, and then ran to Lucena to notify the police; and that when he returned to the place in question, accompanied by the police, they found his uncle and one of the robbers dead on the ground.

The evidence of the prosecution against the defendant, Palmadres, although circumstantial, is convincing, it being based upon facts which were fully established by the testimony of Licerio Alconaba, Maria Espinosa, the wife of the deceased Desembrana, Lope Capistrano, and Carlos Capistrano, and his identification by an old man, Catalino Sevilla, who had about the same time been attacked by the same three individuals and who, like Alconaba, was tied to a tree in the mountains and robbed of 4 pesos, he having been found in this position by the police who were called by Licerio Alconaba.

The findings of the court below do not seem to be in conflict Avith the evidence, nor do we find therein any error either of law or of fact. The court below convicted the defendant of the crime charged in the complaint—to wit, robbery with homicide—under paragraph 1, article 503 of the Penal Code, committed with the aggravating circumstances of *alevosia* and *despoblado*, and sentenced the defendant to death.

The Attorney-General, in his brief, classifies the crime in the same way, but is of the opinion that the aggravating circumstance of *alevosia* is not present. He recommends, however, that the penalty of death be sustained under rule 1, article 80 of the Penal Code, for the reason that the commission of the crime was accompanied by another aggravating circumstance as found by the court below which was established by an inspection made by the court itself of the place where the bodies were found.

There may be some doubt as to whether the defendant in this case can be convicted of the complex crime of robbery with homicide, in view of the doctrine laid down by the supreme court of Spain in its judgments of the 23d of May, 1899, and the 19th of October, 1894.

In the first judgment above referred to that court said:

> "The nature of the crime of robbery as defined in article 515 of the code (502 of the Philippine Code) implies violence or intimidation of the persons or the employment of force upon property, as the case may be, at the time of the commission of the crime or in order to facilitate its commission, and it would not be proper to consider these circumstances after the criminal had fully accomplished his purpose, whatever the extent of his acts or the nature of the crime committed may have been.
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> "Article 516 (503 of the Philippine Code) refers to robberies committed with violence or intimidation of the persons and punishes such offense with a more or

> less severe penalty according to the importance or consequences of these circumstances upon the theory that the same were present at the very time of the commission of the robbery. The phrase *on account or on the occasion of the robbey*' employed in the code not having any other meaning."

And in the second judgment above cited the court said:

> "It can not be said in the case at bar that the crime of homicide was committed on account or on the occasion of the robbery, as the latter offense had already been consummated when the killing occurred. Gonzales killed Perez when he went back to the house robbed, for the purpose of getting a shotgun which he had left there. The existence of the juridical relation either direct or indirect required by the nature of the complex crime defined and penalized in article 5.16, case 1 (503, par. 1 of the Philippine Code) is not clearly established by the evidence."

But in our opinion this doctrine is not applicable to the case at bar, where a direct relation between the robbery and the killing has been sufficiently shown. In. the two cases referred to in the above-quoted decisions of the supreme court of Spain it appears that after the robbery had been completed without any difficulty or further consequence, one of the robbers committed an act which had not the slightest relation to the robbery, which, as above stated, had already been consummated. In the first case it developed that one of the robbers returned to the place where the robbery had been committed for the purpose of closing the gate of a corral from which the cattle had been stolen, in order that the remaining cattle might not get out. He was seen by the man in charge of the cattle, who, up to that time, had not noticed that any of the cattle had been stolen. He upbraided the robber, and the latter assaulted and killed him. In the second case the robber went back to the house in order to get a shotgun which he had left there and met a person who reproached him, whereupon a fight ensued in which the latter was killed. The return of the robber in order to close the gate of the corral in the first instance, and in order to get the shotgun which he had forgotten in the second instance, were acts absolutely independent of the robbery, whereas in the case at bar the robbers, while still on the ground, as soon as they noticed that the deceased, Alconaba, and the boy had freed themselves, again attacked them with their bolos, killing one of them, one of the robbers having been also killed, and his head severed from his body and hid away, probably for the purpose of preventing

identification. On account of and on the occasion of the robbery and in order to conceal the same the crime of homicide was committed.

The judgment of the supreme court of Spain bearing upon the case at bar is the one of the 21st of August, 1873, in which the robbery and the killing, according to the appellant, should not be considered together as constituting one single but two separate acts. This was a case where a priest was robbed of the money which he carried with him at the time, and tied to a tree. One of the robbers fearing that he was recognized by the priest turned back, shot him, and cut his throat with a razor. The supreme court said: "The two crimes of robbery and homicide herein charged constituted one single offense and the court below in so holding committed no error upon which this appeal might be sustained."

The judgment of the court below is accordingly hereby affirmed, except in so far as it is therein declared that the crime was committed with the aggravating circumstance of alcvmia, as to which there is no evidence to support such a circumstance, the defendant to pay the costs of these proceedings and to indemnify the heirs of the deceased, Alconaba, in the sum of P1,000, Philippine currency. After the expiration of ten days from the rendition of final judgment the case will be remanded to the court below for execution. So ordered.

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

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