

7 Phil. 457

[ G.R. No. 3176. February 09, 1907 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. C. M. PENDLETON,  
DEFENDANT AND APPELLANT.**

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

**TRACEY, J.:**

This is a conviction for *asesinato* in killing a policeman named Leoncio Unabia in San Nicolas, Cebu, in the early hours of the morning of December 1, 1905. The defendant, a lieutenant of Constabulary in command at the Parian barracks at Cebu, being intoxicated, borrowed a *carromata* which was without lights from a friend and was found wandering about the streets therein by a municipal policeman named Almonte, who at his request drove him to the barracks. As to subsequent occurrences we have not the benefit of his recollection and must rely on the testimony of the witnesses for the prosecution and the circumstances of the case.

Three men of his command testify that they witnessed the occurrence and they relate that at the barracks he ordered out the guard and selected them with a fourth man not produced at the trial and ordered them to accompany him in the *carromata*, one Ruiz, from whom he had snatched his gun, acting as driver. As they proceeded he twice discharged the gun which he held, the ball passing through the roof of the vehicle. These discharges were heard by four municipal policemen who ordered the party to stop because they carried no lights. The policemen followed along until a stop was made near a corner when they came up, two on each side of the *carromata*. Asked by the defendant who they were, the deceased answered that he was a municipal policeman, and at this point there is some difference of recollection of the witnesses as to his precise reply and as to the distance at which he stood from the *carromata*. Some of the witnesses state that he was struck by the defendant with the barrel of the gun, while others do not seem to have observed any such act. They agree that he then passed on to the rear and started to cross the street when the defendant, who was sitting on the right side of the *carromata*, with his left foot on the breast of one of his men named

Gimnasi, whom he had been abusing, turned to the left and thrusting his gun out of the rear window, fired, hitting Unabia, who immediately fell. In these particulars the soldiers are corroborated by two of the three surviving policemen and in the main by two neighbors who heard the shots. The three policemen fled, as did also Gimnasi. Directed by the defendant, Ruiz obtained a light from a neighboring house with which they together viewed the body of Unabia, lying to the rear of the *carromata*, and finding him dead, the defendant with his three men drove back to the barracks. There obtaining the corporal of the guard with two additional men, he returned to the body and directing it to be placed in the *carromata*, took it to the office of the chief of police and he thereafter returned to the barracks.

The defense criticises this testimony on two different grounds; the first that the witnesses do not agree in various particulars, and the second, that their general conformity, together with an admission that they had talked it over among themselves, indicates a fictitious story. The discrepancies in this testimony are only such as naturally occur in the accounts of men who in excitement witness rapidly passing events of moment. A perfect agreement of recollection or of narrative in such circumstances is impossible and if it existed would discredit their story.

The theory of a fictitious narrative presupposes a conspiracy, not only of the three Constabulary soldiers, but also of two policemen, of the neighbors, of the municipal president, and of other witness—of so many persons that some of them could hardly fail to betray it. The absence from the trial of one of the Constabulary and one of the policemen would be significant were there evidence that there was any special reason for not producing them, or that the defendant could not have called them. No effort is shown on his part to find either of them.

The chief reliance of defendant's counsel seems to have been on the testimony of these men, apparently locating the vehicle with relation to the neighboring houses at a point fully 20 feet from the spots of blood where the body had lain, while they swore that the deceased had fallen only about 3 feet away from their stopping place. This was strongly brought out on a view of the spot by the trial court after the closing of the testimony, when the *carromata*, placed 3 feet from the blood spots, did not correspond with what the witnesses had told of the near-by houses and lights. Considering, however, the condition of the occurrence, the excitement of the drive with a drunken superior who was punishing his soldiers and shooting in the air, the obscurity of the night, the killing of the policeman, and their own danger, these men can not be held to a rigid accuracy as to distances. Twenty feet in relation to barely visible objects along a street at nighttime is not a considerable distance,

and an error to this extent, if it existed, would not suffice to destroy the credibility of the witnesses.

The other circumstances urged by the defense are of minor importance. One Montero swore that after daylight he found the revolver of the deceased several yards from the body, indicating that the policeman had not been shot near where he lay, but had been carried thither. In this he was contradicted by testimony that the revolver was under the body and by the fact that the soldiers who examined the ground with a light before daybreak had not noticed it.

Expert testimony was given that the .45-caliber ball fired from a Springfield carbine at a distance of 3 feet would have an explosive effect on the human body, whereas Unabia's wound was clean cut. It was admitted, however, that an inferior powder or a light charge would do away with the explosion, and nothing was proved as to the nature or quantity of the powder in the cartridge; nor is the distance of 3 feet estimated by the witnesses a certain one.

A Constabulary shoulder strap, together with two empty shells found near the blood marks, were presented as proof of a fruitless attempt to implicate the accused in the crime. But we have nothing to reveal to us whether the object of placing them where they were found was to cast suspicion on the defendant or, on the other hand, to justify the theory of a conspiracy against him. This false evidence may have been devised either in his favor or to his prejudice.

On the whole there is nothing to offset the very strong proof of the prosecution in this case. The term of four weeks from arraignment of the accused and three weeks from his attendance with counsel was ample for preparation for the trial, which was conducted with deliberation. The courts rightly refuse to unnecessarily delay the administration of criminal justice.

The method of the execution of the crime in firing upon the victim, who, unaware, had turned and was walking away from the perpetrator, involving no risk to the latter, qualifies it as committed with *alevosia*, constituting murder (*asesinato*). The drunkenness not having been proved to be habitual, is an extenuating circumstance, calling for punishment in the minimum grade of the crime.

The trial court first imposed a sentence of *cadena perpetua*, which was afterwards changed to *cadena temporal*, with imprisonment for twenty years, and indemnity of 3,000 pesos and

costs. This sentence is reduced to a term of imprisonment for seventeen years four months and one day and 1,000 pesos indemnity, with the costs of both instances. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case remanded to the court below for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.*

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