

7 Phil. 559

[G.R. No. 3255. February 27, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CANDIDO ULAT,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The information charges the accused with the crime of murder in that, on the night of the 8th day of January, 1906, he slew one Basilia Casili, in a deserted place, in the town of Calapan in the Province of Mindoro, with treachery, premeditation, and needless barbarity (*ensañamiento*).

The deceased was the *querida* or concubine of the accused, who was a Constabulary soldier, and at the time of her death was in the last month of pregnancy. Some months before the commission of the crime, the commanding officer of the company of the accused discovered the existence of these illicit relations and warned the accused that they must cease; later when it appeared that the woman was with child, he called the accused before him and threatened him with legal proceedings unless he consented to a marriage. The accused denied that the woman was with child by him, but finally under threat of criminal prosecution, reluctantly promised to marry her when the child was born, though it appears that at that time he was secretly paying court to another woman whom he was trying to induce to marry him, and that though he was living with the deceased, he was not on good terms with her and had openly quarreled with her on the streets of Calapan.

On the morning of January 9, 1906, the body of Basilia Casili was found at a deserted spot on the outskirts of the town of Calapan. An autopsy performed by the medical officer stationed there showed that she had come to her death as the result of several fatal wounds inflicted with a clubbed rifle, or other weapon of similar size and shape, as appeared from the contusions on the head, neck, and body; two smaller lacerated wounds within the contused space on the head appeared to have been caused "by the sharp edges of a gun or

similar instrument," and the distance between these smaller wounds and their lacerated character was such that they would necessarily result from a blow inflicted with the clubbed rifle of the accused should the blow fall on the side to which is attached the sight and breech-loading mechanism.

On the day following the commission of the crime the accused's rifle showed evidence of having been recently washed and cleaned with sand and water; and a screw was broken in the mechanism controlling the trigger in such a way as to lead the commanding officer of Constabulary in Mindoro, who had had fifteen years' experience in handling and inspecting rifles, to believe that it could have been caused in no other way than in the use of the weapon in striking a blow. This rifle had been inspected the day before the commission of the crime and found to be in good condition, and was found in the possession of the accused on the following morning.

The deceased went to bed at the usual hour on the night of the crime but secretly left the house where she was living about 12 o'clock. On the day previous to the commission of the crime the accused asked the husband of the woman in whose house the deceased lived not to let his wife accompany her in the event that she left the house. The accused, who was on duty as a sentinel, was relieved from post at 12 o'clock midnight, and was given permission to be absent from the guardroom for five minutes. He was seen leaving the barracks a few minutes later and did not return for nearly two hours when he was seen coming from the direction where the dead body was discovered on the following day.

No witnesses were called for the defense, and the foregoing facts which were fully established by the witnesses for the prosecution are, in our opinion, sufficient to sustain a finding that the deceased came to her death unlawfully at the hands of the accused, and "in a deserted place." The trial court, however, was of opinion that the crime was committed with treachery (*alevosia*) and found the accused guilty of murder. We do not think that the fact that the crime was committed with treachery was established beyond a reasonable doubt, and this court has frequently held that qualifying and aggravating circumstances before being taken into consideration for the purpose of increasing the degree of the penalty to be imposed must be proved with no less certainty than that with which the commission of the principal offense is established. (U. S. vs. Barbosa, 1 Off. Gaz., 138; 1 Phil. Rep., 741; sentence of the supreme court of Spain, dated November 4, 1878.)

"There is treachery when the culprit commits any crime against persons,

employing means, methods, or forms in the execution thereof which tend directly and specially to insure it, without risk to the person of the criminal, arising from the defense the injured party might make." (Case 2, art. 10, Penal Code.)

There were no eyewitnesses to the commission of the crime and there was nothing in the nature of the wounds inflicted which would justify a finding that the accused inflicted them with "treachery" as that word is defined in the foregoing citation.

The trial court further found that the crime had been committed with "premeditation and vindictiveness," but we are of opinion that while there are strong grounds to suspect that the accused left the barracks and went to find the deceased, with murder in his heart, yet the fact is not fully established, and, on the evidence of record it is impossible to say with certainty at what time he first resolved to take her life, or that the tragedy may not have been the result of a renewal of their quarrel suddenly arising during his final interview with her. The mere fact that a number of wounds were found upon the body of the deceased is not sufficient in itself to establish the fact that the crime was committed "with vindictiveness by deliberately and inhumanly increasing the suffering of the person attacked."

The judgment and sentence of the trial court should be and are hereby reversed, and we should find and do find the accused guilty of the crime of homicide included in the greater crime of murder charged in the complaint, and in view of the fact that the crime was committed "in a deserted place," which is one of the aggravating circumstances mentioned in chapter 4 of the Penal Code, we should impose upon the accused the penalty of *reclusion temporal* in its maximum degree.

We therefore sentence the said Candido Ulap to twenty years imprisonment (*reclusion temporal*) with the accessory penalties prescribed in article 59 of the Penal Code, to the payment to the heirs of the deceased of the sum of 1,000 pesos, and to the payment of the costs of proceedings in both instances. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the record be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

