

7 Phil. 726

[G.R. No. 3290. March 09, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BLAS RABOR, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

A Chinaman named Chiquito employed the accused to murder another Chinaman named Julian Veloso and promised him a considerable sum of money for the commission of the crime.

The accused undertook to kill Veloso and employed one Pedro Aron to assist him; on the evening of the 30th of November, 1904, they hired a boatman named Benedicto Sumagan to row them from the town of Cordoba, where the accused lived, to the town of Cebu; they landed at Cebu shortly after sunset, went together to Veloso's store, which was located on an important business street, and, finding him seated on a bench in front of his store, one of the two, without giving the slightest warning, stabbed him in the back with a dagger and killed him instantly.

They left the place immediately and walked quietly down the street toward their boat, but, their fears of capture having overcome their prudence and cunning self-restraint, they broke into a run, and, having reached the boat, ordered the boatman to take them home with all possible speed.

It does not appear from the evidence that the accused struck the fatal blow with his own hand, and the trial court giving him the benefit of the doubt, held that he did not do so and found him guilty of the crime of murder but declined to take into consideration as aggravating circumstances the commission of the crime with treachery and deliberate premeditation, and imposed the penalty of life imprisonment instead of death as required by law where there are several aggravating and no extenuating circumstances.

We are of opinion, however, that the trial court erred in failing to take into consideration all the aggravating circumstances. The judge appears to have proceeded on the theory that the accused, having induced Pedro Aron to strike the blow, was a principal in the commission of the unlawful killing of the deceased, but that the aggravating circumstances of physical nature marking the actual execution of the deed should not be imputed to him, and in support of his opinion he cites the case of the United States vs. Mijares et al.^[1] (2 Off. Gaz., 507).

In that case, however, the accused, who procured the commission of the crime, were absent when it was committed, but in the case at bar the accused was present and took a direct part in its actual physical execution, whether he personally struck the fatal blow or not, and all the attendant physical circumstances, aggravating or extenuating, which marked the commission of the offense should be taken into consideration in imposing the penalty prescribed by law.

The guilt of the accused of the unlawful killing of Julian Veloso, with treachery, with deliberate premeditation, and for a price or promise of reward, is conclusively established, and we find no extenuating circumstances.

It has been suggested that the commission of the crime with deliberate premeditation and "for a price or promise of reward" should not be treated as two distinct aggravating circumstances, because it is said that the latter necessarily implies the former. This contention, however, can not be sustained in this case and is fully answered by the language of the supreme court of Spain in its decision of March 3, 1885:

"Considering," it says, "that one or the other of the circumstances (treachery or premeditation) is present, either one of them serves to qualify the crime of assassination, and the other to determine the penalty according to the constant jurisprudence of the supreme court, and it further appears that the assassination was committed for *a price*, without there existing *any incompatibility between this circumstance and that of premeditation*, because, if it is certain that by the general rule the first implies the second, it is not less certain that the latter may be present without the former, and in the present case, after the agreement of the criminals as to the price, they exhibited in their acts a studied and insistent tenacity in accomplishing the criminal object they had proposed." (Viada, Vol. I, p. 263.)

We therefore should, and do hereby reverse the judgment and sentence of the trial court, and find the accused, Blas Rabor, guilty of the crime of murder, he having unlawfully taken the life of Julian Veloso, with treachery, deliberate premeditation, and for a price or promise of reward, without extenuating circumstances, and we should, and do hereby, sentence the said Blas Rabor to be hanged by the neck until he is dead, to the payment of an indemnity of 1,000 pesos to the heirs of the deceased, and to the payment of the costs of these proceedings in both instances. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the court from whence it came for proper action. So ordered.

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

^[1] 3 Phil. Rep., 447.
