

44 Phil. 271

[G. R. No. 19572. December 29, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
ALFONSO FACTURAN ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

VILLAMOR, J.:

The appellants were prosecuted in the Court of First Instance of Oriental Negros for the crime of murder committed, according to the information, as follows:

“That on or about May 11, 1922, in the municipality of La Libertad, Province of Oriental Negros, P. I., and within the jurisdiction of this court, the said accused did wilfully, unlawfully and criminally, with evident premeditation, treachery and cruelty, and cooperating with one another, assault and kill Henry Gardner by means of sharp weapons, to wit, hunting knife, bolos and poniard. Contrary to law.”

Trial having been held, the court below found the accused guilty of the crime of homicide, and considering the aggravating circumstance of abuse of superior strength, condemned each of them to the penalty of seventeen years, four months, and one day of *reclusion temporal*, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the action.

Appellants' counsel assigns three errors, to wit, that the court erred (a) in giving credence to the testimony of the two principal witnesses for the prosecution, Cirilo Reela and Teodoro de la Cruz; (b) in holding that “the nature of the wounds of the deceased very strongly supports the theory that they had been inflicted by several persons with different kinds of weapons;” and (c) in convicting the accused and appellants.

A careful examination of the evidence before us shows that the accused Alfonso Facturan

and Restituto Garrupa had a dispute with the deceased over the ownership of a piece of land planted with corn in the sitio of Lunasan, municipality of La Libertad, Oriental Negros; that the dispute ended in a fight in which the said accused tried to wrest from the deceased Gardner the rifle or shotgun which he was then carrying. While the two accused, Garrupa and Facturan, were wrestling with the deceased, in an attempt to secure his shotgun, the other two accused, Sabanal and Dumahil, who were Facturan's laborers, assisted them by holding Gardner's arms and, at the instant Gardner raised his arms with the shotgun in his hands, the accused Facturan thrust a knife or poniard, which he had taken from the belt of the accused Sabanal, into Gardner's stomach; that Restituto Garrupa also wounded Gardner on the left side of his chest with a kitchen knife which he was carrying; that the accused Dumahil also wounded the deceased with the *bolo* which he carried; that as a result of the eleven wounds which Gardner had received from the accused, he fell to the ground, dead, covered with his own blood.

These are the facts established by the testimony of the witnesses Cirilo Recla and Teodoro de la Cruz, corroborated by the accused Alfonso Facturan himself.

We note some slight discrepancies in the details related by said two witnesses; but there can be no doubt that they agree in that the four accused and appellants participated directly in the affray which took place on the day in question, and which resulted in the death of Gardner. The accused Facturan himself testifies that, when Garrupa arrived at the place of the affray, the latter assisted him in trying to wrest the shotgun from the deceased; that the other accused, Sabanal and Dumahil, also took part, although he had no distinct recollection of the part of Gardner's body by which they held him, stating further that he alone was responsible for the wounds of Gardner, including those inflicted after Gardner had lost possession of his shotgun.

The allegation that the accused were not duly identified by the witnesses for the prosecution is groundless. The two witnesses for the prosecution identified the accused, and if that is not sufficient, we have the testimony of the accused Facturan himself, which in itself is a sufficient answer to this argument of the defense. The defense contends that the testimony of the witnesses for the prosecution is false and incredible. The evidence does not, in our opinion, support this assertion. Even the affidavit of Cirilo Recla, which was presented by the defense as Exhibit 2, in effect, substantially agrees with his testimony given at the trial. In said affidavit this witness states that, besides the two accused who were identified by him at the trial, he saw other persons unknown to him, which is but natural, for the act having, as it must have, taken place under such circumstances as to be noticed by the people of the

locality, it was not improbable that other persons unknown to him had gone there to witness the affray.

As to the nature of the wounds described by Doctor Quiambao who examined the body of the deceased on the morning in question, we are inclined to believe his testimony to the effect that they were inflicted with different weapons, in view of the position, opening and depth of the said wounds.

In view of all of the foregoing, we are of the opinion, and so hold, that the evidence shows beyond a reasonable doubt that the accused are responsible for the death of Gardner.

The information charges the accused with the crime of murder; but the presence of any of the qualifying circumstances of this crime not having been established by the evidence, the Attorney-General recommends the affirmance of the judgment appealed from, convicting the accused of the crime of homicide with the aggravating circumstance of abuse of superior strength. The judgment appealed from being in accordance with the merits of the cause and with article 404 of the Penal Code, the same should be, as is hereby, affirmed with the costs against the appellants. So ordered.

Araullo, C. J., Malcolm, Avanceña, Ostrand, Johns, and Romualdez, JJ., concur.