

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ARSENIO PALACIO, DEFENDANT AND APPELLANT.

G.R. No. L-5386. November 08, 1909

Ponente: MORELAND, J.

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MORELAND, J.:

This case comes before the court en consulta.

The defendant was charged with the crime of assassination (murder). He was tried by the Court of First Instance of the Province of Antique on the 8th day of March, 1909. He was found guilty of the crime charged, with attendant aggravating: circumstances, and sentenced to death.

The facts are as follows:

On or about the 25th day of February, 1909, there was living at a place called Budbudan, in the Province of Antique, one Simeon Tamon, an uncle of the defendant. With him were living his wife, Agustina Martinez; his niece, Tomasa Magrare; and one Rosalia Martinez, the latter having with her there her little daughter, about 8 months of age. These persons were all known to the defendant, most of them being relations of his. On the night of February 25 aforesaid, at about 9 o'clock, one Urbano Dumaraog, a relative of the owner and a cousin of the accused, came to sleep at the house above mentioned. About 10 o'clock that night the woman Rosalia, with her infant daughter, was lying asleep upon the floor, the child reclining on the mother's left arm. Urbano Dumaraog was standing at the table, with his back toward the stairs which led from the room below. Simeon Tamon was sitting near him, his arms on the table and his head bowed forward upon them, probably asleep. His wife, Agustina Martinez, was sitting on the other side of the table, and the niece, Tomasa Magrare, was lying down, but apparently not asleep. The accused, Arsenio Palacio, came up the stairs quietly. He carried in a sheath at his side a war bolo. Reaching the top of the stairs, he was seen by the woman Tomasa Magrare immediately to draw his bolo and inflict a blow upon the neck of Urbano Dumaraog, who, at that moment, was standing with his back toward the accused. The blow was delivered with such force that the victim immediately fell to the floor, dying instantly. The accused then quickly attacked Simeon Tamon and struck him a powerful blow upon the head, which appeared to have instantly killed him, his head falling forward upon the table, almost severed from the body. In the meantime Agustina Martinez had run out of the room and away from the house. The other woman, Tomasa Magrare, on hearing the blow delivered against Simeon Tamon, arose from the floor; the accused struck at her with his bolo, inflicting a wound upon her back. The blow, however, was not serious enough to prevent her from running from the house and hiding. The other woman, Rosalia Martinez, sleeping on the floor with her child on her arm, was aroused by a blow upon her arm and, jumping up, saw and felt blood from the head of her child, and, seeing that the little one had been killed by the blow, dropped it and fled from the house, having received herself, as afterwards appeared, an extremely serious wound in her arm. The accused then took a lamp which was burning in the house and set fire to it in various places. He then escaped. After the house had burned down the charred bodies of. Urbano Dumaraog, Simeon Tamon and the child were recovered and identified.

A careful examination of the proofs adduced at the trial demonstrates beyond any question of doubt the guilt of the defendant.

Counsel for the defendant in his brief admits the guilt of the defendant but urges that the judgment of conviction should be reversed and new trial granted upon the ground that the information in the action accused the defendant of not less than five separate and distinct crimes. It appears, however, that no objection was made to the form of the information during the trial. That question is raised on appeal for the first time. In the case of the United States vs. Perez (2 Phil. Rep., 171), the court held that although the information charged and the proofs adduced established the murder of three different persons, it would be inferred that the judgment of conviction referred to one single murder unless the contrary appeared therefrom, and where no objection was taken at the trial the information and proceedings would not be declared void for multifariousness.

The judgment of the court below is, therefore, affirmed, with costs against the appellant.

Arellano, C. J., Torres and Johnson, JJ., concur.

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