

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CLEMENTE ROQUE, DEFENDANT AND APPELLANT.*G.R .No. 4527. October 09, 1908*

Ponente: TORRES, J.

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In the early morning of the 23d of June, 1904, four armed individuals, one of whom turned out to be Clemente Roque, made their appearance in the neighborhood of the houses of Florencio or Florentino Lobo and Sinforoso Ramos, situated respectively in the barrios of Dau and Santo Domingo, within the limits of Lubao, Pampanga. Pretending to be agents of the authorities, the said individuals ordered the men who were in the said houses to come out, and as the order was repeated with, persistence Sinforoso Ramos left his house together with Alejandro de Guzman and Simplicio Balleza, and Florencio Lobo also came out of his house in company with Sotero Balleza. As soon as Florencio Lobo and Sinforoso Ramos were outside they were seized upon and tied up by the aforesaid individuals and conducted to the fields outside of the town. Clemente Roque was recognized as one of the four individuals; he carried a gun and wore a black shirt and red trousers; the other two, as well as the fourth one, also wore black shirts and carried revolvers. At noon on the same day the headless bodies of Lobo and Ramos were found covered with wounds; they were recovered and taken to the cemetery of Lambac where the body of Sinforoso Ramos was identified by his sister Josefa Medina. It should be noted that Ramos' head was found at a distance of about 38 meters from the place where the body was discovered. Lobo's head has not been found.

In view of the above, a complaint was filed by the provincial fiscal on the 20th of July, 1904, charging Clemente Roque with the crime of double murder; proceedings were instituted and on the 23d of August, 1905, judgment was rendered therein, from which judgment the accused appealed. Owing to the fact that the stenographic notes taken in this case were destroyed in the fire at the government building in Tarlac, this court set aside the judgment above referred to and remanded the case to the Court of First Instance of Pampanga for a new trial. Notwithstanding the opposition raised by counsel or the accused in the court below, his motion was overruled, and the new trial, as ordered by the Supreme Court, was held. The court below entered judgment on the 24th of August, 1907, and sentenced Clemente Roque to the penalty of cadena perpetua, to the accessory penalties, to indemnify the heirs of Florencio Lobo in the sum of P1,000, those of Sinforoso Ramos, in a like sum, and to pay the costs. From said judgment the accused has appealed.

The above-described deeds constitute the crime of double murder, defined and punished by article 403 of the Penal Code, inasmuch as the violent death of both Lobo and Ramos was compassed in safety or with treachery, one of the qualifying circumstances enumerated in the said article which calls for a higher penalty than would be imposed for plain homicide.

It is unquestionable that the two unfortunate victims of this attempt against human life, upon being sequestered by their assailants, were tied elbow to elbow in order to prevent any resistance to or escape from their abductors; and while in such position they were attacked" with cutting weapons; their killing was consummated in safety as

planned by their assailants without any risk to themselves from any defense that the victims might have offered. Taking into account the usual methods of procedure of such murderers, and in the absence of evidence to the contrary, it is not reasonable to suppose that they removed the bonds from their victims before attacking them.

The assailants commenced the perpetration of the double crime in question in the respective homes of the victims; there they tied them elbow to elbow and employed means tending directly and particularly to insure the full consummation of the two deaths that they had determined to carry out. It does not appear that the place where the bodies were found in the fields of Guagua was any great distance from the place where, the sequestration was effected, nor that the malefactors did any other acts except those which followed in regular succession from the beginning until the death of the abducted persons; it may therefore be asserted with certainty that the assailants attacked the latter while they were tied up and in such a position that they could not defend themselves nor escape; therefore, the violent death of Lobo and Ramos deserves in justice and in accordance with the criminal law to be qualified as a double murder.

This case is not the first one ever tried by the courts of these Islands. Unfortunately, many deeds similar to that which has given rise to these proceedings have been repeatedly 'committed; peaceful and defenseless residents have been dragged away from their homes in the silence and darkness of night by armed individuals who, after binding their victims, carried them off to places outside the town, where later the abandoned bodies would be discovered, sometimes untied, sometimes still bound. These grave crimes have constantly been qualified as murder, as may be seen in several of the ten volumes of the Philippine Reports already published.

The participation of the accused Clemente Roque in the double murder in question stands beyond all reasonable doubt, and has been fully proven in the proceedings, notwithstanding his denial and exculpatory allegations, supported as they were by the testimony of several witnesses who affirmed his statements with reference to an alibi.

No witnesses saw the execution and violent death of the two deceased, but it is unquestionable that they were murdered by those who sequestered them and took them away from their respective dwellings, inasmuch as, after their abduction, and several hours after their disappearance, their headless bodies were discovered, in an uninhabited place, in the fields of Guagua, the third town from Lubao.

The accused, Clemente Roque, was recognized with rare unanimity by five eyewitnesses to the sequestration as being one of the four armed individuals who, in the early morning of the 23d of June, 1904, abducted the deceased, Ramos and Lobo, and after binding them conducted them out of town; therefore, he should also be considered as one of those who in a cruel and merciless manner treacherously killed the unfortunate sequestered persons, there being no reason whatever to presume that the deceased were deprived of their lives by others than their abductors.

The fire which destroyed the provincial building and court-house of Tarlac on the 19th of March, 1906, destroyed also the stenographic notes taken at the trial of this case which notes would probably contain particulars that would more fully prove the participation of the accused in said murders, yet notwithstanding this, and also the fact that the witnesses for the prosecution were again examined in 1907 with regard to acts which occurred in June, 1904, yet in the record of the case, reproduced in part, the guilt of Clemente Roque as one of the principals in said crimes has been satisfactorily established.

As the accused and his companions were determined to carry out the crimes at bar, they made their appearance with a light in the neighborhood of the houses of their victims they did not secrete themselves, nor did they take any precautions to prevent recognition by the inmates; Clemente Roque was an old acquaintance of the witnesses for the prosecution, while his companions were entirely unknown to them, so it was natural that the eyewitnesses

to the outrage which, as has been seen in many prosecutions, frequently precedes the murder of peaceful and defenseless persons, should take particular notice of the accused among the four sequestrators. The unanimity with which the fire eyewitnesses designated the accused, Roque, as one of the four, and gave details as to the color of the clothing respectively worn by each of them, of the weapons they carried, together with other particulars of what took place is to be noted; all of which proves in an undeniable manner the veracity of the witnesses when giving testimony.

After an analysis of the declarations of the witnesses who sustained the alibi of the accused, Clemente Roque, it appears, from the examination and careful perusal of the testimony of Simeon Bacani, Eustaquio Laxamana, and Tiburcio Guevara in answer to what were sometimes leading questions, that the latter stated that on the night of the 22d of June, 1904, the accused Boque was at home in bed, and unable to walk or leave the house on account of a badly healed and inflamed wound in the left thigh; Bacani further said that he had been ill for three days; Laxamana stated that he went to the house of the accused in the afternoon and spent the night there without having seen the latter leave the house, which statement is also affirmed by Guevara; but Tomas Suarez declares that he saw the accused walking slowly with the assistance of his wife on the street of the barrio of Lambag at dusk, between 6 and 7 in the evening of the 22d of the said month of June.

Martin Gonzalez, the municipal president of Guagua, testified that the wound of the accused did not prevent him from walking when he was taken from his town to the capital, Bacolor, on the 23d of June, 1904, although he only saw him walk from the town as far as the barrio of San Roque.

Dr. Joven declared that he examined the accused in the beginning of July, 1904, the latter being then a prisoner at Bacolor; he found that he was suffering from a small inflammation in the left thigh, due to a badly healed wound which the doctor opened up and from which he extracted a splinter of bone. He further stated that the inflammation had existed for two weeks and that it prevented the accused from walking at the time.

The above declarations, little in accord where not actually contradictory, can not by a great deal overcome the evidence of the prosecution; it is an actual fact that Clemente Roque was seen by five witnesses who testify as one man that lie was one of those who' detained and carried away the deceased a few hours prior to the finding of their headless bodies in the fields, with the particularity that Antonina Yandan, wife of the deceased Lobo, affirms that she stated in the preliminary investigation that she recognized the accused Roque among the four-bandits, even though it was therein staled that she did not know any one of them; it appears, however, that that witness said that the man who carried a gun wore a black shirt and cundiman (red) trousers, a description unanimously affirmed by the other four witnesses of the prosecution when designating the accused.

It is certain that one day before the Holy Week in the year 1904, which must have been during the latter part of March or the beginning of April, Clemente Roque had a quarrel with the deceased Sinforoso Ramos and with Pedro Bannsil, and that he was wounded; but his wound must have healed within very few days, so that the supposed aggressors were released from custody, and it does not appear that any proceedings were instituted against them. The time that it took the wound of the accused to heal does not appear to have been ascertained, but as three mouths had already transpired when the crimes were committed, the subsequent inflammation of the badly healed wound that was treated by Dr. Joven in the beginning of July, when the accused was already in jail on account of these proceedings, is no evidence that he could not have taken part in the murders in question in the morning of the 23d of June, inasmuch as, on the 2d of July following, Roque was conducted on foot to Bacolor, as stated by the municipal president of Guagua; and, even though some days later the said physician discovered that the wound was inflamed in consequence of a splinter which was afterwards extracted, this fact does not prove that he did not walk on the previous days, as in fact he did, impelled by resentment and a desire for revenge upon the deceased Ramos. The latter, when questioned by one of the as sailants when they appealed, dunning to be agents

of the authorities, why he objected to come down from his house, replied that it was because he had an enemy, Clemente Roque; they then told him not to mind, as Roque was already arrested, whereupon Ramos, believing them, surrendered himself to the defendant Roque and his companions.

In the commission of the double crime of murder the concurrence of the generic aggravating circumstances' 8, 15, and 20 of article 10 of the Penal Code must be considered, because cunning and fraud were employed by the authors in committing the crime; they took advantage of the silence and darkness of night for its consummation, and took the deceased away from their houses in order to kill them in a treacherous manner. No mitigating circumstance is present to counteract the effects of these aggravating ones, therefore the penalty of the law should be imposed in the maximum degree, and, notwithstanding the fact that it is the highest and most terrible which human justice can impose, it in no way remedies the consequences of the crime in relation to two families that were left fatherless.

With regard to the allegation of double jeopardy net up by counsel for the accused, it must be stated that this court, having full jurisdiction in this case by virtue of the appeal interposed by the culprit, in order to render a decision considered that it was indispensable to have before it the evidence adduced at the trial; hence, in View of the fact that the stenographic notes of said evidence were destroyed by fire, a new trial was ordered by this court in compliance with the provisions of the law of procedure and in order to cure the said lack of evidence. This principle is in accordance with the provisions of section 48 of General Orders, No. 58, established among other cases in that of the United, States vs. Quilatan (4 Phil. Rep., 481).

By virtue of the considerations above set forth, it is our opinion that the judgment appealed from should be reversed, and Clemente Roque, as coauthor of the double crime of murder, committed with aggravating circumstances and without any mitigating circumstance whatever, should be sentenced, and he is hereby sentenced, to suffer the death penalty, which shall be carried out in the manner provided by Act No. 1577, and at the hour and day appointed by proper authority, to indemnify each one of the respective widows and children of the two deceased in the sum of P1,000, and to pay the costs in both instances; provided, however, that in case the death penalty is not carried out by reason of pardon being granted to the culprit, he shall forever be disqualified and subject to the surveillance of the authorities during his lifetime, unless such accessory penalties are specially remitted in such pardon. So ordered.

Arellano C. J., Carson, Willard, and Tracey, JJ., concur.

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