

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENITO ATIENZA AND JULIAN CLOSA, DEFENDANTS. JULIAN CLOSA, DEFENDANTS-APPELLANT.*G.R. No. L-3001. June 17, 1950*

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a23bd8ccf625/>**MONTEMAYOR, J.:**

In the Court of First Instance of Mindoro, Benito Atienza and Julian Closa were charged with murder for the killing of one Pedro Mendoza. Atienza pleaded guilty when arraigned and took the witness stand to prove two mitigating circumstances, namely: drunkenness and lack of instruction. He was sentenced to 17 years, 4 months and 1 day of imprisonment by the trial court. He did not appeal. The trial court proceeded as to his co-accused Julian Closa. After trial Closa was found guilty and sentenced to life imprisonment, with the accessory penalties provided by law, to pay the heirs of the deceased Pedro Mendoza the sum of P1,000, as indemnity, and to pay one-half of the costs. He was credited with one-half of: the preventive imprisonment suffered by him. He is now appealing from that decision.

The trial in this case was conducted rather irregularly, due either to negligence or oversight on the part of the court officials. After the prosecution had rested its case it was discovered that the two defendants had not yet been arraigned. The provincial fiscal called the attention of the court to that fact. The two accused were then arraigned and it was upon this arraignment that Atienza entered his plea of guilty. The trial court declared all the proceedings up to the arraignment as null and void. The fiscal moved to reproduce the evidence already submitted and said that he would be glad to present again all his witnesses. The Court said that it was unnecessary and decreed reproduced all the evidence already submitted. Counsel of the appellant Closa said that he had no objection.

After a careful review of the record in this case, we find the following facts as fully established: Due to a grudge that he entertained against Pedro Mendoza, appellant Closa in the evening of November 16, 1948, invited his close friend and co-defendant Benito Atienza to go with him. to Mendoza's house and kill him. On the way to Mendoza's house, the two passed by the house of Dominador Mendoza and they asked Dominador if he had seen Pedro Mendoza. When answered in the negative, the two accused proceeded westward in the direction of Mendoza's house which was less than a kilometer from the house of Dominador. The two defendants found Mendoza sleeping alone in his house. While Atienza remained in the kitchen, Closa quietly and stealthily approached his sleeping victim and struck him several blows with his bolo called "sinampalok" (Exhibit C). Then Atienza left the kitchen and entering the room where Mendoza was lying down also inflicted blows on the prostrate victim with his bolo (Exhibit B). In all, Mendoza received sixteen wounds, of which those in the abdomen were necessarily mortal and caused Mendoza's death.

Very early the following morning the two defendants, on their way home, passed by the house of Glicerio Lopez and were seen by the latter as they were coming from the direction of the house of Pedro Mendoza. Not long

thereafter, Atienza arrived at the house of his grandfather, Jose Atienza, woke up the inmates who were his relatives and told them that: "They had killed somebody." His clothes were then blood-stained.

In the course of the investigation conducted by the municipal authorities, Atienza made two sworn statements, (Exhibits D and F) which, are quite similar in their contents. In these statements Atienza said that he had been invited by Closa to kill Pedro Mendoza and that he actually accompanied the former in going to the house of Pedro Mendoza whom may found sleeping and whom they boloed to death, Atienza adding that after the killing Closa threatened him with death if he revealed to anyone what they had done.

Closa also made a written statement (Exhibit E) where he states that sometime in April, 1948, he had a misunderstanding or altercation with we deceased Mendoza over a debt which Mendoza was trying to collect from him in tbs presence of other persons, because of which he felt humiliated; that on November 16, 1948, the day of the killing, lie had a bolo, evidently similar to if not the same weapon mentioned by Atienza in his statement, as having been used by Olosa in boloin the deceased.

Appellant Closa put up the defense of alibi claiming that the whole day of November 16, 1948, he was harvesting and threshing rice with Sofronio Panganiban, his landlord, and that on that night he slept in Sofronio's house. The trial court rejected this story of the defense, not only because it was not convincing but also because it appeared too elaborate and too well planned and calculated to make it appear impossible for Closa to have left the house of his landlord that day and night. Moreover, the trial court found that assuming that Closa was at the house of Panganiban that night of November 16, the place was only a kilometer away from the house of Pedro Mendoza and that he could easily have slipped out of the house unnoticed and committed the murder and then returned to the house. We fully agree with, the finding and reasoning of the trial court on-this point. And as the Solicitor General points out, counsel for the appellant does not in his brief touch upon this defense of alibi indicating that said counsel has not found it to be a valid or reasonable defense.

Counsel for the appellant attacks the procedure followed in the trial already referred where the two accused were arraigned after the prosecution had rested its case, and he claims that the trial court erred in considering such evidence, especially since the trial court itself had declared all the proceedings had before arraignment as null and void. The error, if any, is non-prejudicial. The interests of the appellant have not suffered thereby. His counsel entered into trial without any objection on the ground that his client had not yet been arraigned. Said counsel cross-examined the witnesses for the prosecution. When the fiscal offered to reproduce all his evidence by presenting again his witnesses, instead of accepting said offer, he agreed or rather did not object to having that same evidence for the government declared by the court as reproduced. We hold that this error or irregularity has not prejudiced the right or interests of the appellant, and considering that appellant's counsel had full opportunity of cross-examining all the witnesses who took the witness stand for the government and that furthermore he agreed to the reproduction of the evidence for the prosecution, the error or defect had been substantially or fully cured.

In conclusion, we find that the guilt of the appellant has been established beyond reasonable doubt. It is true that no eye-witnesses to the actual killing testified against the appellant in court. However, there is abundant evidence pointing to appellant Closa as one of the killers of Mendoza. As already stated, on the night of the killing the appellant and Atienza passed by the house of Dominador Mendoza, inquiring and looking for the deceased Pedro. From there they went in the direction of the deceased's house. Early the following morning Closa and Atienza were seen coming from the direction of the house of the deceased, and later Atienza informed' the inmates in the house of his grandfather that they, meaning he and Closa, had killed somebody. Exhibits D and F, which are the extrajudicial confessions of Atienza directly implicating appellant Closa, were introduced and admitted in evidence during the trial without objection by the counsel of the appellant. By such failure to object and the court

proceedings being a joint trial, those exhibits were admissible against and affected appellant Closa, and constitute competent evidence to prove his guilt (People vs. Bernadez, CA-G.R. No. L-479, April 30, 1947, 43 Off.Gaz., p. 2260). Furthermore, and this is important, when Atienza was making the extrajudicial statement implicating Closa, the latter was present and kept silent, but did not protest or remonstrate against the supposed false charge or implication. According to Rule 123, Section 8, of the Rules of Court, "Any act or declaration made in the presence and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him."

The trial court found that the killing was attended by the aggravating circumstances of nighttime and dwelling. We agree with the Solicitor General that nighttime is absorbed in the treachery that qualified the killing as murder.

With the modification that the indemnity imposed by the trial court is increased to P6,000, the decision appealed from is hereby affirmed, with costs.

Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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