

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EDUABDO ELICANAL, DEFENDANT AND APPELLANT.

G.R. No. 11439. October 28, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

The appellant in this case is one of several persons arrested and convicted of murder. He was sentenced to death and this case comes to this court not only en consulta but by appeal also.

The accused was a member of the crew of the lorch Cataluna cruising in the waters of the Philippine Islands off Iloilo under the captaincy of Juan Nomo. The first mate was Guillermo Guilloresa. The accused is about 22 years of age, without education or instruction and somewhat weak physically. The lorch left the mouth of the Iloilo river early in the morning of the 11th of December, 1914. She had scarcely cleared the river when Guillermo, the chief mate, suddenly and without having mentioned the subject to the accused before, said to him that he was going to kill the captain because he was very angry with him, and asked him to assist him. The accused took this statement as a joke as, according to him, the chief mate was a great joker; and particularly as he was smiling at the time he made the statement; and naturally paid no more attention to it. Neither he nor the other members of the crew held any resentment, against the captain and he had no idea at that time that he would take part in any acts directed against him.

The following morning while the crew were engaged in their daily occupation, Guillermo, finding the captain in his cabin, assaulted him, attempting to seize and hold his hands and, at the same time, calling to the crew to come forward and help him. The crew, drawn by the cries, hastened to the spot where Guillermo was engaged in a hand to hand fight with the captain. At the request of Guillermo the crew, with the exception of the accused, seized the captain and tied him with rope. After he had been rendered helpless Guillermo struck him in the back of the neck with an iron bar and then, delivering the weapon to the accused, ordered him to come forward and assist in disposing of the captain. The accused thereupon seized the bar and, while the captain was still struggling struck him a blow on the head which caused his death.

The sole defense of the accused is that, in killing the captain, he was acting under the impulse of an uncontrollable fear of a greater injury induced by the threat of Guillermo, the chief mate, and that he was so absolutely overwhelmed thereby that, in striking the blow which killed the captain, he acted without volition of his own and was reduced to a mere instrument in the hands of the chief mate

The learned trial court refused to accept this defense holding that the chief mate did not exercise such influence over the accused as amounted to an uncontrollable fear or that deprived him of his volition. We are satisfied from the evidence that the finding of the trial court was correct. It was held by the supreme court of Spain in a decision of the 5th of November, 1880, that "a threat, in order to induce insuperable fear, must promise such grave results, and such results must be so imminent, that the common run of men would succumb. The crime threatened must be greater than, or at least equal to, that which we are compelled to commit." In a decision of the same court of April

14, 1871, it was said that "inducement must precede the act induced and must be so influential in producing the criminal act that without it the act would not have been performed." That is substantially the principle which is, at the bottom of subdivision 9 of article 8 of the Penal Code. That article defines the different circumstances under which a person will be exempt from criminal liability. Subdivision 9 thereof covers "any person who acts under the compulsion of an irresistible force." The foundation of these decisions and the basis of the defense in this case is subdivision 10, which exempts from liability "any person who acts under the impulse of an uncontrollable fear of an equal or greater injury."

As we have already intimated, before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It must be such that, in spite of the resistance of the person on whom it operates, it compels his members to act and his mind to obey. He must act not only without will but against will. Such a force can never consist in anything which springs primarily from the man himself; it must be a force which acts upon him from the outside and by means of a third person. In order that one may take advantage of subdivision 10 of article 8 and allege with success that he acted under the impulse of an uncontrollable fear of an equal or greater injury, it must appear that the threat which caused the uncontrollable fear related to a crime of such gravity and so imminent that it might safely be said that the ordinary run of men would have been governed by it. And the evil threatened must be greater than, or at least equal to, that which he is compelled to cause. The legislature by this enactment did not intend to say that any fear would exempt one from performing his legal duty. It was intended simply to exempt from criminal responsibility when the threat promised an evil as grave, at the very least, as that which the one threatened was asked to produce. Viada in his commentaries on this subdivision of article 8 of the Penal Code gives this illustration:

"Certain evil-minded persons seize me and threaten me with death if I do not set fire to a neighbor's house; if I perform the act under such threat, as grave as it is imminent, I would fall within the exemption from criminal responsibility provided for in this number; but if the same persons threaten to lay waste my forest if I do not kill my father my act would not come within the exemption for the reason that the evil with which I was threatened was much less than that of killing my father."

The evidence fails to establish that the threat directed to the accused by the chief mate, if any, was of such a character as to deprive him of all volition and to make him a mere instrument without will of his own but one moved exclusively by him who threatened. Nor does the threat appear to have been such, or to have been made under such circumstances, that the accused could reasonably have expected that he would suffer material injury if he refused to comply. In other words, the fear was not insuperable. Indeed, it is doubtful if any threat at all in the true sense was made; certainly none of such serious nature as would justify an illegal act on the part of the accused.

This discussion disposes of the first error assigned by counsel for the appellant. The second relates to the finding of the trial court that the crime committed was murder instead of homicide; and counsel for appellant argue, under this assignment, that the evidence does not sustain the finding of any qualifying circumstance which would raise the crime from the grade of homicide to that of murder. It is quite true, as counsel argue, that qualifying circumstances must be as clearly proved and established as the crime itself; and, unless the evidence in this case shows beyond a reasonable doubt that the crime was committed with one or more of the qualifying circumstances required by the Penal Code to constitute murder, it must be denominated homicide and not murder. (U. S. vs. Beecham, 15 Phil. Rep., 272; U. S. vs. Gavarlan, 18 Phil. Rep., 510; U. S. vs. Aslul, 21 Phil. Rep., 65; U. S. vs. Ibanez, 19 Phil. Rep., 463; U. S. vs. Macuti, 26 Phil. Rep., 170; U. S. vs. Amoroso, 5 Phil. Rep., 466; U. S. vs. Cagara, 5 Phil. Rep., 277.)

We agree with counsel that the evidence does not establish the existence of premeditation as a qualifying circumstance. In the case of *United States vs. Banagale* (24 Phil. Rep., 69), the court said with respect to the facts which must be proved to establish premeditation:

"The record does not show whether Banagale, upon extending the invitation to Domingo Posada through Mariano Nao, did so for the purpose of killing the former, inasmuch as there is no proof that he had resolved upon doing so, through deliberation, meditation, and reflection, and performed acts revealing his criminal purpose, some days or even hours prior to carrying out his criminal determination to kill the unfortunate Posada. Article 10, circumstance 7, of the Penal Code establishes the requisite that the criminal should have acted, in the perpetration of the crime, with deliberate premeditation or that he should have prepared for its commission by outward acts such as denote in the agent a persistent criminal purpose and a meditated resolution to consummate the deed." (U. S. vs. *Nalua and Kadayum*, 23 Phil. Hep., 1; U. S. vs. *Alvarez*, 3 Phil. Rep., 24; U. S. vs. *Lasada and Lasada*, 21 Phil. Rep., 287; U. S. vs. *Catigbac*, 4 Phil. Rep., 259; U. S. vs. *Angeles*, 6 Phil. Rep., 480; U. S. vs. *Idica*, 3 Phil. Rep., 313; U. S. vs. *Buncad*, 25 Phil. Rep., 530.)

In the case at bar it does not appear that there was ever any consideration of the question of killing the captain of the launch by the members of the crew, in which this accused took part. The matter, so far as the evidence goes, was never mentioned except on the day before the crime was committed and then in such a way as not to show any fixed purpose or determination even on the part of the chief mate and much less on that of the accused. The fact that he, with the rest of the crew, answered the call of the chief mate while he was engaged in his endeavor to make way with the captain is not sufficient by itself, or in connection with the conversation of the day before, to establish that sustained reflection and continued persistence which are the special features of the qualifying circumstance of premeditation. It does not appear that the accused had even thought of taking any part in the death of the captain up to the very moment when the iron bar with which he dealt the fatal blow was handed him by the chief mate. Under such circumstances it is error to find the existence of premeditation as a qualifying circumstance (U. S. vs. *Beecham*, 15 Phil. Rep., 272.)

We cannot agree with counsel for the appellant that the qualifying circumstance of treachery, or *alevosia*, has not been proved. It appears undisputed that, at the time the accused struck the deceased with the iron bar and thereby caused his death, the latter was bound hand and foot and was helpless and defenseless. While it is quite true that there was no treachery at the beginning of the struggle terminating in the death of the captain, that is, the initial attack was open and fair, the struggle being man to man between the chief mate and the captain, both unarmed, this does not necessarily dispose of the question of treachery. This court has held repeatedly that, even though the beginning of an attack resulting in the death of the deceased is free from treachery of any sort, nevertheless it will be found present if, at the time the fatal blow is struck, the deceased is helpless and unable to defend himself. While the writer of this opinion holds the view that, where there is not treachery in the attack which results in the death of the deceased, there can be no treachery which will qualify the crime as murder notwithstanding the fact that, at the time the fatal blow was struck, the deceased was unarmed and defenseless, but, the court having held so frequently the contrary, the writer accepts the doctrine so well established. Counsel for the appellant, however, maintain that the doctrine of the court in this regard was modified in the case of *United States vs. Balagtas and Jaime* (19 Phil. Hep., 164). In that case the deceased was walking with the two accused in single file in a narrow street, the deceased being between the other two.

"When they were about ninety yards from any house and while in an obscure place on the railroad track, at about eight o'clock at night, the deceased was knocked down, and while down was struck two or three blows in the face and rendered practically unconscious. While in this unconscious condition, but still groaning, the two defendants, one taking him by the head and the other by the feet, carried him across the embankment, which was alongside the railroad track, and threw him into a small pond of water, face downward. The defendants then returned to their

house. The deceased remained in that position until the following day when his body was found there by the policemen, Hartpence and Solis, who conducted the body to the morgue where it was later identified as that of Simeon Flores by Valentin Franco, a friend and neighbor of the deceased."

The question arose in that case, under the facts just stated, whether the act of throwing the deceased into the water while he was still alive but in a perfectly helpless and defenseless condition constituted alevosia, and made the crime murder instead of homicide. It will be noted that the attack was not treacherously made, that is, begun with treachery. This the court held; and, therefore, if that element is to be found at all in the case it must be found from the fact that the deceased was thrown into the water and drowned while he was unconscious and in a helpless and defenseless condition. Discussing that question the court said:

"But assuming that the deceased would have recovered from the effects of the four wounds, if he had not been thrown into the water, yet we still think that the proofs fail to show that there was present treachery, as the knocking down of the deceased, striking him while on the ground, and throwing him into the water were all done in so short a time and one movement followed the other in such rapid succession, constitute one and the same attack. In order that treachery may be considered as a qualifying circumstance to raise the classification of the crime, or as an aggravating circumstance to augment the penalty, it must be shown that the treacherous acts were present at and preceded the commencement of the attack which caused the injury complained of. After the commencement of such an attack and before its termination an accused person may have employed means or methods which were of a treacherous character, and yet such means or methods would not constitute the circumstance of alevosia. One continuous attack, such as the one which resulted in the death of the deceased Flores, cannot be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein and considered as a qualifying or aggravating circumstance."

While the writer of this opinion is inclined to agree with the contention of counsel that the doctrine laid down in this case is quite different from, if not directly opposed to, that already stated as, theretofore, the uniform holding of this court, nevertheless the majority of the court being of the opinion that it was not the intention of the court in the case just cited to reverse the previous decisions of this court and to set down a new doctrine, the writer accepts that view, particularly in the face of the almost unbroken line of decisions on the subject now to be referred to. In the case of *United States vs. De Leon* (1 Phil. Rep., 163), it appeared that the accused entered the house of the deceased, drew their bolos and compelled him to follow them. On arriving at a place called Bulutong the deceased was bound and in that condition murdered. It was held that the fact that the accused was bound at the time he was killed, although there was no treachery at the beginning of the assault resulting in his death, the qualifying circumstance was present. The court said:

"From the evidence there appears the qualifying circumstance of treachery. To show this it is only necessary to mention the fact that the deceased was bound."

The head note to that case says:

"The fact that the deceased was bound while killed constitutes the qualitative circumstance of alevosia and raises the crime to the degree of murder, * * *."

The same was held in the cases of *U. S. vs. Ricafor* (1 Phil. Rep., 173); *U. S. vs. Santos* (1 Phil. Rep., 222); *U. S. vs. Abelinde* (1 Phil. Rep., 568); *U. S. vs. Hinto Santos* (2 Phil. Rep., 453); *U. S. vs. Jamino* (3 Phil. Rep., 102); *U. S. 08. Abaigar* (2 Phil. Rep., 417); *U. S. vs. Gloria* (3 Phil. Rep., 333); *U. S. vs. Gabriel* (4 Phil. Rep., 165); *U. S. vs. Doon* (4 Phil. Rep., 249); *U. S. vs. Colombro* (8 Phil. Rep., 391); *U. S. vs. Tupas* (9 Phil. Rep., 506); *U. S. vs. Nalua and Kadayum* (23 Phil. Rep., 1); *U. S. vs. Indanan* (24 Phil. Rep., 203); *U. S. vs. Reyes and De la Cruz* (11 Phil. Rep., 225).

For these reasons we are of the opinion that the crime was committed with treachery and that it was properly denominated murder instead of homicide.

The third error assigned charged that the court erred in refusing to apply article 11 of the Penal Code in favor of the accused. We do not agree with this contention. The personal qualities and characteristics of the accused are matters particularly cognizable by the trial court; and the application of this section is peculiarly within the discretion of that court.

There being neither aggravating nor extenuating circumstances, the judgment appealed from is reversed and the accused is hereby sentenced to cadena perpetua. No costs in this instance. So ordered.

Torres, J., concurs with the exception of that part of the decision that refers to the application of article 11 of the Penal Code.

Johnson, J., concurs in the result.

Trent, J., concurs with J. Carson.

Carson and Araullo, JJ., see concurring opinion.

CONCURRING OPINION

CARSON, J.:

I concur in the disposition of this case, but desire to observe that I find nothing in the briefs of counsel to the effect that the doctrine laid down in the case of the United States vs. Balagtas (19 Phil. Rep., 164) "is quite different from, if not directly opposed to, that already stated as, theretofore, the uniform holding of this court." In fact, counsel for the defendant cite three cases of this court in support of the same proposition as that in support of which United States vs. Balagtas was cited. The rule laid down in this case is not in conflict with the other cases cited in the majority opinion. I also desire to observe that if the court, in saying that "the personal qualities and characteristics of the accused are matters particularly cognizable by the trial court; and the application of this section is peculiarly within the discretion of that court," intends to hold that this court has no power or authority to apply article 11 of the Penal Code, as amended, as an extenuating circumstance, if the trial court has declined to do so, or vice versa, I cannot consent to such holding.

CONCURRING OPINION

ARAULLO, J.:

Although, as a general rule, the trial judge has better opportunity than this court to determine whether the provision of article 11 of the Penal Code, as amended by Act No. 2142 of the Philippine Legislature, should be taken into account for the purpose of increasing or diminishing the penalty that should be imposed upon the defendant; yet, as one of the assignments of error is based on the trial judge's failure to apply this article in one or the other of the senses mentioned, it is my opinion that this court, after reviewing all the evidence of record and taking into account the said legal provisions, should decide whether the trial judge did or did not incur the error attributed to him.

With this observation, and being of the belief that the said article 11 of the Penal Code as amended by the Act above cited should not be applied in the present case to increase or diminish the penalty fixed for the crime committed by the defendant and which should be imposed upon him, I concur in the preceding decision.

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