

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BINAYOH, DEFENDANT AND APPELLANT.

G.R. No. 11512. October 11, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

The appellant was convicted of the crime of murder on his plea of guilty and his voluntary statement of the facts and circumstances constituting the crime and of his connection therewith. The court qualified the crime as murder with the qualifying circumstance of alevosia and in imposing the penalty took into consideration the aggravating circumstances of premeditation and uninhabited place.

Counsel on this appeal assigns two errors: First, The court erred in finding the existence of two aggravating circumstances not alleged in the information to which the defendant pleaded guilty; and second, The court erred in the severity of the sentence imposed.

It appears in the record that, on appearing for trial on the charge of murder for having killed an Igorrote by the name of Ballogan on the 18th day of April, 1915, the accused pleaded guilty and voluntarily stated to the court the facts. He declared that, during the celebration of a holiday which was held at his house, one Majjin of the barrio of Jaliap was present and became intoxicated; that later he went to his nephew's house where he drank some more and wanted to attack and kill Quinalong; that the accused took Majjin's lance from him, broke it and threw it upon the ground; thereupon Majjin went home; that about a month later Majjin stated to him that he (referring to another) had killed some boys whom he had found in the Bolo river and said "You are the one responsible for the killing; if you do not kill some other man I will kill you;" that he brought with him to the accused's house a lance and told him that he must kill somebody; that in view of what Majjin had said to him the accused went on a journey to remote places passing through Anao, Codog, Mampolia and Palog finally arriving at Palongan where he met the deceased Ballogan who was armed with a lance; that on approaching Ballogan the accused received him with a smile and as he approached him killed him with a stroke of his lance.

Parts of this statement were brought out by questions put to the accused by the trial court during the progress thereof. While it is admitted that the incriminatory statement following his plea of guilty was voluntary and he was properly protected therein it is contended that the court erred in asking him certain questions which brought out the fact that the crime was committed with premeditation and in an uninhabited place. Counsel argues:

"The information charged the defendant with the crime of murder, with the qualifying circumstance of treachery. To this defendant, unassisted by counsel, entered a plea of guilty. The court thereupon proceeded to question the defendant and the defendant, unattended by counsel and in ignorance of his rights, replied to these questions. The defendant had no reason to believe that he was charged with anything not appearing in the information. The court erred in extracting from the defendant incriminating evidence as to circumstances not alleged in the complaint. The defendant should have been fully advised before he answered the questions."

We do not agree with counsel in this argument. So long as the plea of guilty and the statement of the accused

substantiating such plea were made voluntarily and with full knowledge of his rights, we are of the opinion that, for the purpose of ascertaining the penalty which is to be imposed or for any other legal purpose, the court might properly ask such questions as were necessary to that end and especially those which the accused would voluntarily answer. Having entered a plea of guilty and voluntarily offered himself, in effect, as a witness, he waived the protection thrown about him by that provision of the law which says that an accused person is not required to be a witness against himself—this to the extent, at least, of not allowing him subsequently to claim error by reason of such questions or the answers thereto on the ground that he was prejudiced thereby.

Section 16 of the Code of Criminal Procedure relates to an arraignment of the accused after a complaint or an information has been filed against him but before trial; and section 17 requires that, on such arraignment, if the defendant appears without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel. If he desires but is unable to employ counsel the court must provide him counsel. He is also entitled, if he requires it, to a reasonable time, not less than one day, to answer the complaint or information. He may answer by demurrer or by plea. After his plea he shall be entitled, on demand, to at least two days in which to prepare for trial. (Sec. 30, Code Crim. Proc.)

The appearance of the defendant for trial is not considered an arraignment, although the two events may be simultaneous and none of the requisites of the arraignment are a part of his appearance in the court for trial. At the trial the defendant is entitled to appear and defend in person and by counsel at every stage of the proceeding; to be informed of the nature and cause of the accusation; to testify as a witness in his own behalf or to refuse to be a witness in the case; to be exempt from testifying against himself; to be confronted at the trial by and to cross-examine the witnesses against him; to have compulsory process issue for obtaining witness in his own behalf; to have a speedy and public trial. (Sec. 15, Code Crim. Proc.) It should be noted, however, that, after a defendant offers himself as witness, he may be cross-examined as any other witness; but his neglect or refusal to so offer himself shall in no manner prejudice or be used against him. The Code of Criminal Procedure makes a sharp distinction between the duties of a court when an accused person is arraigned and when he appears for trial. When he is arraigned there is a duty laid by the Code upon the court to inform the accused of certain rights and to extend to him, on his demand, certain others. This duty is an affirmative one which the court, on its own motion, must perform, unless waived. No such duty, however, is laid on the court with regard to the rights of the accused which he may be entitled to exercise during the trial. Those are rights which he must assert himself and the benefits of which he himself must demand. In other words, in the arraignment the court must act of its own volition, regardless of whether the accused request it, whereas on the appearance for trial the court does not act except on the request of the accused. To put it in a different way, with respect to the rights which are the essential accompaniments of an arraignment, certain duties are laid on the court which he must perform affirmatively, unless waived; while with respect to rights which may be exercised during the trial the duty to act in the first instance is not laid on the court but on the accused himself. This does not mean, however, that a failure of the court to conform to certain requirements of the law to be observed during the trial may not result in such an error as would require a reversal on appeal; such, for example, as to try the case without the presence of the accused. But the general statement is correct that, with regard to the rights of the accused during trial, the mere silence of the court is not error; while, with regard to the rights of the accused on arraignment, the silence of the court may be error unless the right with regard to which silence is maintained is waived by the accused.

As is seen by the assignment of error and argument of counsel on appeal there is no claim that the trial court did not fulfil its duty on arraignment. The only rights of the accused which it is claimed the trial court violated were the rights which he is entitled to exercise during the trial. Having offered himself voluntarily as witness, to all intents and purposes, the accused was subject to such examination or cross-examination as the court might deem proper or necessary for a complete understanding of the case, at least such as would permit him to impose a just

sentence. While, in cases where the accused is without counsel and ignorant, the trial court should, as a matter of fairness, inform him of his rights during trial, it is not, except perhaps in very flagrant cases, reversible error for him to fail to do so. In cases, however, where the death penalty is imposed and which, therefore, come to us en consulta, we feel that we are authorized to send the case back for a new trial where, although the trial court committed no error of law requiring a reversal, we are satisfied that, on account of his ignorance and the fact that he was not represented by counsel and by reason of the failure of the trial court to inform him of his rights during the trial, the accused has not had a fair opportunity to defend himself. The power which the Supreme Court has in cases where the death penalty is imposed are supervisory as well as appellate and authorizes us to see to it that an accused, in such a case, has a fair opportunity to defend himself and that there is secured to him such an opportunity even though he failed of it through no legal error of the trial court. In the case before us, however, we see no reason for exercising either the one attribute or the other. He voluntarily pleaded guilty with full knowledge of the effect of such a plea and, with the same knowledge, detailed the facts of the crime. There is nothing in the record which would lead us to conclude that his confession was fabricated, or that it was made to shield others, or that it was conceived and given for the purpose of misleading and deceiving the trial court. It bears all the earmarks of truth; and, having been made knowing his rights, such statement, with the plea of guilty, may properly serve as the basis of his conviction.

Lastly, as to the qualification of the crime: The information charges treachery and the accused pleaded guilty. That was an admission of every material fact alleged in the information. The trial court found it to exist. Counsel here does not attack that finding. The record, in our judgment, supports the conclusion of the court. The attack was made suddenly, unexpectedly and under the guise and assurance of friendship. The accused admits active deception. He went toward his victim smiling sweetly, with every appearance of friendship that he was able to assume. On seeing that he had fully disarmed his fears and suspicions by these active representations he attacked and slew him before he had an opportunity to recover himself. This constitutes treachery and qualifies the crime as murder.

The learned trial court found that the crime was committed with premeditation and in an isolated place; and took into consideration these two aggravating circumstances in sentencing the accused. Counsel for appellant argue that the court erred as to both circumstances. No particular reasons were given, however, to sustain the argument. We perceive clearly, nevertheless, what such reasons are. It might be urged that, while the confession of the accused shows that he had formed the purpose of killing some one, he had no definite person in view; and, in fact, did not know that he would be able to kill anyone. As a result it might be urged that there was no subject-matter for reflection and no definite and specific purpose in which he could persist; that there was no particular person against whom he had any resentment and, for that reason, he had no passion which was driving him onward and no motive which caused him to consider, meditate, or reflect upon the commission of the crime; and, accordingly, premeditation in strict sense would be impossible. We see the force of these arguments; but they were considered and rejected in the case of *United States vs. Manalinde* (14 Phil. Rep., 77). There it appeared that the accused, a Mohammedan Moro, took an oath before his dato (priest) that he would go out and kill the first two persons whom he saw. No particular persons were had in mind as the victims. In pursuance of that vow, he killed a Spaniard whom he had never seen or heard of before. The question was presented whether, under such circumstances, premeditation could be said to be present in the commission of the crime. Resolving that question the court said:

"As to the other circumstances it is also unquestionable that the accused, upon accepting the order and undertaking the journey in order to comply therewith, deliberately considered and carefully and thoughtfully meditated over the nature and the consequences of the acts which, under orders received from the said dato, he was about to carry out, and to that end provided himself with a weapon, concealing it by wrapping it up, and

started on a journey of a day and a night for the sole purpose of taking the life of two unfortunate persons whom he did not know, and with whom he had never had any trouble; nor did there exist any reason which, to a certain extent, might warrant his perverse deed. The fact that the arrangement between the instigator and the tool considered the killing of unknown persons, the first encountered, does not bar the consideration of the circumstance of premeditation. The nature and the circumstances which characterize the crime, the perversity of the culprit, and the material and moral injury are the same, and the fact that the victim was not predetermined does not affect nor alter the nature of the crime. The person having been deprived of his life by deeds executed with deliberate intent, the crime is considered a premeditated one as the firm and persistent intention of the accused from the moment, before said death, when he received the order until the crime was committed is manifestly evident." (See also U. S. vs. Rodriguez, 19 Phil. Rep., 150.)

We arrive at a different conclusion with regard to the aggravating circumstance of despoblado. While it appears from the statement of the accused that the crime was committed on a trail, it appears also that it was near a clearing, which would indicate that it was in the vicinity of a habitation; but even if the evidence does not support the conclusion that the crime was committed near an inhabited place it does support the finding that it is insufficient to show that it was an uninhabited place. We have frequently held that both qualifying and aggravating circumstances must be as clearly proved as the crime itself before they can be legally held to be present. The evidence in this case failing to show beyond a reasonable doubt that the crime was committed en despoblado, it was error to permit it to exercise any influence in the case.

The trial court properly took into consideration article 11 of the Penal Code and gave the accused the benefits of his dense ignorance and the fact that he belonged to a savage and pagan tribe and that he had been brought up and nurtured in the belief that he was justified in killing a member of a different rancheria under the circumstances detailed in his statement. He honestly believed that the superior law was the law of his tribe and that he was doing nothing really illegal in taking the life of Ballogan.

The judgment of conviction is modified and the accused is hereby sentenced to cadena perpetua. As so modified the judgment is affirmed. No costs in this instance.

So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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