

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO BALABA, DEFENDANT AND APPELLANT.

G.R. No. 12392. December 04, 1917

Ponente: CARSON, J.

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CARSON, J.:

Sentence of death having been imposed upon Francisco Balaba in the Court of First Instance of the Province of Agusan, the record of the proceedings had in the court below is before us en consulta, in accordance with the law made and provided in such cases.

The information charges the accused with the crime of triple asesinato (triple murder) in the following language:

"The undersigned fiscal charges Francisco Balaba, the above-named accused, with the crime of triple murder, committed as follows:

"That, on or about the 29th of February, 1916, in the municipality of Cabadbaran, Province of Agusan, Philippine Islands, the accused, Francisco Balaba, did, willfully, unlawfully, criminally and treacherously, kill Lazaro Daguplo, Fortunata Cabasagan, and Claudia Ligao—acts committed in violation of article 403 of the Penal Code."

The decision filed by the trial judge is as follows:

"On the day of the crime the defendant Francisco Balaba was living in the house of his brother Agapito Balaba, in the sitio of Alangilan, barrio of Tubay, municipality of Cabadbaran, Province of Agusan, Department of Mindanao and Sulu, P. I. The defendant took care of fighting cocks. On February 20, 1916, he fell out with his sister-in-law, the deceased Fortunata Cabasagan, wife of Agapito Balaba, because she had tethered the defendant's cocks, which were injuring the corn plantings. On the 29th of the same month, in the morning, while the defendant was feeding this cocks, he found among them one that was not his; so he caught, killed and ate it. This rooster belonged to the deceased Claudia Ligao. The deceased Lazaro Daguplo was a brother of the respective first husbands of the deceased Fortunata Cabasagan and Claudia Ligao. In the morning of that same day, the 29th, Donato Duero, second husband of Claudia Ligao, at the latter's suggestion, went to look for the cock that had disappeared and made inquiry about it of the defendant, whom he suspected of having stolen it. In reply to the inquiry, Balaba admitted that he had butchered the cock and offered to pay for it or exchange another one for it; he therefore proposed that Duero choose one from among those in the lower part of the defendant's house. Duero pointed out one of a bakiki color, but the defendant would not give it to him, excusing himself by saying that it was not his. Then Duero, backed up by Sergio Daguplo, obliged the defendant to follow him for the purpose of arranging the matter of the price of the cock, with Duero's wife, Claudia Ligao. In walking toward the house of the spouses Duero and Ligao, the three men, Donato Duero, Lazaro Daguplo and the defendant, went in file, one behind the other. On the way they met Claudia Ligao, who was going toward her hemp plantation. Claudia Ligao left it to her husband to settle the matter of the price of the cock, to be paid by the defendant. It appears that the defendant wanted to fix a low price, on which account Lazaro Daguplo laid blame upon him, saying to him that he (Daguplo) knew that the bakiki cock, selected in exchange by Donato Duero, belonged to the defendant, and that

the latter's refusal to part with it appeared to show his intention neither to make payment nor exchange for the cock butchered by him. The defendant, disgruntled at this intermeddling on the part of Lazaro Daguplo, waited until the latter was off his guard and was walking along in front of him, when with the bolo with which he had previously provided himself, he treacherously assaulted Daguplo, inflicting upon him a wound in his right side, which caused his death. Thereupon the defendant immediately ran to his brother Agapito's house, where he lived, and there found his sister-in-law Fortunata Cabasagan near the fogon, preparing the meal. He informed her of the occurrence between himself and Lazaro Daguplo and confessed that he had killed the latter because of a quarrel over the cock. Then his sister-in-law, while continuing her work, said to him: 'You were a thief; now you are a criminal. You should go to jail.' When the defendant heard this, and while Fortunata Cabasagan had her back toward him, was facing the water jug and in the act of cleaning a kettle, he suddenly assaulted her with the same bolo and inflicted a serious wound in her left side, which produced her death. The defendant then started to run, pursued by Agapito, to whom Fortunata had called out and indicated her assaulter. Balaba went straight to the hemp plantation, where he saw that Claudia Ligao, the owner of the stolen cock, was going, and there he also assaulted her with the same bolo, inflicting a wound in her stomach, which likewise produced her death.

"The defendant deprived three human beings of their lives. He slew them to satiate his criminal instinct. These three victims all perished together, struck down by the defendant's treacherous hand. The facts recited constitute three crimes perpetrated in one single act. Under article 89 of the Penal Code, there must be imposed upon the defendant the punishment corresponding to the crime for which the severest penalty is prescribed in its maximum degree, which crime, in the present case, is that of the murder perpetrated upon the person of his sister-in-law Fortunata Cabasagan, for the reason that it was attended by the generic, aggravating circumstances of kinship and sex. The killing of Claudia Ligao is classified only as homicide, as the manner and means of its perpetration have not been proven.

"The defense has endeavored to show that the defendant is insane and was insane when he committed the crime, and although the court was sure that the evidence introduced for that purpose did not prove such an exemption from liability, yet it appointed a medical committee, composed of three physicians, to examine the defendant's mental condition and submit a written report on the matter. This committee has now rendered its report and gives the following opinion:

" 'In view of the clinical observation and the biological, laboratory tests made, the [members of the] committee who have subscribed hereto have concluded, and so inform the honorable court, that Francisco Balaba is in a perfectly sane mental condition, and that, at the time he was under our observation, he was not suffering from malaria. Butuan, October 7, 1916.'

"By reason of the foregoing, the court finds Francisco Balaba guilty of two murders, perpetrated on the persons of Lazaro Daguplo and Fortunata Cabasagan, both qualified by treachery, and likewise guilty of the crime of homicide, committed against the person of Claudia Ligao. The murder of Cabasagan and the homicidal killing of Ligao were attended by the generic, aggravating circumstance of sex, but this circumstance is compensated by the extenuating one of article 11, as amended by Act No. 2142. In the murder of Fortunata Cabasagan there concurred, besides, the circumstance of kinship.

"The court is therefore of the opinion that it should, and does hereby, sentence Francisco Balaba to be hanged by the neck until he is dead, and orders that during the day time on a day and at a place that shall be determined later, the defendant shall be executed in the manner prescribed by law. Out of the defendant's property there shall be paid an indemnity of P1,000 to the heirs of the deceased, and the record of the proceedings in this cause, together with a transcript of the evidence taken at the trial, shall be forwarded to the Honorable Supreme Court of these

Islands for review and final disposal."

The evidence of record fully sustains the findings of fact by the trial judge, and we find no error, prejudicial to the rights of the accused, in the course of the proceedings leading up to the entry of the judgment of the court below.

The trial judge convicted the accused of three separate offenses, two *asesinatos* (murders) and one *homicidio* (homicide), the commission of two of the *asesinatos* (murders) being marked with the generic aggravating circumstances of *parentesco* (relationship with the victim), one of these murders being also marked with the additional generic aggravating circumstance of sex. .

It has been suggested that in so doing, the trial judge denied the accused the right not to go to trial upon a complaint or information charging more than one offense. It appears, however, that the information clearly and specifically charges three separate and distinct offenses, and the accused having gone to trial on that information without objection, waived the right secured to him under section 21 of General Orders No. 58 to demur to the information on the ground that it charges more than one offense. It follows that his guilt of each and all of the offenses charged in the information having been conclusively established by the evidence of record, he was properly convicted of the commission of each and all of these offenses under the doctrine announced in the cases of *United States vs. Lampano and Zapanta* (13 Phil. Rep., 409); *United States vs. Mendoza*, (R. G. No. 9462, Sept. 25, 1914 [1].)

In the *United States vs. Lampano and Zapanta* (supra), we said that: "While under the provisions of section 11 of General Orders No. 58, a complaint or information should charge but one offense, and if the attention of the trial court is directed to the fact that more than one offense is charged, it is the duty of the court to direct the prosecution to elect to stand on one of the charges or to file two or more separate complaints or informations charging each crime separately; yet, if by mistake of oversight a complaint does charge two or more separate offenses, and the accused without objection goes to trial thereon, and the evidence is sufficient to convict him of one of them, he can not be heard to complain on appeal, of the fact that there were other offenses charged of which he was not convicted."

The facts in the case at bar demand a further ruling upon the question whether, in the event that no objection is made to the complaint or information by the accused on the ground that more than one offense is charged therein, the prosecution can properly submit evidence as to the commission of each and all of the offenses charged? And further, whether the court can enter judgment of conviction of each and all of these offenses, and thereupon impose the prescribed penalties for each and all of them?

We are of opinion that these questions should be answered in the affirmative.

On principle, it would appear that the accused having waived his right to be tried for but one offense, there can be no objection to the introduction of evidence of his guilt of each and every offense charged in the complaint or information; and it would seem that conviction of any and all of such offenses should logically follow upon proof of their commission by the accused. Having arrived at the conclusion that under our system of criminal procedure convictions can properly be entered in such cases for more than one offense charged in the complaint or information, it then becomes the duty of the court to impose the corresponding penalties under the provisions of article 87 of the Penal Code which is as follows:

"When a person is found guilty of two or more felonies or misdemeanors, all the penalties corresponding to the several violations of law shall be imposed, the same to be simultaneously served, if possible, according to the nature and effects of such penalties."

The principal objections urged to this practice appear to be based upon considerations of the alleged undue

hardship imposed upon the accused in requiring him to defend himself upon two or more charges in the course of a single trial; and also upon the supposed lack of precedents in English and American criminal procedure.

(1) But the rights of the accused in this regard would seem to be sufficiently safeguarded by the provisions securing him from any attempt to force him to trial, over his objection, for more than one offense charged in the complaint or information. We can conceive of many instances where the interests of both the accused and the state would be best subserved by a single trial in the course of which his guilt or innocence of several allied offenses charged against him would be determined once and for all, without compelling him to undergo a series of burdensome and vexatious trials, in order to secure a separate verdict or judgment upon each and all of a series of allied offenses with which he may have been charged.

(2) Even if it were true that the practice has no precedents in English and American criminal procedure we would not consider ourselves bound thereby in this jurisdiction, wherein jury trials are known. The general but not uniform English and American practice in felony cases, requiring the submission to the jury of a single issue of "guilty" or "not guilty" of a single, specified offense, would appear to be based, in large part, upon the belief that juries, untrained in the law and the rules of criminal procedure, might be confused by a multiplicity of issues, and find it impossible to give a number of charges of separate and distinct felonies the attention and consideration which they deserve.

But the truth is that the practice is not uniform in the United States, as will appear from the annexed citations from Bishop on Criminal Procedure and the cases cited in support of the text:

"Par. 449.—1. Common practice not quite uniformly qualified by judicial discretion, permits the joinder of counts for felony. But—

"2. One transaction.—By the English rule, widely yet not universally prevailing in our States, the court at the trial will restrict the evidence to one transaction; the differing counts being allowed only for the purpose of describing in it varying ways. * * *

"Par. 450.—1. Exceptional doctrine.—Contrary in part to the doctrine already explained, there are states in which, without statutory aid, the courts permit felonies committed in distinct transactions to be joined, within limits not greatly different from those in misdemeanor. One of these States is Massachusetts, where such has been 'the long-established practice;' the felonies being 'of the same general nature, requiring the same mode of trial, and having the punishment annexed to them of a like nature. As to the—

"2. Verdict and sentence.—If, after a general finding of guilty on such an indictment, there is a sentence to a longer imprisonment than any one count would sustain, yet not longer than all, the judgment is not erroneous. This is not the place to inquire whether it is or should be so in other States.

"PAR. 451.—1. The like joinder of distinct transactions in felony seems to be permitted also in Tennessee, and two or three of the other States, without statutory aid.

"2. Statutes have directly or by their consequences greatly enlarged this right of joinder, or confirmed it, or restricted it, in various States.

"Par. 452.—1. General.—By the practice everywhere, distinct misdemeanors may be joined in separate counts of one indictment, to be followed by one trial for all, and by conviction for each, the same as though all were charged in separate indictments; subject to practical limitations from judicial discretion."

We conclude, in the absence of objection by the accused, that neither principle nor precedent forbid the practice in this jurisdiction of hearing and adjudicating at a single trial charges of different offenses set forth in a single

complaint or information; and that upon conviction of two or more offenses thus charged in the complaint or information, the prescribed penalties for each and all of such offenses may be imposed, to be executed in conformity with the provisions of article 87 of the Penal Code.

It may be well, however, to indicate here that the better practice in this regard would seem to be that adopted by the State of Massachusetts and set forth in the foregoing citations from Bishop, paragraph 45§; and that the Courts of First Instance in this jurisdiction should, in the exercise of a sound judicial discretion, decline to permit the joinder of felonies committed in distinct transactions in cases wherein the felonies thus joined are not "of the same general nature, requiring the same mode of trial, and having the punishment annexed to them of a like nature."

The trial judge was erroneously of opinion that the prescribed penalties for the offenses of which the accused was convicted should be imposed in accord with the provisions of article 89 of the Penal Code. That article is only applicable to cases wherein "a single act constitutes two or more crimes, or when one offense is a necessary means for committing the other." (U. S. vs. Ferrer, 1 Phil. Rep., 56.)

It becomes our duty, therefor, to determine what penalty or penalties should have been imposed upon the accused upon the conviction of the accused of the three separate felonies charged in the information.

There can be no reasonable doubt as to the guilt of the convict of two separate crimes of *asesinato* (murder) marked with the generic aggravating circumstances mentioned in the decision of the trial judge, and unaccompanied by any extenuating circumstance other than that set forth and defined in article 11 of the Penal Code as amended. It follows that the death penalty must and should be imposed for each of these offenses unless, under the terms of article 11 as amended by Act No. 2142, the court is of the opinion that the ignorance and lack of instruction of the convict should be taken into consideration so as to reduce this penalty from death to *cadena perpetua* (life imprisonment). Under all the circumstances we do not believe that the prescribed penalty should be reduced in this manner. There is no question here of a crime committed by an untutored savage in the belief that he was acting in accord with some tribal custom, or, of an ignorant creature acting under the impulse of an old superstition handed down to him by his ignorant and uncivilized forbears. Doubtless the convict is an uneducated and even a densely ignorant man. But living in mind the conditions under which he did his three victims to death, we are of opinion that his criminal responsibility for these heinous crimes is not modified in any substantial degree by his ignorance and lack of education. Neither education nor a high degree of intelligence is necessary to teach a man that it is unlawful and criminal in the highest degree to do murder under the circumstances which surrounded the commission of the crime of which this accused stands convicted. In giving way to his vindictive rage aroused by demands for redress for the petty wrong he had done his neighbor and by criticism of his conduct in that connection, he must have known that he subjected himself to the severest penalties of the law, and his ignorance and lack of education offer no justification or excuse for the merciless and murderous assault upon the lives of his relatives and neighbors.

In addition to the conviction of these separate *asesinatos* (murders) the accused was also properly convicted of a separate and distinct crime of homicide, unmarked by aggravating or extenuating circumstances, for which the prescribed penalty is from 14 years 8 months and 1 day to 17 years and 4 months of *reclusion temporal*.

Unless the accused should be acquitted hereafter on appeal, of one or both the *asesinatos* with which he is charged in the information, it would seem to be a useless formality to impose separate penalties for each of the offenses of which he was convicted, in view of the nature of the principal penalty; but having in mind the possibility of such acquittal, and the possibility that the Chief Executive may deem it proper to grant a pardon for one or more of the offenses without taking action on the others; and having in mind also the express provisions of the above cited article 87 of the Penal Code, we deem it proper to modify the judgment entered in the court below by substituting

for the penalty imposed by the trial judge under the provisions of article 89 of the Code, the death penalty prescribed by law for each of the two separate asesinatos of which he stands convicted, and the penalty of 14 years 8 months and 1 day of reclusion temporal, together with the accessory penalties prescribed by law, for the homicide of which he was convicted, these separate penalties to be executed in accord with the provisions of article 87 of the Penal Code; and thus modified, the judgment convicting and sentencing the accused should be affirmed with the costs of this instance against him. So ordered.

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

Avancena, J., did not sit in the case.

[1] Not published.

STREET, J., concurring and dissenting in part:

I concur with the judgment imposing the sentence of death upon the accused for the crime of murder committed upon the person of Fortunata Cabsagan, but I am constrained to record my dissent from so much of the decision as holds that the accused may in the same proceeding be convicted of toher offenses charged in the complaint. Section 11 of General Orders No. 58 provides that a complaint or information must charge but one offense except in those cases where the law prescribes a single punishment for various allied offenses.

The plain inference is that upon one complaint or information there can be only one conviction, and such has heretofore been understood to be the law. I think that this court made a reasonable interpretation of this section when it held, in *United States vs. Lampano and Zapanta* (13 Phil. Rep., 409), that if an accused person goes to trial upon a complaint charging the commission of more than one offense, he cannot be heard to complain on appeal that he was improperly tried on such a complaint where the facts constituting the several offenses are so interrelated that it is inconvenient to state the different offenses separately; and this practice has been frequently adopted. Accused persons seem to have generally acquiesced in the practice on account of the fact that only one penalty could be imposed. It is often a substantial advantage to the Government for its prosecuting officer to be able thus to charge several independent, but related, offenses in one complaint rather than to be compelled to charge the offenses separately, because at the trial the Government gets the benefit of the cumulative effect of the evidence relative to all the different offenses, and conviction is certain if either of the offenses are proved. Nor are the ends of justice defeated by limiting the judgment to the penalty attached to only one offense, for the penalties prescribed in the Penal Code are generally severe enough to enable the court to give the guilty party enough. We think that the decision now made will prove to be inconvenient in its practical result; for as lawyers learn that no benefit can accrue to their clients from allowing them to be tried upon complaints charging more than one offense, the result will be that the complaint will be commission of two or more separate offenses. the result will be that the fiscal will often be reduced to great perplexity in trying to charge separately and with sufficient fullness the commission of offenses which are really more or less involved with each other.

It would seem clear that the enactment of the provision above quoted form General Orders No. 58 necessarily had the effect of modifying the application of article 87 of the Penal Code.

MALCOLM, J., dissenting:

I agree that the proof justifies the imposition of the capital penalty. I must disagree as to the remainder of the judgment which decrees that the accused shall receive the death penalty twice, and shall by some supernatural

means fulfill a sentence of 14 years, 8 months, and 1 day—all in accordance with the cited article 87 of the Penal Code "to be simultaneously served, if possible." I stand also on the clear provisions of section 11 of the Code of Criminal Procedure reading—"A complaint or information must charge but one offense."

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