

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MORO JAMAD, DEFENDANT AND APPELLANT.

G.R. No. 12678. December 15, 1917

Ponente: CARSON, J.

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CARSON, J.:

The death penalty having been imposed upon Moro Jamad, the defendant in the above entitled cause, the record of the proceedings in the court below is before us en consulta

(for review).

The information on which the accused was brought to trial is as follows:

"That, on or about the evening of September 30, 1916, at Fort Pikit, Pagalunga, of the Province of Cotabato, Department of Mindanao and Sulu, P. I., said accused, being a duly enlisted private of the Insular Police Force or Philippine Constabulary, and being on guard duty as a sentinel, did, willfully, unlawfully, and criminally, and with treachery and premeditation, pursue, attack, assault, and, with the gun which he was then carrying, shoot at his wife the Mora Aring, Juan Labonete, and the soldiers Isidro Torres and Taclid, inflicting several mortal wounds upon each of them, as a result of which the said Mora Aring, Juan Labonete, and the soldier Isidro Torres then and there died; and that, after having killed said persons, he fired at his officers with intent to kill them—acts committed in violation of the law."

Upon arraignment, and after the information had been read to him in his native dialect, the accused, under advice of counsel, pleaded "guilty."

Notwithstanding the plea of "guilty," several witnesses were examined, under the well-settled practice in this jurisdiction which contemplates the taking of additional evidence in cases wherein pleas of "guilty" are entered to complaints or information charging grave crimes, and more especially crimes for which the prescribed penalty is death.

The substance of the testimony of these witnesses is set forth in the brief of the Attorney-General as follows:

"Roberto Munar, a constabulary soldier, testified free, p. 17) that as a practicante he examined the bodies of Mora Aring, Juan Labonete, and Isidro Torres and discovered that they had all died as a result of having been shot; that Mora Aring had a wound showing that a bullet had entered the upper part of the arm back of the right shoulder and had come out through the breast, and another wound caused by a bullet which entered below one of the ribs on the right side and came out of the right side of the back; that Juan Labonete had a wound caused by a bullet which entered the chest and came out of the back, and another wound made by a bullet which entered beside the navel and came out of the left side of the back; that Isidro Torres had a wound caused by a bullet which entered near the left eye and came out of the rear of the head; that Aring died probably about one or two hours after having been wounded, and Juan Labonete and Isidro Torres died about four hours after they were wounded; that he saw the wound of Taclid which was caused by a bullet which entered the right shoulder and came out of the

upper part of the same side; and that the dead body of the woman was near the Pikit barracks, and the bodies of the men were in the barracks when he examined their wounds."

"Taclid testified (rec, p. 20) that on September 30, 1916, he was unarmed and seated at the guard post just outside the barracks, and had listened for about five minutes to a conversation between the defendant and the Mora Aring who were less than one braza distant from him; that defendant was the sentinel then on guard; that he (Taclid) was sitting with his head inclined and could not understand the conversation which was carried on in the Samar dialect; that after about five minutes Jamad shot him (Taclid) with a gun, knocking him down; that he did not see the accused point his gun at him as at that moment he was sitting with his face turned away from him; that he (Taclid) then ran and notified Lieutenant Killan, and then gave the alarm call with a cornet; that while he was running he heard several other shots fired. The witness then showed where a bullet had entered his shoulder and had come out through his back (rec., p. 27). He at first testified that defendant and his wife were talking in a loud tone, but during cross-examination testified that they were not talking in a loud quarrelsome tone but with a low voice. He also testified that he had no quarrel or trouble with defendant and knew no reason why he was thus attacked, that no one was present at the time he was shot except Jamad, Aring and himself; and that he heard no shooting prior to the shot which struck him."

"Tranquilino Balicaco testified (rec, p. 24) that he saw this defendant come from the guard post at about 7 p. m. on September 30, 1916, and shoot Juan Labonete, a cook, twice with a constabulary gun; that he also saw defendant shoot three times at Lieutenant Killan; that Juan Labonete was not armed; that he (witness) had heard shooting before defendant came up into the lieutenant's kitchen, and that he (witness) became afraid and had secreted himself but could see defendant; that the lieutenant was on the balcony; and that he (witness) did not see the lieutenant do any shooting."

"Lieut. N. C. Killan testified (rec, p. 29) that on September 30, 1916, he was a lieutenant of the constabulary; that this defendant was a soldier of the constabulary; that at about 7 p. m. he (witness) heard several shots and was informed by Taclid that Jamad had gone juramentado; that Jamad came to the lieutenant's house and shot at him (lieutenant) and also shot and killed the cook Labonete; that he (lieutenant) shot at defendant with a revolver, but the latter escaped carrying off the 'Crag' rifle with him and hid in the grass until October 3, 1916, when he was captured by the soldiers after exchanging several shots and that defendant stated that he shot his wife because she insulted him."

The evidence thus adduced at the trial, read together with the plea of "guilty" entered on the arraignment, leaves no room for reasonable doubt that the accused took the lives, unlawfully, of his wife, Mora Aring; of Juan Labonete; and of Isidro Torres; and that at or about the same time he shot and wounded, with intent to kill, the witness Taclid. It appears, furthermore, that he acted *con alevosia* (treacherously), that is to say, that he "employed means, methods or forms in the execution thereof which tended directly and specially to insure the commission of those crimes without risk to himself arising from the defense which his victims might make," in that he shot them suddenly and without warning with a rifle, at close range (subsection 2, art. 10, Penal Code).

We are of opinion, however, that notwithstanding his plea of "guilty" to the commission of these offenses with *premeditacion conocida* (deliberate premeditation), it does not appear beyond a reasonable doubt that the commission of these offenses was marked with *premeditacion conocida* (deliberate premeditation) in the sense in which that word is used in subsection 7 of article 10 of the Penal Code, wherein it is provided that *premeditacion conocida* (deliberate premeditation) shall be taken into consideration as an aggravating circumstance in the imposition of the penalties prescribed in the code. (U. S. vs. Gil, 13 Phil. Rep., 530.)

The commission of these crimes does not appear to have been marked with any extenuating circumstances; and

having in mind the fact that the accused was a Constabulary officer, who may be presumed to have had some of the benefit of the discipline and training afforded its members by that organization and necessarily incident to their contact with their fellow soldiers and officers, we are of opinion, in view of the nature of the crimes committed by him, that he is not entitled to have the penalties prescribed for those crimes reduced in degree under the provisions of article 11 of the Penal Code as amended by Act No. 2142.

The trial judge found the accused guilty of one parricide (parricidio), two murders (asesinatos) and one frustrated murder, in that he unlawfully took the life of his wife Aring, of Isidro Torres and of Juan Labonete, and made a frustrated attempt upon the life of Taclid, each of these offenses being marked with the aggravating circumstance of "treachery" (alevosia), deliberate premeditation (premeditacion conocida), and abuse of confidence.

As we have said already, the evidence does not sustain a finding that the crimes were marked with the aggravating circumstance of deliberate premeditation (premeditacion conocida); and we are of opinion that the aggravating circumstance of "treachery" (alevosia) which marked the acts of the accused must be held to include as one of its elements the abuse of confidence, which the trial judge treated as a separate and distinct aggravating circumstance.

For all of the offenses of which the accused was convicted in the court below, the trial judge imposed the death penalty, that is to say the penalty prescribed for the most serious crime committed, in its maximum degree, and for this purpose made use of the provisions of article 89 of the Penal Code. But as indicated in the case of *The United States vs. Balaba*, (ante, p. 260) recently decided wherein the controlling facts were substantially similar to those in the case at bar, "all the penalties corresponding to the several violations of law" should have been imposed under the express provisions of article 87, and, under the ruling in that case, the trial court erred in applying the provisions of article 89 of the code.

We conclude that the judgment entered in the court below should be reversed, and the accused convicted (1) of parricide (parricidio), in that he unlawfully took the life of his wife Aring, this crime being marked with the aggravating circumstance of treachery (alevosia) and no extenuating circumstance; (2) of the murder (asesinato) of Juan Labonete marked with neither aggravating nor extenuating circumstance, treachery (alevosia) having been taken into consideration as a special or qualifying circumstance to characterize the crime as murder (asesinato); (3) of the murder (asesinato) of Isidro Torres, marked with neither aggravating nor extenuating circumstances; (4) of the frustrated murder of Taclid, marked with neither aggravating nor extenuating circumstances; and that the following separate penalties should be imposed upon him, to be executed in accordance with the provisions of article 87 of the Penal Code: (1) The penalty of death for the parricide of his wife Aring; (2) the penalty of life imprisonment for the murder of Labonete; (3) the penalty of life imprisonment for the murder of Torres; (4) the penalty of 12 years and one day of cadena temporal for the frustrated murder of Taclid; and that in addition to these penalties there should be imposed upon him the accessory penalties prescribed by law as to each of the principal penalties, the indemnification of the heirs of each of the deceased in the sum of P1,000, and the costs of the proceedings in both instances.

Before finally disposing of this case some comment may properly be made on the request of the Attorney-General for a more definite ruling as to the practice which should be followed in admitting evidence after a plea of guilty by the accused. Citing *Wharton on Criminal Evidence* (Vol. 2, pp. 1323-4) in support of his contention that a plea of guilty is conclusive when formally made on the issue, unless shown to have been made by mistake, or to have been secured by fraud, the Attorney-General says that "in the case of *U. S. vs. Agcaoili* (31 Phil. Rep., 91) the judgment of the lower court, sentencing the defendant to the death penalty after a plea of guilty without any evidence being taken, was reversed by this court and a new trial ordered. In the decision this court invited attention to the 'rule of practice recommended' in the cases of *U. S. vs. Talbanos* (6 Phil. Rep., 541) and *U. S. vs.*

Rota (9 Phil. Rep., 426) and held that, 'while there is no law requiring it' in every case where the death penalty may be imposed 'it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant.'

"The result of the above decisions, reversing the judgments of conviction rendered by the court below, is to cause some doubt as to the essential weight to be given to judicial confessions and as to the quantity of evidence which is considered necessary by this court to be taken in order to support a judgment of conviction after a plea of guilty."

In one of the cases cited by the Attorney-General, *U. S. vs. Talbanos* (supra), this court expressly held that a plea of "guilty" to a complaint which clearly charges the commission of an offense, even a capital crime, is sufficient, without the introduction of evidence, to sustain a judgment of conviction of the offense charged. This doctrine has been steadfastly adhered to by this court, and would seem to be the doctrine for which the Attorney-General is contending, and in support of which he cites an array of authority which cannot be successfully challenged.

In the case of *U. S. vs. Dineros* (18 Phil. Rep., 566) we said that "the essence of the plea of guilty in a criminal trial is that the accused on arraignment admits his guilt, freely, voluntarily, and with a full knowledge of the consequences and meaning of his act." The effect of that ruling is to make it clear that the doctrine -just referred to is not applicable unless the plea of "guilty" is in truth and in fact made under the conditions indicated, that is to say on arraignment, freely and voluntarily, as an express admission of the guilt of the accused of the offense with which he is charged, and with full knowledge of the consequences and the meaning of his act. A mere formal plea of "guilty" made under compulsion, or under any condition other than those just indicated will not suffice.

If the accused does not clearly and fully understand the nature of the offense charged, if he is not advised as to the meaning and effect of the technical language so often used in formal complaints and informations in qualifying the acts constituting the offense, or if he does not clearly understand the consequences by way of a heavy and even a capital penalty flowing from his admission of his guilt of the crime in the precise technical manner and form in which it is charged, his plea of guilty should not be accepted; and if accepted, it should not be held to be sufficient to sustain a conviction.

Our experience has taught us that it not infrequently happens that, upon arraignment, accused persons plead "guilty" to the commission of the gravest offenses, qualified by marked aggravating circumstances, when in truth and in fact they intend merely to admit that they committed the act or acts charged in the complaint, and have no thought of admitting the technical charges of aggravating circumstances. It not infrequently happens that after a formal plea of "guilty" it develops under the probe of the trial judge, or in the course of the statement of the accused made at the time of the entry of his plea, or upon the witness stand, that the accused, while admitting the commission of the acts charged in the information, believes or pretends to believe that these acts were committed under such circumstances as to exempt him in whole or in part from criminal liability. Clearly, a formal plea of guilty entered under such circumstances is not sufficient to sustain a conviction of the aggravated crime charged in the information.

As will readily be understood, the danger of the entry of improvident pleas of this kind is greatly augmented in cases wherein the accused is a member of an uncivilized tribe, or a densely ignorant man who speaks a dialect unknown to his own lawyer, to the trial judge, and to the court officers other than the interpreter. In the course of the last fifteen years we have had before us a number of instances wherein members of uncivilized tribes have pleaded guilty to the commission of crimes marked with one or more aggravating circumstances, for which the prescribed penalty is that of death, life imprisonment, or a long term of imprisonment. In not a few of these cases the evidence, taken under the rule of practice in this jurisdiction, has disclosed the fact that the crimes actually

committed were not marked with the aggravating circumstances set forth in the information, and in some cases it has developed that the accused was either wholly or partially exempt from criminal liability.

The case now under consideration well illustrates the danger of accepting formal pleas of "guilty" without further investigation. As will be seen from the information set out above, the accused, a Moro, was charged with inflicting a fatal wound on one Taclid. He pleaded guilty to this charged, apparently under the advice of counsel, in open court and in the presence, of the trial judge and the fiscal. But it appears from the evidence that this very man Taclid, whom the accused admitted he had fatally wounded, was then present in court, and later appeared as a witness against the accused, having entirely recovered from his wound so far as can be gathered from the record. Furthermore, by his plea of guilty the accused formally admitted that he had shot his different victims with premeditation *conocida* (deliberate premeditation) and yet, from the evidence taken at the trial, it appears that most, if not all of the shots were fired without any, the slightest premeditation *conocida* (deliberate premeditation), as that term is used in the code.

Will it be contended in the light of these experiences, that this court is not justified in indicating to the trial judges that "while there is no law requiring it," nevertheless, in capital cases especially, "it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant" notwithstanding his formal plea of "guilty?" (U. S. vs. Talbanos, 6 Phil. Rep., 541.)

As we said in the case of U. S. vs. Rota (9 Phil. Rep., 426):

"There is no provision of law which prohibits the taking of testimony where the accused enters a plea of 'guilty,' and that procedure is the proper and prudent course, especially in cases where grave crimes are charged, and where the court is required to exercise its discretion in imposing a more or less severe penalty in view of all the circumstances attending the commission of the crime."

In the case of U. S. vs. Agcaoili (31 Phil. Rep., 91), we reversed a judgment convicting the defendant on his formal plea of "guilty" and sentencing him to death, and sent the case back for a new trial, on the ground that after an examination of the whole record, we could not rid our minds of a doubt as to whether the accused fully and clearly understood the nature and effect of his plea. In that case the information charged the defendant with the crime of *asesinato* (murder), marked with a series of aggravating circumstances couched in highly technical terms, and set forth so as to necessitate the imposition of the death penalty upon conviction of the crime thus charged in the information. The defendant being a Moro, whose language was unknown to the trial judge and the court officers other than the interpreter, and no evidence having been taken, the court inclined to doubt that sufficient pains had been taken to make certain that the accused fully understood the nature and consequences of his plea—a doubt which the meager record of the proceedings in the court below was insufficient to remove. In capital cases, this court is required by law to review the record of the proceedings of the court below, whether the accused appeals or not, and to confirm, modify, or reverse the judgment on this record, and we were of opinion that we could not confirm the imposition of the death penalty upon the plea entered at the trial, in the absence of a satisfactory showing in the record that, under the peculiar circumstances of that case, the precise meaning and legal effect of the information, and the consequences of the entry of a formal plea of "guilty" thereto, were fully apprehended by the uncivilized Moro defendant.

It is no undue or unreasonable burden to place upon the state, in the prosecution of grave criminal charges, to require the production of sufficient evidence, aside from or in addition to a plea of "guilty," to establish independently the commission of the crime, or at least to leave no room for reasonable doubt in the mind of either the trial court or this court, on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charges to which he pleaded guilty; and, further, to develop the

circumstances surrounding the commission of the crime which justify or require the exercise of a greater or less degree of severity in the imposition of the prescribed penalties.

In the case at bar, while it may well be doubted that the accused intended by his plea of guilty to admit the truth of the technical relation of aggravating circumstances set forth in the information, nevertheless, it cannot be doubted that he did intend to admit, and did in fact admit that he shot the persons mentioned in the information at the time and place set forth therein, and this admission read together with the evidence leaves no room for reasonable doubt as to his guilt as hereinbefore indicated. Accordingly, we are able to dispose of the case notwithstanding the apparent irregularity of the proceedings. The irregularity manifestly did not have the effect of prejudicing any substantial right of the accused, his trial having proceeded to all intents and purposes as though he had in fact plead "not guilty" as charged, at the same time formally admitting the shooting of the persons mentioned in the information at the time and place indicated therein.

We may say then, in response to the request for a ruling on this subject by the Attorney-General:

- (1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.
- (2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.
- (3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of "guilty."
- (4) Having in mind the danger of the entry of improvident pleas of "guilty" in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.
- (5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.
- (6) Notwithstanding what has been said, it lies in the sound judicial discretion of the trial judge whether he will take evidence or not in any case wherein he is satisfied that a plea of "guilty" has been entered by the accused, with full knowledge of the meaning and consequences of his act.
- (7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of "guilty" with full knowledge of the meaning and consequences of the act. So ordered.

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

MALCOLM, J., concurring:

In view of the decision in *United States vs. Balaba*, I concur in the result.

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