

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELINO CUNANAN, FERMIN BUCUD, PIO (POLICARPIO) BALATBAT, MARIANO BALATBAT AND HILARIA SISON, DEFENDANTS AND APPELLANTS.

G.R. No. 13177. March 12, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

We have to determine whether or not Felino Cunanan, Fermin Bucud, Pio (Policarpio) Balatbat, and Mariano Balatbat, defendants in case No. 1991 of the Court of First Instance of Pampanga, and Hilaria Sison, defendant in case No. 1989 of the same Court of First Instance, all of whom were tried together, are guilty of having murdered one Numeriano Regalado. The trial judge so found and condemned Felino Cunanan, Fermin Bucud, and Policarpio Balatbat to the death penalty, and Mariano Balatbat and Hilaria Sison to life imprisonment, all to indemnify jointly and severally the heirs of the deceased, Numeriano Regalado in the amount of P1,000, and each to pay one fifth part of the costs. The attorney for Fermin Bucud and the attorney for the other defendants, on appeal, make numerous assignments of error, all of which, however, can be resolved as relating either to the proof or to the penalty, and contend with much force that their clients are innocent. Counsel have also presented two motions for a new trial in this court.

On a careful review of the evidence, in connection with the decision of the trial court, we have come to the conclusion, as to the defendant Hilaria Sison, that she must be held to be not guilty. The theory of the trial court as to this defendant was that she had enticed the deceased to a lonely place to his death. The theory of the Attorney-General as to this defendant is that she and the deceased had had illicit relations and that they were together on this occasion to accomplish such a purpose, when her husband and his three comrades set upon Regalado and killed him. No direct evidence connecting her with the crime is found in the record. It therefore results, as held by the Chief Justice in the case of *The United States vs. Guevara* ([1903] 2 Phil., 528), that the mere presence of the defendant at the time and place of the commission of the crime is not of itself sufficient to show such an act of simultaneous cooperation as to make such a defendant an accessory to the crime.

As to the other four defendants, we hold that they have been proved guilty beyond a reasonable doubt of the crime of homicide because of having killed Numeriano Regalado. Briefly stated, these four defendants, on one of the early days of June, 1916, appear to have waited in a lonely place, armed with clubs, for the arrival of Numeriano Regalado and Hilaria Sison, and then to have killed Regalado and thrown his body into the river. This prominent fact is demonstrated by one eyewitness, by the evidence of other witnesses who identified these defendants as having been in the locality at this time, and by medical testimony. The defense was limited to an attempt to establish an alibi. Counsel on appeal also endeavor further to substantiate their alibi and to impeach the testimony of the principal witness for the prosecution, intimating that the reason why he testified against the defendants was in order to be able to live with Benita Sison, wife of one of the defendants. We do not think that a new trial would change the result.

The lower court took into consideration the circumstances of premeditation and alevosia. It is undeniable that the accused seem to have known that the deceased and Hilaria Sison would pass by a particular place, but this sole circumstance does not warrant the deduction of known premeditation. Says the supreme court of Spain:

"The finding by the jury that the accused had concocted the act beforehand well knowing that the offended parties were going to pass that afternoon at the point where the act was committed, does not constitute a sufficient foundation for the existence of the aggravating circumstance of known premeditation. In order that this circumstance may properly be considered it is necessary to determine when the intent to commit the crime was engendered in the mind of the accused, the motive which gave rise to it, the means which they had beforehand selected to carry out the criminal intention (independently of the fact of having waited in ambush for their victim and attacked him without danger to their person, which constitutes the circumstance of alevosia, already considered), in fine, all those facts and antecedents which combined show that the crime was knowingly premeditated, as required by law, or, that the accused acted not only with a preexisting design, which is a condition ordinarily found in all crime, but with that cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose, which is the distinctive characteristic of this aggravating circumstance, whether as qualifying or generically considered." (Decision, November 9, 1895.)

As to the circumstance of alevosia there is also doubt as to its existence, but somewhat connected therewith is another circumstance, which has been proved, of advantage being taken of superior strength. Another aggravating circumstance which must be considered is that the crime was committed in an uninhabited place and by a band of more than three armed men. The Attorney-General suggests as a mitigating circumstance, working in behalf of Pio (Policarpio) Balatbat and Mariano Balatbat, the fact that the act was committed in the immediate vindication of a grave offense to the one committing the felony. If the theory of the Attorney-General is correct, this of course is possible, for Mariano Balatbat was the husband of Hilaria Sison and Pio (Policarpio) Balatbat was her father-in-law, and these two may have conspired to commit the homicide because of the illicit relations existing between Hilaria Sison and the deceased. We find no proof of this mitigating circumstance.

In view of the foregoing, we acquit Hilaria Sison, with one-fifth of the costs of both instances de officio. We further find the other four defendants, Fermin Bucud, Felino Cunanan, Mariano Balatbat, and Pio (Policarpio) Balatbat, guilty of the crime of homicide and sentence each of them to seventeen years, four months, and one day of reclusion temporal, with the accessory penalties provided by law, to pay jointly and severally to the heirs of Numeriano Regalado the amount of P1,000, with one-fourth of the costs of both instances against each appellant. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Street, Avanceña, and Fisher, JJ., concur.

Johnson, J., dissents.

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