

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO BAUL, EULALIO TAMAYO AND SANTIAGO SIVAL, DEFENDANTS AND APPELLANTS.

G.R. No. 14100, March 29, 1919

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

On March 22, 1917, Major Tomlinson of the Philippine Constabulary, then senior inspector for the Province of Pampanga, upon receiving information about the commission of a crime in the sitio of Pibalatungan, Porac, proceeded to that place and there found two corpses. He took the pictures of these two corpses and found out that one of them was that of Pablo Pingol and the other that of the latter's son named Valentin Pingol, about eight years of age. Pablo Pingol had four wounds: (1) one transversal in the throat, 7 centimeters long and 2 centimeters deep; (2) an oblique wound in the upper jawbone close to the nose, cutting the left cheek, 3 centimeters long and 1 centimeter deep; (3) several longitudinal wounds on the left temple, 8 centimeters long and 2 centimeters deep; and another in the extreme end of the right leg cutting the three toes, beginning with the small one (Exhibit E, record, p. 11). Valentin Pingol had two wounds, to wit: one in the throat which almost severed the head from the trunk and another in the inner side of the left wrist, 2 centimeters deep (Exhibit F, record, pp. 12, 127-130).

On the morning of that day, Policarpo Nacup on his way towards the sitio of Planas heard cries for help and continuing on his way saw, in the neighborhood of a bamboo grove, the accused Santiago Sival, Francisco Baul, and Eulalio Tamayo giving blows with a bolo to Pablo Pingol.

On the same morning Catalino Manalang, while fishing in the river near the outskirts of the same place, heard the cries of Valentin Pingol who was asking for help because, as he said, they were giving blows with a bolo to his father. For the purpose of finding out what prompted those cries, Catalino Manalang went up to the river bank and from there saw at a short distance that the accused Francisco Baul was giving blows with a bolo to the child Valentin Pingol and also saw in the same place the other accused Santiago Sival and Eulogio Tamayo as well as Pablo Pingol's corpse.

On the previous night, that is, the night of March 21, 1917, the accused Eulalio Tamayo, Francisco Baul, and Santiago Sival, and Pablo Nacup slept in a barn located in the place known as Calantas, in the municipality of Floridablanca, where they were grinding sugar cane. When all were in bed, Pablo Nacup heard Francisco Baul and Eulalio Tamayo say that on the next day they would go to Pibalatungan to gather bamboo sprouts. On the afternoon of March 22d, Pablo Nacup saw the three accused carrying bamboo sprouts.

In a statement which he ratified under oath before the justice of the peace of Floridablanca, Santiago Sival; said that, after eating on that day of March 22d and while searching for some bamboo trees, he arrived at the place known as Pibalatungan, Porac, Pampanga, where he saw the accused Francisco Baul and Eulalio Tamayo cutting some bamboo trees; that Pablo Pingol and his son Valentin arrived there; that Pablo forbade Francisco Baul and Eulalio Tamayo from continuing cutting the bamboo trees; that Francisco Baul and Eulalio Tamayo approached

Pablo, because the latter had insulted them; that shortly thereafter upon entering into a heated discussion but the matter, Francisco Baul and Eulalio Tamayo attacked Pablo with their bolos and afterwards attacked the latter child named Valentin; that Francisco Baul and Eulalio Tamayo, approached witness and frightened him with their bolos that he might join in the aggression; and that witness, through fear, gave blows to Pablo's corpse.

From what has been said, it appears that the liability of the three accused with regard to the death of Pablo Pingol and Valentin Pingol is not only proven by the testimony of the eyewitnesses, Policarpo Nacup and Alipio Manalang, but also by the corroborative testimony of Nacup, and above all as regards Santiago Sival, by his own testimony. After considering all the evidence presented, the trial court states in his decision that the demeanor of the witness for the prosecution while testifying has convinced him that they have told the truth. We have in turn examined carefully the evidence on behalf of the prosecution as well as that of the defense, and" we believe that we would not be justified in altering this conclusion reached by the trial judge, which was attained under more favorable circumstances than ours, same having seen the said witnesses testify.

The facts alleged in the information and sufficiently proven at the trial constitute two distinct offenses, with respect to the death of Pablo Pingol and Valentin Pingol, committed separately and independently and by different voluntary acts. They therefore determine two distinct responsibilities which should be punished separately. The death of the child Valentin Pingol constitutes the offense of murder qualified by the circumstance of alevosia (treachery). This circumstance is determined by the fact that the deceased is a child of tender age and the three accused are men in the fullness of physical development who have thus taken advantage of their marked superior strength against which it was impossible for the weak victim to resist and defend himself. The death of Pablo Pingol constitutes the offense of simple homicide with the aggravating circumstances of abuse of superior strength which is determined by the number of the accused. With respect to both crimes, the circumstance specified in article 11 of the Penal Code, as amended, should be applied in favor of the three accused.

Therefore, as the facts alleged in the information constitute two distinct offenses as regards the death of Pablo Pingol and Valentin Pingol and as no objection has been presented to such information, the accused should be found guilty of those offenses, in accordance with the doctrine laid down by this court in the case of the United States vs. Balaba([1918] 37 Phil. Rep., 260).

Modifying the judgment appealed from, we hereby hold that the defendants Francisco Baul, Eulalio Tamayo, and Santiago Sival are guilty of the crime of homicide committed upon the person of Pablo Pingol and of murder committed upon the person of Valentin Pingol and we hereby sentence each of the said accused to fourteen years eight months and one day reclusion temporal for the first offense and seventeen years four months and one day of cadena temporal for the second offense, and in each of the said two crimes the accused should indemnify, jointly and severally, the heirs of both of the deceased respectively in the sum of P500 and to pay the costs. So ordered.

Arellano, C.J., Torres, Johnson, Street, and Malcolm, JJ., concur.

Judgment modified.

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