

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE CARBONEL ET AL., DEFENDANTS. MAMERTO DE LEON ET AL., APPELLANTS.

*G. R. No 24177. March 15, 1926*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This is an appeal taken by Fidel Arrojo, Mamerto de Leon, Catalino Matula, Silvino Bulahan, Susano Gualdrapa and Felipe Gualdrapa from a judgment of the Court of First Instance of Occidental Negros convicting them of the crime of murder as principals, the first by induction, and the second by direct participation, and sentencing each of them to undergo life imprisonment; and Catalino Matula, Silvino Bulahan, Susano Gualdrapa, Felipe Gualdrapa and Jose Carbonel, of the crime of murder, as accomplices, and sentencing each of them to the penalty of twelve years and one day reclusion temporal, all of them to indemnify jointly and severally the heirs of the deceased, Eliseo Olmedo, and to pay the costs.

Jose Carbonel has not appealed from the judgment, so that it has now become final as to him.

To substantiate their appeal, the appellants assign the following supposed errors as committed by the trial court, to wit: (1) The conviction of the herein accused, Fidel Arrojo and Mamerto de Leon, as principals, and Catalino Matula, Silvino Bulahan, Susano Gualdrapa, Felipe Gualdrapa and Jose Carbonel, as accomplices, instead of acquitting them of the crime charged in the information upon reasonable doubt; (2) its failure to consider the principal and irreconcilable contradictions of the testimony of the witnesses for the prosecution which raise reasonable doubt in favor of the accused; (3) the holding that the accused were identified, when the evidence does not duly establish their identity; and (4) its failure to hold that Jose Carbonel, one of the herein accused, is the only author of the murder of Eliseo Olmedo, as shown by the confession of the said Jose Carbonel made in open court that he had killed Eliseo Olmedo in self-defense.

The facts proven at the trial beyond a reasonable doubt are as follows: On the date of the commission of the crime there existed in the municipality of Hog, Province of Occidental Negros, two rival societies, enemy to each other, known as Mainawaon and Kusug Sang Imol, respectively. Eliseo Olmedo was a member of the Mainawaon and Jose Carbonel, Mamerto de Leon, Fidel Arrojo, Catalino Matula, Silvino Bulahan, Susano Gualdrapa and Felipe Gualdrapa, were members of the Kusug Sang Imol. Four days before the crime, Fidel Arrojo was stopped on his way and then chased by four Mainawaons who tried to catch him, but he succeeded in escaping. In the month of October, Fidel Arrojo went to the club of the Kusug Sang Imol and told the vice-president, Ramon Larracas, and the secretary, Francisco Gemora, both of the said club, that the Mainawaons of the barrio of Gosy, headed by Eliseo Olmedo, were after him. Upon hearing such notice, Ramon Larracas struck the table with his fist and said: "Why did you not kill him? Kill him." Francisco Gemora, also striking the table with his fist, seconded the proposition, saying: "You try to kill him; you must kill him, because if you kill him there, where there are many Mainawaons, they will become afraid, and if you kill him, do not be afraid because in Bacolod there are good

lawyers. I am a procurador here in Bacolod and our club has a good lawyer in Bacolod." After the said interview, on the morning of December 26, 1924, Fidel Arrojo was telling everybody the following: "Tonight, I am going to kill three Mainawaons; if not F. Bello, then Juan Catalan; if not Juan Catalan, then Eliseo Olmedo," On the afternoon of the same day, Eliseo Olmedo, Mamerto de Leon, Fidel Arrojo, Jose Carbonel, Catalino Matula, Silvino Bulahan, Susano Gualdrapa, Felipe Gualdrapa, Santiago Helboligaya, Andres de Leon and Vicente Genito met in the house of one Basilio Salinas where there was a little celebration of the birthday of one of the children of the owner of the house. During their stay in the said house and while drinking tuba and eating some viands, Fidel Arrojo and his co-accused were seen talking in a low voice and so behaving as to arouse the suspicion of the other guests that something wrong was being planned. Fidel Arrojo was seen looking intently at Eliseo Olmedo from head to foot. When Andres de Leon asked him why he looked at Eliseo Olmedo in such a manner, Fidel Arrojo whispered to him in the ear "You shut up, a lightning will strike that fellow, I am going to kill him." When the departure of the guests began, Mamerto de Leon and Fidel Arrojo were the first to leave, followed by Vicente Genito and Santiago Helboligaya. Afterwards Eliseo Olmedo left the house accompanied by Catalino Matula, Jose Carbonel, Felipe Gualdrapa, Susano Gualdrapa and Silvino Bulahan. When they were about 30 meters from the house of Basilio Salinas, the voice of Fidel Arrojo was heard, saying "Go ahead, strike him now." Catalino Matula then placed his right hand upon the shoulder of Eliseo Olmedo, whereupon a fight ensued between the two. Silvino Bulahan, Susano Gualdrapa, Mamerto de Leon and Felipe Gualdrapa immediately also seized Eliseo Olmedo, two upon each arm, pulling his two arms crosswise; two holding both legs; one holding his waist and Mamerto de Leon holding his nape with his left hand. When Eliseo Olmedo had become weakened, his assailants took off his shirt and lowered his pantaloons until the knees. On that instant the voice of Fidel Arrojo was again heard saying "strike him now with the bolo." Upon hearing this, in the twinkling of an eye everybody let Eliseo Olmedo and Mamerto de Leon strike him with his bolo on the nape and everybody run away. The witness Vicente Genito who saw with Andres de Leon all of this from behind some shrubbery, attempted to interfere, but Mamerto de Leon met him and said "You also want to help him?," at the same time giving him a bolo blow which hit him on the right hand, inflicting a wound 2 inches long. When the body of Eliseo Olmedo was examined by Dr. Fortunato Angeles on December 28, 1924, the following wounds and contusions were found: One on the base of the cranium, 15 inches long by 1 inch wide and 1½ inches deep, which ran from the posterior part of the right ear downward almost to the back part of the lobe of the left ear cutting the scalp, the occipital bone and the hard membrane which covers the brains, and penetrating to the arteries and the cerebellum,—this wound is mortal of necessity; another wound on the left shoulder 1½ inches long, having the same direction as the former one apparently inflicted by the same bolo blow; one ecchymosis about 3 inches in diameter on the back; another on the buttock one upon each calf and one on each omoplate.

The defense tried to prove that the accused Mamerto de Leon and Fidel Arrojo, upon leaving the house of Basilio Salinas, went directly to their respective homes and did not know of what had happened until the following day. As to the other defendants, they attempted to prove that when they had walked some distance from the house of Basilio Salinas, Eliseo Olmedo turned to the accused Catalino Matula, Felipe Gualdrapa, Jose Carbonel and Susano Gualdrapa and challenged them, saying that if they, the Kusug Sang Imol people, were really brave, they could aline before him. Jose Carbonel, thinking that he was the person alluded to, approached the deceased and the latter pushed and struck him with a dagger which did not hit him but Vicente Genito. Then Eliseo Olmedo, with a penknife, attacked Catalino Matula. Jose Carbonel, upon seeing this, struck him with a bolo on the nape, running away afterwards. As to the defendants Silvino Bulahan and Susano Gualdrapa, the defense tried to prove that the said accused remained in the house and did not leave until later.

The evidence for the prosecution consists in the testimony of Vicente Genito and of Santiago Helboligaya who witnessed the event. Andres de Leon, being a member of Kusug Sang Imol, was included in the complaint, but

later excluded to be used as state's witness, for the purpose of proving the motive of the crime and also its commission by the defendants. The testimony of the witnesses for the prosecution is corroborated by the circumstances of the case and by the marks of violence that were found upon the body of the deceased. The wound on the nape shows that he was killed by bolo blows. The ecchymoses on the arm, on the back, on the buttocks and on the calves corroborate the testimony of the witnesses that the deceased was held by the defendants in those parts of the body. As to the identity of the defendants there cannot be the slightest doubt, because they were seen by persons who knew them very well and who were with them at the time and under such circumstances that it was not possible to make a mistake about their identity. The slight contradictions found in the testimony of the witnesses for the prosecution, far from denoting that they did not tell the truth, prove that each of them testified only as to that which he perceived subjectively and objectively. It is a phenomenon now no longer a matter of speculation, but a psychological truth, that two persons seeing the same accident or act do not perceive the details in the same manner nor receive the same impression. Experience has shown that there can only be absolute coincidence in the details of observation of the same accident or act by two or more persons when there has been a previous concert.

The defense of alibi, as regards the defendants Fidel Arrojo, Mamerto de Leon, Silvino Bulahan and Susano Gualdrapa, cannot overcome the conclusive evidence of the prosecution as to their identity and participation in the crime. As to the other accused neither is the evidence that Eliseo Olmedo provoked the fight, compelling Jose Carbonel to defend his person and his companions, meritorious since, aside from the fact that all the witnesses for the defense are interested persons and partial witnesses on account of their natural tendency to protect themselves, the circumstances of the case do not corroborate their testimony which was contradicted by the witnesses for the prosecution who had witnessed the event.

Having found beyond all reasonable doubt that all of the herein accused have cooperated in killing Eliseo Olmedo, we shall now proceed to consider the nature of the crime committed and the responsibility of each and everyone of them.

The advices and assurances given to Fidel Arrojo by the vice-president and secretary of the Kusug Sang Imol of Hog; the statements made by him on the following day that he would kill three Afainawaons, among them, the deceased Eliseo Olmedo; the secret conversations that took place in the lower part of the house of Basilio Salinas in the afternoon of December 26, 1924; the cry of "Go ahead, strike him now" suddenly made by Fidel Arrojo when he got about 30 meters away from the house of Basilio Salinas; the instantaneous action of Catalino Matula in holding Eliseo Olmedo by the right shoulder and the cooperation, also instantaneous, given by the accused Mamerto de Leon, Silvino Bulahan, Felipe Gualdrapa, Jose Carbonel and Susano Gualdrapa, holding the said Eliseo Olmedo in different parts of the body; the second cry of Fidel Arrojo of "strike him now with the bolo;" the instantaneous blow struck by Mamerto de Leon on the nape that caused his death,—all of this shows that in the afternoon of the day when the crime was committed, the accused, headed by Fidel Arrojo, conspired and agreed to kill Eliseo Olmedo, and united for one single purpose, each one having his respective part in the consummation of the crime, assaulted said Eliseo Olmedo, inflicting several wounds upon him, one of which was mortal of necessity and as a result of which he died on the spot. The accused Catalino Matula, Silvino Bulahan, Susano Gualdrapa and Felipe Gualdrapa cannot be considered as mere accomplices, because if they had not participated in the conspiracy to kill Eliseo Olmedo, Fidel Arrojo would not have shouted "strike him now with the bolo," and upon hearing it, they would have prevented Mamerto de Leon from executing the order. Not only did they not do anything of the kind—giving it to understand by their silence that they approved of the act—but they stripped Eliseo Olmedo of his shirt, and would have done the same with his pantaloons, that were already lowered up to the knees, if the order to kill him had not been given prematurely. " \* \* \* If two persons pursue by their acts the same object often by the same means, one performing one part of the act and the other another part of the act, so as to

complete it with a view to the attaining of the object which they are pursuing, this will be sufficient to constitute a conspiracy. \* \* \* It is not essential that each conspirator shall take part in every act, or that he shall know the exact part to be performed by the other conspirators in execution of the conspiracy. Conspiracy implies concert of design and not participation in every detail of execution. Nor is it necessary that the plan of combination shall embrace in detail in its early stages the various means by which it is to be executed, as it is sufficient that there is a general plan to accomplish the result sought by such means as may from time to time be found expedient." (12 Corpus Juris, p. 545.) "Generally it is not material that the plan which was carried out differs widely from the original plan, nor will it be required to show the existence of any previous plan if, from the evidence, it seems clear that there had been negotiations to the same end." (Underbill's Criminal Evidence, page 794, par. 490.)

Direct proof is not essential to show conspiracy. "It need not be shown that the parties actually came together and agreed in express terms to enter in and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and, from the secrecy of the crime, usually must be, inferred by the jury from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. \* \* \* The details of the conspiracy need not be proved. If a community of purpose among the parties to do some criminal act or acts is shown, it is not necessary that the acts which are charged, or of which evidence has been given, were specifically contemplated by them or included in the original design. \* \* \*" (Underbill's Criminal Evidence, page 795, par. 491.)

The facts proven at the trial constitute the crime of murder, qualified by the circumstances of known premeditation and alevosia, as regards Fidel Arrojo and of alevosia as regards the other defendants, each and everyone of them being criminally responsible as principal, Fidel Arrojo by induction, and all the others by direct participation, the penalty provided by law being from cadena temporal in its maximum degree to death. In the imposition of the penalty there are no generic circumstance modifying the criminal liability; hence, the penalty must be imposed in the medium degree, that is cadena perpetua.

In view whereof, the judgment appealed from, as regards Catalino Matula, Silvino Bulahan, Felipe Gualdrapa and Susano Gualdrapa, is reversed, and they are held guilty of the crime of murder, as principals by direct participation, and each of them is sentenced to the penalty of cadena perpetua, said judgment being affirmed in all other respects, with proportional costs against the appellants and with credit of one-half of the preventive imprisonment already suffered. So ordered.

Avanceña, C. J., Street, Malcolm, Vittamor, Ostrand, Romualdez, and Johns, JJ., concur.

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