

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN BANGUG, GABRIEL BANGUG, JOSE ANGOLUAN AND EUFRASIO CARABANGA, DEFENDANTS AND APPELLANTS.

G.R. No. 28832. September 17, 1928

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PER CURIAM:

The record in this case has been elevated here for review. Pursuant to law, the decision will be entitled "Per curiam," and signed by all the members of the court who are present.

The prosecution is for the crime of multiple murder with which five persons were charged in the Court of First Instance of Bontoc. After trial, the lower court found the accused guilty as charged and sentenced Juan Bangug, Gabriel Bangug, Jose Angoluan, and Pascual Tulinao to the penalty of death, and to indemnify jointly and severally the heirs of Private Nabagtec in the amount of P1,000, the heirs of Private Sison in the amount of P1,000, and the heirs of Igorot Tulang in the amount of P500, and sentenced EufRASIO Carabanga to eight years and one day imprisonment, presidio mayor, with the accessory penalties, with one-fifth of the costs against each defendant. As during the pendency of the appeal Pascual Tulinao died, the case now only concerns Juan Bangug, Gabriel Bangug, Jose Angoluan, and EufRASIO Carabanga.

On December 23, 1926, two hunting parties, one from Ilagan, Isabela, and the other from Naguilian, Isabela, were encamped in the region called Gulu or Cama, situated in the subprovince of Bontoc. The party from Ilagan was composed of Juan Bangug, Gabriel Bangug, Francisco Bangug, Jose Angoluan, Pascual Tulinao, and EufRASIO Carabanga, and the one from Naguilian was composed of Antonio Mangadap, Juan Gallina, Antonio Talusig and Federico Caoilan. On the day mentioned, two Constabulary soldiers named Nabagtec and Sison accompanied by a cargador, an Igorot named Tulang, arrived near the camps of the hunters. The two soldiers and their cargador were then returning to their station at Natonin, Bontoc, from a trip to Sili to escort Lieutenant Gloria of the Constabulary Medical Corps.

Once in the camp of the hunters from Ilagan, the Constabulary soldiers examined the licenses of the shotguns, and after taking all the ammunition, returned the guns to their respective owners, Juan Bangug and Gabriel Bangug. The soldiers then told the hunters that they would be taken to Natonin the next morning to answer for a violation of the hunting law in using artificial lights. Later, about sunset, while the two soldiers and the Igorot cargador were cooking their supper, the Ilagan hunters gathered together and agreed to kill the two soldiers and the Igorot. Evidently the soldiers did not notice the secret confab for after eating supper they laid down. The hunters with the Igorot cargador slept inside the shed while the soldiers slept outside. Sometime between midnight and 3 o'clock in the morning while the two soldiers and the Igorot cargador were sleeping soundly, the murder was perpetrated. First, Juan Bangug slipped up quietly and possessed himself of the carbines of the Constabularymen. Then the soldiers and the Igorot were attacked by the members of the Ilagan party, the latter being armed with the guns of the soldiers and with bolos and lances. Although the soldiers put up the best fight possible against hopeless odds, and although one of the soldiers succeeded in wounding Francisco Bangug so seriously that sometime later he succumbed to his wounds, within a short time the soldiers and the Igorot cargador were killed. The horse of the

Constabulary men was shot, the carbines were hid in the bushes, and the three corpses were dragged a short distance and left.

Antonio Mangadap of the Naguilian hunting party, who saw most of the tragedy, departed hurriedly on being threatened with death if he should ever disclose the incident to any one. The members of the Ilagan hunting party returned to their homes on December 25th and reported to the authorities the death of Francisco Bangug, stating that he had fallen from his horse and accidentally wounded himself with his lance. So the whereabouts of the missing soldiers and the Igorot cargador remained a mystery until May, 1927, when certain rumors were run down and investigated, with the result that suspicion pointed to the Ilagan and Naguilian hunters. As a result of the investigation, the members of the Ilagan party were identified and arrested. They were taken to the scene of the crime, and there three human skeletons were found, which were shown to be those of the two soldiers and the Igorot cargador.

These are the facts. They are as found by Judge Montemayor in a splendidly prepared decision. They are as conceded by the attorney de oficio. They are as presented by the Attorney-General. They stand in the record uncontradicted. Their basis is found in the confessions of the accused, the admissions in open court by the accused Eufrasio Carabanga, the testimony of the eyewitness Antonio Mangadap, and the external circumstances which place the facts beyond dispute.

Counsel de oficio, after a conscientious study of the record, is led to assign two errors, viz., (1) The court erred in holding that the now appellants Juan Bangug, Jose Angoluan, Gabriel Bangug and Pascual Tulinao committed the crime of murder instead of homicide, and should therefore suffer each and every one of them a capital punishment; and (2) in finding that the appellants Gabriel Bangug, Jose Angoluan and Pascual Tulinao were not entitled to the benefit of the provisions of article 11 of the Penal Code. In other words, facts generally conceded, our task is narrowed down to a correct application of the penal law to those facts.

The trial judge found that the crime was murder with the concurrence of the circumstances of treachery, evident premeditation, and nocturnity, but without the concurrence of the aggravating circumstance of uninhabited place. The court further mentioned that in reality two crimes were committed those of murder and assault against agents of authority. No mitigating circumstance was found with reference to four of the defendants, but Eufrasio Carabanga as an accessory was given a light sentence because of a failure of the proof with reference to his agreement to the plan and because of his youth. In effect and in result, the conclusions of the trial judge are substantially correct, but will bear reexamination with reference to the proven facts and with reference to the individual responsibility of each defendant.

The crimes were attended with the qualifying circumstance of treachery, which classifies them as murders. That cannot be gainsaid. At the time of the sudden and unexpected attack, the victims were in sound sleep and practically defenseless. The further qualifying circumstance of evident premeditation which now changes to an aggravating circumstance must be taken into account for there was a concerted plan by the guilty parties and there had elapsed sufficient time between its inception and its fulfillment for them dispassionately to consider and accept the consequences. (U. S. vs. Dasal [1903], 3 Phil., 6; U. S. vs. Pala [1911], 19 Phil., 190; U. S. vs. Cornejo [1914], 28 Phil., 457; decisions of the Supreme Court of Spain of June 4, 1874, May 9, 1877, December 26, 1887, September 1, 1893, November 10, 1894, November 16, 1900, November 23, 1900, November 21, 1901, and May 20, 1903; Albert, *The Law on Crimes*, pp. 97-106.) The second aggravating circumstance that the crimes were committed in an uninhabited place must also be taken into consideration. The locality where the crimes were perpetrated was isolated, far from human habitation and with two sheds used for hunting purposes. The fact that occasionally persons passed there and that on the night the murders took place another hunting party was not a great distance away, does not change the characteristics attending this circumstance. It is the nature of the place

which is decisive. (Decision of the Supreme Court of Spain of November 13, 1890.) The third aggravating circumstance of nocturnity cannot properly be applied as found by the trial judge and as suggested by the Attorney-General because nighttime here becomes a part of the treachery which was employed. (U. S. vs. Salgado [1908], 11 Phil., 56; U. S. vs. Domingo and Dolor [1911], 18 Phil., 250.) Finally, as to the commission of two crimes, while this may be true, inasmuch as the crime of assault against agents of authority was not alleged in the information, the accused may not be convicted of that offense.

The second error assigned relates to the failure of the trial judge to find that the accused were entitled to the benefits of the provisions of article 11 of the Penal Code. This court has heretofore held that it is for the trial court rather than the appellate court to determine the proper application of article 11 of the Penal Code. This is so because the personal qualities and characteristics of the accused are matters peculiarly cognizable by the trial court. And here we have this finding: "The defendants are not natives of the Mountain Province. They are not densely ignorant. In fact, two of them, Jose Angoluan and Gabriel Bangug, possessed licenses to bear firearms. They are, therefore, not entitled to the benefits of article 11 of the Penal Code." This court is in no position to reverse that finding. (U. S. vs. Elicanal [1916], 35 Phil., 209.)

These then are dastardly crimes deliberately planned and treacherously committed in an isolated region where discovery was improbable. That is triple murder and calls for the application of the maximum penalty provided by law.

Juan Bangug, it will be recalled, was sentenced to the death penalty. That was right. He was one of the two defendants who told their companions to kill the soldiers, who stole the guns of the soldiers in preparation for the attack, who was a leader in the murder, and who was described by the trial judge as "the most intelligent" of them.

Jose Angoluan was likewise given the death penalty. That also was right. He, together with Juan Bangug, was one of the leaders who planned the murder and who, making use of the guns, killed the Constabulary soldiers and the Igorot cargador.

Gabriel Bangug was the third accused to receive the death penalty. Here we entertain some doubt. In the first place, we have this expression of opinion in Gabriel Bangug's favor by the trial judge: "Of the four defendants sentenced to capital punishment, Gabriel Bangug and Pascual Tulinao (deceased), are, in the opinion of the court, the less guilty." In the second place, Gabriel Bangug was not identified by the eyewitness Antonio Mangadap as an active participant in the crime. In the third place, while Eufrasio Carabanga during the time he was on the witness stand pointed to Juan Bangug and Jose Angoluan as the ones who committed the crime, the witness steadfastly refused to include the name of Gabriel Bangug. And lastly, the various confessions of the other accused may not legally be taken into account against Gabriel Bangug. All the legitimate evidence which we have against him is that while protesting in the beginning against the murders, he did not actively intercede for the victims, and on his return to Isabela, connived at concealing the crimes. At least, this makes Gabriel Bangug an accessory in the commission of each murder.

The remaining defendant, Eufrasio Carabanga, was a lesser participant, and properly received a lesser penalty. As an accessory, he should have been convicted thereof for each murder (U. S. vs. Balaba [1917], 37 Phil., 260).

The judgment of the trial court in so far as it relates to the defendants and appellants Juan Bangug and Jose Angoluan will be affirmed, and in so far as it relates to Gabriel Bangug and Eufrasio Carabanga will be modified by sentencing each of the two latter to eight years and one day imprisonment, presidio mayor, for each of the three murders, with the accessory penalties. So ordered with one-fifth of the costs of this instance against each of the four appellants, and with the remaining one-fifth of the costs de oficio.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Johns, J., absent.

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