

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CLEMENTE BABIERA, JUSTO BABIERA AND DOMINGA BORES, DEFENDANTS AND APPELLANTS.

G.R. No. 28871. September 19, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Clemente Babiera, Justo Babiera and Dominga Bores from the judgment of the Court of First Instance of Iloilo finding them guilty of the crime of murder, the first as principal, and the last two as accomplices, sentencing the former to life imprisonment with the accessories of article 54 of the Penal Code, and each of the latter to fourteen years, eight months and one day cadena temporal, with the accessories of articles 54 and 59 of the Penal Code, respectively, and all three to indemnify the family of the deceased Severino Haro in the sum of P1,000 jointly and severally, and each of them to pay one-third of the costs of the action in the justice of the peace court and the Court of First Instance.

The six alleged errors assigned by the accused as committed by the trial court in its judgment may be shifted down to the following propositions:

1. That the evidence adduced at the trial by the prosecution has not established the guilt of the defendants-appellants beyond a reasonable doubt.
2. That Exhibit I of the prosecution is not an ante-mortem declaration and is therefore inadmissible as evidence.
3. That the offended party's quarrelsome disposition can be proved in the trial to determine who began the attack.

Before discussing the evidence adduced by both parties and determining its weight and probatory value, it is well to decide the questions raised by the appellants on the admissibility of evidence.

The first question of this nature refers to the character of the document Exhibit I, which is a statement made by Severino Haro in Saint Paul's Hospital of Iloilo on the morning after the crime was committed.

Although said statement in itself is inadmissible as an ante-mortem declaration, inasmuch as there is nothing to show that at the time he made it Severino Haro knew or firmly believed that he was at the point of death, nevertheless, having ratified its contents a week later when he was near death as a result of his wounds, said declaration is admissible as a part of that which he made ante-mortem "A statement made under circumstances which would not render it admissible as a dying declaration becomes admissible as such, it is held, if approved or repeated by the declarant after he had abandoned all hope of recovery." (30 Corpus Juris, 257.)

Passing now to a consideration of the evidence, the prosecution tried to prove the following facts:

Justo Babiera was the owner of two parcels of land situated in the municipality of Oton, Province of Iloilo,

Philippine Islands. On October 19, 1922, Justo Babiera executed a contract of sale with the right of repurchase in favor of Basilio Copreros whereby he sold the two parcels of land to the latter for the sum of P124 with the condition that if the vendor did not repurchase them on or before August 1, 1923, the sale would become absolute and irrevocable (Exhibit F). The period for repurchase having expired, Basilio Copreros took possession of said two parcels of land, and on March 24, 1927, made application to the registrar of deeds for the Province of Iloilo for the registration of the consolidation of his title to said parcels. On the 26th of the said month, Basilio Copreros leased said parcels to Severino Haro, municipal president of Oton (Exhibits G and G-1). In view of this, on March 31, 1927, Justo Babiera filed a complaint against Basilio Copreros in the justice of the peace court of Oton for the recovery of the possession of said two parcels of land. The complaint having been dismissed on April 19, 1927 on the ground that it did not allege facts sufficient to constitute a cause of action, Justo Babiera appealed to the Court of First Instance of Iloilo (Exhibit M). Later on, said Justo Babiera asked for the dismissal of the complaint for unlawful detainer and filed another one for the recovery of property (Exhibit F). Inasmuch as Severino Haro was already in possession of the aforesaid two parcels of land as lessee, he bore all the expenses in the case of unlawful detainer as well as in that for recovery of the property.

Fermin Bruces was Severino Haro's copartner on shares in said lands. About the month of May, 1927, Justo Babiera accompanied by his copartner on shares, Rosendo Paycol, went to where Fermin Bruces was plowing and asked the latter: "Who told you to plow here?" Fermin Bruces replied: "Severino Haro." Then Justo Babiera asked him: "If this Severino tells you to kill yourself, will you do it?" "Of course not," answered Fermin Bruces. After this interchange of words Justo Babiera told Fermin Bruces to stop plowing and to tell his master, Severino Haro, to come and plow himself. Fermin Bruces informed Severino Haro of the incident, and in answer the latter only told him not to mind it, but to go on plowing.

On another occasion while Fermin Bruces was transplanting rice on the same lands, Clemente Babiera and Rosendo Paycol arrived and told him that if he continued working they would pull out someone's intestines. Fermin Bruces also informed Severino Haro of these threats, who as before, told him not to mind them, but to go on sowing.

On July 23, 1927, Jose Haro, brother of Severino Haro, visited his land in the barrio of Bitá, which was under the care of Victoriano Randoquile. He was told by the latter that he lacked palay seeds. At that time, Rosendo Paycol was in his field, Jose Haro and Victoriano Randoquile approached him and asked him to give them some seeds. Rosendo Paycol answered that he could not do so because he needed what he had for his own farms. Haro and Randoquile then asked him: "Which fields do you mean?" "The fields over which Copreros and Babiera are in litigation," answered Rosendo Paycol. Surprised at this answer, Jose Haro told Rosendo Paycol that what he said could not be, because the lot in dispute was leased to his brother Severino Haro. Rosendo Paycol replied that attorney Buenaventura Cordova had told Clemente Babiera and Justo Babiera that Severino Haro would never be able to reap or enjoy the fruits of the land, because if they did not win the suit by fair means they would win it by foul.

Ever since he had leased said land Severino Haro visited it rather often, especially during the months of June and July, which is the sowing season, trying always to return to town early. To go to the land, which was in the barrio called Bitá, there was but a beaten path that passed by the house of Rosendo Paycol, copartner on shares of Justo Babiera, where the latter and his family lived.

On August 21, 1927, Severino Haro, as usual, went to visit his land in the barrio of Bitá, accompanied by Gregorio Torrija, Benito Carreon and Pedro Tauro. On arriving there Fermin Bruces, his copartner on shares, told him that the day before he had found Clemente Babiera's cow grazing on that land. It happened at that moment Clemente Babiera and Dominga Bores were passing by. Severino Haro then informed Clemente Babiera of what

his cow had done on the former's land and told him to take better care of his cow in future and not to let it run loose. He then ordered Fermin Bruces to take the animal to where the Babiera family lived. Severino Haro was not able to return to town until almost 7 o'clock in the evening. As it was already dark, he and his companions had to make use of a torch made out of split bamboo to light them on their way. Severino Haro went ahead, followed by Pedro Tauro, who carried the torch, some 8 brazas behind, with Gregorio Torrija and Benito Carreon following. On coming to a place in the road near Rosendo Paycol's house, Clemente Babiera suddenly sprang from the cogon grass, went after Severino Haro and struck him with his bolo in the back. On turning his head to see who had attacked him Severino Haro received another bolo blow in the forehead near the right eyebrow. In trying to defend himself with his hand he was wounded between the index finger and the thumb. He then tried to grasp his assailant but did not succeed and he fell to the ground. Then Justo Babiera appeared and placing himself upon Severino Haro's stomach, held the latter's hands. Later, Dominga Bores appeared on the scene and held both knees of the wounded man. When Justo Babiera arrived, a voice was heard saying: "Hold him, papa," and at the same time, Severino Haro's voice was heard saying: "Help! help!" Pedro Tauro wished to come near in order to help Severino Haro, but Clemente Babiera raised his bolo in the air and kept on brandishing it to warn everybody off. Pedro Tauro, in fear, stepped back, dropping the torch he carried. Not far from there were also Buenaventura Gabalfin and Gregorio Paycol, who threatened to kill Severino Haro's companions if they helped him. After the torch had been extinguished they heard a voice which they recognized as Severino Haro's saying: "Uncle Justo, have patience with me, for I have done no wrong." Then they heard another voice, that of Dominga Bores, which said: "Here is the revolver; let us return." Before the assailants left two or three revolver shots were heard. When Severino Haro's companions saw that their assailants had already departed, they drew near to where Severino lay stretched out to see what had happened to him. Severino Haro told them not to fear for he did not feel as if he were going to die, and calling his copartner on shares, Fermin Bruces, directed him to bring a cot and take him to town. Pedro Tauro and Gregorio Torrija did as Severino Haro wished, and on arriving at the barrio of Santa Monica, they by chance came upon a truck in which were some policemen. They place the wounded man in the same truck and took him to Saint Paul's Hospital in the City of Iloilo. When Severino Haro was taken to the town he did not have his revolver and the cartridge belt, without the holster, was found by Gregorio Torrija near where the incident took place.

When Severino Haro was already in Saint Paul's Hospital he was examined by Dr. Mariano Arroyo, who issued a certificate stating that he found the following wounds: Three on the right frontal region; one on the right forehead taking in the soft parts up to the auditory arch; on the right palmar arch; another on the left arm; a deep one reaching down to the spinal column on the dorsal part; another on the middle of the left calf; and four slight wounds on the right thigh; the ones on the forehead and the dorsal region being mortal of necessity. All the wounds were caused, in the doctor's opinion, by a sharp-edged and pointed weapon, and while the combatants were on the same plane, except the wound on the middle of the calf which must have been caused while the assaulted party was on a lower plane than his assailant, and the wounds on the right thigh, which must have been inflicted while the assailant was on a horizontal plane.

On the same morning, August 22, 1927, and in the same hospital, Severino Haro made a sworn statement before the deputy fiscal, Edmundo S. Piccio (Exhibit I), relating the occurrence and mentioning the persons who were present. This sworn statement was ratified by him before the same deputy fiscal on the 27th of the said month and year when he had given up all hope of recovery.

In this statement, Exhibit I, Severino Haro, among other things, said the following:

"Without warning, I received a slash on the left shoulder. On turning back my face, I saw Clemente Babiera, and he then gave me another slash on the forehead just above the right eyebrow. At that moment I also received a cut on the right hand, because on receiving the blow on the forehead I defended myself with that

hand. I then grasped him because I could no longer support myself due to my two wounds. Then I fell. When I fell, Clemente Babiera's father placed himself upon my stomach, while his (Clemente's) wife sat on my feet, while Justo Babiera, Clemente's father, grasped my two hands and said to me, 'There, now draw your revolver' addressing me. I shouted to my companion for help, for I felt I would die and while they approached, Clemente Babiera turned upon them, and said: 'Do not approach for you have nothing to do with this. Whoever comes near gets a slash from this bolo.' I shammed death and when they left me, and upon seeing that neither Clemente, nor his father, nor his wife remained, my three companions came up to me from their hiding places. One Aunario, copartner on shares of Jose Abada, who lived near there, also came up to me, and later, Fermin."

In his ante-mortem declaration made on the 27th of August, 1927 before the same deputy fiscal, Severino Haro, among other things, said the following:

"They repeatedly passed their fingers over my upper lip and at the same time to see if I still breathed; they felt and opened my eyelids and then inserted a finger in my pupil, because they believed that if I was insensible, I was already dead. They knelt on my stomach and one knelt on my lower limbs, and made a pass with something, which seems to me was bamboo or a bolo, over the anterior surface of my calf, and Dominga then took the revolver from me. I got up because I was afraid Dominga would shoot me and when I attempted to escape Clemente Babiera pursued me and gave me another cut on the left side of the waist, and I think the blow struck the ammunition belt, and if it had not been for the belt it would have severed my waist."

The defense tried to prove the following facts:

On the afternoon of August 21, 1927 Clemente Babiera went to a place called Caboloan, passing by the house of one Oper, located in the barrio of Bitá, Oton, Iloilo. While he was in Oper's house, his father Justo Babiera arrived, and some moments later Severino Haro also arrived, and at once said to him: "Clemente, why do you leave your cow loose?" Clemente denied the imputation and said that his cow was tied. Severino Haro insisted, and added that said animal had damaged his sugar-cane plantation, and therefore, Fermin Braces, his copartner on shares caught and tied it, by his order, to a mango tree. Clemente Babiera answered that he left the case in his hands and that he could charge him what he would, for the damages occasioned by his cow. As Severino Haro charged him P2 for the damage, Clemente told him that at the moment he had no money, but that on the following day he would get money from the town market and pay him. Severino Haro accepted the promise and left. Clemente Babiera in turn retired to his house, together with Dominga Bores and his father, and upon reaching a coconut palm they met Fermin Braces, copartner on shares with Severino Haro, who told them that he had already tied up the cow as per his master's order. At about 7 o'clock in the evening, while Clemente Babiera was in his house conversing with his father about the land which they had in Caboloan, which was attached by the Government, he suddenly heard a commotion; he went to the porch of the house to see what had happened and saw a number of persons coming one carrying a light and another leading his cow by a rope. Clemente Babiera told his father what he saw and went out to meet said persons, and saw Buenaventura Cabalfin leading his cow by the rope, and Severino Haro followed by his companions Pedro Tauro, Gregorio Torrija, Benito Carreon, Margarito Mediavilla and Fermin Braces. Clemente Babiera then asked Severino Haro: "Why are you taking my cow away? Haven't I promised to pay you tomorrow the loss caused by the animal? If you have no confidence in me, then prepare a receipt showing that tomorrow without fail, I will pay you." In reply, Severino Haro only said to Buenaventura Cabalfin: "Get on, proceed." Clemente Babiera took hold of the rope by which the cow was led, and said: "Buenaventura, stop!" Severino Haro then grasped Clemente Babiera by the hand and pulled him to one side. Clemente Babiera disengaged himself from Severino Haro's grasp, but Margarito Mediavilla struck him with a bolo at the base of his little finger. Feeling himself wounded, Clemente Babiera tried to unsheathe his bolo intending to return the blow to Margarito Mediavilla but failed to do so, because he heard someone say: "Shoot him!" Immediately thereafter he saw Severino Haro with revolver unholstered, and without any loss of time he went up to the latter and at that moment shots were heard. Clemente Babiera then began to slash blindly right and

left without considering what he was at, catching Severino Haro in the back, as a result of which the latter fell to the ground on his back. Clemente Babiera threw himself upon him, held him down so he could not get up, and asked him: "Where is your revolver?" Severino Haro answered that he did not have it. Then Clemente Babiera raised Severino Haro's hands and felt his back, but did not find the revolver. Justo Babiera, Clemente's father, then appeared, and was told by his son: "Papa, hold him, while I search for his revolver." When Clemente Babiera saw Fermin Bruces he thought that the latter meant to attack him because he had one hand behind, where he carried his bolo, so Severino turned on him, but his wife, Dominga Bores, restrained him telling him not to approach. One Nario also wanted to approach in order to defend Severino Haro but dared not do so in view of Clemente Babiera's threats. After having made a fruitless search for Severino Haro's revolver, Clemente Babiera, his father, and his wife went back to their house.

After charging Rosendo Paycol with the care of the children, the three went to town and passed the night in Florencio Mayordomo's house. On the following morning Dominga Bores went to Attorney Buenaventura Cordova's house and informed him of what had happened. Buenaventura Cordova then went to Florencio Mayordomo's house and told Dominga Bores to return to the place of the incident in order to look for the revolver and deliver it to the Constabulary if she found it. Then he accompanied Clemente Babiera to the office of Captain Gatuslao of the Constabulary at Fort San Pedro, to whom they delivered the holster of the revolver and the three shells they had picked up on the night of the incident. Dominga Bores having found the revolver in a furrow near the place of the crime took it to Iloilo and delivered it to Captain Gatuslao of the Constabulary between 9 and 10 o'clock in the morning.

Dr. Jose Gonzales Roxas, Constabulary physician, treated Clemente Babiera's wound and certified that the same was 2 centimeters long and half a centimeter deep and was situated at the base of the little finger of the right hand, taking in the cellular tissue of the skin and the exterior ligament of the wrist.

In rebuttal, the prosecution tried to prove that at about half past five in the morning of August 22, 1927, Dominga Bores was seen in the ground floor of the provincial government building of Iloilo, carrying a package under her arm and from there she went to the public market of Iloilo.

There is no question that Severino Haro had leased from Basilio Copreros two parcels of land the ownership of which had passed to him due to Justo Babiera's failure to repurchase them within the stipulated period. Nor is there any question that the latter tried to recover them, first, by an *accion publiciana* (action for unlawful detainer), and then by an action for the recovery of possession. There is likewise no question that Severino Haro paid the expenses of the defendant Basilio Copreros for the reason that he was already in possession of said lands as lessee. There is also no question that Clemente Babiera's cow damaged the plantings of Fennin Bruces, for which reason the latter caught said cow, tied it, and notified his master of the matter when the latter went to visit the lands leased by him. Neither is there any question that there was an agreement between Clemente Babiera and Severino Haro whereby the latter ordered his copartner on shares, Fermin Bruces, to take the cow near Clemente Babiera's house and tie it up there. In like manner there is no question that at about 7 o'clock in the evening of August 21, 1927, when Severino Haro and his companions were returning to the town of Oton, and upon their coming near Rosendo Paycol's house, in which were Clemente Babiera, his father Justo Babiera, and his mistress Dominga Bores, said Severino Haro had an encounter with Clemente Babiera in which Severino Haro received several wounds in consequence of which he died a week later in Saint Paul's Hospital of Iloilo.

The only question to determine in the present appeal is whether, as the prosecution contends, Severino Haro was suddenly and treacherously attacked by Clemente Babiera, aided by his father and his mistress Dominga Bores; or, as the defense contends, Severino Haro notwithstanding the agreement between himself and Clemente Babiera by which the latter was to indemnify him for the damages caused by his cow, wanted to take the animal to town;

that in trying to prevent it, Clemente Babiera was grasped by the hand by Severino Haro and pulled to one side; that in disengaging himself Clemente Babiera received a bolo cut from Margarito Mediavilla that wounded the little finger of his right hand; and that Severino Haro then unsheathed his revolver and fired several shots, in view of which Clemente Babiera struck right and left with his bolo, thus causing the former's wounds.

In order to decide the question thus raised, it is necessary to take into account all the circumstances, previous, coetaneous and subsequent to the incident in question, and to determine who had, or could have had, motives to assault the other.

We have seen that Justo Babiera sold two parcels of land to Basilio Copreros with the right of repurchase, and that, having failed to repurchase them within the period stipulated, the title thereto was consolidated, in the purchaser, who leased them to Severino Haro, the latter taking possession of them. Justo Babiera resorted to every lawful means to regain possession of said two parcels of land, first by an accion publiciana, which failed, and then by an action for the recovery of possession. Severino Haro paid the expenses of Basilio Copreros in order to carry on the suits. Such interested intervention on Severino Haro's part without doubt must have vexed Justo Babiera, for in the month of May 1927, he went with his copartner on shares, Rosendo Paycol, to where Fermin Bruces, Severino Haro's copartner, was plowing, and asked him who had ordered him there, and when Fermin Bruces answered that it was Severino Haro, Justo asked him whether he would commit suicide if told to do so by said Severino Haro, and then told him to tell his master to go and plow himself. Later on, Clemente Babiera, Justo Babiera's son, accompanied by his copartner Rosendo Paycol, seeing that Fermin Bruces went on working the land, told him that if he continued plowing, Clemente would pull out someone's intestines. If all these threats are true, as we believe they are, then Justo Babiera and Clemente Babiera must have borne Severino Haro deep resentment, doubtless believing that it was due to him that they could not recover their two parcels of land, and this was sufficient and adequate to move them, upon the failure of lawful means, to resort to violence.

It has been contended by the defense that the defendantappellant, Clemente Babiera, only acted in defense of his life and property, having been obliged to resort to arms on seeing his life endangered, contending that the provocation consisted in that after Severino Haro had agreed to an indemnity of P2 for the damage caused, the latter wanted to take Clemente Babiera's cow to the town, and that the attack consisted in that Margarito Mediavilla gave him a bolo blow on the little finger of the right hand, and that Severino Haro threatened him with his revolver and fired several shots at him.

Examined in the light of the ordinary conduct of men, Severino Haro's alleged attitude, in having tried to take Clemente Babiera's cow after having agreed to accept P2 for the damages, and having ordered that the animal be returned to its owner, is highly illogical, and not a scintilla of evidence has been presented to explain this change of determination, as unexpected as it is unreasonable.

With respect to the allegation that Margarito Mediavilla and Severino Haro began the attack, inasmuch as it has not been proved that they were the instigators, it cannot be conceived that they committed said unlawful aggression, for he who has no reason to provoke, has no reason to attack unlawfully.

The defense also attempted to prove that Severino Haro was of a quarrelsome disposition, provoking, irascible, and fond of starting quarrels in the municipality of Oton, but the trial judge would not permit it.

While it is true that when "the defense of the accused is that he acted in self-defense, he may prove the deceased to have been of a quarrelsome, provoking and irascible disposition, the proof must be of his general reputation in the community and not of isolated and specific acts (Underhill Criminal Evidence, par. 325, p. 570), such as the accused Clemente Babiera tried to prove, and hence the lower court did not err in not admitting such proof. But even if it had been proved by competent evidence that the deceased was of such a disposition, nevertheless, it

would not have been sufficient to overthrow the conclusive proof that it was the said accused who treacherously attacked the deceased.

Another circumstance which shows the falsity of the theory of the defense is that of having made Buenaventura Cabalfin take part as the person whom Severino Haro employed to lead Clemente Babiera's cow. If Severino Haro's copartner, Fermin Bruces, whom he had told to return said cow to Clemente Babiera was with his master on that night, together with other companions, what need was there of said Severino Haro's employing the services of another person and one not belonging to his group? The plan of the defense necessitated a provocation and to that end they conceived the idea of the breach of the supposed agreement on the return of the animal through the payment of an indemnity of P2, making use as an instrument of one on whom the defense could depend to serve as witness, and there was no one better suited for such a purpose than Buenaventura Cabalfin who according to the witnesses for the prosecution, was at the place of the crime with Gregorio Faycol threatening the deceased's friends if they offered to help him.

To rebut the evidence of the prosecution that Dominga Bores was the one who by order of Clemente Babiera took Severino Haro's revolver from him on the night in question, the defense tried to prove that on the following morning attorney Buenaventura Cordova, a relative of the Babieras, told Dominga Bores to return to the place of the incident and look for said weapon, and that she found it in a furrow near the place and took it to the office of the Constabulary in Iloilo between 9 and 10 o'clock in the morning. But the rebuttal evidence of the prosecution disproved this contention and showed that Dominga Bores did not have to look for the revolver in the field, since at half past five in the morning she was already in the provincial building of Iloilo carrying a package under her arm.

With regard to the small wound at the base of the little finger of the right hand which Clemente Babiera showed to the Constabulary physician as having been caused by Margarito Mediavilla, we are convinced that the latter was not in the company of Severino Haro on the night in question and could not have inflicted such a wound. Bearing in mind the plan of the defense, it may safely be said that in order to cast an appearance of reality on the concocted plea of an unlawful attack and self-defense, Clemente Babiera inflicted on himself the slight wound; since, if in order to escape military service there were men who mutilated themselves, who would not wound himself slightly in order to escape a life penalty?

The facts related above have been proven beyond a reasonable doubt and constitute the crime of murder defined in article 403 of the Penal Code, there being present at the commission of the crime, the qualifying circumstance of treachery, consisting in the accused Clemente Babiera having attacked Severino Haro suddenly while the latter had his back turned, inflicting various wounds on his body as a result of which he died a week later, said Clemente Babiera being criminally liable as principal by direct participation.

Justo Babiera and Dominga Bores are also liable but as accomplices, because, while they did not take a direct part in the infliction of the wounds that caused Severino Haro's death, or cooperated by acts without which they could not have been inflicted, or induced Clemente Babiera to inflict them, yet they took part in the commission of the crime by simultaneous acts consisting in the former having mounted Severino Haro's body and held down his hands, while the latter sat on his knees while he lay stretched out on the ground in order to allow Clemente Babiera to search the body for his revolver, Justo Babiera and Dominga Bores cannot be held as accomplices of the crime of murder, inasmuch as it does not appear to have been proven that they knew the manner in which Clemente Babiera was going to assault Severino Haro, in accordance with the provision of article 79 of the Penal Code, to the effect that the circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the act or their cooperation therein. Although in the instant case the treachery is

not considered a generic aggravating, but a qualifying circumstance, nevertheless, it does not fail to produce a special aggravation.

To graduate the penalty, we are not to consider any modifying circumstance of the criminal liability, for while it is true that Clemente Babiera took advantage of the darkness of nighttime, this circumstance is included in treachery, inasmuch as, considering the fact that Severino Haro was followed by several companions, the accused would not have been able to conceal himself in the cogon grass nor attack the deceased from behind without being seen in time and prevented from executing his criminal purpose had it not been for the darkness of the night.

The penalty provided by law for the crime of murder namely, that of cadena temporal in its maximum degree to death must therefore be imposed upon Clemente Babiera in its medium degree, that is, life imprisonment.

The penalty provided for in article 404 of the Penal Code for the crime of homicide is reclusion temporal in its full extent, and the one next lower is prision mayor in its full extent, which is the penalty that must be imposed on Justo Babiera and Dominga Bores as accomplices in the crime of homicide (art. 67, Penal Code). In graduating the penalty, the aggravating circumstance of nocturnity must be taken into consideration, without any extenuating circumstance to offset it, and therefore said penalty of prision mayor must be imposed in its maximum degree, that is, ten years and 1 day.

As there are three persons civilly liable, one as principal in the crime of murder and two as accomplices in that of homicide, we must fix the share, for which each must answer, of the P1,000 fixed by the trial court, in accordance with the provision of article 124 of the Penal Code, that is, P600 for Clemente Babiera and P400 for Justo Babiera and Dominga Bores, each of the latter being liable solidarity between themselves for their share, and subsidiarily liable for the share of the former and the former for the share of the latter, according to the provision of article 125 of the same Code.

By virtue whereof, the appealed judgment is hereby modified, and it is held that Justo Babiera and Dominga Bores are guilty of the crime of homicide as accomplices and each sentenced to ten years and 1 day prision mayor, and to pay the sum of P400 jointly and severally, and Clemente Babiera to pay the sum of P600, the former to be subsidiarily liable for the latter's share, and the latter for the former's share, payment to be made to the heirs of the deceased Severino Haro, the appealed judgment being affirmed in all other respects with the proportional costs against each. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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