

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO DURANTE, DEFENDANT AND APPELLANT.

G.R. No. 31101. August 23, 1929

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PER CURIAM:

Pedro Durante, the defendant, was tried in the Court of First Instance of Manila for the crime of murder by virtue of the following information:

"That on or about January 15, 1929, the above-named defendant, while serving two sentences for two frustrated murders at Bilibid Prison in the City of Manila, Philippine Islands, with malice aforethought and the deliberate intention to take the life of Mateo Gutierrez, willfully, unlawfully, feloniously, suddenly, unexpectedly, and treacherously attacked the latter with a knife, first wounding him in the chest, and afterwards, when enfeebled and unable to defend himself, again in the stomach, both wounds being necessarily mortal, and being the direct and immediate cause of said Mateo Gutierrez's death a few moments later.

"Contrary to law."

The defendant, assisted by his attorney, was arraigned upon the information, and on being asked by the trial court whether he understood the contents of the information, answered that he did, and pleaded guilty. Notwithstanding this plea of guilty, the court, on petition of the prosecuting fiscal, proceeded to hear the evidence for the prosecution and for the defense, with the object of determining what crime the acts imputed to the defendant constituted, and above all to ascertain whether the qualifying and aggravating circumstances alleged in the information were really present. (U. S. vs. Jamad, 37 Phil., 305.)

From the evidence it appears that on January 15, 1929, after 1 o'clock in the afternoon had struck, and while a brigade of prisoners was leaving its dormitory in Bilibid Prison, Raymundo Zafra, foreman of said brigade, saw some other prisoners going into it and saying that someone had been stabbed. At that moment, Mateo Gutierrez entered the said dormitory with his left hand over his chest, and told Raymundo Zafra that someone had stabbed him. Zafra asked Gutierrez where he had been stabbed, and at the same time tried to get a club from the head of his bed, and on turning his face to where Gutierrez was, he saw the defendant enter the room, and at once stab Gutierrez with the dagger in the abdomen, or more properly speaking, according to the medical certificate Exhibit B, on the right side a little above the waist, while the former reclined upon a table; after which, the defendant ran away, and a few moments later, said Gutierrez expired as a result of his wounds.

Emiliano Ramos, chief foreman of Bilibid, testified that on hearing the siren, which is the alarm signal, he went into the prison to find out what had happened, and there met the defendant Pedro Durante, who was running and brandishing the knife Exhibit A. As the defendant would not give himself up when required to do so by Ramos, the latter had to hit him with his truncheon on the neck and waist, whereat he fell to the ground and let go of the knife. When the defendant had been overpowered Ramos asked him what he had done, and the defendant answered that he had attacked the deceased and that the knife he had used had been kept by him after Christmas "for he was bent on killing him," because the latter had hit him with his fist.

Some time later the Director of Prisons, Ramon Victorio, repaired to the scene of the crime, and in the office of the overseer found the defendant Pedro Durante. He asked the latter why he had stabbed Gutierrez and where he had obtained the knife Exhibit A. Defendant answered: "Because I bore him ill will," and adding, "that the knife with which I wounded him was the one used when the arch was made before Christmas Day (1928) and that I had kept it in a nanca tree in the garden in Bilibid, for the purpose of killing Gutierrez." The Director testified that these statements were made by the defendant without any violence being employed against him, and without any immunity being promised him.

Finally, Dr. Pablo Anzures, who made the autopsy of Mateo Gutierrez's body, testified that he "found six wounds on the body, caused by a sharp pointed instrument as a result of which said Gutierrez died; that the wound on the chest was of necessity mortal because it reached the lung, and was alone sufficient to cause his death. The following wounds were discovered: One on the upper right-hand side of the chest; another on the right side, a little above the waist; the third in the middle of the right arm; the fourth on the upper part of the right arm, near the shoulder; the fifth in the middle of the right shoulder; and, the sixth on the upper left-hand side of the back.

The defense presented as witness the defendant himself, who is 24 years of age, unmarried, a prisoner in Bilibid Prison, and he stated that he had not studied in any school, nor does he know how to read in any language or local dialect, and that he only knows how to write his name.

According to Exhibit C, the defendant, at the time of committing the crime was serving two sentences at Bilibid for the crime of double frustrated murder, committed at San Pedro Makati, Rizal, on August 14, 1928.

With the aforementioned evidence at hand, the trial court rendered judgment finding the defendant guilty of the crime of murder committed with treachery, and considering the presence of the aggravating circumstance of evident premeditation, and in view, furthermore, of the provision of article 129 of the Penal Code imposed upon the defendant the penalty fixed by article 403 of said Code in its maximum degree, that is, the death penalty, indemnity to the heirs of the deceased in the amount of P500, and payment of the costs.

This judgment with the record of the case, was forwarded to this court on review.

The brief filed by counsel for the defendant assigns error to the court below in finding the defendant Pedro Durante guilty of the crime of murder instead of simply homicide, and in sentencing him to the death penalty. And for the reasons therein stated, the attorney, Isabel Artacho-Ocampo, who defended the accused in this instance prays that the latter be only sentenced to reclusion temporal in its maximum degree.

On the other hand, the Attorney-General recommends that the judgment of the trial court be affirmed, the same being in accordance with the law and the evidence, with costs against the defendant Pedro Durante.

There is no question as to the facts. The court below held in its judgment that prior to December 16, 1928, the defendant had had an altercation with the deceased, Mateo Gutierrez, and since then had borne him a grudge. It is to this doubtless, that the defendant's answers to the chief foreman of Bilibid and the Director of Prisons referred, on his being questioned by them as to what had happened on that occasion. That the deceased, Mateo Gutierrez, died on the afternoon of the crime as a result of the wounds inflicted upon him by the defendant is, likewise, undisputed. What counsel does contend is that the acts imputed to the defendant only constitute the crime of homicide, for the reason that in the case at bar neither the qualifying circumstance of treachery nor the aggravating circumstance of premeditation has been present.

We agree with the defense that the qualifying circumstance of treachery cannot be taken into consideration in the instant case. No one has testified as to the manner in which the defendant inflicted the first wound upon the deceased outside the dormitory. Therefore, treachery cannot be deemed to have been present, because treachery

must be proved as the crime itself. (U. S. vs. Arciga, 2 Phil., 110; U. S. vs. Asilo, 4 Phil., 175). And although it might be true that the defendant's attack within the dormitory was treacherous in character, considering the defenseless state of the deceased, nevertheless, the second attack being a continuation of the fight between the two, according to the repeated ruling of this court, this second attack does not make the act treacherous. In *United States vs. Balagtas and Jaime* (19 Phil., 164), this court held:

"In order that alevosia may be considered as a qualifying circumstance to raise the classification of the crime, or as an aggravating circumstance to augment the penalty, it must be shown that the treacherous acts were present and preceded the commencement of the attack which caused the injury complained of. After the commencement of such an attack, and before its termination, an accused person may have employed means or methods which were of a treacherous character, and yet such means or methods would not constitute the circumstance of alevosia. One continuous attack cannot be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein and considered as a qualifying or aggravating circumstance."

And in *People vs. Cafiete* (44 Phil., 478), it was held:

"When an altercation which ends in a homicide is begun without alevosia on the part of the slayer, and the criminal design is prosecuted to its consummation without any break in the continuity of the aggression and without the intervention of any factor which materially changes the conditions of the aggression, the offense constitutes homicide, although the final fatal blow may be delivered under conditions exhibiting some of the features of alevosia."

In the instant case, the defendant attacked the deceased, wounding him mortally in the chest. After this attack, the deceased fled and sought refuge in the dormitory of Zafra's brigade, and there he was overtaken by the defendant, who dealt him another mortal wound on the right side a little above the waist. The first attack cannot be deemed treacherous for lack of evidence as to the manner and form in which the crime was perpetrated. The second attack being a continuation of the first, even if treacherous in character, cannot lead to the legal conclusion that Gutierrez's death was caused treacherously.

Let us now inquire whether the circumstance of evident premeditation was present, it being one of the circumstances which qualify the crime of murder according to article 403 of the Penal Code. According to the jurisprudence construing the seventh aggravating circumstance enumerated in article 10 of the Penal Code, the essence of this circumstance consists in that the execution of the criminal act must be preceded by cool thought and reflexion upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment. In *United States vs. Abeline* (1 Phil., 568), it was held:

"Proof that the band which committed the murder was formed some time before and that the members of the band had taken measures tending to insure the success of their criminal enterprise is sufficient to show such reflective, persistent deliberation on the commission of the crime as to constitute the circumstance of evident premeditation."

In *United States vs. Larion* (2 Phil., 476), it was held:

"The accused, upon entering the town in command of the band of malefactors headed by him, searched out the family of the complaining witness and killed the latter's wife and children. This conduct reveals reflection and preparation to a degree constituting the aggravating circumstance of deliberate premeditation."

In *United States vs. Manalinde* (14 Phil., 77), the court held among other things:

"As to the other circumstance it is also unquestionable that the accused, upon accepting the order and undertaking the journey in order to comply therewith, deliberately considered and carefully and thoughtfully

meditated over the nature and the consequences of the acts which, under orders received from the said datto he was about to carry out, and to that end provided himself with a weapon, concealing it by wrapping it up, and started on a journey of a day and a night for the sole purpose of taking the life of two unfortunate persons whom he did not know, and with whom he had never had any trouble; nor did there exist any reason which, to a certain extent, might warrant his perverse deed. * * *

And in *United States vs. Liwakas* (17 Phil., 234), the court said:

"In the matter of the perpetration of the crime it is proper to consider the presence of the aggravating circumstances 7, 15, 20, and 21 of article 10 of the Penal Code, as it was shown that Liwakas commenced to sharpen his bolo on the afternoon immediately preceding the night of the crime, which indicated that, from that time, he thought of and determined upon committing the said murders and did with premeditation deliberately resolve to deprive the deceased Mamacao and Santanan of their lives, thus preparing, by those overt acts, the execution of the crime, * * *

In accordance with the legal doctrines herein enunciated, we find that the death of Mateo Gutierrez, was caused with evident premeditation. Prior to December 16, 1928, the defendant had an altercation with the deceased, who according to the former, hit him with his fist, and since then, the defendant bore him a grudge. He used a knife in building a Christmas arch, and stored it away in a nangka tree in the garden in Bilibid, for the purpose of killing Gutierrez. The proceedings do not show when the defendant took the knife he had hidden, but he doubtless took it from its hidingplace when he found an opportunity to carry out his criminal designs; all of which shows that the defendant had enough time to meditate and reflect on the act he was about to perform, and on its consequences.

Without discussing the admissibility of the statements made by the defendant to the chief foreman of Bilibid and to the Director of Prisons, counsel insinuates that those statements should not be taken into account against the defendant; In the first place, because the defendant testified before the foreman after he had been beaten by said foreman; and in the second place, because the statements he made before the Director of Prisons are due to the great moral influence of said Director over the prisoners. We find no merit in this contention. The defendant was beaten by the foreman because he would not give up his weapon on being required by said foreman to do so. After he surrendered, the foreman did nothing to obtain from him the statement that "he attacked the deceased and that the knife he used was one he had hidden away after Christmas, because he was bent on killing him." As to the defendant's having made similar statements to the Director of Prisons, there is nothing in the proceedings to show that said Director employed undue influence to obtain them. Such statements are admissions of the accused, *res gestæ*, and admissible as evidence in the case.

By virtue of the foregoing, we are of opinion and so hold that the crime committed by the defendant is murder, qualified by evident premeditation, defined and penalized by article 403 of the Penal Code. This article imposes upon any person guilty of murder a penalty ranging from *cadena temporal* in its maximum degree to death. And it appearing that at the time of the commission of the crime the defendant was serving two sentences for frustrated murder in Bilibid, article 129 of the same Code is applicable, according to which, any person who shall commit a felony or misdemeanor after having been convicted by a final judgment, before beginning to serve such sentence, or while serving same, shall be punished in accordance with the following rules: " (1) The maximum degree of the penalty prescribed by the law for the new felony or misdemeanor shall be imposed; (2). * * *."

Wherefore, the judgment under review being in conformity with the law, the same must be, as it is hereby, affirmed, with costs against the defendant. The death penalty imposed upon the defendant shall be executed in the manner prescribed by law on the date fixed by the judge of the lower court. So ordered.

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

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