

JUAN PICO, PLAINTIFF IN ERROR, VS. UNITED STATES.*G.R. No. 319. April 07, 1913*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-319/>

The mere fact that a person is killed—even intentionally —by another when he is defenseless (as when he is attacked from behind, or when he is held so that he cannot move) does not ipso facto constitute murder with treachery. There must be a conscious taking advantage of the deceased's defenseless conditions.

Sentences, Supreme Court of Spain, April 2, 1884; May 6, 1884; February 19, 1879; United States vs. Ricafort, 1 Philippine, 175.

The intent to kill is a necessary element of murder with alevosia.

Sentences, Supreme Court of Spain, June 13, 1887; May 6, 1884; January 27, 1887; October 8, 1877; United States vs. Mercoleta, 17 Philippine, 317; United States vs. Balagtas, 19 Philippine, 164.

Although the findings of fact of the Supreme Court of the Philippines and the Court of First Instance are in a sense concurrent, and thus entitled to great respect, this court will, under the rule laid down in *Wiborg vs. United States* (163 U. S., 652; 41 L. ed., 296; 16 Sup. Ct. Rep., 1127, 1197), and followed in *Clyatt vs. United States* (197 U. S., 207, 222; 49 L. ed., 726, 731; 25 Sup. Ct. Rep., 429), examine the record for the purpose of determining whether or not there is any evidence to sustain the conviction (*Diaz vs. United States*, 223 U. S., 442; 56 L. ed., 500; 32 Sup. Ct. Rep., 250, Ann. Cas., 1913C, 1138), even where the question was not properly raised, and is presented as a plain error unassigned.

Solicitor-General Bullitt argued the cause, and, with Mr. Loring C. Christie, filed a brief for defendant in error.

Mr. Justice LAMAR delivered the opinion of the court:

Juan Pico, claiming the right as patrol to arrest suspicious persons in the hacienda of Maluno, within the municipality of Hagan, Province of Isabel, Philippine Islands, on March 1, 1909, entered the house of Eugenio Castellanes in the nighttime, and inquired if there was anyone else on the premises. He was told that there was a Chinaman asleep in the next room, and, going there with several attendants, ordered him to get up. Receiving no answer, Pico struck him with a gun. The Chinaman arose and seized the gun as Pico again attempted to strike him. After some altercation, he was overpowered and Pico ordered his attendants to bind him. This they did, putting a rope around his neck, tying his arms behind his back, and, in this condition, he was ordered out of the house for the purpose of being taken to the nearby hacienda, of which Pico was manager. Whether through unwillingness or physical inability resulting from the blow previously inflicted, does not clearly appear, but the Chinaman refused to walk, and Pico again struck him several times with the gun. Partly dragged and partly carried, the Chinaman was in a state of collapse when he reached the hacienda, where, a few hours later, he died. The next morning at 8 o'clock he was buried—a medical employee on the estate giving a certificate that he had died of heart failure. The suspicion of the authorities having been aroused, the body was disinterred; and, as it exhibited signs of external violence, Pico and two of his attendants were arrested, Pico being charged "with the crime of murder, with the qualifying circumstances of alevosia (treachery), as defined and penalized in article 403 of the Penal Code, in that * * * he feloniously ordered his two servants to seize and tie the Chinaman, GoSiengco, and thus tied and unable

to defend himself, the said Pico, with the intention of killing the said Chinaman, struck him several blows with a shotgun, as the result of which blows the Chinaman subsequently died." .

The evidence for the Government was direct and positive, and left no reasonable doubt as to the guilt of the defendant, unless the witnesses for the prosecution were unworthy of belief. Their credibility, though attacked, was sustained by the trial judge, who found the defendant guilty and sentenced him to cadena temporal, to be confined in the Bilibid Prison for the term of his natural life, with accessories named in article 54 of the code, and to pay the heirs of the Chinaman 1,000 pesos. A motion for a new trial was overruled, and on appeal the supreme court stated that only a question of fact was involved, and that the testimony for the Government, being direct and without elements of untruth, fully supported the findings of the trial court:

"We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration in favor of the accused the extenuating circumstance described in article 9, subdivision 3, of the Penal Code, namely, that 'the delinquent had no intention of committing so grave an injury as that which he inflicted.' There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree." (15 Philippine, 549.)

- It is claimed that this finding was in legal effect an acquittal; and several decisions of the supreme court of Spain are cited to support the argument that there can be no "murder with alevosia" unless there was a specific intent to kill the person bound. We cannot so construe the Philippine Code. Under it the killing of a human being is parricide, murder, or homicide, depending, not always on the intent, but upon the relation of the parties and the circumstances under which and the means by which life was taken. On the trial of a charge of "murder with premeditation," there might be call for proof of a specific intent, but even then that could usually be established only by external circumstances capable of proof. But in the case of murder with cruelty or with alevosia, the intent would be immaterial, although the accused might claim that he thought that the cruelty would not cause death, or that the beating would punish, and not destroy, the person who was bound. Under the Penal Code of the Philippines, as at common law, men are presumed to intend the natural consequences of their act, and cannot escape punishment for taking life on the claim that they had not intended or expected that such consequence would result from what they purposely did.

In this case Pico was not charged with "murder with evident premeditation." As the Chinaman was, at the time, bound and defenseless, Pico was guilty of "murder with the aggravating circumstances of alevosia," punishable by the minimum, medium, or maximum penalty, depending on the presence or absence of mitigating or aggravating circumstances, as defined by the code, which permitted effect to be given to the absence of a specific intent by a mitigation of the punishment. This we understand to be the effect of the decision of the Supreme Court of the Philippine Islands, and not, as claimed, an acquittal of the charge on which Pico was tried. (United States vs. Brobst, 14 Philippine, 310; United States vs. Candelaria, 2 Philippine, 104.)

The decisions cited by plaintiff in error do not require a reversal, for none of them relate to a case like this," where the accused, having himself ordered his victim to be bound, consciously, intentionally, and repeatedly beat him with an instrument likely to produce death.

- It was also contended that the complaint was defective in failing to allege that the Chinaman had been tied for the purpose of making defense impossible, and so that he might be killed without risk to the accused. This

objection comes too late. It was not made in the supreme court nor in the trial court, where amendments could have been made even if necessary under the liberal system of criminal plead-ing authorized by paragraphs 6, 8, 9, and 10 of the Appen-dix to the Penal Code of the Philippine Islands.

- Pico was sentenced by the supreme court to seventeen years four months and one day of cadena temporal, to the accessories provided by law, and to indemnify the heirs of the deceased by the payment of 1,000 pesos. In the record there is an assignment of error that this was cruel and unusual punishment (*Weems vs. United States*, 217 U. S., 349; 54 L. ed., 793; 30 Sup. Ct. Rep., 544; 19 Ann. Cas., 705) ; but on the argument the contention was abandoned in open court, and the point will therefore not be considered. In other assignments complaint was made that Pico was deprived of his liberty without due process of law—because the evidence was insufficient to prove beyond a reasonable doubt that the Chinaman died as a result of the blows inflicted by Pico; because the supreme court refused to pass upon the credibility of witnesses in the trial court; because he was refused a new trial on the ground of newly discovered evidence; and because one of the witnesses admitted to have given false testimony. We find no error of law. The evidence fully sustained the conviction, and the judgment is affirmed.

Affirmed.

[1] 228 U.S., 225; 57 L. ed., 812.

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