

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS COLOMBRO, DEFENDANT AND APPELLANT.

G. R. No. 3200. August 19, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of assassination, committed as follows:

"That in the month of July, 1902, in the sitio de Buyo, pueblo of Leon, Province of Iloilo, P. I., the said Tomas Colombro, in company with many individuals unknown, armed with guns and bolos, intentionally, maliciously, and by means of treachery, with premeditation and vindictiveness, killed, without justifiable motive, with a bolo with which he was armed, Laureano Calumbayan and Maximo Cabuguiran, inflicting various wounds on said persons in many parts of their bodies, killing them in the act, against the provisions of the law"

The defendant was duly arrested, brought before the court and pleaded "not guilty" of the crime charged in said complaint. He was placed upon trial on the 11th day of July, 1905. After hearing the evidence adduced during the trial, the lower court found the defendant guilty of the crime charged in said complaint and sentenced him to the penalty of death. The defendant did not appeal from this sentence. The cause is here now en consulta;

During the trial in the court below there were four witnesses for the prosecution who were present at the time the alleged crime of assassination was committed. The testimony of each of these witnesses is practically the same and is in effect as follows :

In the early part of July, 1902, a band of ladrones, numbering about twenty, armed with bolos and guns, assaulted the barrio of Malublub of the pueblo of Leon and attacked, among other houses, the house of Maximo Cabuquiran and Laureano and Julio Calumbayan and took these three men prisoners and tied them in a manner so that they were helpless and defenseless and carried them away to a place near the head of the Buyo River, where the defendant herein killed each of the said prisoners with his bolo. None of the witnesses were able to give a motive for the killing of these three persons, further than the mere supposition that in their opinion it was robbery; however, no evidence was introduced during the trial of the case to show that any robbery had been committed.

The testimony of the four witnesses shows that after the band, with the said prisoners, arrived at the place near the head of the Buyo River, at a short distance from the said barrio which was attacked, the defendant, while the three persons were still helplessly and defenselessly bound, by means of his bolo assaulted the three persons and then and there killed two of them and so wounded the third that he died within a short time thereafter.

As to the purpose of this inhuman act by the band the judge of the lower court who saw and heard the witnesses states:

"I can not attribute it to anything except the savagery of the nature of the men who did it, a reckless and entire

disregard of human life and human rights."

The only defense which the defendant made during the trial of said cause in the lower court was that of an alibi.

The fact that the defendant first manacled the three persons killed before attacking them with his bolo clearly establishes the qualifying circumstance of the crime as that of alevosia. (U. S. vs. Cabe, 1 Phil. Rep., 265.)

Did there exist any aggravating or extenuating circumstances?

This court has held in the case of United States vs. Cabe that the meeting together of a considerable number of men at a certain barrio and at a given hour for the capture and assassination of others discloses such plan and concerted action as constitutes premeditation.

This court has also decided in the case of United States vs. Larion (2 Phil. Rep., 476) that where the accused, upon entering a town in command of a band of malefactors, search out the family of the complaining witness and kill the latter's wife and children, this conduct reveals reflection and preparation to the degree constituting the circumstance of deliberate premeditation.

We therefore hold that there existed the aggravating circumstance of premeditation.

The crime was also committed in the nighttime, and we believe that the defendant and his companions took advantage of that time in order that they might the more successfully carry out their evil designs. Hence, there existed also the aggravating circumstance of nocturnity.

For all of the foregoing reasons the judgment of the lower court should be affirmed, and it is so ordered, with costs.

Arellano, C. J., and Torres, J., concur.

Willard and Tracey, JJ., concur in the result.

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