

THE UNITED STATES, PLAINTIFF, VS. THE MORO MATANUG, SULTAN OF DIMABARRA, DEFENDANT.

G.R. No. 4094. September 03, 1908

Ponente: MAPA, J.

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MAPA, J.:

The accused was sentenced by the court below to the penalty of death, to pay an indemnity of P1,000 to the heirs of the deceased, and costs, for the murder of a soldier, James W. McDonald, with the aggravating circumstances of deliberate premeditation and forcible entry. The case has been submitted to this court en consulta.

It appears from the proceedings, and we hold that the same has been proven, that an agreement was previously entered into between the accused and the Moros Mamaku and Macabangan; that on the morning of the 22d of January, 1906, the three being armed respectively with a campilan, a cris, and a lance, started from Calilangan, the place of their rendezvous, for the military post of Parang, district of Cotabato, Moro Province, with the express object of stealing rifles from the soldiers stationed there and killing the latter if necessary to attain their object; that they reached the neighborhood of said military post at dusk, halted and waited until night was well advanced, and at a late hour they took up positions near the barracks until "taps" were sounded and everything was quiet in the post; that they then entered it and cautiously ascended the stairs of some houses in order to see if there were any rifles in them, but seeing none, they went in the direction of a field tent that was occupied at the time by five sick soldiers, the door of which was strongly tied to the pole, and the side walls being well secured to pegs driven in the ground; that before reaching the tent the accused and Macabangan left Mamaku in charge of their effects under a cocoanut tree about 70 yards away, and the two continued their way to the tent; that, defeating the vigilance of a sentry on duty near the tent, the two, that is, the accused and Macabangan, cut the ropes at the rear of the said tent, entered it and suddenly fell upon two of the soldiers who were inside, wounding them with the arms they carried, running away immediately after the deed. All of this took place in the early morning of the 23d of January, while the two soldiers who were the victims of the aggression, and who turned out to be Harry Wickham and James W. McDonald, were asleep. The former was apparently but slightly wounded, while the latter received two wounds, one of which proved mortal, and died in consequence in the evening of the 25th, that is, three days after the occurrence.

The accused acknowledged that he traveled from Calilangan to Parang in company with Macabangan and Mamaku; his exculpation has simply tended to establish the fact that his meeting the others on the road was merely casual, and that he did not reach the military post at Parang because he remained on the night in question in the sitio of Pangui, distant, according to the evidence, about 900 yards from said post. He states that his object in going to Parang was to buy cotton, clothes, and buyo; that when in Calilangan he met Macabangan and Mamaku who were also on their way to Parang, for which reason they traveled together; that before reaching Parang the others left him in the sitio called Pangui, telling him that they would go straight on to the market to buy buyo, he being then ignorant of their intention to kill Americans; that he remained in Pangui because, having reached it at dusk, he thought that he would not have sufficient time to buy the things that he needed, and

furthermore, because, as he was armed, he decided upon passing the night in said place in order to await some person who was a friend of the Americans and thus be able to enter the town on the following day with his weapons and make his purchases, or else to hide his weapons, go to the market and return afterwards to recover them; but that in the morning Mamaku and Macabangan came back running and told him that they had killed some Americans, and in view thereof he escaped with them.

The important point in the above declaration is that which refers to the fact asserted by the accused of having remained all the night in question at the sitio of Pangui. If this were true it is evident that he could not have taken actual part in the aggression from which resulted the death of the soldier McDonald. But there is conclusive evidence to the contrary. Pangui is about 900 yards distant from the military post of Parang. If only Mamaku and Macabangan had entered the said post, the accused having remained in Pangui, but two aggressors would have been seen in the neighborhood of the tent immediately after the aggression; however, witness Walker, one of the soldiers who were in the said tent, testified that there were three. This witness heard the noise of the blow that wounded Wickham, and when he saw that McDonald had also been wounded, he jumped out of his cot, he says, with such rapidity that he carried the mosquito net with him. To quote the witness's own words: "After hearing the first shot I jumped to my feet and ran to the rear of the tent and raised the flaps; I then saw three native Moros running toward the place where the new hospital is located."

The place where the cocoanut tree is located is only about seventy yards distant from the tent where the deceased, McDonald, was wounded. The fact that three Moros were seen at such a place and at such time instead of two, indubitably proves that the accused, far from remaining in Pangui, which is at a distance of more than 800 yards from said point, together with his companions Mamaku and Macabangan entered the military post of Parang where the affray took place, as was actually testified to by Mamaku.

It is shown by the evidence that the deceased McDonald was wounded with a lance, and that the weapon that the accused carried was a campilan. The lance was carried by his companion Macabangan. In view of this fact it seems clear that it was the latter, and not the former, who attacked and wounded McDonald: The person who was attacked and wounded by the accused was the other soldier, Wickham. However, the liability of the accused as to the wounds and subsequent death of McDonald is exactly the same as if he had personally caused them, because the acts of both of them, that is, the said accused and Macabangan, were concerted and directed toward the carrying out of the same purpose, previously resolved and agreed upon by them, either to steal rifles from the soldiers or kill them. The unity of purpose and of action resulting from such agreement under which they acted when carrying out the aggression of which the deceased McDonald was the victim, makes them jointly liable for the whole of the consequences of the aggression in which the accused certainly took as direct a part as his companion Macabangan.

As the deceased was attacked in such a sudden and unexpected manner while asleep, it was materially impossible for him to make any defense or oppose any resistance to the aggression. Under the circumstances, the aggressors acted with entire safety and without the least risk; to themselves, which fact determines the aggravating circumstance of treachery, justly considered by the court below as qualifying the crime as that of murder as charged in the complaint.

The court below has also justly considered the concurrence of the aggravating circumstance of deliberate premeditation, clearly demonstrated by the agreement that preceded the execution of the crime, followed by a long journey made with the exclusive object of carrying it out, and by the careful precautions taken by the accused and his companions when nearing the military post of Parang to hide themselves during the evening and the early hours of night, and to enable them to enter the camp and carry out their wicked intent when they considered that the proper time therefor had arrived; they afterwards went peeping into different houses looking for rifles and to

thus determine which house they should break into; all of which clearly shows that, after they decided to commit the crime, they persisted in their intention, carefully and deliberately considering and calculating the manner and means which would, in their opinion, insure the consummation of their criminal intent with the greatest safety; these facts constitute the aggravating circumstance of premeditation. The court below has likewise justly considered the other aggravating circumstance of forcible entry.

Inasmuch as in the commission of the crime herein aggravating circumstances are present without any mitigating circumstance to offset them, the penalty must be imposed on the accused in its maximum degree, which in the present case is that of death, (Art. 403, Penal Code.)

The judgment is hereby affirmed. The penalty of death imposed on the accused shall be executed on the day and hour to be previously appointed in the manner prescribed by the law, with the costs of this instance against the accused. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

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