

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO GARCIA, DEFENDANT AND APPELLANT.

G.R. No. 4121. March 26, 1908

Ponente: MAPA, J.

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MAPA, J.:

This is a proceeding on a charge of murder. The court below qualified the deed complained of as homicide, found the accused guilty thereof, and imposed upon him the penalty of fourteen years eight months and one day of reclusion temporal, with the corresponding accessory penalties, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs of the proceedings.

The accused was a soldier of the Constabulary, and was on guard as sentry on the night when the said murder occurred. The time for relieving the sentry having arrived, the deceased, accompanied by the corporal of the guard, went to his post in order to relieve the former from duty. The accused was not found there, nor did they obtain an answer from him notwithstanding the fact that the corporal called him several times, and they were about to turn around when a gunshot sounded and the bullet wounded the deceased, passing through his body from one side to other, killing him instantly. The corporal threw himself upon the party who fired the shot and who turned out to be the accused, and" who at that time was sitting on a bench 3 brazas distant from the place appointed for the sentry, from which point he could not be seen by the former because the night was dark and stormy. These facts are stated in the testimony of the corporal of the guard who was an eyewitness of the occurrence, and the same have been partly confirmed by two other witnesses, and we consider that they have been sufficiently proven in the case.

The accused admits the fact that he killed the deceased, but alleges that he did it for the reason that the latter did not stop or answer to the order to halt which he gave him three times, but that, on the contrary, he continued to advance toward him without taking any heed of his intimation; lie therefore took him for an enemy and fired at him the shot that killed him, in compliance with the orders which he had received. This allegation is contra-dicted by the testimony of the corporal of the guard who relates the affair in the terms already stated above. There are besides two other witnesses who were close to the place where the affair happened, who heard the corporal of the guard call to the accused several times, and on the other hand they did not hear the latter give the order to halt. The falsity of the declaration of the accused is further shown by other important details in the proceedings ; thus, for instance, he affirms that the deceased was alone and did not carry a light, when as a matter of fact lie was accompanied by the corporal of the guard, and the latter carried a torch, as appears from the testimony of the said corporal and of the other two witnesses referred to. And from the fact that the deceased was accompanied by the corporal of the guard and that they came from the cuartel, as has also been attested by the said witnesses, there was no reasonable motive for the accused to have taken the former for an enemy and to have shot him.

The Attorney-General maintains in his brief that the crime should be qualified as murder because it was committed with treachery, inasmuch as the aggression was sudden and unexpected, and was carried out by the accused while he was concealed from the sight of the injured party who was thus unable to defend himself, or in

any way to counteract the said aggression. Taking into consideration all the circumstances of the case, we believe that what happened was, that the accused fell asleep on the bench where he was afterwards found by the corporal, and that on being abruptly awakened by the repeated calls of the latter, and seeing that two persons were coming toward him in the darkness of night, bewildered and without time to comprehend the exact situation, he fired the shot that caused the death of the deceased. Under such circumstances it can not be said that there was on the part of the accused a deliberate intent to act without risk to himself or in perfect safety; it can not be said that he willfully and knowingly availed himself of the advantageous position in which by mere chance and unexpectedly, he found himself placed on waking up, in order to insure the success of the aggression without risk to his person, in which treachery consists according to the Penal Code. For said reason this circumstance should not be considered in the present case, and the trial judge acted correctly when qualifying the deed as plain homicide.

The judgment appealed from is hereby affirmed with the costs of this instance against the accused. So ordered.

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

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