

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FERNANDO ESTABILLO, DEFENDANT AND APPELLANT.

G.R. No. 4365. August 25, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

At 2 o'clock in the afternoon of the 1st of July, 1907, in the barrio of Acao in Bugnay in the pueblo of Bauang, in the Province of La Union, four employees of the Compañia Tabacalera, carrying each a sack of money, were waylaid on the public highway by a band of ten men, armed with revolvers and bolos. The money, amounting to P2,000, having been taken from them and sent away in the custody of six of the band, the other four bound the four prisoners and conducted them to a lonely spot among the trees on the mountain side, 150 yards away, and placed them, so bound, squatting on the ground. Then each of the robbers attacked one of the prisoners, two of whom, Pablo Garcia and Gaspar Marquez, were killed outright, while Marcelo Agan and Francisco Galves were left lying on the ground, the first altogether unconscious with bolo wounds in his neck, shoulders, and back. He swears that when given them he was sitting down manacled and that they were inflicted upon him by the accused alone, whom he thoroughly identified, having theretofore known him as a man who hired out his beast of burden for transportation to the Tabacalera Company, and who lived in the same region as himself.

In the face of the specific relation of the two surviving victims, Agan and Galves, the pretense of the accused that he was present at the robbery and murder under compulsion, having been summoned by the robbers from his house to act as their guide, can not be credited.

This is a case where the murder was perpetrated at a place different from that of the robbery and after an appreciable interval of time. Yet, both transactions being part of the general plan and, the object of the murders being in furtherance of the robbery, by doing away with the witnesses to it, the entire transaction is considered as constituting the crime of robbery with homicide. (U. S. vs. Palmadres, 7 Phil Rep., 120; U. S. vs. Macalalad, 9 Phil. Rep., 1.)

It appears from the testimony that each of the robbers dealt only with his particular victim, so that this accused did not assault either of the men who died. Nevertheless, the murders having been in furtherance of the common plan, in which he participated, he is responsible for them. (U. S. vs. Santos, 4 Phil. Rep., 189.)

The court below rightly considered as aggravating circumstances that the crime had been committed in an uninhabited place by a gang of men, with alevosia, and without any extenuating circumstances, and condemned the accused to death, with indemnity of P500 to the heirs of Pablo Garcia and Gaspar Marquez, together with the costs. This judgment is affirmed, with the costs of this instance. So ordered.

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

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