

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEOCADIO SALGADO, DEFENDANT AND APPELLANT.

G.R.No. 4498. August 05, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

According to the judgment of the court below, brought to this court in consultation, it appears that—

"It has been shown in this case that the accused, Leocadio Salgado, suddenly attacked Gonzalo Lamaira on the night of the 25th of June, 1907, at a place called Palumpuy, town of Mariveles, Province of Bataan, -while the latter, accompanied by his father, Saturnino Lamaira, was passing through an uninhabited place on their way to inspect their fields, to which their attention had been attracted by the barking of dogs during the night; that the accused struck Gonzalo Lamaira with his bolo, first on the back of the head, then on the neck, and finally on the arm; that the wounds inflicted were such that the victim died immediately; that, after wounding Gonzalo Lamaira, and on seeing that his father, Saturnino, intended to defend him, the accused attacked him also and, as Saturnino started to run to his house, pursued him thereto ; that, on reaching his house, Saturnino secured a bolo and challenged Salgado to come up, but the former's wife, Eduvigis Lastrado, and daughter-in-law, Felisa Ambrosio, becoming aware of the affray, and seeing from the window that Salgado was armed with a bolo, called for assistance, whereupon the accused ran away. The day before the affair the accused had asked Gonzalo Lamaira for a black shirt, and subsequently for rice and cigarettes, but as Gonzalo could not give the accused what he had asked, the latter appeared to be disappointed and left without further ceremony. The affray occurred within two days after this incident."

The court below considered that the deed was proven and defined the same as a crime of murder with treachery under article 403 of the Penal Code; the treachery was taken into consideration because the accused hid himself in a place where he expected his victim would pass, and, cautiously waylaying him, first struck him a mortal blow with his bolo on the back of the head, and immediately after inflicted another cut on the neck, without allowing him time to defend himself. The court also took into account the aggravating circumstances of nocturnity and the commission of the crime in an uninhabited place; therefore, as there was no mitigating circumstance to compensate them, the accused, Leocadio Salgado, was sentenced to death in the manner provided by the law, to indemnify the family of the deceased in the sum of P500, and to pay the costs.

As related by the father of the deceased, the deed occurred as follows: Father and son were both in their house and heard the barking of dogs as if something were taking place in their field close by; they went down to see what the matter was, and finding nothing unusual, they were returning to their home when the son, who was walking behind his father, at a distance of 6 feet, exclaimed "father;" the latter looked around and saw a man, who was standing to the left of his son with a bolo in his right hand, strike the boy on the back of the head; at that moment his son was nearer to him than to the other man. Undoubtedly the crime was committed treacherously, and its qualification as murder is in accordance with the law.

As to the aggravating circumstance of the crime having been committed in an uninhabited place, also taken into

consideration by the court below, the record discloses by the testimony of the father of the deceased, that the house that stood nearest to the place of the occurrence was at a distance of 10 brazas (20 Spanish yards), but that the owners thereof did not live there. On said night there were only the two men who rendered assistance, and another person who lived in another house about 30 brazas away; and on being questioned as to the distance between his house and the place where his son was attacked, he said that it was approximately 30 varas. Under such conditions the aggravating circumstance of the commission of crime in an uninhabited place can not be taken into consideration. An uninhabited place is one where there are no houses at all, a considerable distance from town, or where the houses are scattered at a great distance from each other. (Judgment in cassation, January 9, 1884)

It is true that the crime was committed at night. In accordance with the judgment in cassation rendered on the 21st of June, 1890—

"The circumstance of nocturnity and an uninhabited place does not absolutely imply treachery, nor is it, as a general rule, inherent in the latter, inasmuch as there are crimes wherein the former circumstance is present and which are not treacherous, so there are many others in which the first circumstance is not present; therefore, they are entirely compatible the one with the other, and should be given the legal value that they respectively possess, except in the case of some particular crime wherein nocturnity constitutes the most salient feature of or means whereby the crime is treacherously committed."

In a case similar to the present one two persons who were in charge of a vineyard were awakened by the barking of dogs, and upon going to the place where the dogs indicated that something was occurring, they were fired upon. Their assailant was a man with whom they had had some trouble and who was hiding close by in the shrubbery. In the judgment in cassation of the 29th of December, 1884, it was held that:

"Nocturnity must be considered by courts in accordance with the express provisions of the Penal Code and with the nature and circumstances of the crime. Therefore, in the present case, which was committed at night, it was a peculiar manner or form to insure its execution, rather than a special circumstance, and constitutes a circumstance absolutely inseparable from the treachery which has already been fully considered as qualifying the crime of murder."

By virtue thereof, the accused Leocadio Salgado is hereby sentenced to the penalty of imprisonment for life, and to suffer the accessory penalties of article 54 of the Penal Code, the judgment appealed from being reversed in that regard. Otherwise with respect to the indemnity and payment of the costs of the first instance it is affirmed, and with those of the second instance also against the accused. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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