

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO BARBICHO, DEFENDANT AND APPELLANT.*G.R. No. 5109. July 31, 1909*

Ponente: TORRES, J.

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A few days prior to the 17th of April, 1908, and on a date which does not appear in the record of the case, although it seems that it was on Tuesday of Holy Week, the father of Pedro Barbicho, whose name is not given, and a certain Gaudencio, an uncle of Mateo Barbicho, had some trouble and angry words passed between them, which ended without further consequences; the said father of Pedro left and returned to his house, where Pedro was informed of what had occurred between his father and Gaudencio, whereupon he went to the house of the latter, and announced on his arrival that he wanted to kill Gaudencio; Eulalia Cabalona heard him, and advised him not to do such a thing, nor carry out his threat, because it was a wicked thing to kill a relative; Pedro then said that he would kill Gaudencio because the latter had insulted his father. After this, Eulalia Cabalona went to her house where, on arrival, she communicated to her husband, Mateo Barbicho, what had taken place, and the latter then said: "As to the killing, that won't do; if I see him it will be different; we would then both of us have something to say."

As soon as the above words were uttered by Mateo, they must have been heard by Pedro Barbicho, because he made his appearance near the house and said: "As you say that I am conceited, come down and prove it, and we will find out whether I dare do what you say I don't, and I will kill you." Mateo did not reply to this or do anything, because his wife, Cabalona, intervened and advised the two men not to quarrel so violently, and although at the time more words passed between them, they afterwards apologized to each other, conversed amicably, and renewed their friendly relations.

Some days later, at about 10 p. m. on Good Friday, the 17th of April, Pedro Barbicho went to the house of the married couple, Mateo and Eulalia, and greeted them in a friendly manner, and as Mateo saw that Pedro was carrying a dagger, locally called a barao, he told him that he should not carry such a weapon during the sacred days of Holy Week, because the devil lurked in every man; to this advice Pedro answered that Mateo had nothing to do with him, because the weapon was his own; after this conversation, Mateo and his wife and children, and the girl Sergia Escoro, all went to sleep, Pedro Barbicho also remaining there to sleep. Late that same night Mateo, the owner of the house, while sound asleep, was attacked by Pedro Barbicho who, with the above-mentioned weapon, inflicted on him a mortal wound in the left side of the abdomen, and the woman awakened by hearing her husband call out "Pedro, come back here, what have you done to me?" struck a light at once and saw that her husband, Mateo, was getting up and that his aggressor, Pedro, was going toward the door in order to leave the house, which he did. The husband then informed her that he had been wounded by Pedro Barbicho, and died a few hours later, about 4 in the morning, due to the very serious wound which he had received. In view of what had occurred, the woman, as soon as she was able, about 6 o'clock on Saturday morning, reported the occurrence to Cornelio, the lieutenant of the barrio of Refugio.

A complaint was subsequently filed by the provincial fiscal on the 11th of November, 1908, with the Court of First Instance of Cebu, charging Pedro Barbicho with the crime of murder, in that said crime was committed with premeditation, treachery, and in the house of the deceased; thereupon these proceedings were instituted, and the trial judge, upon the evidence presented, entered judgment therein on the 25th of said month, sentencing the accused, Pedro Barbicho, to the penalty of imprisonment for life, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs of the proceedings; from the said judgment the accused has appealed.

The above-stated facts, duly proven in the present case by the testimony of Eulalia Cabalona, the wife of the deceased, the principal details of which are confirmed by Sergia Escoro, the girl who also slept in the house of said married couple on the night of the attack, constitute the crime of murder defined and punished by article 403 of the Penal Code, inasmuch as Mateo Barbicho was attacked, received a mortal wound in the left side of the abdomen while fast asleep with his family, in his own house, and only awoke when receiving the blow and as the weapon penetrated his body. The aggressor, in order to insure the success of his criminal intent and purpose, and the consummation of the crime without any risk to himself as might ensue from such defense as the victim might offer, took advantage of a time while the latter was fast asleep, and under such conditions attacked him. The specific circumstance of treachery was unquestionably present therein, and it is one of those which qualify the crime of homicide and convert it into murder, punished with a heavier penalty.

The accused, Pedro Barbicho, stands convicted as the sole participant in said crime, and notwithstanding his denial and exculpatory allegations, the record in the case furnishes incriminating data and sufficient merits to produce in the mind, when duly considered according to the rules of sound criticism, the fullest conviction of the guilt of the accused, it being impossible to consider the preponderance and weight of the evidence as in any way favoring the defense, for the reason that it has been conclusively shown that, shortly before the aggression, the accused made his appearance at the house carrying a dagger, and there remained to sleep without showing any sign of displeasure or resentment; that when Mateo, the assaulted man, woke up because of the wound that he had received, he recognized and asked his aggressor what he, Pedro, had done to him, calling him correctly by his name, while the wife of the wounded man, on striking a light, saw the defendant going toward the door of the staircase in order to leave the house; and that the deceased Mateo, up to the moment of his death, repeatedly stated that he was wounded by his relative Pedro Barbicho, statements which, according to the wife of the deceased and the girl Sergia Escoro, must have been heard by some of the neighbors who went to the house where the crime was committed. Not the slightest suspicion attaches to any person, other than the accused, as being guilty of the crime, and if the latter was not arrested at once it was only because he was not found until the 12th day of May following.

In connection with the crime of murder it is proper to consider the presence of the aggravating circumstances of premeditation, a generic one in the present case, and abuse of confidence (subdivisions 7 and 9 [10] of article 10 of the Penal Code), inasmuch as the accused, who lived at a short distance from the house of the deceased, made his appearance therein carrying a deadly weapon without any reasonable motive for so doing, and there remained to sleep, unnecessarily suffering the discomforts due to a room so small that he had to lie down with his head close to the door and his feet almost touching the body of his victim; and inasmuch as that, in spite of the apparent reconciliation and friendly feeling which he displayed in his dealings with his relative after the trouble that the accused and the deceased had had on the previous Tuesday, the former must have been since meditating and carefully maturing his plans and making his arrangements to consummate the threat of death made against the latter when he challenged him on that day, and being bent upon committing the crime, went to the house of the deceased armed with a dagger on Good Friday night, and gained the confidence of the latter through his good behavior as a relative, in order to benefit by it afterwards in causing the latter and his family most serious damage, irreparable per se, although one of said aggravating circumstances is compensated by the mitigating one

established by article 11 of the code, the adequate penalty, in view of the other aggravating circumstance not compensated, must be imposed in its maximum degree.

In regard to the doubt as to whether the accused is over or under 18 years of age, and in the absence of proof that on the day he committed the crime he was 18 years old, he must perforce be considered as still under that age, and therefore, the mitigating circumstance mentioned in paragraph No. 2 of article 9 of the code should be applied in his favor, the penalty next inferior to that imposed by article 403 of the code, and in the maximum degree for the uncompensated circumstance, being applicable under the provisions of article 85, paragraph 2. Hence, the penalty should be that of presidio mayor in its maximum degree to cadena temporal in its medium degree.

By virtue of the considerations above set forth, it is our opinion that the judgment appealed from should be affirmed so far as it agrees with this decision, and that Pedro Barbicho should be and is hereby sentenced to the penalty of seventeen years of cadena temporal, to suffer the accessory penalties of article 56 of the Penal Code, to indemnify the widow and heirs of the deceased in the sum of P1,000, and to pay the costs of both instances.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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