

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BARTOLOME ARREGLADO, DEFENDANT AND APPELLANT.*G.R. No. 5114. August 05, 1909*

Ponente: TORRES, J.

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On the night of the 12th of October, 1908, Bartolome Arreglado and Juan Buybuy approached Claudio de Ocampo, who was engaged in the construction of his house situated in the pueblo of Tiaong, Province of Tayabas, and insisted upon his calling Felipe Malihan, who was in his own house, as by order of Valentin, the lieutenant of the barrio of Lusacan, for the purpose of doing patrol duty. Ocampo did so, but shortly after Malihan had left his house and started off in company with Ocampo, the latter, fearing that the said Arreglado and Buybuy might carry out their mutual intent to kill Felipe, (which they had communicated to him shortly before when instructing him to induce Felipe to leave the house and follow him), advised the latter to return to his home, telling him that he first wanted to see the parties who gave him the order, and that he would call him again if necessary. Malihan followed this advice, while Ocampo returned and told Arreglado and Buybuy that Felipe had refused to follow him because the hour was so late, whereupon they separated.

On the following night, the 13th, between 10 and 11 o'clock, Bartolome Arreglado went to the house of Malihan and called on him in the name of Valentin, the lieutenant of the barrio, to do duty as a volunteer. Malihan left the house at once and followed Bartolome Arreglado, but shortly thereafter Tomasa Arpon, Malihan's wife, heard from her house the cries of her husband saying "Bartolo, you are not a man, you have betrayed me;" whereupon the woman Arpon, being convinced that it was her husband's voice, left her house in order to go to the place where the cries came from, but at a short distance from her house, and before she had reached the spot where her husband was, she was met by Bartolome, who seized her by the hand and told her that he had killed her husband; and when the woman asked him why he had done so, Arreglado replied that he had killed him because the deceased had threatened to kill his carabao if he could not manage to steal it, and when, on seeing a man some distance away, she asked Arreglado who it was, he said that it was Juan Buybuy, and after answering compelled her to return to her house, threatening to kill her if she reported the matter to the authorities; and, in order that she might not report the occurrence, the two aggressors kept watch over her the whole of that night; however, on Thursday morning, the third day, she managed to leave her house, with the permission of her guards, under the pretext of looking for a seamstress. While on the street, she met a certain Gregorio Umali (alias Atoy), and informed him that her husband had been murdered by Arreglado and Buybuy, and requested him to report it to the authorities. Umali reported the matter to the municipal president who, after the preliminary investigation, went to the place where the body of the deceased was buried, as pointed out by Bartolome Arreglado who was already in custody; the body was exhumed and recognized by the wife and relatives of the deceased as well as by the president of the local board of health who, upon examining said remains on October 20, found labial wounds, the upper and lower lips being cut without affecting the gums, another wound in the right auricular region inflicted with a blunt instrument, and also a contusion in the right temple which produced cerebral hemorrhage and caused the death of the wounded man, he having been attacked with an iron bar 2 feet long and 1 inch in diameter.

In view of the above a complaint was filed by the provincial fiscal on the 27th of November of said year in the Court of First Instance of Tayabas, charging Bartolome Arreglado with the crime of murder; another separate complaint was filed against Juan Buybuy, and proceedings were instituted against the first-named. On the 30th of November, 1908, the trial judge sentenced Bartolome to the penalty of death, to pay an indemnity to the heirs of the deceased, together with the costs, and ordered the case forwarded to this court for review.

From the record in the case, it seems to be completely established that a very serious crime, the murder of Felipe Malihan, was committed on the night of October 13 in a barrio of the town of Tiaong, Tayabas.

On the body, when exhumed "by order of the authorities, there were found wounds and contusions which, if not mortal, were very serious, so that the violent death of the said individual should be classified as murder, inasmuch as the specific circumstance of premeditation is clearly manifest; for from the time when the malefactors conceived the idea of, and seriously reflected and meditated on the crime, they planned to carry it through with persistence and reflection, and took preparatory steps which demonstrated their intent. To this end they prepared and dug the grave in which they were to and did bury the body of their victim, and in order to accomplish the murder of the unfortunate Malihan they made use of Claudio Ocampo to summon the deceased on the night of the said 12th of October, divulging at the time to the messenger their criminal intention. When by reason of the information so volunteered Ocampo neglected to obey the order, the criminals persisted in the perpetration of the crime, and one of them, the accused Bartolome Arreglado, went to the house of the victim and called him out in the name of the lieutenant of the barrio, causing him to leave his house by means of said false pretext, and when Malihan went out to obey the lieutenant's order, he was suddenly attacked by the said accused and Juan Buybuy, who had been lying in ambush in the road, and who inflicted upon him wounds that produced his instant death. All of said acts which preceded the crime and were performed successively on different days and hours, as fully proven in the case, show in an unquestionable manner that the death of the said Felipe Malihan was calmly and coolly considered and fully decided upon by the guilty parties, and consequently this crime can not be classified otherwise than as premeditated murder.

The evidence introduced by the prosecution satisfactorily and conclusively establishes the guilt of Bartolome Arreglado as one of the two authors of the murder in question, for notwithstanding the fact that the said accused pleaded not guilty, and in spite of his exculpatory allegations tending rather to inculpate his codefendant, Juan Buybuy, who is being separately prosecuted for the same crime, the case furnishes sufficient evidence and weighty and conclusive indications, based on proved facts and confessions by the accused, to produce in the mind, when considered as a whole, according to the rules of sound criticism, the fullest conviction of the guilt of the accused, Bartolome Arreglado, as one of the murderers.

Even though it may be deduced from the record in the case that Tomasa Arpon, the widow of the victim, who for many months had been the querida or mistress of Juan Buybuy, the other defendant charged under another complaint, must have been aware of the premeditated murder of her unfortunate husband, as shown by her own statements and other acts even before the crime was committed, it does not, however, prevent her uncontradicted testimony against the authors of the crime, corroborated in several points by the declarations of Claudio Ocampo, Valeriano-Arpon, and the municipal president of Tiaong, Pedro Cantos, from serving as evidence for the prosecution, and, taking the evidence all in all, we consider the criminal responsibility of the accused Bartolome Arreglado as coauthor of the crime as proven, inasmuch as he has stated that he himself called the injured party and made him leave his house, by means of deceit and a false pretext, at 11 o'clock on the night of October 13, while Juan Buybuy awaited his victim on the road. The accused, according to his own declaration, alleges that, though he was present at the place where the crime was committed, he took no part in the deed which was carried out by his codefendant Juan Buybuy alone, but the wife of the injured man testified that she heard her husband cry

out "Bartolo, you have betrayed me," and that, when she went to the place where her husband should have been, she was met by Bartolome, who told her that he had killed the latter, and threatened to kill her too if she reported the matter to the authorities. It has also been proven that Bartolome Arreglado assisted Buybuy to bury the body, and when arrested later on, pointed out the place of burial in compliance with the demand of the local authorities. All of said acts clearly show the participation of the accused in the crime, and that it was committed with especial malice, cruelty, and the greatest perversity.

In the commission of the crime in question it is proper to consider the presence of circumstances 2, 6, 8, and 15 of article 10 of the Penal Code, for the reason that Felipe Malihan was unprepared and believed that the authorities of the barrio had actually sent for him; he was suddenly attacked from behind, judging from the location of the wounds, according to the statement of the physician who examined the body, and from what Bartolome Arreglado, the accused, stated, corroborated by the cry heard by the wife of the deceased; and further because, in order to make the injured party leave his house, on both occasions the accused and his codefendant employed trickery and deceit, simulating a false order from the lieutenant of the barrio, and in order to facilitate the execution of the crime with impunity, they purposely selected the darkness and silence of night; and, even though the circumstance of abuse of superiority be considered as included in the treachery because the injured party was suddenly attacked by two armed men, making it impossible for him to defend himself or even to escape, the fact must not be ignored that the accused, in order to cause the violent death of the unfortunate Malihan, deliberately increased the enormity of the crime by subjecting him to unnecessary suffering in order to deprive him of his life, such as the cutting off of his upper and lower lips; an act of cruelty which they had no need to perform in order to kill him. There is not a single mitigating circumstance to compensate any of the aggravating ones mentioned and, in view of the nature of the crime and the circumstances and conditions surrounding it, and the trickery and perversity with which it was performed, no reason whatever exists that would justify the application in his favor of the mitigating circumstance established by article 11 of the code.

Therefore, in view of the foregoing reasons, it is our opinion that the judgment submitted for review should be affirmed, provided, however, that Bartolome Arreglado shall be sentenced to pay jointly and severally with Juan Buybuy, who has also been sentenced in the case brought against him, an indemnity of P1,000 to the widow and heirs of the deceased, with costs, the sentence to be executed in accordance with Acts Nos. 451 and 1577; and provided further, that in the event of a pardon being granted by a commutation of the penalty, he shall also be sentenced to suffer the accessory penalties of article 53 of the code unless the same be specially included in the pardon.

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

[1] Cause No. 5182, *The United States vs. Juan Buybuy*, was considered and decided on August 9, 1909, with the same result.

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