

THE UNITED STATES, PLAINTIFF, VS. TEODORO BAGUIO AND CRISTOBAL ALBANO (ALIAS UBAL), DEFENDANTS.

G.R. No. 5332. October 04, 1909

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants in this case were charged with the crime of robbery with homicide (robo con homicidio). They were tried in the Court of First Instance of the Province of Pangasinan on the 4th day of December, 1908. They were found guilty of the crime charged and sentenced to death, and to the corresponding accessories in case of pardon, and to indemnify the family of the deceased in the sum of P500, and each to pay one-half the costs of the trial.

The case comes to this court en consulta.

The court below found clearly established the following facts :

On or about the 4th day of October, 1908, at 8 o'clock in the evening, in the pueblo of Urdaneta, in the Province of Pangasinan, the said defendants, by means of force, entered the garita of Rafael Estrada, and, having inflicted upon said Rafael Estrada five serious wounds with a bolo upon various parts of his body, and having severely beaten Ambrosia Rioca, the wife of said Rafael Estrada, the defendants took and carried away P31 in money and jewelry and other effects of the value of P26, all the property of the said Rafael Estrada and his wife. Rafael Estrada was so severely wounded that he died from the effects of his wounds a few days later.

A careful examination of the whole record leaves no doubt in our mind of the correctness of the result reached by the trial court upon the facts. The record shows the defendants to have been guilty of the crime charged beyond reasonable doubt. The defendants were identified at the time of the commission of the crime by Ambrosia Rioca, who states positively that she recognized both of the accused on the night in question; by the said Rafael Estrada at the time of his ante-mortem statement, which statement was made in the presence of the accused. In this statement Estrada declares that on the flight he was injured he recognized both of the defendants clearly and declared that Teodoro Baguio was the person who cut him with the bolo. He recognized them and identified them as they were brought before him at the time his ante-mortem statement was taken.

The defendants attempted to prove an alibi, but the trial court, upon hearing the testimony of the witnesses upon the part of the defense, refused to believe them, and accepted rather the statements of the witnesses for the prosecution. There is no reason why the conclusions of the judge in this respect should be disturbed.

We are, however, constrained to differ with the trial court as to the penalty imposed under the judgment of conviction. Article 503 of the Penal Code, subdivision 1, provides that the penalty for the crime of robbery shall be cadena perpetua to death, "if on account or on the occasion of the robbery there results homicide." The maximum penalty, death, can not be imposed in the absence, of an aggravating circumstance. (Penal Code, art. 81.) A garita is not a dwelling within the meaning of article 10, subdivision 20, of the Penal Code. There is no

evidence that the place where the crime was committed was uninhabited. As to nocturnity, article 10, subdivision 15, of said code says:

"When it is committed at night or in an uninhabited place, or by a gang.

"The courts shall take this circumstance into consideration according to the nature and characteristics of the crime."

We are of opinion that, under all the circumstances of this case, as disclosed by a careful reading of the evidence and record, the court is not warranted in finding any aggravating circumstance present in the commission of the crime. Estrada and his wife were traveling from one part of the country to another. Shortly before the commission of the crime they had taken possession of this garita for the night. The defendants, so far as the evidence goes, did not know, until almost the very moment of the crime, that Estrada was anywhere in that neighborhood. They happened to be passing that place and, seeing the garita and its occupants, conceived then the purpose of committing the crime for which they stand convicted.

The appreciation of nocturnity as an aggravating circumstance being in the discretion of the court (supreme court of Spain, February 28, 1884), we do not feel warranted in finding it present under the circumstances of this case.

The judgment of the lower court is, therefore, modified and the defendants are hereby sentenced to cadena perpetua, to the corresponding accessories provided in the law, to indemnify the family of the deceased in the sum of P500, and to pay each one-half of the costs of the action; and said judgment, so modified, is affirmed.

Arellano, C. J., Torres, Johnson, Carson, and Elliott, JJ., concur.

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