

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RUFINO ANCHETA, DEFENDANT AND APPELLANT.

G.R. No. 5381. March 18, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant, Rufino Ancheta, was charged with robo con homicidio por induccion, alleged to have been committed on the 26th of August, 1908, by inducing, persuading, and hiring four Igorots, named Laoyan, Guay, Dalocdoc, and Udcusan respectively, to murder Tiburcio Ancheta. These Igorots, having confessed their crime, were convicted and sentenced to death, and the judgment has been affirmed by this court (No. 5136).[1] This defendant, after a separate trial, was found guilty as charged, and sentenced under paragraph 1 of article 503, Penal Code, to cadena perpetua, and to indemnify the heirs of Tiburcio Ancheta in the sum of P500, and to pay the costs of this prosecution.

Upon his appeal to this court, the defendant assigned numerous errors, based upon the alleged insufficiency of the warrant and information, and the insufficiency of the evidence to justify the defendant's conviction of the crime of which he was in fact convicted. Passing for the present the preliminary questions which go to the regularity of the manner in which the defendant was charged and brought to trial, we proceed to the consideration of the question of his guilt or innocence upon the evidence adduced.

The information charges:

"That on or about the 26th day of August, 1908, in the township of Cervantes, Mountain Province, Philippine Islands, and within the jurisdiction of this court, said Rufino Ancheta did intentionally, criminally, maliciously and feloniously, and for the purpose of gain, induce the Igorots Laoyan Dolinen (alias Quibatay), Guay, Dalocdoc, and a certain Toog (alias Udcusan), to take possession of and to rob, by means of force and against the will of the owner, one carabao, the same being the property of one Tiburcio Ancheta and in said township of Cervantes, by first putting to death the owner thereof, said Tiburcio Ancheta; and that the said Igorots, Laoyan Dolinen {alias Quibatay), Guay, Dalocdoc, and a certain Toog (alias Udcusan), in pursuance of said inducement of the said Rufino Ancheta, did voluntarily, criminally, feloniously, and maliciously, and for the purpose of gain, take possession of, rob, and carry away, by means of force against the property and violence and intimidation against the person, the same consisting in having put to death said Tiburcio Ancheta, one carabao, the property of said Tiburcio Ancheta, of the value of ?150, and other effects, also articles of clothing."

The evidence offered on behalf of the prosecution shows that in the latter part of August, 1908, Tiburcio Ancheta, who resided with his Igorot wife Salome in a hut near the town of Cervantes in the Mountain District, was murdered by the four Igorots named in the information. The murderers then took possession of the carabao and certain other personal property, and left for their home in the mountains. The prosecution claims that the crime thus committed by the Igorots was suggested, incited, and brought about by the defendant, Rufino Ancheta, who sought the death of his uncle Tiburcio in order to satisfy certain feelings of resentment, and also in order that he

might inherit Tiburcio's property. The case rests upon the evidence of the Igorots Laoyan and Guay, and certain circumstances corroborative thereof.

The defense contends that the defendant can not be convicted of the crime of robbery with homicide, because of the absence of the intent of gain to himself, one of the essential elements of the crime of robbery. We can not give weight or force to this contention, because whether or not the accused intended to gain or did gain financially or otherwise by the robbery is wholly immaterial. The mere fact of inducing the commission of the crime makes him a principal. (Supreme court of Spain, judgment of October 20, 1881.) The crime was consummated and completed when the persons induced committed the crime with the intent to gain for themselves. The instant the crime became complete as to them, that instant the accused became a principal. No further participation in the crime was necessary. This is apparent from the provisions of article 13 of the Penal Code as well as from reason and authority.

The four Igorots named in the complaint left their rancheria, called Booyan, and went to a rancheria called Lesseb, where they passed the night. Leaving there in the morning, by evening of the day they arrived at a point near Cervantes, where the defendant lived with his wife Petra. They were not acquainted with the defendant, but went to his house and told him they wanted work, and were asked if they would like to kill a man, a relative who had mistreated him, and whom he would like to have out of the way. As an inducement or reward for killing the man, the defendant told the Igorots that the man to be killed had recently sold some land, and received P40 therefor, and this sum they would find in the house; that they could also take his carabao and exchange it for a younger one, which he would later purchase from them. As the witness Guay testified, the defendant said to them: "If you go to work, you only make a little; it is better to kill this man and take his carabao and the P40 which was received from the sale of the house in town." The Igorots agreed to kill the man. The defendant was to go to a place called Ululing in the morning, and remain away until after the crime had been committed. The Igorots were to hide in the bushes south of the victim's house until night, when they should go to his house and kill him.

The defendant left for Ululing, and the Igorots spent the day in the bushes, where the defendant's wife brought them food. At night they went to the defendant's house to eat. From there they proceeded to Tiburcio's hut, some 70 yards distant, for the purpose of carrying out their design, but finding him armed with a long bolo, they decided not to take the risk involved in attacking him, and returned to the bushes, where they spent the night.

The next morning they went to the house of one Bacolog, near Ululing, where they found the defendant taking his breakfast with Bacolog and an Ilocano named Abot. When the Igorots saw the defendant alone, they explained why they had not killed Tiburcio, and the defendant replied: "Why did you eat my chickens if you are not going to do what I told you to do? I came here to spend the night in Cambaguio because I thought you were going to kill him."

The Igorots then spent three days clearing some land for Bacolog, for which they received P2.25. About noon of the third day of their work the defendant went to them and said: "Now you must repeat what I told you to do, and comply with our agreement. I am going to Ululing today, and I wish you to kill Tiburcio tonight. You go to the bushes and conceal yourselves in the same place where you were concealed before." The four Igorots then left the house of Bacolog and returned to the defendant's house, where they saw his wife Petra, who told them to go to Tiburcio's house and pretend they wanted to cook their rice there. They again concealed themselves in the bushes, where as before Petra brought them their food. After darkness came they went to the house of Tiburcio, and having established familiar relations with him by means of appealing to his hospitality they killed him. They were unable to find the P40, but took the carabao, and carried it away with them.

The testimony of the Igorot witnesses gives a vivid idea of the manner in which this crime was committed, and

the way in which the savages were induced to act. The witness Laoyan testified as follows:

"We started from Lesseb in the morning and we arrived at his house in the evening, and we went there for the purpose of asking him whether or not he had some work for us. When we stopped at his house on that night Rufino Ancheta said to us that he wanted us to go and kill a man because that man had sold a house of theirs for the sum of P40 and that he had not given Rufino any part of it, and besides that we made rice fields and he did not give me but a very small part of it, and he said that I hate him for that reason. Besides all of that, Rufino Ancheta said that Tiburcio was the son of one hundred fathers; and then he gave us five chickens to kill and we looked at the galls of the chickens and we found out from the galls that it was all right; that it was a good time to kill a man. And then Pinong Ancheta asked us whether we could kill that man that night or not, and we told him yes, we can kill him if you wish it done. And then afterwards he said to me: 'I am living here alone with my wife and the best thing for us to do is that I am going to Ululing tomorrow morning (or Cambaguio), and then you will also go to the bushes to the south of the house and tomorrow night you will go to kill this man. I want to go to Cambaguio so that I can avoid being examined after that man has been killed.' In the daytime, according to the instructions of Pinong, we went to conceal ourselves in the bushes around the house of Pinong, and at night we went to the house of Tiburcio for the purpose of killing him, but as we found him with a long bolo in his possession we were afraid to do it, and then we went back to the bushes. The next day in the morning very early we went to meet Pinong in the house of Bacolog, and when we arrived there Pinong asked us 'Why did you not kill him?' and we replied, 'No, because we were afraid because he had a long bolo.' Then Pinong said, 'Why did you eat my chickens if you are not going to do what I told you to do? I came here to spend the night in Cambaguio because I thought you were going to kill him.' And then I spoke to Bacolog about cleaning four parcels of land of his, and we agreed to clean the four parcels of land for the sum of P2.25. And Pinong and Abot, who was with him there, went to plow some lands there while we were cleaning off the four parcels. Then on the day that we had been working there we spent the night also in the place of Bacolog, and the second day in the morning very early Pinong and his companion continued to plow the lands where they were working on. In the afternoon they left that place and we remained there. When Pinong asked me why we did not kill that man Tiburcio, Bacolog was plowing some land and his companions were some distance away from us. I do not know where he had gone to, and no one heard this conversation. And when we finished our work Pinong came back to Bacolog's house or place in the morning very early and he said to us: 'Now you must repeat what I told you to do and comply with our agreement. I am going to Ululing today, and I wish you to kill Tiburcio tonight. You go to the bushes and conceal yourselves in the same place that you concealed yourselves in before.' When we left Bacolog's place the sun was about 12 o'clock and we went to conceal ourselves in the place where we were concealed before. We arrived at the house of Pinong in the afternoon and we did not meet anyone there except his wife Petra. We went to the house of Tiburcio and we found them there cooking their supper; and while they were eating their supper we cooked our rice. After our rice was cooked we also ate our supper. And then all of us went outside of the house, in front of the house on the porch. As Tiburcio sat down in the doorway of the door I and Dalocdoc sat down in front of him and Udcusan sat to his left, and Guay to his right; and while in this position they struck him. Guay struck Tiburcio with a club about as long as this, a piece of wood, and about as large as my arm [indicating a club a little less than a meter long], and Udcusan struck him on his legs with a piece of wood or club. And after this we went inside of the house to search for the P40, which was the price of the house according to Pinong, and as we could not find it we asked his wife Salome where that money was, and she told us it was used to pay for some clothing and bolos. And then we took the carabao off with us because Pinong, Rufino Ancheta, promised that we should have that carabao as our reward as well as the P40. And Pinong further told us that if we got that carabao we should exchange it for a younger carabao which has horns about like this [indicating a young carabao's horns about 8 inches long] and then I will come and buy that carabao from you to use in my Work. We only had the intention to rob the carabao and without induction we would not have killed that man but we killed him because that man instructed us to kill him [indicating the accused, Rufino Ancheta]. And Pinong instructed us not to take the young pigs and chickens, because he said they would be used in feeding the people who would bury the body of Tiburcio. I tell the truth now, and we left in the house some palay, a jar full of

rice, some other things, a barate, and an ax, and we also left there a brass jar which they used for cooking camotes for the pigs. And he [indicating Rufino Ancheta, the accused] also told us not to take the black shirt because that he said would be placed on the dead body when it was buried. When we asked Salome about this black shirt she said it was here in town in the possession of his mother. And the woman Salome took with her the three bolos and placed them in her belt; and myself and Salome opened the trunk out of which we took the clothing and skirt, and we took the clothing out and placed them in a basket and she took them with her."

The witness Guay said:

"We came from our rancheria and went to the house of Pinong (the defendant Ancheta). We came from Boogan and we slept in Lesseb, and we came with Udcusan. We came from Lesseb and we arrived in Ululing to look for some work. We were four with Udcusan, and we came to the house of Pinong. When we arrived at the house of Pinong it was nighttime. We arrived that night in the house of Pinong, and he asked us where we were going, and we told him to look for some work, and he then asked us if we wanted to kill a man and we replied to him, 'Why are we going to kill a man?' and then he said, 'I am his only relative and there will be no one to complain against you afterwards, and I am mad at him because of the action of this man in regard to the sale of our house in the town.' Pinong said that he was mad because he sold their house in the town and did not give him anything, and also their rice fields and that he did not give him a part of them. And also he said that when he asked him for the carabao to work some he did not wish to let him take it. He said in the early morning 'you go away and I am going to look for some labor and at night you go and kill him, because if I am near there they will call me to examine me.' We went near the house of Pinong in a gully near by to hide there, and our food was brought to us by Petra, the wife of Pinong. All that we ate for dinner was cooked by Petra, and Dalocdoc went to look for her. At night we went to eat in the house of Pinong, and on that night we went to the house of Tiburcio. We found him armed with a bolo and we left. We returned to the place where we were at first, where there were many camachili and other trees; at this time it was already daylight. The following day we went to work in the rice fields of Bacolog. We arrived at the house of Bacolog and we found Pinong, Abot, and Bacolog there, and our conversation there was not heard by Abot and Bacolog. When we arrived there they had not eaten yet. We worked on the pacteo (contract) for Bacolog for P2.25. Abot and Pinong cooked the rice, and then we all ate there. After we had eaten we went outside, and Pinong asked us why we had not killed him; Abot and Bacolog remained in the house. We answered him that we did not kill him because we were afraid of the bolo which he had. And while they were plowing we cleaned the grass away. On that night we all slept in the house of Bacolog. The following day they plowed and we continued to clean the grass; we were in the house of Bacolog for three days. Pinong said to us now that we had finished we must go and kill him, because I am going to Ululing, because if I do not they may examine me. We finished about this time and we returned where we had been before where there were many camachili trees and bushes. On that day, as before, Petra brought us our food; at night we went to the house of Pinong to eat and Petra told us to go there to Tiburcio's house with the excuse to cook our rice. We arrived there with the excuse to cook as though we had just arrived from Cervantes, in fact that is what we told Tiburcio. After Laoyan had cooked the rice we went inside to eat, and after we had eaten we left the house and went outside of the house. And outside of the house we were in this position: Laoyan was sitting in front of Tiburcio; Udcusan was sitting to the left of Laoyan, and I, myself, was sitting over to one side of Tiburcio, and Dalocdoc was sitting near Udcusan.

"Q. What else? - A. Laoyan was in front of Tiburcio talking to him because he could not defend himself, and this is what Pinong ordered us to do. We gave him a blow in the face and Udcusan struck him on the legs. We were the only two that struck him. We killed him and searched the house for the money which Pinong said was there and we could not find anything. We asked the woman about the money which Pinong spoke about, but Salome said they used it to buy rice fields. The clothes the woman took, and the black shirt, which Pinong said we must leave there because it was worth much with the Christians, we could not find. We asked Salome about the shirt and she said yes it was true that there was a shirt there but that it was not in the house then but in the town. The chickens and the pigs which Pinong said we must leave there and the bolo also we did not touch. Pinong said to us: 'Leave the pigs and the chickens; do not take them away; leave part of the chickens because

the people who will bury Tiburcio's body will have something to eat.' We only carried away the carabao because that is what Pinong had told us to do; he told us to carry away the carabao and the money, but the woman said there was no money there. He told us to carry away the carabao to our house and that after the palay was cut he would come there to get the carabao to bring it here to Cervantes to work. And he further told us that 'if you go in the road and the people come to catch you, you must run away although you may have to leave the carabao, because if they catch one of you it will be bad for us, and although they may bring the carabao here I will get it the following day and give it back to you.' We carried the carabao away, but we did not tie the woman up. Although the woman says that we tied her up it is not true, we did not tie her up. And Pinong said: 'After you have killed the man Petra will come to Ululing to tell me about it, and I will come from Ululing to report the matter and then you will be far away.' We killed him, it is true, and Petra did not sleep because she was watching. Petra put out the light when we killed him. Salome, when we killed her husband, cried out.

"Q. How did Salome cry out, and what did she say? - A. [Indicating by a horrified yell.] And Pinong then further said: 'If you kill him I will get the rice fields, and when you come to Cervantes you must come to eat in my house.' We celebrated a kañao with the chickens of Pinong; we made a kañao in his house and ate all of the chickens.

"Q. How many chickens did you eat? - A. Five chickens. Everything that I have stated is true. And he said 'after you have seen the galls of the chickens if it is all right then go;' that is what he said to us; that is what Pinong said. We did not see anybody else in the house. We only saw the two whom I have mentioned. We took the chickens and went outside of his house to hide there.

"Q. But whom did Pinong inform you that you must kill? - A. Pinong is the man who informed us of the sale of the house, and proposed that we must kill him for the amount of the sale of said house. And in regard to the amount of the house they did not give us anything."

After this simple yet graphic description of the course of events from the inception of the crime to its commission, little more needs to be said as to the facts. The court below, after a careful review of all the evidence adduced at the trial, arrived at the conclusion that the story told by the Igorots was true. We are satisfied that the court was right in that decision. There appear in the story told by these savage witnesses so many of the badges and indicia of truth as to leave in the mind no doubt concerning its substantial truthfulness. Although the accused denies absolutely the testimony of these witnesses and states that he had never in his life seen them until they appeared against him in court, still their narrative of the facts discloses a knowledge of many matters so personal to the accused that it could have been acquired only through the most intimate relations between them. The sale of the house and lot by Tiburcio and that the accused received no part of the proceeds, the tilling of the land by him and accused in common, the black shirt in the possession of Tiburcio in which he was to be buried, the leaving of the pigs and chickens for those who should attend the funeral, that the accused was working for Bacolog and was at Ululing during the days immediately prior to the murder, that the accused had a wife and that her name was Petra, the relationship between the accused and Tiburcio, and that the accused would be one of those to inherit the land of Tiburcio, all these facts the Igorots knew. From whom did they obtain this information? The impossibility of answering this question otherwise than with the two words "The accused," is, under the facts of this case, irrefragable corroboration of the testimony of the two hillmen.

This being so, the fact that the accused was the instigator and inducer of the crime charged appears so clearly as to require no discussion or argument. (Supreme court of Spain, judgments of 20 October, 1881; 7 January, 1887; 12 January, 1899; Penal Code, art. 13.)

It now remains to inquire whether the sentence imposed by the court below was proper under the law.

Article 79 of the Penal Code reads as follows:

"Art. 79. The aggravating or extenuating circumstances that consist in the moral condition of the delinquent, in his private relations with the injured party, or in any other personal cause, shall serve to aggravate or diminish the liability of only the principals, accomplices, or accessaries who may be affected thereby.

"The circumstances which consist in the material execution of the deed, or in the means employed to accomplish it, shall serve to aggravate or diminish the liability of those persons only who were acquainted with them at the moment of the commission of the crime, or of their cooperation therein."

Commenting on this article, Groizard says, volume 2, page 362:

"A new limitation, a new reduction of the circle within which aggravating and extenuating circumstances may occur and be considered, is created by this article.

"The circumstances attending the commission of a crime either relate to the persons participating in the same, or to its material execution, or to the means employed. The former do not affect all the participants in the crime, but only those to whom they particularly apply; the latter have a direct bearing upon the criminal liability of all the defendants who had knowledge thereof at the time of the commission of the crime, or of their cooperation therein.

"The principle is clear and just. If the law had failed to expressly recognize it, it could be fairly inferred from the rational nature of the crime and its legal definition, from the scientific notion of the imputability and legal determination of the inherent liability of the authors, accomplices, and accessaries, from the general theory of aggravating and extenuating circumstances, and from the peculiar nature of each of these as determined by the legislator in describing them.

"Four malefactors commit homicide. One of them is under eighteen. Another is drunk. The third is a recidivist, and the other is neither under age nor drunk, nor guilty of any former crime. Are they equally liable? The first one has in his favor an extenuating circumstance, to wit, minority, which does not affect his codefendants. The second has another different circumstance in his favor, to wit, drunkenness, which does not extend to the other participants in the crime. The third has an aggravating circumstance which affects him only; and the fourth, finally, shall suffer the penalty corresponding to him without taking into consideration the aggravating circumstance which affects the one or the extenuating circumstances which affect the others.

"Greater doubts, if not as to the principle itself, at least in the practical application of that principle, will arise under the second paragraph, which relates to the circumstances affecting the material execution of the deed, or to the means employed. Such circumstances under the law can only aggravate or mitigate the criminal liability of those who had knowledge of the same at the time of the commission of the crime, or of their cooperation therein.

"The rule, of course, as stated long ago by one of our more able commentators (Pacheco), has no application as to extenuating circumstances. 'The law - says the writer referred to - refers in the second paragraph of this section both to extenuating and aggravating circumstances. We who understand the theory of the latter, and can cite many instances regarding the same, are unable to understand the former, or to find a single instance in which they may apply.'

"It is the same with us. During our long practice we have never yet found a single case in which this provision of the law has been invoked with reference to extenuating circumstances, and must confess that we are unable to conceive one in which it might be so invoked. In so far as relates to the means employed in the execution of the crime, and other acts incident to the actual perpetration thereof, it is impossible to conceive that any mitigating circumstance which can properly be considered as to one of the defendants, is not equally applicable to the others, even to those who had no knowledge of the same at the time of the commission of the crime, or of their cooperation therein.

"The Neapolitan Code has recognized the difference which exists upon this point between extenuating and

aggravating circumstances. While it applies the rule provided in case of personal circumstances, to extenuating and aggravating circumstances, it limits the same to aggravating circumstances where they relate to the material execution of the crime.

"It is to be regretted that our code does not contain a similar provision. In other respects it would be easy to give illustrations of the application of the rules under consideration. Two malefactors lay hands upon an agent of the authorities. One of them is induced by a promise of reward by a third party, a fact of which his codefendant has no knowledge. That which constitutes an aggravating circumstance as to one of them does not apply to the other. A person induces others to commit the crime of abduction, or forcible entry of a dwelling. The latter in undertaking to commit the crime do so, employing, without the knowledge of the instigator of the deed, deceit, fraud, and disguise. They are all equally liable for the commission of the crime, but the aggravating circumstance referred to attending the material execution of the crime, shall only affect those who actually commit the deed.

"We are fully aware of the fact, however, that notwithstanding the simplicity and justice of the rules contained in the said section, this will not always suffice to dissipate the shadow of the doubt which will arise in the minds of our courts when applying the same, particularly in certain difficult cases in which the so-called qualifying circumstances, according to most of the expounders of our law, play an important part. But these objections are inevitable. The letter of the law properly construed, the spirit of the same where the text is not clear, and the previous knowledge of the theories, sources, and origin of these legal provisions where the spirit and letter of the same may appear insufficient, are the only means which the courts have to comply with their mission in these and other similar cases. It is impossible for the law to cover every possible case that may arise. Wherever it attempts to do so it fails. Casuistry, which only furnishes a solution in certain specified cases, would take the place of the legal doctrine within the principles of which a satisfactory solution can always be found."

The robbery and homicide were planned by the accused. He instructed the Igorots exactly how to accomplish them. The crime was carried out in perfect consonance with his instructions. By express arrangement with the hillmen the night was selected by the accused as the time for the commission of the crime, to the end that it might be the more easily committed and that the chances of discovery might be minimized. Under the provisions of the article above quoted, we are of the opinion that the aggravating circumstance of nocturnity must be imputed to the defendant, nocturnity being one of the circumstances in the material execution of the deed and one of the means employed to accomplish its commission, and he, at the time of the commission of the crime and before, being acquainted with that circumstance and of the fact of its use in the commission of the crime. (Supreme court of Spain, judgment of 12 January, 1899.) Moreover, there must be imputed to the accused in this case the aggravating circumstance of premeditation. While premeditation is an inherent and integral element or quality of the crime of robbery and therefore can not, in that crime, be used as an aggravating circumstance (United States vs. Castroverde, 4 Phil. Rep., 246; United States vs. Blanco, 10 Phil. Rep., 298), such is not the case in regard to the crime of robbery with homicide as defined in articles 502 and 503 of the Penal Code. In that crime premeditation, if it is present, may be used as an aggravating circumstance (supreme court of Spain, judgments of 7 January, 1887, and 22 November, 1900) to augment the penalty to be imposed. This doctrine meets our approval upon principle. That there was, in the case at bar, the element of premeditation is too clear for discussion.

We have delayed until this moment the discussion of the questions raised by appellant's counsel respecting the irregularities which he claims were present in the arrest, arraignment, and trial of the accused. His assignments of error upon that branch of his appeal are:

"1. That the warrant was issued without probable cause and was not supported by oath or affirmation and was issued without due process of law.

"2. The pretended querella upon which the defendant was tried is not verified or based upon a preliminary examination as provided by law.

"3. That the pretended querella does not conform substantially to the prescribed form.

"4. That the pretended querella does not state facts sufficient to constitute the crime of robo con homicidio por induccion."

A detailed examination of the record before us discloses that from the time of the arrest of the defendant until the termination of his trial no objection was made to any of the processes or pleadings, except that, at the beginning of the trial, the defendant's counsel interposed a demurrer to the complaint "because it does not set forth any intent of gain or that any gain was to be got out of this robbery by the accused in this case, Rufino Ancheta." Giving the objection the full force and effect of a demurrer, it is still evident that it is without legal basis as it appears, from what has been said heretofore, that it is wholly immaterial whether or not the accused intended or expected to gain financially by the commission of the crime.

This being the only objection taken by the defendant during the whole course of the trial, we hold that the questions presented by the assignments above quoted can not be heard here. Objections not having been presented opportunely, such defects, if any, as the assignments indicate, were waived. Moreover, sections 9 and 10 of the Code of Criminal Procedure read as follows:

"SEC. 9. The information or complaint may be amended in substance or form, without leave of court, at any time before the defendant pleads; and thereafter, during the trial, as to all matters of form, at the discretion of the court, when the same can be done without prejudice to the rights of the defendant.

"SEC. 10. No information or complaint is insufficient nor can the trial, judgment, or other proceedings be affected by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits."

No defect of form or substance existed in the complaint or information which is not cured by these provisions. No accused person may be heard to challenge any process, pleading, proceeding or decision in the courts of these Islands on account of any defect or irregularity which does not prejudice a substantial right upon the merits.

Many of the questions raised by the defendant in his assignments of error have been passed upon by this court in the case of *United States vs. Wilson* (4 Phil. Rep., 317).

The guilt of the defendant as a principal in the crime having been clearly established and there being present at the commission of the crime the aggravating circumstances of premeditation and nocturnity, with no extenuating circumstance, the penalty should have been imposed in its maximum degree.

The judgment of the court below is reversed and the defendant is hereby found guilty of the crime of robbery with homicide as defined in articles 502 and 503 of the Penal Code, and he is hereby condemned to the penalty of death, the accessories of article 53 of the Penal Code, to indemnify the heirs at law and next of kin of Tiburcio Ancheta in the sum of one thousand pesos (P1,000) and to pay the costs of this appeal. So ordered.

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

[1] 14 Phil. Rep., 747

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