

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIO VITUG ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 5430. September 08, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants in this case were brought to trial under the following information:

"On or about the afternoon of October 7, 1908, in the sitio of 'Queng banca' or 'Telabanca,' a place entirely uninhabited, of the municipality of Floridablanca, of this Province of Pampanga, P. I., Fourth Judicial District, the seventeen accused, above named, all and each one of them, leagued in conspiracy and operating together, did, intentionally, maliciously, illegally, and criminally, and with treachery and premeditation and vindictiveness, attack, strike, cut, thrust, and wound Vicente Toledo with bolos. Two of the wounds thus caused and inflicted penetrated the cranium of the said Vicente Toledo. One of the said wounds was inflicted in the back of the neck and measured 4 inches in length by 4 in depth and almost severed the head from the body. Another of the said wounds was in the left shoulder and measured about 4 inches in length by about 4 in depth. All the wounds aforementioned were caused by blows with bolos carried by the said accused while they together struck and slew Vicente Toledo. Seven of the said wounds were necessarily fatal, and in consequence thereof the said Vicente Toledo died then and there in the act.

"The following aggravating circumstances entered into the illegal acts committed by the said accused and by each one of them:

"1. The said accused, together and each one of them, had previously formed the intention to kill Vicente Toledo, and acted in conformity with the said intention previously meditated.

"2. The said accused, all and each one of them, attacked Vicente Toledo with treachery at a time and in a place in which their victim was unarmed, defenseless and completely at the mercy of the said accused.

"3. The said accused by their arms and number abused their superior strength.

"4. The place where the aforesaid accused attacked and killed Vicente Toledo was distant from any inhabited house or other means of assistance and entirely uninhabited.

"5. The said accused, all and each one of them, in attacking and killing Vicente Toledo, did so with unnecessary cruelty and vindictiveness, they having wounded their victim, the aforesaid Vicente Toledo, nine times, thus producing an equal number of wounds, nearly all of them necessarily fatal.

"An act committed with violation of the law."

The Court of First Instance of the Province of Pampanga convicted them of murder, the element qualifying the crime being treachery. The trial court found as an aggravating circumstance that the crime had been committed in an uninhabited place. Under the judgment of conviction, he sentenced five of the accused, namely, Julio Vitug, Cirilo Baluyot, Matias Baluyot, Agapito Cabuso and Marcelo Cabuso, to death. To the other ten, namely, Benito

Baluyot, Pedro Maria, Cirilo Maria, Lorenzo Maria, Anacleto Tungol, Gregorio Tungol, Segundo Pangan, Jacinto Pangan, Victoriano Liwanag, and Juan Pelagio, he extended the benefit of the provisions of article 11 of the Penal Code and sentenced each of them to life imprisonment. They all appealed.

For some time prior to the 7th day of October, 1908, rival claims had been made to certain mountain timber lands known as Tibag, near Dampe, in the Province of Pampanga. On the one hand, an American, Charles Trotter, claimed that he was the sole owner thereof and had the exclusive right to cut and remove timber therefrom. On the other hand, Clodoaldo Vitug, father of the accused, Julio Vitug, asserted that he was the owner of those lands and had the exclusive right to cut and remove the timber. Each claimant, for some time prior to the date above mentioned, had been engaged in removing timber from the lands for his personal benefit. Although no hostile words had theretofore passed between the rival claimants, and nothing had been done by either openly against the other, nevertheless it is undoubted that bad blood existed between them at the time of the occurrence which gave rise to this action.

On the 7th of October aforesaid, early in the morning, said Charles Trotter, accompanied by Vicente Toledo and Jose Cayanán, together with certain laborers, set out from the house of Toledo, having for their destination the timber lands in question, intending to cut and remove timber. Trotter and Toledo were men grown. Jose was about 17. About noon of that day, Trotter, Toledo, Jose Cayanán and a laborer, Patricio Reyes, left the forest for the purpose of returning home to secure their midday meal. Just after leaving the forest it was discovered that Jose had left behind a carabao yoke which Toledo had bidden him to bring, and he accordingly returned to fetch it. While Jose was thus engaged, Trotter, Toledo, and Reyes proceeded on their way. They had not gone far when they met Fernando Cayanán, a brother of Jose, about 15 years of age, who was bringing them their food. After it was ascertained that he brought food for only two, Trotter and Toledo, Reyes proceeded on his way, while they sat down and ate. Finishing their meal, they continued their journey toward home, Fernando walking with them.

On the same day Julio Vitug, in company with sixteen others, started to go to the said timber lands to cut and remove timber. They followed the same road taken by Trotter, Toledo and the others earlier in the day. They had attained about half the distance from Dampe to Tibag when, between 1 and 2 o'clock of the afternoon, they met Trotter, Vicente Toledo, and Fernando Cayanán, traveling as heretofore described. On meeting, a conversation took place between Vitug and Trotter, Toledo acting as interpreter. As to what occurred from this moment on, the testimony is conflicting. The main witness for the prosecution, Fernando Cayanán, who was the sole survivor of the party of which he was a member, and who was, therefore, so far as the prosecution is concerned, the sole eyewitness of the affair, testified and asserted that the American was the first to speak; that he asked Vitug where he was going; that Vitug replied that he was going to the forest of Tibag to cut timber; that the American insisted that he should not go, as the lands from which the timber spoken of was to be cut belonged to him; that Vitug and his companions insisted on going ahead and cutting the timber; that the American still objected, but they insisted and exhibited a paper to the American, asking for a receipt; that the American refused to give them one and invited them to go to the presidencia to settle the matter; that they refused to go because, as they stated, it would cause them and their animals great damage; that the American said that it would cause him damage also, but that if they would go to the presidencia and the matter should go against him he would pay all of the damages occasioned to them thereby; that they refused to do so, but insisted on going forward and cutting the timber; that the American still urged going to the presidencias for the purpose of ascertaining who was the owner of the land in question, saying that if he lost the case he would pay all damages resulting; that they still refused and insisted on going on to cut the timber; that the American still objected; that at this point the defendants dismounted from their carabaos and said, "it appears that this cono de su madre wants us to kill him," whereupon all of them surrounded the American and his party, and Vitug said to his companions, "advance," and the American said, "do not go farther"; that at this moment two of the defendants seized the American by the arms and tried to throw him

to the ground; that he was able, however, to loosen his right hand and with it he struck Vitug in the face; that thereupon they struck him in the head and he fell to the ground, they striking him with their bolos in the head and body; that, while lying on the ground, the American was able to draw his revolver and to discharge several shots; that they then struck him further blows, from which he died immediately; that thereupon the defendants attacked Toledo, Jose, and Fernando Cayan, Jose having arrived upon the scene with the yoke about the time they attacked Trotter, killing Toledo and Jose in turn and leaving Fernando, the witness, dead, as they supposed, on the ground. The witness Fernando, as well as many other witnesses for the prosecution, asserts that of the four constituting Trotter's party, three were wholly without arms, while Trotter carried a revolver and a bolo; that neither Toledo, Jose, nor Fernando used or attempted to use violence against the defendants, and that they were set upon suddenly, unexpectedly, ruthlessly and without cause.

On the other hand, some of the witnesses for the defendants assert, and this is taken as their defense by all the defendants who admit participation in the event, that Trotter and his party were armed, the former with a revolver and a bolo and his companions each with a bolo; that they assaulted the defendants with bolos in their hands, and that the defendants, in whatever they did, acted purely in self-defense.

Of the fifteen defendants, eight were called as witnesses. The witness Agapito Cabuso testified as follows:

"On our way to Tibag we were stopped by four persons. They asked me where are you going. I answered that we were going to Tibag to get out timbers for our employer. The Spaniard (Toledo) said: 'Are you going to steal timber?' After asking this, he asked who was the representative of our principal. I told him that it was Julio Vitug. He then asked me to call him, I called to Julio Vitug and he came up to where we were. They asked him where he was going, and he said they were going to get timber which they had been ordered to get in Tibag Mountain. The Spaniard said: 'You are going to steal timbers.' Julio Vitug answered him and said: 'No, we are not going to steal timber, because that timber belongs to us and in proof of it here is justification of our claim of ownership.' He thereupon drew out a paper which the American took and read, after which he returned it to Vitug. Then after this the Spaniard said: 'You must not go there because that property belongs to the American.' Julio Vitug said: 'We will not insist on going there if you will give us a receipt which I can show to my father/ After saying this, the American struck him a blow in the face and he fell to the ground, whereupon the American kicked him and stepped upon him. On seeing this I dismounted from my carabao, saying: 'Why do you do this; he is not guilty of anything.' After saying this, the American discharged his pistol and hit me in the lower jaw and knocked out some of my teeth. I called to my companions that I was hit and then they began a general fight and as I was defending my life I did not know what was occurring. When I felt that I was hit, I drew my bolo. I do not know what I did because I was defending my life. I struck blows in order to defend my life because I was dying. The Spaniard acted merely as an interpreter. I did not see anyone dead and after the fight I went away alone on my carabao."

Marcelo Cabuso testified as follows:

"We did not arrive at Tibag because we were stopped by an American, a Spaniard, and their two companions. My brother was walking in front of me at the time we were stopped, I saw that they were talking with my brother. The Spaniard was speaking with him. I heard my brother call to Julio Vitug, asking him to come forward, that they wanted him. He went forward and they talked together. I saw Vitug deliver a paper to the American and he read it. After the American had returned the paper he struck Vitug in the face and knocked him down. He then kicked him and stepped on him. At that time I was mounted on my carabao. On hearing the revolver shots, I turned and saw that my brother had been hit. I then got off my carabao and drew my bolo and began to strike with it. I do not know whom I hit because my vision was so obscured that I could not see. After hitting I ran away. I did not see anyone dead nor anyone whom I hit. I got off my carabao, struck with my bolo, and my companions did likewise."

Anacleto Tungol testified as follows:

"On our way to Tibag and before we arrived there four men stopped us and told us that we could not go any farther. The Spaniard and the American asked to speak with Julio Vitug. On Vitug's presenting himself he took from his pocket a paper and showed it to the Spaniard and he and the American read it. After reading it, it was returned to Vitug, and he took it and put it in his pocket. Thereupon the American struck him in the face and he fell to the ground. The American then kicked him. After he had kicked Julio, the American drew his revolver and commenced to shoot. I got off my carabao. They attacked us like malefactors and we did nothing more than to save our lives. I responded to the attack and attacked myself because my nephew was wounded. I do not know whom I hit, because I was blind. I do not know how many we killed, because I could not see. I got off my carabao and fought, and my companions did likewise, When I got back my sight I went away. I had vision enough to get my carabao and see the road but I could not see the corpses."

Jacinto Pangan testified as follows:

"We were stopped on the way by an American and three companions of his, I am related to Segundo Pangan, Agapito Cabuso, also Marcelo Cabuso and Prudencio Serrano. When we were stopped in the road on the way to Tibag, Agapito Cabuso was wounded. When I found out that he was wounded and when he told me that he was going to die because he had been struck by a bullet and I saw that he was bleeding, I drew my bolo and got off my carabao. I engaged in the general fight which followed. I do not know whom I attacked. I do not know whom I hit, because I believed I was going to die and tried to defend myself. After I had fought with my bolo I took the bolos from the companions of the American. I do not remember where those companions were when I took the bolos. I did not see them running, but I saw the bolos at their side. I do not remember whether I saw the owners or not when I took the bolos. The way I know that the bolos which I took belonged to the companions of the American was because when they were talking with Agapito Cabuso and Julio Vitug I saw them with bolos in their hands. I did not see the corpses when I took the bolos."

The other witnesses who were called for the defendants upon this Question, namely, Marcos Dabu, Lorenzo Vitug, Donato de los Reyes, Benito Baluyot, Cirilo Maria, Pedro Maria, and Julio Vitug, the last four only being defendants, after describing the conversation which occurred between Vitug and Trotter substantially as had the other witnesses for the defendants, stated further that, upon seeing the American draw his revolver and shoot, they ran away without engaging in the affair and without seeing anything which transpired thereafter. They, therefore, could say nothing whatever about the facts involving the death of Toledo.

Many other witnesses were sworn by the defense but none as to the facts involving the death of Toledo. The other defendants, Cirilo Baluyot, Matias Baluyot, Lorenzo Maria, Gregorio Tungol, Segundo Pangan, Victoriano Liwanag, and Juan Pelagio, did not testify.

It was stated a moment back that Fernando Cayanan was, apart from the defendants themselves, the only surviving eyewitness to the commission of the crime with which the defendants stand charged. The defendants assert, however, that their party, instead of being seventeen in number, consisted of twenty persons, there being present at the time Toledo was killed, in addition to the defendants named in the indictment, three persons not defendants and, therefore, disinterested, namely, Marcos Dabu, Lorenzo Vitug, and Donato de los Reyes. These three persons were produced as witnesses on the trial and, as before stated, gave substantially the same version of the occurrence up to the time of the controversy with Trotter as did the defendants. It is to be noted, however, as we have indicated already, that, according to their testimony, they did not see anything that happened after Trotter began to shoot; each one states that, upon seeing the American draw his revolver and shoot, he ran away without in any way engaging in the affair and without witnessing anything which transpired thereafter. But, irrespective of what these witnesses claim to have seen or not to have seen, the prosecution asserts that the party which engaged in the killing of the decedents and the wounding of Fernando consisted of seventeen persons only and that the three individuals named above were not members thereof. In support of this contention there were produced as witnesses, Fernando Cayanan, who, in his testimony, limited the number of the party to the seventeen persons

named in the indictment, saying that, at the opening of the conversation between Trotter and Vitug, the latter, in response to a question of the former inquiring how many were in the party, replied that there were seventeen; Patricio Reyes, who testified that he saw the party at a point near where they met Trotter and his companions, and just before the meeting, and that it consisted of only seventeen persons, each one of whom he identified and pointed out at the trial and among whom was not one of the three persons above mentioned; Captain Ramos, who testified at the trial that Julio Vitug stated to him that his party consisted of only seventeen; and that Donato de los Reyes told him soon after the event that he knew nothing whatever of what had occurred; Mr. Panlaqui, presidente of Floridablanca, who testified that Donato de los Reyes told him that he knew nothing concerning the death of Toledo, as he, Marcos Dabu and Lorenzo Vitug were far behind the rest and were eating their dinner in Gutad at the time of the occurrence; Antonio Gomez, who, in his testimony, stated that Donato de los Reyes told him that on the 7th of October Julio Vitug asked him to go with him to Tibag for the purpose of getting timbers, and he replied that he then had to feed his carabaos but would come shortly; that after an hour or so, he, Lorenzo Vitug and Marcos Dabu followed after Julio Vitug and his party but were met on the way by that party returning immediately after the death of Toledo and the rest.

The testimony thus introduced by the prosecution upon this point is reinforced by the admission of Donato de los Reyes himself, made when a witness at the trial, who stated on cross-examination that he had told Gomez that he remained behind, but, by way of explanation of his inconsistency, alleged that he was forced to make such statement because Gomez had pricked him with needles. We are satisfied from a thorough examination of the evidence in relation to this particular point that the conclusion of the court below that the party which caused the death of Trotter and his two companions consisted of seventeen persons only and that neither Donato de los Reyes, Marcos Dabu, nor Lorenzo Vitug was a member thereof, is fully sustained by the proofs.

In determining the probative force of the testimony introduced by the defendants in relation to the death of Toledo, which testimony involves the question of self-defense, we observe, in the first place, that the witnesses Agapito Cabuso, Marcelo Cabuso, Atiacleto Tungol, and Jacinto Pangan are the only witnesses for the defense who testified to facts touching in any way the death of Toledo. In the second place, we note that soon after the commission of the crime each of these witnesses made a confession, which was reduced to writing and was signed and sworn to by each before a notary public. The confession of Agapito Cabuso is dated the 16th day of October, 1908, and was subscribed and sworn to on that date before Vicente Limjucu, a notary public in and for the Province of Pampanga, and witnessed by Aurelio Ramos, captain of Constabulary, and Alfredo B. Cacio, a stenographer in the employ of the Court of First Instance. In that confession Cabuso declared:

"That on Wednesday, the 7th day of October, 1908,¹ I was in my house, situated in the said barrio, when there came to the house Julio Vitug, who told me that he wanted me to accompany him to the forest of Tibag for the purpose of getting logs therefrom. Complying with his request, I left my house in company with said Vitug and his companions, who are now in the Constabulary jail of this province. While on the way in the direction of Gutad, one Eugenio Lingad joined us, who stated to Julio Vitug and to my companions that the American, Charles Trotter, accompanied by Vicente Toledo and his brothers, Jose and Fernando Cayan, were to the north, whereupon Julio Vitug addressed my companions, telling them to be prepared; that in case that the American should attempt to prevent us from getting timber or should illtreat him by word or act, they should cut him to death with bolos. To that end, we prepared our bolos and continued our way, meeting Charles Trotter, Vicente Toledo, and his brothers in a place called Telabanca, where the American, Charles Trotter, and one of our companions, called Julio Vitug, stood talking some moments in reference to the ownership of the forest of Tibag, Vicente Toledo acting as interpreter for the American. After they had talked a while, Trotter and Vitug got into a personal combat, whereupon the American drew his revolver and began to shoot. He was seized by Cirilo Baluyot and others of my companions at the same time that the others were cutting him to death. While this was occurring, Vicente Toledo and his companions were imploring pardon, to which Julio

Vitug replied, saying: 'Kill all of them; do not leave one alive,' When Trotter was dead we pursued Toledo, overtaking him within about 30 meters, whereupon we cut him to death. While we were cutting Toledo to death, his brothers begged us to pardon him, but we refused, and after killing him we chased Jose Cayan, overtaking him about 4 meters from where we killed Toledo, and thereupon cut him to death, and while this was occurring his little brother Fernando was also praying to us not to injure him; but, as in the other cases, we paid no attention to him; and, after the death of Jose, we pursued Fernando, overtaking him at a distance of something like 4 meters, where we cut him to death also. Those who took part in the assassination of Trotter were Cirilo Baluyot, Matias Baluyot, Segundo Pangan, and I. Those who took part in the killing of Toledo were I, Cirilo Baluyot, Matias Baluyot, Jacinto Pangan, Segundo Pangan, Marcelb Cabuso, and others. Those who took part in the death of Jose were Cirilo Baluyot, Matias Baluyot, and others, and in that of Fernando, six of our companions whose names I do not now recall. I state that all of us, the seventeen prisoners now in the Constabulary jail, including Julio Vitug, took part directly in the acts above described, they having been carried into effect by the order of Julio Vitug, whom we recognized as our chief."

The confessions of Marcelo Cabuso, Anacleto Tungol, and Jacinto Pangan are the same in substance as that of Agapito Cabuso above quoted. In his confession, Jacinto Pangan adds:

"I was present at the death of Trotter and his three companions, and I am able to state confidently that the only one who possessed any arms whatever was Charles Trotter, who carried a revolver and a bolo, which bolo is marked 'No. 1.' The bolo which is now shown to me, marked 'No. 2,' belongs to Anacleto Tungol."

Substantially the same confessions were also made by Cirilo Maria and Benito Baluyot. In his confession the latter said:

"Trotter and his companions were completely defenseless when my companions killed them."

At the trial evidence was introduced on behalf of the defendants tending to demonstrate that the confessions above referred to had been obtained from them through force, duress, and fear, and that they had been compelled to sign and swear to the confessions by the same means. We have carefully examined the record in relation to this particular. After a thorough reading of the evidence adduced by both sides upon this question, we, without hesitation, concur in the conclusion of the court below upon that point and find that his opinion that the confessions were, voluntary and given without promise of reward or clemency is fully sustained. The testimony of Captain Ramos, of Lieutenant Gomez, and of the notary public, Limjuco, leaves no doubt whatever in our mind upon that point.

While we, in the decision of this case, use these confessions against the persons who made them, we give them no force or effect against any other defendant.

A severe assault has been made by the attorney for the defendants upon the testimony of the witness Fernando Cayan. It is asserted that his evidence is contradictory, improbable, unreasonable, uncorroborated, and generally unworthy of belief. In support of this contention he has placed in his brief copies of statements alleged to have been made by the witness at various times prior to the trial. One such statement is claimed to have been made at the time when and at the place where he was picked up, wounded nearly to death, a short time after the assault. A second is claimed to have been made on the 8th day of October, 1908, before the justice of the peace of Floridablanca. Still another is claimed to have been made before prosecuting attorneys Adams and Veloso on the 10th day of October, 1908. Counsel for the defendants vehemently asserts that said three statements are contradictory of each other; that they wholly destroy the testimony given by the witness on the trial of this action; and that, therefore, no credit whatever should be given to his evidence. It must be observed, however, that the alleged statements were not introduced in evidence during the trial of the case. They never became a part of the proofs. They are not now and never have been a part of the record in this court. We have no knowledge of them

whatever except as they appear in the brief of defendant's counsel. We can not, therefore, consider them in the decision of this case,, they not being matters of which we may take judicial notice. The only statement made by the witness Cayanan which we may consider on this appeal is the one formed by the evidence which he gave as a witness for the prosecution upon the trial of this action. A careful and a thorough reading of the proofs, taken in connection with all the circumstances which surrounded the commission of the crime, discloses that the testimony of Cayanan is as richly corroborated in its essential elements as conditions will permit.

In the first place, the witness asserts that all of the defendants, with the exception of two, were armed with bolos. This statement is admitted to be true by the defendants themselves.

In the second place, he states that he and his two brothers, Jose and Vicente, were wholly unarmed at the time the assault was made upon them. This statement is contradicted by certain of the defendants, namely, Agapito Cabuso, Marcelo Cabuso, Anacleto Tungol, Jacinto Pangan, Benito Baluyot, and Cirilo Maria. They assert in their testimony that the three companions of Trotter were armed with bolos and that they assaulted the defendants with their bolos drawn. The witness Jacinto Pangan claims to have obtained from somewhere the three bolos with which Trotter's companions are alleged to have been armed. The bolos were presented in court by the defendants as conclusive evidence of their claim that Toledo, Jose and Fernando were armed. It is to be noted, however, that the witness Pangan was unable to state where he got the bolos; whether he took them from the hands of the victims, from the sheaths, or from the ground; whether from the bodies of the victims or elsewhere. He was, as well, unable to say whether or not he saw the bodies of any of the victims at the time he took the bolos, or whether or not anyone had been killed or injured at all. Moreover, it appears from the testimony of the justice of the peace and of all those who, upon being notified of the tragedy, made an investigation of the facts and recovered the bodies of the victims, that, at the time the bodies were found, a receptacle for carrying a revolver and a bolo sheath were found upon Trotter's body, but upon the bodies of none of his companions was there discovered either a bolo or a sheath for one. It is the declaration of Guillerma Sibag and of all the laborers who saw Vicente and Jose leave the house on the morning of the tragedy that neither of them carried a bolo; and it is the testimony of several persons who saw them upon the way, either coming or going, that neither carried a bolo or other arm. In addition, the probative value of the testimony of Agapito Cabuso, Marcelo Cabuso, Anacleto Tungol, Jacinto Pangan, Benito Baluyot, and Cirilo Maria is completely destroyed by the confessions made by them heretofore mentioned. We do not forget, either, that it appears from the testimony of Captain Ramos that Jacinto Pangan told him soon after the assault that the only one in Trotter's party who was armed was Trotter himself and that neither Jose nor Vicente had a bolo; that the reason why he had stated at first that they all had bolos was because Julio Vitug had ordered him to say so. It should also be noted that not one of the defendants was wounded during the alleged fight. It would be but reasonable to suppose that in case Trotter and his companions had assaulted the defendants with their bolos, some of the defendants would have borne the marks of that assault. Not one of them, however, was injured in the slightest except by pistol shots, which shots were admittedly fired by Trotter.

The testimony of Fernando upon this point seems thus to be so completely and satisfactorily corroborated as to leave no reasonable doubt that Vicente Toledo, Jose Cayanan, and Fernando Cayanan were entirely unarmed and defenseless at the time they were assaulted by the defendants.

In the third place, the witness testified that all of the defendants took direct part in the assault upon the victims. At least four of the defendants who testified admitted that they themselves took part in the injuries inflicted, but plead self-defense. The other defendants who were witnesses at the trial assert that they ran away when the shooting began. Those of the defendants who made confessions state in those confessions that they themselves took direct part in the assault. As to the other defendants, to establish their participation in the commission of the crime, we have only the declaration of the witness Cayanan, whose testimony we are discussing, and that of the

defendant Anacleto Tungol. As we have before indicated, Cayanán states positively that the whole party, except Prudencio Serrano and Eugenio Lingad, took direct part in the commission of the crime, Julio Vitug, although unarmed, pursuing the victims and urging that all be killed. The cross-examination of Anacleto Tungol in relation to what he and his companions did at the time of the killing shows the following questions and answers:

"Q. And you personally, what did you do? - A. I dismounted from my carabao and took part in the attack.

"Q. And your companions, what did they do? - A. They did the same"

In contradiction, we have only the testimony of those witnesses who claim to have been present up to the time the shooting began but who then ran away. Of the witnesses so testifying, we have already found that three of them, namely, Lorenzo Vitug, Marcos Dabu, and Donato de los Reyes, were not in fact members of the party committing the crime and knew nothing whatever about the facts thereof. As to the others so testifying, namely, Benito Baluyot, Cirilo Maria, Pedro Maria, and Julio Vitug, we have already seen that Benito Baluyot and Cirilo Maria signed written statements which contradict in every particular their testimony relating to the commission of the crime. This leaves only Pedro Maria and Julio Vitug to dispute the truth of the testimony of the witness Fernando Cayanán. All the other witnesses of the defense upon this point admit, in one way or another, participating directly in the commission of the crime. We have no hesitation in concluding that the trial court was fully warranted in finding that all of the defendants took direct part in the commission of the crime.

Lastly, the witness Fernando states that the assault was made by the defendants and not by him and his companions and that the defendants were not acting in self-defense. This declaration is thoroughly and completely corroborated by the testimony of witnesses and by the circumstances of the case itself. It is, as to them, conclusively supported by the six defendants who made confessions. As to the others, the declaration of the witness that he and his two brothers ran away from the defendants in an attempt to save their lives, and that they were pursued by all of the defendants and assaulted one after another, is corroborated by the location of the bodies after the assault terminated. It appears from the undisputed evidence in the case that the body of Vicente Toledo was found about 100 meters from the place where Trotter was killed and from the place which Toledo occupied at the time the assault was made on Trotter. The body of Jose was found at about the same distance from the place where he was when the assault was made on Trotter, and the body of Fernando was found at a distance of about 40 meters from the place where Trotter was assaulted and killed. It is evident that if the assault had been made upon the defendants by Vicente, Jose, and Fernando, they would have been surrounded and killed at the place where the assault took place, whereas, if they were not the aggressors but were the ones being assaulted, the number of the assaulting party being so superior, it would be natural that they, being unarmed, should endeavor to escape, and, in doing so, put as much distance between them and their pursuers as they could. That the defendants pursued them for the distances mentioned and caused the injuries complained of, is indisputable. That some of them did so is the uncontradicted testimony of the case. No defendant, even, denies that the victims were pursued and killed by some of the defendants. The only difference between the testimony of Cayanán and that of the defendants who testified on this point is, that, while Cayanán asserts that all of the defendants pursued and killed, the defendants testifying on this point, without denying that at least a portion of their number pursued and killed, assert that some of them did not.

It appearing beyond all question that all of the defendants attacked and pursued Toledo and his two brothers, they unarmed, killing two, Toledo and Jose, and leaving the third, Fernando, for dead, and that the defendants acted with the common purpose of compassing the death of all of Trotter's companions, the plea of self-defense is wholly unsustained. Even if it be conceded for the moment that the defendants were assaulted by the four, the right to kill in self-defense ceased when the aggression ceased; and when Toledo and his brothers turned and ran, without having inflicted so much as a scratch upon a single one of the defendants, the right of the defendants

to inflict injury upon them ceased absolutely. They had no right to pursue, no right to kill or injure. A fleeing man is not dangerous to the one from whom he flees. When danger ceases, the right to injure ceases. When the aggressor turns and flees, the one assaulted must stay his hand.

The learned trial court found that the crime was committed with treachery. With that finding we concur. It seems to us clear that the defendants committed the crime for which they stand convicted by the employment of "means, methods, or forms in the execution thereof which tend directly and specially to insure it without risk to the persons of the criminals arising from the defense the injured party might make." The assaulted were wholly unarmed. The defendants were, in effect, all armed with bolos. There were fifteen who made the attack. The assault upon Toledo was sudden and unexpected. He was acting simply as interpreter for Trotter. He had done nothing, so far as he knew, or so far as we know, to incur the displeasure of the defendants. He had laid no claim to the lands in dispute. He had taken no part in the controversy between Vitug and Trotter. He believed that the trouble over the timber lands was strictly confined to them. He took no part personally in the conversation. He was simply a servant performing his work and receiving his pay, having no expectation of attack and no thought of danger. The aggressors being many and fully armed, and their victims few and defenseless, they were directly and especially insured against danger to themselves arising from any defense which Toledo and his friends might offer, particularly in view of the fact that the attack was sudden and unexpected and was made simultaneously by all of the defendants.

We do not, however, agree with the court below in the conclusion that there was present in the commission of the crime the aggravating circumstance of desoblado. The mere fact that the crime was committed in an uninhabited place is not sufficient. It must be proved, in addition, that the culprit took advantage of the isolation of the locality to commit the crime, either that he might be free from molestation and thus the more surely attain his end, or that he might thereby the better secure himself against detection and punishment. (1 Viada, 306, 307, 308.) Neither of these conditions has been shown. It appears, on the contrary, that the meeting of the defendants and the victims in this particular place was entirely unexpected. There is no evidence that the defendants had formed the intention to kill prior to the meeting. There is no evidence that they were seeking the assaulted for any purpose whatever. The intent to kill was formed suddenly and, so far as the evidence goes, the wildness and isolation of the locality contributed nothing to induce that intent.

We are also of the opinion that the other aggravating circumstances alleged by the prosecution to have been present at the commission of the crime were not so present. The circumstance of abuse of superiority is swallowed up by and becomes a part of the qualifying element of *alevosia*. It can not be used for any other purpose here.

There is an entire failure of proof of premeditation.

Taking into consideration the number who took part in the assault, the numerous wounds received by Toledo do not establish, of themselves, that "the evil accomplished by the crime" was "deliberately increased by causing other evils unnecessary for its execution." There is no proof to supplement the evidence of the wounds themselves and we can not, therefore, say that the aggravating" circumstance described in article 10, paragraph 6, of the Penal Code was present. Such a conclusion would be largely assumption.

In imposing sentence upon the defendants, we are constrained to believe, under all the conditions, that the provisions of article 11 of the Penal Code were properly applied by the trial court. We, therefore, make the same application.

In accordance with the above findings, we affirm the judgment of conviction; and, there being neither aggravating nor extenuating circumstances, we sentence Julio Vitug, Cirilo Baluyot, Matias Baluyot, Marcelo Cabuso, and Agapito Cabuso to life imprisonment, to be served at the place and in the manner provided by law. We sentence

Pedro Maria, Cirilo Maria, Lorenzo Maria, Segundo Pangan, Victoriano Liwanag, Anacleto Tungol, Juan Pelagio, Benito Baluyot, Jacinto Pangan, and Gregorio Tungol to twenty years of cadena temporal, to be served at the place and in the manner provided by law. We decree that all of the accused shall, jointly and severally, indemnify the heirs of Vicente Toledo in the sum of P1,000 and pay, each, one-fifteenth of the costs of the trial.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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