

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GUILLERMO ROMULO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5502. March 07, 1910

Ponente: CARSON, J.

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CARSON, J.:

In the Court of First Instance of the Province of La Laguna, Guillermo Romulo, Celerino de la Cruz, Buenaventura Canape, and Fidel Veloz, were charged with the crime of assassination in an information couched in the following terms :

"That the said accused, on the 16th day of April, 1909, in the municipality of Majayjay, Province of La Laguna, P. I., voluntarily, unlawfully, feloniously, with treachery, premeditation, vindictiveness, and nocturnity, murdered Mr. Adrian Herren, a surveyor of the Bureau of Public Lands, inflicting upon him several blows with a cutting instrument, causing numerous wounds on his shoulder, arm, neck, hand, and other parts of his body, severing his head from his body and his left arm from the shoulder, and cutting him in the middle of the right forearm; all contrary to law."

Upon arraignment, the defendants pleaded not guilty. Before entering on the trial, the information against Fidel Veloz Was dismissed on the motion of the provincial fiscal, for the purpose of using him as a witness for the prosecution. The trial court found each and all of the other defendants guilty of the crime of assassination, and sentenced Romulo and Canape to death, and De la Cruz to life imprisonment, together with the accessory penalties prescribed by law. The record is before us now on the appeal duly taken by these three defendants from the judgment of conviction and sentence imposed by the lower court.

About half past 4 o'clock on the evening of the 16th of April, 1909, one Adrian Herren, a surveyor in the Bureau of Public Lands, set out from a place called Malinao, where he was engaged at work, for the town of Majayjay, where he was accustomed to pass the night. He was accompanied by his four native assistants, the defendants in this action, the party walking in single file, Herren in front followed in order by Romulo, Canape, De la Cruz, and Veloz. When the party arrived at a clump of cane, near the River Dalitiwan, Romulo stepped up alongside Herren and struck him a blow with a hatchet which felled him face downward to the ground. Immediately thereafter Canape struck the fallen man a number of blows on his head and body with a heavy stick, and both assailants slashed and cut the helpless and unconscious man with their bolos. The body of the deceased was at once hidden in the nearby clump of cane, and the whole party immediately set out for the town of Majayjay.

The evidence fails to disclose what participation, if any, was taken in the commission of the crime by De la Cruz and Veloz; and as to De la Cruz, we think that the weight of the testimony tends to sustain his counsel's contention that while he was present when the crime was committed, he took no part therein, and in nowise aided or abetted the assassins either by word, act, or deed. There is no evidence which would support a finding that he had any warning or knowledge that the sudden and unexpected attack was about to take place, or that he could have prevented it had he desired so to do; and while it affirmatively appears that Romulo and Canape bore bitter enmity and resentment against the deceased because of his alleged brusque and overbearing manner toward them,

the evidence tends to disclose that De la Cruz and the deceased were on friendly terms at the time of the murder, and that De la Cruz had worked for the deceased for many years and had his confidence. It appears, however, that after the crime was committed, De la Cruz, who was foreman of the native party, was present when the body was concealed in the clump of cane, accompanied the murderers back to Majayjay, slept in the same house with them on arriving there, and the following morning, manifestly for the purpose of concealing the commission of the crime, and aiding the murderers, his companions, to escape detection and capture, voluntarily presented himself to the president of Majayjay, and after inquiring whether the president knew where Herren could be found, said that "while they were putting out boundary posts or marks in Malinao about 4 o'clock of the afternoon of the day before, the American had gone ahead of them, so that the capataz and his workmen were left there until the termination of the work which had been ordered by the American."

The evidence of record conclusively establishes the guilt of Romulo and Canape of the crime of assassination of which they were convicted, but we do not think that it sustains a finding of the guilt of Celerino de la Cruz, as principal or accomplice. It does not appear beyond a reasonable doubt that he took any part either direct or indirect in the commission of the crime beyond the mere fact that he happened to be present during its execution. It does not appear that he was aware of the existence of the criminal conspiracy between Romulo and Canape before the commission of the crime, nor that there was any understanding between De la Cruz and the other members of the party in this regard. Without some previous concert or conspiracy as to the execution of the proposed crime, we do not think that the mere fact that De la Cruz happened to be present at the time when it was executed establishes his guilt as principal or as accomplice in its commission, there being nothing in the surrounding circumstances which would justify us in assuming that he in fact aided or abetted the murderers, or gave to them the moral support of his sympathy and advice, or in any way countenanced their act.

In its sentence of the 7th day of September, 1885, the supreme court of Spain held that "The simple fact that a person accompanied another who intended to set fire to a straw deposit, which intention was unknown to the former; that he remained on one of the streets of the town while the other was setting the place on fire, and that he fled after the perpetration of the crime, is not sufficient to show the culpability of said person as a coprincipal."

In its sentence of the 22d of December, 1883, the same court held "That direct instigation to commit a crime, by reason of which the instigator is considered as a principal, the same as the person who actually commits the crime, should be recognized only in a case involving acts of command, of advice sometimes, of agreement, or excitation so explicit that they may effect the criminal act, none of which are found in the words of Miguel Perez, which are alleged to have been the efficient cause of the death, both because important circumstances simultaneous with the affair are not clearly known (such as the respective position of the deceased and the murderer at the moment the words were pronounced, and the degree reached in the quarrel between them), and because the decision appealed from does not furnish any facts sufficiently expressed to show that Miguel might have foreseen the use of a firearm by his son, nor that, therefore, he might excite the latter to use it; consequently the trial court in so holding has not violated the legal provision cited by the appellant prosecutor, etc." And again in its sentence of March 13, 1884, that "the fact that a person witnessed the murder, committed by his brother, of a person who was an enemy common to both of them, with whom they had had some trouble previously; that, during the perpetration of the crime, he said some threatening words, the words not being known nor against whom they were directed, is not sufficient to prove his participation in the crime on the ground that, although the accused supplied a cause for the first trouble, and later on accompanied the aggressor and was present at the perpetration of the crime, pronouncing some threatening words, all as stated above; these isolated facts, without any other preceding ones explaining them, can not be considered as of great importance without grave danger of error, nor can we deduce from them any participation or cooperation in the criminal act, which is the fact that legally constitutes complicity in the case of a crime."

So in its sentence of the 20th of March, 1885:

"The said supreme court based its decision reversing the said judgment on the fact that, it being an indispensable element of the liability of an accomplice that he, by means of previous or simultaneous acts, should aid, facilitate, or protect the execution of the acts constituting the crime perpetrated by another, it does not appear from the facts stated in the decision that the shot fired by the aggressor at the offended party was either advised, assisted, or induced by the appellant, whose acts were merely those of intimidation or offense; therefore the trial court, by declaring the latter an accomplice of the complex crime of shooting firearms and of lesiones menos graves, acted in violation of article 15 of the Penal Code" (art. 14 of that of the Philippines.)

And in its sentence of June 25, 1886, it formally announced the doctrine as follows:

"Considering, in the matter of the appeal of Jose Martinez Atalaya, that the trial court finds him guilty as an accomplice in the commission of the crimes solely for the reason that he was present at the place where they were committed, at the same time acknowledging that he took no part in their commission; considering that the liability of an accomplice is determined by acts of assistance knowingly rendered to the principal before or at the time; and that the fact of being present during the commission of the crime not falling within this category, when it is not shown, and, for the effects of the appeal, when the lower court does not find, that such presence has for its object the encouragement of the principal, or to pretend, or to actually lend additional help: the declaration of the responsibility of Martinez Atalaya can not be thereby sustained, after it has been fully shown that between him and Juan Gomez no agreement existed, because, as held by the trial court, there are no prior or simultaneous acts which would demonstrate, beyond peradventure of doubt, his intention of doing or assisting in doing any damage in the house he entered, and thus perhaps incurring criminal liability of another kind; and considering the absence of voluntary cooperation on the part of Martinez Atalaya and of any appropriate overt act which would establish his liability the conjunction of which circumstances forms the basis of liability of the indirect principal of the crime, the lower court has committed an error and has violated article 15 of the Penal Code."

This court, discussing the same question, has held as follows:

"The mere presence of the defendant at the time and place of the commission of the crime is not of itself sufficient to show such an act of simultaneous cooperation as to make such a defendant an accessory to the crime." (U. S. vs. Guevara, 2 Phil. Rep., 528.)

"Where one of two persons jointly engaged in a quarrel with others stabs and kills one of his opponents, his companion can not be held as principal or accomplice where it does not appear that there was some concerted action leading up to the striking of the fatal blow, or that said companion had any reason to believe that a deadly attack was to be made on the deceased." (U. S. vs. Manayao, 4 Phil. Rep., 293; see also U. S. vs. Cabonce, 6 Off. Gaz., 1340;[1]; U. S. vs. Flores, 6 Phil. Rep., 383; U. S. vs. Maquiraya, 7 Off. Gaz., 1666,[2] citing U. S. vs. Empeinado, 9 Phil. Rep., 613; U. S. vs. Dasal, 3 Phil. Rep., 6).

"One of the defendants, Reyes, suddenly and unexpectedly inflicted mortal injuries with a club upon a man named Legaspi, while Legaspi was being held by the other defendant, Javier: Held, That Javier was neither principal nor accomplice in the commission of the crime of homicide of which Reyes was convicted, it appearing that there was no concerted action between him and his codefendant, that he had no reason to believe that a homicidal attack was about to be made, and that, in holding Legaspi, he was not voluntarily cooperating therein." (U. S. vs. Reyes, 7 Off. Gaz., 1359.[3])

Adhering to the doctrine laid down in these decisions, it is clear that we can not and should not sustain the finding of the trial court of the guilt of De la Cruz of the crime with which he was charged, either as principal or accomplice.

We think, however, that the evidence is sufficient to establish his guilt as encubridor (accessary after the fact) of

the crime with which he was charged as principal, not because he was present with the murderers when the crime was committed and when they concealed the body of the deceased, and continued in their company until the following day, nor because he failed to denounce the crime to the local authorities; but because he went to the municipal president of the town of Majayjay and volunteered false information which tended affirmatively to deceive the prosecuting authorities and thus to prevent the detection of the guilty parties and to aid them in escaping discovery and arrest. In the case of the United States vs. Caballeros (4 Phil. Rep., 350) we said that the mere fact that one does not denounce the perpetration of a crime to the authorities is not a punishable offense under the Penal Code; but it is one thing to refrain from denouncing the accused, and another to affirmatively aid him in escaping the vigilance of the prosecuting authorities. Article 15 of the Penal Code provides that -

"Accessories after the fact (encubridores) are those who, having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, subsequently take part in its execution in any of the following manners:

* * * * *

"3. By harboring, concealing, or assisting in the escape of the culprit, provided any of the following circumstances are attendant:

* * * * *

" (2) When the delinquent is guilty of treason, regicide, parricide, assassination, attempt against the life of the Governor-General, or known to be an habitual criminal in any other crime."

In view of all the foregoing, we are of opinion that the judgment of conviction as principal in the commission of the crime of assassination and the sentence imposed therefor upon De la Cruz should be reversed, and that this court should find him guilty as accessory after the fact (encubridor) of the crime of assassination with which he was charged, and that for that offense he should be sentenced to the penalty of eight years and one day of presidio mayor, together with the accessory penalties prescribed by law and to pay his proportionate share of the costs of the proceedings in both instances. The guilt of the defendants Guillermo Romulo and Buenaventura Canape as principals of the crime of assassination, of which they were convicted, marked with the aggravating circumstances, as found by the trial court, and no extenuating circumstances, is established by the evidence beyond a reasonable doubt, and the judgment of conviction and the sentence imposed upon them by the trial court should therefore be affirmed, with their respective shares of the costs in this instance against them. So ordered.

Torres, Johnson, and Moreland, JJ., concur.

Arellano, C. J., and Mapa, J., concur as to the conviction of Guillermo Romulo and Buenaventura Canape only.

[1] 11 Phil. Rep., 169.

[2] 14 Phil. Rep., 243.

[3] 14 Phil. Rep., 27.

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