THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO BIRAY, DEFENDANT AND APPELLANT.

G.R. No. 5569. March 12, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant was convicted of the crime of robbery with homicide in the Court of First Instance of the Province of Misamis and sentenced to death, there having been found present in the commission of the crime several aggravating circumstances. The case comes to us en consulta.

The court below found clearly and conclusively proved the following facts, using the language of his decision:

> "On or about the 12th day of June, 1908, in Casol, barrio of Baliangao, municipality of Langaran, Province of Misamis, Rafaela Magusara, her niece Francisca Magusara, two children of the latter, the elder of whom was 11 years of age, named Hilario, Bonifacio Palot and Mateo Uraga occupied a house of light materials located in an isolated place. While there were three neighboring houses in that vicinity, they were so far away that a cry made at the house in question could not be heard at either of the others. On the day named, at about 2 o'clock in the morning, the accused and two companions, dressed in black, he and one companion wearing red chevrons on their cuffs, entered the house in question. They were all armed with daggers, bolos, and revolvers. The accused, who appeared to be the leader, called to the household in the name of the law. They awoke and lighted a lamp. The accused entered the house and immediately compelled Bonifacio and Mateo to go outside, striking said Bonifacio with a tail of a fish called 'ray' as he passed out. On passing out they were instantly seized and bound together by those outside and one of their captors conducted them to a field of hemp near by. The accused compelled Francisca Magusara and her two children to sit town in the house, threatening them with death if they moved. He and his companion then placed a rope around the waist of Rafaela Magusara, threw it over a rafter in the house, and seizing the end thereof, they raised and lowered her, and permitted her to violently drop to the floor several times, for the purpose of compelling her to disclose where her money was hidden. They then unbound her and took her with them to another part of the house separated from the others by a curtain of matting, where they broke open trunks and appropriated the contents, including her money. In the meantime Francisca and her children escaped from the house, taking different directions. On the following day they were found in the forest. Some moments after their escape Rafaela Magusara, still conducted by her captors, passed near the place where Bonifacio and Mateo were being detained in the direction of the seashore opposite the little island of Murcielagos, called also Cagban. When the accused passed near where Bonifacio and Mateo were detained, he called to the one who was guarding them to go to the house and get a bag of money which he had forgotten, he himself standing guard over the prisoners, who were about 10 meters distant. Bonifacio availed himself of this opportunity to loosen the rope with which he and Mateo were bound, telling the latter to escape. Mateo fled in the direction of a forest, while Bonifacio, being lame, was able to go only a short distance, where he hid himself beneath some dry hemp leaves. When the accused was told of the escape of Bonifacio and Mateo, he said that they ought to have killed them in order that they might not reveal what had been done. On the fourth day after, the corpse of Rafaela was found on the beach of Cagban with two stones tied to the waist, floating on the water, 1 yard deep. The body was substantially nude, with a strip of the skirt on the waist. One foot was gone and there were several serious wounds on the body, among others, one

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> near the navel, from which protruded a portion of the intestines. The right arm and forearm were covered with wounds.

We have carefully examined the evidence adduced at the trial and are thoroughly satisfied that the court below was quite correct in his conclusions as to the facts proved. The guilt of the defendant is proved beyond a reasonable doubt. In addition to the evidence of the persons who were in the house at the time the robbery and homicide were committed and who testify directly to the commission of the one and circumstantially to the other, the testimony of Florencia Gumiter corroborates and fortifies the case against the accused in a manner that leaves no room for doubt. She had been a servant in the house of the accused for some time prior to the commission of the crime. She testified that prior to the crime she made for the accused, at his order, the red sleeves which the other witnesses testified he wore the night of the crime; that on Thursday before the night of the crime he, accompanied by two other men, left home taking with him the said sleeves and a kris; that the other two were also armed; that on Saturday at about 3 o'clock in the afternoon two of them returned; that one of them carried some money in a handkerchief; that there were blood stains on some of their weapons and on their clothes; that the day following, the witness and the wife of the accused washed the blood out of the garments of the accused; that at the order of the accused, one Guillermo took the money thus brought to Misamis to change it for other money; that the accused, after his return, did not stay at the house, but remained in the forest in hiding, charging the witness that if anyone came looking for him she should say that he had returned to his pueblo; that some days after the crime the wife of the accused returned from Oroquieta, where she had been to attend church, and told her husband that they were looking for him; that thereupon the accused became very much frightened, and leaving the house ran to the woods; that on Tuesday following he and his companions started for the Island of Siquijor on a very rainy night.

The evidence fully justifying the conviction, and there being no error in the record of which the accused may complain, the judgment of the trial court is affirmed with costs against the appellant.

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

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