

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENITO PARAISO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5658. September 28, 1910

Ponente: TRENT, J.

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TRENT, J.:

The defendants in this case, Benito Paraiso, Isidoro Delin and Clemente Delin, were accused of the crime of murder. The complaint alleges that on or about the 24th day of May, 1908, within the jurisdiction of the town of Barili, Province of Cebu, the said defendants, with treachery and known premeditation, wounded Severino Manigos with bolos, causing the instantaneous death of the said Manigos. The Court of First Instance of Cebu found Benito Paraiso and Isidoro Delin guilty as principals of the crime of homicide, and sentenced each of them to seventeen years four months and twenty-one days of reclusion temporal, together with the corresponding accessory penalties, and Clemente Delin to eight years of prision mayor, as an accomplice, also to the accessory penalties. These defendants were further condemned to indemnify, jointly and severally, the family of the deceased in the sum of P500, and to pay the costs. From this sentence the defendants appealed, but Clemente Delin and Isidoro Delin withdrew their appeals and are now serving the sentence imposed upon them by the court below.

The prosecution presented two witnesses, Marcos Campaña and Claro Ababa. The defense examined Isidoro Delin and Clemente Delin, two of the accused. Marcos Campaña testified that he knew the three accused and the deceased; that the deceased was a very old man who walked by supporting himself with a cane; that between the hours of 7 and 8 o'clock on the night of the 24th of May, 1908, in the barrio of Montalangan, in the municipality of Barili, Province of Cebu, he heard the defendants say, when they were a short distance from his house: "Where is our enemy?" That on hearing this he looked through an opening in the side of his house and saw the three accused, Clemente Delin in front carrying a torchlight, Benito Paraiso about two brazas behind Clemente, Isidoro Delin about one braza behind Paraiso; that these defendants met the old man, Severino Manigos, just in front of his (witness's) house, and on meeting him there Benito Paraiso said: "You are my enemy," then struck him with a bolo; that immediately after the deceased was struck by Paraiso, Isidoro Delin struck the old man with the same kind of weapon; that Manigos fell to the ground and died immediately as a result of these blows; that the defendants then went to the door of the tienda of Claro Ababa, which was just in front and about four brazas distant from his (witness's) house; that the defendants, after leaving the house of Claro Ababa, entered the cockpit which was very near by, looked around inside the same, and then went to the body of the deceased and examined it; that on examination one of them remarked: "Caramba! This is an old man."

Claro Ababa, the other witness presented by the Government, corroborated in all its material parts the testimony given by Marcos Campaña. This witness testified that it was about 10 o'clock on that night when Manigos was killed by Benito Paraiso and Isidoro Delin; that when this trouble occurred, just in front of his store, his tienda was open but that he immediately closed the door; that after the defendants had struck the old man twice with their bolos and he having fallen to the ground, they came to the door of his store and began to strike blows on the

said door with their bolos; that after leaving his store they entered the cockpit and then returned to the body of the deceased; that he examined the body of the deceased on the following day and saw the two severe wounds, the deceased having been disemboweled by one of said wounds.

The two accused, Clemente Delin and Isidoro Delin, presented as witnesses for the defense, testified that they took no part in the killing of Severino Manigos; that they were not there on that night; that they knew absolutely nothing of this killing; and that they did not know, nor were they acquainted with the deceased.

The two witnesses presented by the Government were eyewitnesses to this killing; they were well acquainted with the defendants and deceased before this trouble occurred. On the night in question they had a good opportunity to recognize the defendants, as the killing occurred very close to their houses and under such circumstances that their attention was directed to the identity of the persons who committed the deed. It is true that one of these witnesses stated that the killing occurred between 7 and 8 o'clock on the night of the 24th of May, while the other witness testified that it occurred about 10 o'clock on that night. We are of the opinion that this discrepancy as to the hour is not material. The attention of these witnesses was not called or directed to the hour when this occurred. The principal thing which concerned them at the time was the killing of this old man. It is immaterial whether this killing took place between the hours of 7 and 8 or at 10 o'clock. This would not change the fact that the deceased was killed at that place on the night of the 24th of May.

There can not be the slightest doubt that the deceased died as a direct result of the wounds inflicted by Benito Paraiso and Isidoro Delin on the night of May 24. Either one of these wounds would alone have caused the immediate death of Severino Manigos. The deceased was a very decrepit old man, and was walking quietly along the street, aided by his cane, when he was suddenly attacked by these armed defendants. He had absolutely no opportunity to either defend himself or make his escape, the attack being sudden and without warning. He was, under these circumstances, perfectly defenseless. This appellant and his companions were in no danger whatever of bodily harm when they attacked this old man. The fact that the deceased had a cane does not in any manner change the nature of this crime inasmuch as it was necessary for him to use this cane when walking. He was not carrying it for the purpose of defending himself and was not expecting any attack, as there did not exist any reasons whatsoever for him to have the slightest fear or intimation that he was going to be attacked on that night.

The complaint in this case charged the defendants with the crime of assassination, in that they, with treachery and known premeditation, caused the death of Severino Manigos by means of bolos. In order to raise this crime from homicide to assassination one of these qualifying circumstances must have been present. The circumstance of known premeditation did not exist, but we are clearly of the opinion that the qualifying circumstance of treachery (alevosia) has been established.

No. 2 of article 10 of the Penal Code provides as follows:

* * * * *

"There is treachery when the culprit commits any crime against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal arising from the defense the injured party might make,"

In the case at bar, as we have said, the appellant and his two companions were armed with deadly weapons. The deceased was a defenseless old man. The attack was sudden, resulting in the instantaneous death of Manigos, without giving him any opportunity to defend himself or make his escape, the culprits thereby employing means in the execution of this crime which insured them against any risk of personal injury from the deceased, Severino Manigos, and treacherously taking the life of the said Manigos. (U. S. vs. Angel, 4 Phil. Rep., 295; U. S. vs. Canaman, 9 Phil. Rep., 121; U. S. vs. Matanug, 11 Phil. Rep., 188.) The trial court found that the aggravating

circumstance of nocturnity was present in the commission of this crime. Such application, however, can not be made, inasmuch as it has not been shown that the defendants intentionally sought the cover of darkness for the purpose of committing this murder. They were going along the street carrying a light of sufficient brilliance to make it easy for people near by to recognize them. (U. S. vs. Ramos, 2 Phil. Rep., 434.) No modifying circumstances have been established in this case.

The judgment appealed from is, therefore, reversed, and the defendant Benito Paraiso is found guilty of the crime of murder and sentenced to cadena perpetua (that is, to life imprisonment in the Insular Penitentiary), to the accessory penalties, to indemnify the heirs of the deceased jointly and severally with the other two defendants in the sum of P1,000, and to pay one-third of the costs of this cause.

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

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