

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO DE LA CRUZ AND FELIX SORIANO, DEFENDANTS AND APPELLANTS.*G.R. No. 5871. December 17, 1910*

Ponente: TORRES, J.

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On the night of August 1, 1909, Pedro de la Cruz, a sergeant of Scouts, Felix Soriano, and another man, afterwards found to be Alejo Root, both Scouts, went to the house of the Chinaman, Juan Marquez; the two first named entered the house and inquired for two individuals, mestizos with mustaches who, they said, had insulted Sergeant Cruz. These two men sought were Primo Avedillo and Cirilo Enriquez and they had been in the said house a few moments before. The landlord's daughters, Elena and Valentina Marquez, told the searchers that Avedillo and Enriquez had already gone, so the said Cruz and Soriano left, accompanied by Alejo Root, who had not entered but remained on the lot, in search of the said mestizos. When the appellants and the said Root arrived at the sitio of Talon-Talon of the district of Zamboanga, they found, between 11 and 12 o'clock that night, several individuals who were giving a serenade in front of the house of Eugenio Iturralde, and one of the soldiers then inquired of his countrymen, there assembled, which of them had insulted the first sergeant of the company of Scouts, and he was told that none of those present had done so; thereupon, while Pedro de la Cruz stepped back a few steps, the soldier Alejo Root came face to face with the mestizo Primo Avedillo, who was then leaning with his arms against the fence of the lot on which the house stood, and immediately gave him a heavy blow on the mouth with his fist. On account of this assault Avedillo started to run and Cirilo Enriquez followed him, dispersing at the same time the other parties who were assembled there for the serenade; the latter, on account of the suddenness of the assault, were unable to observe how it occurred nor what else happened, for three of them, Juan Candido, Tomas Francisco, and Pablo Candido, present during the disorder, on seeing the blow given to Avedillo, started to run, and Cirilo Enriquez alone stated that, on running behind the deceased, he saw the three Scout soldiers, one of them Sergeant Cruz, catch Avedillo, and that, while two of them held him fast and struck him, the other stabbed him to death with a weapon with which he was provided. In fact, according to the examination and autopsy made on the following day by Dr. J. B. Clayton, of the military medical corps, the body of the deceased bore three wounds, one near the eighth rib, which slightly injured the stomach and severed a few veins, including a large one which could not be exactly determined on account of the coagulation of blood; another, three inches and a half deep, near the fifth rib, which pierced the pericardium and the left ventricle of the heart and must have caused instant death; and the third wound, a bruise, on the upper lip, produced by a blow with a clenched fist. The two wounds first described were inflicted with a dagger or like weapon

For the foregoing reasons, after the preliminary examination by the justice of the peace court, the assistant fiscal of the Moro Province, on the 28th of September of the same year, filed an information with the Court of First Instance of Zamboanga, charging Pedro de la Cruz, Felix Soriano, and Alejo Root with the crime of murder, and, this cause having been instituted, the court, upon the evidence adduced at trial, rendered judgment on November 12 following, convicting the accused of the crime of homicide and sentenced them to the penalty of seventeen years and four months of reclusion temporal, to pay jointly and severally an indemnity of P1,000 to the heirs of

the deceased, to the corresponding accessory penalties, and to the payment of the costs. From this judgment Pedro de la Cruz and Felix Soriano alone appealed.

The facts above related, which were duly proved in the present cause, constitute the crime of murder, provided for and punished by article 403 of the Penal Code, inasmuch as the deceased, Primo Avedillo, died a violent death in consequence of two serious wounds, one of them necessarily fatal, at the hands of one of his three assailants, while he was stretched out on the ground and was being maltreated and held fast by the other two, who prevented him from moving, which situation was taken advantage of by the third assailant, who with a dagger or like pointed weapon assaulted the victim and inflicted upon him the said wounds, one in the stomach and the other in the breast. The second wound penetrated the pericardium and a ventricle of the heart. At the time of the assault the said Avedillo was unsuccessful in defending himself, or even so much as freeing himself and escaping from his three assailants, for he had been running from the moment he received the blow in the mouth delivered by his slayer, and when the other two overtook him they held him fast and stretched him out on the ground and did not leave him until he died from the wounds; wherefore, it is undeniable that, in the killing of the unfortunate victim Avedillo, there entered the specific and qualifying circumstance of treachery, which determines the crime of murder, because the assailants employed ways and means conducive directly to assure the consummation of the common purpose of depriving the deceased of his life, without any risk whatever to themselves, such as could have arisen from any defense which the assaulted party might have made, but who was then completely helpless and, since the beginning when he was struck by the accused who afterwards stabbed him with a dagger, had not shown the slightest intention nor made any action whatever to resist or to defend himself from the unjust and uncalled for assault.

The defendants, Pedro de la Cruz and Felix Soriano, pleaded "not guilty" and denied the charge; but notwithstanding their exculpatory allegations, absolutely devoid of proof, it was shown that the said Cruz and Soriano tenaciously pursued the deceased, Primo Avedillo, and, as soon as they overtook him, held him fast, illtreated him and threw him to the ground, at which moment, and while still held by them, the other soldier, Alejo Root, arrived and with the dagger which he carried, leaped upon the deceased and wounded him in the breast and in the stomach; all of which was witnessed by Cirilo Enriquez, who was also running behind the deceased, Avedillo, and although the other witnesses, Juan Candido, Pablo Candido, and Tomas Francisco, did not see the assault, because they ran away in view of the fact that the sergeant and the two soldiers who went with him were maltreating everybody, yet they saw the appellants pursue Avedillo, who was afterwards killed. Besides these facts, it is established that the said appellants, Cruz and Soriano, were those who, with Alejo Root, appeared at the place where the deceased and others were playing musical instruments, illtreated them and then pursued them, only overtaking Primo Avedillo, and that on this occasion they were looking for a mestizo with a mustache who, they said, had insulted the first sergeant, their purpose being undoubtedly to punish the former or avenge the latter.

Although Alejo Root did not appeal from the judgment rendered in this cause, in view of the fact that, in incriminating his codefendants, Cruz and Soriano, he at the same time confessed to his having attacked the deceased and wounded him with a dagger, such statements undoubtedly tend to prove that his said two codefendants actually pursued the deceased, Avedillo, and afterwards overtook him, and that while they held him fast, stretched out on the ground as he was, Root leaped upon the assaulted man and wounded him with a dagger; from all of which testimony it is concluded that the three defendants acted together in common accord with unity of purpose and action in order to attack the deceased.

It is true that it was Alejo Root alone who inflicted the two wounds upon the deceased, but had the latter not been held fast on the ground by the defendants, Pedro de la Cruz and Felix Soriano, who were the first to overtake and

hold him, perhaps Alejo Root would not have succeeded in getting at him, nor in assaulting him, as described, inasmuch as he was following his codefendants.

It is to be noted that, as antecedents of the criminal act, the three defendants went together in their quest for the party who they claimed had insulted the first sergeant of their company, and thus they went to the house of Juan Marquez and, as they did not find the said party there, they continued their search with intentions which doubtless were neither peaceable nor lawful, and then together approached several persons who were playing musical instruments, whom, without any cause whatever, they illtreated, on which occasion Root struck the deceased, Avedillo, a blow on the mouth, and the latter, as well as the others, the musicians, on running away without defending themselves, were pursued by the appellants determinedly until they overtook Avedillo and held him fast and laid him out on the ground; in this situation Alejo Root, who came immediately behind his two coaccused, took part in the assault. The two appellants, therefore, are unquestionably coperpetrators of the murder, as they took a direct part in the commission of the crime which was consummated by their participation, inasmuch as, had they not caught, held, and stretched out on the ground the deceased, Primo Avedillo, perhaps the latter might have been able to escape out of the reach of the said Root, who apparently was the only one of the aggressors who was armed.

No extenuating nor aggravating circumstance attended the perpetration of the crime, wherefore the penalty for murder should be imposed upon them in its medium degree.

Wherefore, it is our opinion that, with a reversal of the judgment appealed from, Pedro de la Cruz and Felix Soriano, as coauthors of the crime of murder, should be sentenced, each of them, to the penalty of cadena perpetua, to the accessory penalties 2 and 3 prescribed by article 54 of the Penal Code, to pay an indemnity of P1,000, jointly and severally with Alejo Root, to the heirs of the deceased, and, each of them, a third part of the costs of first instance and one-half of those of this second instance. So ordered.

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

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