

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEOCADIO PAJARILLO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5930. April 05, 1911

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Capiz, convicting the four appellants, Leocadio Pajarillo, Tranquilino Pajarillo, Juan Pajarillo, and Francisco Orleans, of the crime of asesinato and sentencing them and each of them to the penalty of cadena perpetua, to the accessory penalties prescribed by law, to the indemnification of the heirs of the deceased in the sum of P1,000, for the payment of which they are made jointly and severally liable, and to the payment of their respective shares of the costs of the proceedings.

The carefully prepared opinion of the trial judge, setting out with substantial accuracy a fair summary of the material evidence of record on which he based his conclusions of fact and of law, is as follows (translated from the original Spanish):

"On December 27, 1909, the following complaint was filed in the Court of First Instance of Capiz by Vicente Gella, acting provincial fiscal:

"That on one night in the month of May, 1900, the accused, Leocadio Pajarillo, Tranquilino Pajarillo, Francisco Orleans, Vito Navarra, Fabian Arevalo, and Esteban Arevalo, maliciously and intentionally searched for Ciriaco Occeño, then a deputy police officer of the municipality of Sapián, with the sole, exclusive, purpose of murdering him, and with known premeditation and treachery, and, carrying prohibited arms, they discharged the said arms, at Ciriaco Occeño, thereby causing his instantaneous death; all in violation of the law,

"The accused, Leocadio Pajarillo, through his attorneys, filed a demurrer to the complaint on the ground that it was not drawn up in accordance with the prescribed essential requisites, but this demurrer was overruled. Leocadio Pajarillo then appeared and presented the following answer:

"1. That he was not guilty.

"2. That the crime charged fell within the terms of the proclamation of amnesty issued by the President of the United States of America, on July 4, 1902. The other accused pleaded 'not guilty.'

"At the opening of the trial of this cause, on January 12, 1910, the prosecuting officer asked for a dismissal with respect to the accused, Vito Navarra, Fabian Arevalo, and Esteban Arevalo, on the grounds that, after a complete investigation of the matter, the prosecution could present no proof of their guilt. The cause was prosecuted only against Leocadio Pajarillo, Tranquilino Pajarillo, Lino Pajarillo, and Francisco Orleans.

"Both sides presented their evidence and the trial came to a close on January 20, 1910, after oral arguments by counsel for the prosecution and the defense.

"It is an uncontroverted fact, admitted by both parties, that Ciriaco Occeño died in Sapián, in his own house, on the morning of May 11, 1900, as a result of several bullets fired into his breast at very close range and at the moment when he was coming from the bed, where he was lying, toward the door of his house. The shots were fired with guns from the foot of the stairs of the house in front of the opening of the doorway, when the said Ciriaco Occeño approached to open the door. At the time when this event occurred the American forces were in several pueblos of the Province of Capiz, but they had not, up to that time, occupied the pueblo of Sapián, which was governed under the regime established by the revolutionary government. The deceased Occeño held the position of deputy police officer, Elias Oro was the local president, Simon Rupaz was the vice-president, Aguedo Arboleda, a brother-in-law of Ciriaco Occeño, was the deputy collector of revenue, and Eusebio Oro was the deputy judicial officer. The revolutionary bands were scattered among the mountains, but in the pueblo of Sapián there was not, at that time, any detachment or party of soldiers of the revolution.

"The evidence adduced by the prosecution to prove that the accused in this cause were those who fired several gunshots at Ciriaco Occeño, thereby causing his immediate death, is the testimony of the following witnesses:

"Maxima Occeño, a sister of the deceased, testified that while she was sleeping, on the day of the crime, she heard shouts of somebody calling Ciriaco, her brother, and on hearing them she got up and said that Ciriaco was not there, as he had moved to his new house; that the calling was renewed and that, then the door of the house was opened and the accused entered; that Leocadio Pajarillo asked her where Ciriaco was, and she replied that he was in Ylaud (toward the shore), and then Leocadio seized the light which she had in her hands and began to light up the kitchen, the room, and other parts of the house, and that as he did not see Ciriaco there the four accused went down out of the house; that, on leaning out of the window, she saw many people going toward Ylaud; that a few moments afterwards she left her house, passing, not through the street door, but through the back part, and went to the house of her father, Mariano Occeño, situated in front of that which was then occupied by the deceased Ciriaco; that she did not succeed in entering the house, because the door was closed, and remained on the stairs; that from there she heard some one cry out, 'Esteban, call Ciriaco,' and that when Ciriaco leaned out of the window, Leocadio ordered them to fire; that, immediately upon this order being given, she heard shots and a few moments later saw Ciriaco's wife lean out of the window and heard her say, 'Leocadio, that is enough, for Ciriaco is already dead;' that on the witness hearing these words she started up the stairs, but Leocadio caught her by the arm and prevented her from going up.

"Esteban Obidos, married to Andrea Occeño, another sister of the deceased, testified that on the morning of the day of the crime, while he was yet asleep, the accused went to his house and called him from below, and when he went down they bound him by both arms and then took him to Ciriaco's house; that, besides the accused, he saw many people in the street, among them a soldier named Fabian; that on arriving at Ciriaco's house, Leocadio ordered the witness to call Ciriaco from the stairs and at first he called him in a low voice, wherefore Leocadio ordered him to call louder; that when the witness cried out the second time in a loud voice, 'Ciriaco, Ciriaco,' the latter leaned out of the door and then Leocadio gave the order to fire; that on Leocadio's giving, for the second time, the order to fire, Ciriaco's wife leaned out and said that her husband was dead; that the accused were armed with guns and revolvers; that after the shooting they went up into Ciriaco's house and took the witness away with them; that the witness then saw Ciriaco dead in the middle of the room; that he also saw Leocadio speak secretly with the wife of the deceased, and then the said Leocadio removed the revolver, the dagger, and the sword, which were hanging from a beam, and then the accused went down out of the house; that witness saw a wound in the upper part of Ciriaco's breast through which much blood flowed.

"Andrea Occeño, a sister of the deceased and wife of Esteban Obidos, testified as follows: That on the morning of the crime she was awakened by raps against her house, and they opened the door; then some people, among whom she recognized the accused, came in, who made her husband go down, and, when he went down one of the accused ordered him bound; she followed her husband, who was taken in front of Ciriaco Occeño's house, and once there the accused commanded Esteban to call Ciriaco, and as Esteban called in a low voice, Pajarillo, one of the accused, struck him with a bolo to make him call louder; then Esteban called Ciriaco in a loud voice,

pronouncing his name several times, and when the latter opened the door Pajarillo said 'Fire,' at this command, four shots were fired in succession, and when Leocadio again said 'Fire,' Ciriaco's wife leaned out of the window and said, 'Leocadio, that is enough, for Ciriaco is dead.' The witness followed the several accused and her husband up into the house and saw that her brother was lying face upwards; while they were there Leocadio saw the deceased and then spoke with Hermenegilda quietly, in such manner that the others could not hear what they were saying; after this, the accused went down, taking Esteban with them, after having: first removed the revolver, saber, and dagger that were hanging in the wardrobe.

"Juliana Olica, who at the time of the crime was a servant of the deceased Ciriaco Occeño, testified as follows: That on the morning of the crime Ciriaco's house was surrounded by armed people, and soon her master, Ciriaco, was called three times, and when he went to the door the report of a firearm was heard and he received several bullet wounds; then Ciriaco returned toward the door of the room and there fell; afterwards the accused, all four of whom carried guns, together with Esteban, who was then bound, went up into the house, and once there they took the weapons away from the deceased and then went down; after the deceased had fallen at full length, his wife got up, opened the window, leaned out and said, 'Cadio, that is enough, for Ciriaco is already dead.'

"Marcelo Aguila testified that on the afternoon preceding the day of the crime, Francisco Orleans, one of the accused, went to the barrio in which the witness lived, that of Loctugan, and invited the witness to accompany him to search for a carabao which he had lost; that he accompanied Francisco to the latter's house, situated in Dapdapan, one of the barrios of Sapián, arriving at the said place after the time for the saying of prayers, and when he arrived there there were many people in the house; he there saw the four accused; on the following morning all those people awoke and immediately started out for the town of Sapián; the accused went along at the head of the band and were armed with guns; when they arrived at the town, they first went up into a house, the door of which they forced and opened; the accused entered, but soon afterwards went down; they continued walking and went to another house, the owner of which opened the door; they took him along, bound, and following him was a woman; afterwards they continued walking, and on the way Leocadio told the man that was bound to awaken Ciriaco, and the said man called Ciriaco in a low voice; then Leocadio told him to raise his voice; he did so, and it was then that the master of the house awakened; when Leocadio perceived that the master, of the house was moving above, he commanded, 'Fire;' after hearing this command of 'Fire,' witness heard a noise which appeared to have been produced by a man falling.

"Vito Navarra testified that, at the time of the crime, he was a captain of revolutionary soldiers under the command of Sr. Hontiveros; he then had twenty soldiers with eight guns; that on a certain occasion Leocadio Pajarillo wrote a letter to him, soliciting his aid because they had stolen carabaos from the said accused, and as he said that he could not search for them, for he was afraid of the revolutionists, not being one himself, he begged the witness to furnish him with eight soldiers for the search for his animals - a letter that was answered by the witness in the sense that he could not make any provision without first informing his superior; that two or three days afterwards Leocadio Pajarillo went to his, Navarra's, camp in Batin, Mambusao, accompanied by his brother Lino; that on that day some soldiers arrived with the reply from Colonel Hontiveros, granting Pajarillo's petition; that the witness then ordered eight of his soldiers under command of an officer, Lieutenant Federico delos Santos, to proceed to the barrio of Dapdapan, Sapián, and render aid to Pajarillo; that all his soldiers then carried their guns, and when they returned Lieutenant De los Santos reported that the accused put four shots into Ciriaco Occeno, in his own house; that his soldiers, on returning, took along eight carabaos and some meat, which had been obtained in Sapián.

"Esteban Arevalo, one of the soldiers who went to Sapián by order of Vito Navarra, testified as follows: That eight soldiers under command of a lieutenant were ordered by Vito Navarra to march to Dapdapan, and on arriving there they lodged in the house of Leocadio Pajarillo; early in the morning of the following day they marched toward the pueblo, and on arriving there they went up into a house from which after a few minutes they went down, and then they went to the house of Esteban, into which the four accused entered; there they

seized Esteban, took him below and bound him by order of Leocadio, and then they took him in front of another house, and once there Leocadio ordered Esteban to call Ciriaco; when Esteban called for the second time, 'Ciriaco,' in a loud voice, the witness was able to observe that the door opened and at that moment the four accused fired their guns; that after the first shots Leocadio again ordered them to fire, but a woman in the upper part of the house leaned out of the window and said, 'Cadio, that is enough, for Ciriaco is already dead;' then the accused went up into the house, taking with them Esteban who was already bound.

"Marcelo Lozada, another of the soldiers of Vito Navarra, testified as follows: That by order of his captain, the witness and seven soldiers, under the command of the lieutenant, Federico de los Santos, set out from Batin, on the night previous to the day of the crime, and, oh arriving at Dapdapan, went to the house of Leocadio Pajarillo, where there were many people; at 3 o'clock in the morning Leocadio told him that they had to go out to look for the carabaost and they set out, preceded by the four accused, and on arriving at the town they first went up into a house and from there they went to the house where Esteban lived; the accused there ordered the latter to come down, and when he did so they bound him, and after he was bound they took him to Ciriaco's house; there they told Esteban to awaken Ciriaco, and as he called in a low voice Leocadio unsheathed his saber and struck him on the calf of the leg; then Esteban raised his voice and cried out, 'Ciriaco;' at this moment Ciriaco opened the door and asked, 'Who are you people?' and then Leocadio commanded, 'Fire;' after the first shot had sounded he again ordered them to fire, but at this juncture a woman from within said that Ciriaco was already dead; immediately afterwards the four accused went up into Ciriaco's house; while this occurred, the soldiers from Mambusao were standing in file in the street.

"Finally, Romualdo Refugio, another of the soldiers from Mambusao, testified in the following manner: That he and his companions went with the four accused, who were armed, to Ciriaco Occeño's house in Sapián; that before arriving at Ciriaco's house, they stopped at three houses, and on arriving at Ciriaco's they called him, and when he leaned out Leocadio immediately said, 'Fire,' then a shot was heard and then he again ordered them to load, at which juncture a woman said that Ciriaco was already dead; that afterwards the accused went up into the house, taking Esteban with them.

"On the other hand the evidence of the defense tends to establish:

"1. The fact that the shots received by Ciriaco Occeño were fired by Fabian Arevalo, Esteban Arevalo, and Cornelio Guerra, three of the band of soldiers who proceeded to Mambusao, by order of Vito Navarra.

"2. That the motive of this act was to avenge the arrest made of the person of Cornelio Guerra by the deceased Occeño in his capacity of deputy police officer.

"3. That at the precise moment when Ciriaco Occeño received the shots, the accused in this cause were not present and were at another place.

"It is pertinent to transcribe here the most important parts of the testimony of these witnesses, for the purpose of its analysis and comparison with that of the witnesses of the prosecution, and then to declare which of the two versions must be accepted as certain and true, in order to decide the principal question of fact raised in this cause, to wit, what party or parties killed Ciriaco Occeño on the morning of May 11, 1900, in his own house.

"Hermenegilda Oro, the widow of the deceased, testified at the trial, as follows; On Friday, May 11, she was awakened at about 6 o'clock in the morning by hearing; noises and shouts around the house; when she and her husband awoke they went toward the door, and on arriving there her husband opened it a little and they both peeped out; she saw three men on the stairs, and when her husband peeped out through the opening of the door, she heard a voice that cried out in the street, saying, 'Fire;' then two shots were heard; her husband received the bullet in his breast and then moved backward toward the room and there fell at full length; afterwards she opened the sala window and saw a man in the street who was found to be Vito Navarra; she also saw two men from Sapián, who were already bound, and were Diosdado Onrade and Mariano de la Cruz; then she 'went to the door, opened it wide open and told the men to come up, because Ciriaco was dead; then Fabian Arevalo,

Esteban Arevalo, and Cornelio Guerra went up and took away with them the arms that were in the house and bound Tomas Nunez, who was there, and then went down, going in the direction of the house of Aguedo Arboleda, the deceased's brother-in-law; that on that occasion she did not see the accused go up into the house.

"Mariano de la Cruz testified that at that time he was a municipal alguacil; that on May 11, Friday, Vito Navarra in company with several armed men went to the town hall and on arriving there shouted, 'Cornelio,' and when they went up they released Cornelio, who was then in the stocks, and bound those who were there on guard, that is, Mariano de la Cruz and one Diosdado Onrade; having done this, they went down out of the building and to the house of Ciriaco Occeño; there they shouted, 'Come down, Ciriaco,' and when the latter heard those words he peeped out of the door and then Cornelio and Fabian shot him; afterwards they went up into the house and when they went down they took Tomas Nunez with them, bound, and also the arms that belonged to the deceased; from Occeno's house they went to that of Aguedo Arboleda and compelled the latter to come down; he was tied when he came down; after the occurrence of these acts they went toward the outskirts of the town and there met with the accused Leocadio Pajarillo, and witness and the other prisoners begged him to intercede with Navarra for their release.

"Flora Occeño, a daughter of the deceased, testified as follows: That at 6 o'clock on the morning of May 11, 1900, they shouted around her house 'en guerrilla,' and afterwards they shouted at the very door, 'Open,' on which account the witness, her father, and her stepmother awakened; the latter went toward the door and the witness toward the window, which was beside the door, and when her father arrived at the door he opened it a little and she from the window saw the people who were shouting on the stairs; on seeing that her father opened the door, two men, who were on the next to the last stair and other men further down, immediately shot him; her father received a bullet in the left side of the breast, and after he was shot he returned to the place where they had been sleeping and there fell and died; that when her stepmother or her aunt perceived that Ciriaco was indeed dead, she shouted from the window, 'That is enough,' and on hearing these words, the three men went up into the house and asked for her father's arms, which were delivered to them by her stepmother; that they who went up into the house on that day were not the accused nor those that fired their guns at her father. The witness must have been 12 years old when the crime was committed, for she stated at the trial that she was 23 years of age.

"Maximiana Obligar testified that on the morning of the crime she heard a shot and was frightened; she got up and looked to see what was going on outside, and in front of Ciriaco Occeño's house she saw many people, among whom she recognized Mariano de la Cruz, Diosdado Onrade, Vito Navarra, and several others; that after a few short moments Tomas Nunez came out of the house, bound, followed by Cornelio Guerra, and that among the crowd congregated in front of the house she did not see the accused in this cause.

"Catalina Occeño, a sister of the deceased, testified that on Friday morning while she was sleeping she heard a noise in the court-house building; after a moment her sister Andrea came up; while they were talking they heard a noise in front of Ciriaco Occeno's house, and then it seemed to her that she heard two or three shots; afterwards they shouted, 'Dead, Ciriaco, dead;' after this the people went to the house of the witness; they shouted to her husband, 'Come down ;' they broke open the door and some three or four men came in; these men bound her husband and said, 'We will do to you what we have done to your brother-in-law;' then she opened the window, peeped out, and saw many people in the street, and among that crowd she only recognized Diosdado Onrade, Tomas Nunez, and Mariano de la Cruz who was then in bonds; and that she did not see the accused among those people.

"Catalina Olaso testified that, on the day of the crime, she was living in the house adjacent to that of Ciriaco Occeño, the two houses being separated by a space of only 1 braza; that at 6 o'clock in the morning she was frightened by the noise of the people and their shouts of 'guerrilla;' that she got up, began to listen, and looked from the side of the house that was opposite the town hall and saw Diosdado Onrade and Mariano de la Cruz, who were already in front of Ciriaco's house; two men on the steps of the stairs and another below cried out, 'Ciriaco, come down;' Ciriaco opened the door about the width of a span; then she heard the word, 'Fire,' and

two shots were fired; after this, the witness turned her attention to her children, for she was terrified, with the purpose of fleeing from the house; and when those men went down, she saw Tomas Nufiez, who was in bonds, and they turned toward Aguedo Arboleda's house; the accused were not seen by her on that morning among the crowd in front of the town hall and that gathered later opposite Ciriaco's house.

"Florentina Ocbina testified that her house was near Ciriaco's, about 60 yards away; that on awakening in the morning there was noise in front of the town hall; that she listened at the window and saw many people; that some persons went down from the town hall, among whom she recognized two, who were Diosdado Onrade and Mariano de la Cruz, both of whom were already bound; the crowd went to Ciriaco's house and there stopped; two persons went up the stairs and another remained at the foot of the same; they shouted for Ciriaco to come down; after a moment the door was opened; Ciriaco peeped out and two shots were heard; there was then a woman at his side; Ciriaco returned within and then the woman leaned out of the window and shouted, 'Who is to go down if Ciriaco is already dead?' that the witness did not recognize the three men who were on the stairs of Ciriaco's house, because they had their backs toward her.

"Francisco Otro, who lived with Catalina Olaso in the same house, testified in this wise: That at 6 o'clock on the morning of Friday, May 11, 1900, he was awakened by the voices of the people who were calling at the foot of the stairs of Ciriaco's house; on awakening witness got up and opened the window that was opposite the stairs of Ciriaco's house and saw three men carrying guns; Ciriaco opened the door and peeped out and then they fired two shots; witness saw that Ciriaco received two bullets and fell staggering toward the inside of the house; after a moment his wife Hermenegilda shouted, 'That is enough, sir; Ciriaco is dead;' after Hermenegilda had pronounced these words, Vito Navarra, who was in the street beside the stairs, ordered those three persons to go up, which they did, and, after a moment, went down, bringing with them Tomas, who was in bonds; as soon as the people were down, Hermenegilda opened her window; when Vito Navarra saw her he fired at her with his revolver, but the shot missed her; that after all this, they went away to the house of the deputy revenue collector, Aguedo Arboleda; that the three persons who went up into the house of Ciriaco Occeno were Cornelio Guerra, Fabian Arevalo and another unknown to him, and that they were not the accused in this cause.

"Aguedo Arboleda, who was then deputy revenue collector, testified similarly to his wife, Catalina Occeno, and stated, besides, that when they were taken toward the outskirts of the pueblo, they there met Leocadio Pajarillo, and then the witness begged him to unbind those who were bound, to which Leocadio replied in these words, "How can you be released if you are traitors, since you were going to surrender to the Americans?"

"Andres Nuñez testified that he also lived beside the house of Ciriaco Occeno, but opposite Francisco Otro's house; that while sleeping he heard the noise of people; that he got up quietly and went to the wall that was near the window, raised the nipa and looked out into the street; then he saw a multitude of men with talibones and guns; these men shouted, 'Ciriaco, come down;' pretty soon they fired, and after hearing the shots witness left the place where he had been watching; that among the people who were in Occeno's house he recognized Mariano de la Cruz, who was in bonds, but among those persons he did not see the accused in this cause, nor any of them.

"Diosdado Onrade described the crime in the following manner: That on that morning Don Vito [referring to Don Vito Navarra] and a crowd of men armed with guns and talibones arrived and headed for the court-house building or town hall, and when they arrived there they asked where Cornelio was; four men went up into the building and over to the stocks where Cornelio was and took him out of them; then Fabian and Esteban tied the witness and a companion of his, Mariano de la Cruz; afterwards they took them to Ciriaco Occeno's house, and on arriving there the people shouted, 'Come down, Ciriaco, 'Guerilla,' and the three men went to the door; two of them went up the stairs and the other remained at the foot of the same; from the street the witness could hear the sound of steps going toward the stair door; the door was opened, then they shot him who approached it; after this D. Vito continued saying, 'Come down, Ciriaco;' then Hermenegilda leaned out of the window and received a shot from D. Vito; Hermenegilda said these words: 'Who is to go down if Ciriaco is already dead?'

D. Vito and his people went up into the house and afterwards went down, taking with them Tomas Nuñez, bound, then they started for the house of Lieut. Aguedo Arboleda; D. Vito ordered that they should take the prisoners to Mambusao, but after they had crossed the bridge outside of the town they met Leocadio Pajarillo and companions; the captives begged Pajarillo to intercede for them with D. Vito, in order that the latter might release them, to which Pajarillo answered in these words: 'How can you be released if you are traitors? Your presidente said that you were going to surrender to the Americans.'

"Federico de los Santos, the lieutenant sent by Vito Navarra with a platoon of soldiers to Sapián, testified as follows: That early in the morning of the day of the crime they set out from Dapdapán, the residence of Leocadio Pajarillo, going in the direction of the pueblo of Sapián; but before arriving at the pueblo, they stopped in a place called Janlid or Catadman, lodging in the house of one Andres Olandezca; while they were breakfasting there they heard shots that were fired in the pueblo of Sapián; Pajarillo asked what that was, and the witness answered that it must be some knavish tricks of the soldiers; after breakfast they started out for Sapián and while entering the pueblo met several macheteros who informed them that Ciriaco Occeño had been shot.

"In the midst of this conflicting testimony, who told the truth - the witnesses for the prosecution or those for the defense? There are six witnesses of the prosecution who, at the trial, stated in a positive and decided manner that they saw the accused in this cause, in front of the house of the deceased Ciriaco Occeño, aim their guns toward the door of the house and discharge two shots, on the command of 'Fire,' given by Leocadio Pajarillo, who was acting as chief of the band, at the person who approached the door, who turned out to be Ciriaco Occeño himself and was called, also by order of Leocadio, by Esteban Obidos, a brother-in-law of the deceased, who had been captured and bound in his house a few moments prior to going to Occeño's house. Of these witnesses, three are near relatives of the deceased and the other three are outsiders, two of which latter belonged to the platoon of revolutionary soldiers sent by Vito Navarra to Dapdapán at the request of the accused, Leocadio Pajarillo.

"All of them swore that they were eyewitnesses of the crime, and from their testimony it is clearly concluded that they were in such positions that they could see perfectly well what occurred beside the stairs of Ciriaco Occeno's house. One of these witnesses, Esteban Arevalo, was accused of having been one of the authors of the death of Ciriaco Occeno, and although the value of his testimony might be assailed, as coming from a person who naturally has a special interest in clearing himself from the liability that might be exacted of him because of Occeno's death, however the testimony of the others stands, and undoubtedly must merit credit, unless its probative force has been successfully impugned by the defense. The mere circumstance of Maxima Occeno, Andrea Occeno, and Esteban Obidos being the sisters and brother of the deceased, is not a sufficient reason to reject their testimony as devoid of truth on account of partiality and interestedness, much less if, as in the present case, such testimony appears to be corroborated by persons entirely unrelated to the family.

"The defense also presented several witnesses, some of whom positively declared that those who shot Ciriaco Occeno were Cornelio Guerra, Fabian Arevalo, and Esteban Arevalo, three soldiers who came from Mambusao by order of Vito Navarra; while others of them limited their testimony to the statement that, at the moment of the crime, they did not see the accused in this cause in front of Ciriaco Occeno's house. The widow and the daughter of the deceased were inside the house and, although they averred that they saw the men who discharged their guns at the deceased Occeño, it is most probable that at the moment Ciriaco received the bullets they were, inside the house still lying down and that Ciriaco was the only one who approached the door. Were it true that the wife accompanied her husband to the door and that she was very close to him, it would appear unlikely that she should have entirely escaped all harm, notwithstanding the fact that four guns were discharged at one time. Catalina Olaso, Florentina Ocbina, Francisco Otro, and Andres Nunez, who testified to their having seen three persons discharge their guns in front of Ciriaco Occeño's house and that none of the accused were among these three persons, were, at the moment of the occurrence, in their respective houses at quite a distance from Occeño's, and they themselves admitted that they witnessed the crime under considerably

abnormal conditions; now listening through a hole or partition, now briefly and rapidly glancing toward the place of the occurrence, and therefore they did not have a full opportunity to observe all the particulars and details of the crime. Of the witnesses of the defense, only Mariano de la Cruz and Diosdado Onrade pretend, according to their testimony to have been in company with the men who discharged their guns at Ciriaco Occeno.

"The defense desires to attribute great importance to the fact that the widow and the daughter of the deceased testified in favor of the accused, as likewise did another sister of his named Catalina, for the purpose of disproving the testimony given by the other sisters, Andrea and Maxima, and Andrea's husband. On these premises the defense established the conclusion that Maxima, Andrea, and Esteban Obidos testified falsely, because, were it true that Ciriaco had been shot to death by the accused, the widow, the daughter, and the other sister of the deceased would have united with those three witnesses for the prosecution in a common cause for the purpose of incriminating the accused. There is in this cause serious circumstantial evidence tending to show that the motive of Leocadio Pajarillo's causing the death of Ciriaco Occeno consisted in that there existed unlawful and criminal relations between the widow of the deceased and the accused, Leocadio Pajarillo. Although the direct evidence introduced with regard to this feature is not entirely satisfactory, the subsequent conduct of the widow appears to confirm such suppositions. The indifference shown by her at the time of her husband's death gives room to presume that she was not very desirous of prosecuting the murderers of her husband.

"The testimony of Hermenegilda Oro, imputing the shooting of her husband to Cornelio Guerra, Fabian Arevalo, and Vito Navarra, is extremely suspicious. Were these latter really those who killed Ciriaco, it is not understood why she made no claim nor presented any complaint whatever against Navarra and his soldiers until two days after a complaint had been presented in the justice of the peace court of Capiz against Leocadio Pajarillo and the other accused in this cause, on the 17th of February, 1906; whereby it is seen that the sole purpose of imputing the crime to the soldiers of Vito Navarra was to neutralize and bring to naught the action tiled against the accused. Since the deceased died, up to the time that the complaint was filed by Hermenegilda Oro against Navarra and his soldiers, nearly six years elapsed, during which the municipal government of Sapan and the administration of justice therein were placed into the hands of Leocadio Pajarillo and to persons closely related to him. This very circumstance explains why a complaint could not immediately be filed against Leocadio Pajarillo and his brothers by any person aggrieved or interested in the prosecution of this crime, charging them with the murder of Ciriaco Occeño.

"After a careful consideration of the motives entertained by the witnesses of one side and of the other to distort the facts; the opportunity they all had to observe the acts as they occurred; the greater or lesser influence which the accused in this cause, who, since the day of the crime, have exercised unlimited power in Sapan, have been able to wield over them; and, finally, the form and manner in which they testified at the trial, it having been noted that the witnesses for the defense gave their testimony in a uniform, unnatural and studied manner, while those of the prosecution testified with the dullness that is natural in witnesses of scant education, the court is of the opinion that in the present case the truth lies with the witnesses for the prosecution and, therefore, that the facts to which they testified are certain and true, so that it can not but establish the conclusion that the accused in this cause, under the direction and orders of Leocadio Pajarillo, were those who, provided with firearms, caused the death of Ciriaco Occeño in the latter's own house, and that they have not proved their alibi to the satisfaction of this court.

"We come now to the second question raised by the accused, Leocadio Pajarillo, who invokes in his behalf the benefits of the Proclamation of Amnesty of the President of the United States, of July 4, 1902 - a defense which has not been invoked by the other accused in this cause. In the first place, it appears to the court illogical and absurd that the accused should now wish to rely upon the benefits of that proclamation of amnesty when he not only endeavored to prove an alibi by denying the least connection with the death of Ciriaco Occeño, but also, besides, attributed the death of the said Occeño to other persons. We have read with considerable care all

the reported cases of the Supreme Court of these Islands on the matter of amnesty, and we have observed that the benefits of the same have been extended to accused who, although they did not admit their guilt, yet in their testimony admitted their greater or less participation in the crime charged to them. It has sometimes occurred that the accused did not admit at the hearing of the case, their participation in the crime, yet, in order to receive the benefits of the proclamation of amnesty, they had to subscribe affidavits admitting the commission of the crime. (U. S. vs. Repollo, 2 Phil. Rep., 195, 227.)

"This seems to be the most rational point of view and the one most in accord with common sense, because "amnesty" means "complete pardon and total oblivion of certain political crimes, granted and decreed by the sovereign by virtue of the power and authority conferred upon him by the constitutional law," and illy can it be said that one can be pardoned who does not acknowledge his having been guilty of any wrong, but who, on the contrary, tries to prove his innocence.

"However, we may lay aside these disquisitions and decide, after an examination, of the evidence presented by the accused, Leocadio Pajarillo, whether such evidence really entitles him to the benefits and rights conferred by the Proclamation of Amnesty of July 4, 1902.

"The circumstances that accompanied the death of Ciriaco Occeno are very strange. The deceased at that time held the position of deputy police officer for the revolutionary municipal government of Sapián, and on the same day that Ciriaco Occeno was shot the other municipal officers were captured and detained by order of the accused, Leocadio Pajarillo. After killing Ciriaco Occeno, Leocadio and the people accompanying him passed on to the house of Aguedo Arboleda, Occeno's brother-in-law, who was then deputy collector of revenue, and took him away, bound; then Leocadio ordered barotos to be prepared and they set out in the direction of a barrio in which the president, Elias Oro, was, and captured him also. Simon Tupaz, the vice-president, was also captured. When these facts occurred - that is, in May, 1900 - the revolution in the Province of Capiz had not yet been entirely suppressed and many of the revolutionary chiefs were roaming, dispersed, through the mountains without wishing to submit to American sovereignty, while only a few of the pueblos were garrisoned by American troops. On that day Sapián had not yet been occupied by American troops. Moreover, on the day of the occurrence of all these acts, the death of Ciriaco Occeno and the capture of the other municipal officers of Sapián, Pajarillo counted on the assistance of revolutionary soldiers whom Captain Vito Navarra sent to him from Mambusao. The evidence is at variance with respect to the reason why these soldiers were sent to aid Pajarillo. Vito Navarra testified that he sent these soldiers to Pajarillo because the latter had asked aid to search for some carabaos which had been stolen from him. On the other hand, the accused, Leocadio Pajarillo, testified that he requested that force to aid him in capturing the president and the deputies in Sapián, for the reason that he had conceived them to be traitors to the Filipino cause, as a few days before he had had information that they wished to surrender to the American forces, and that he made such request, moreover, because he believed that the forces at his disposal were unable to effect the said capture.

"The defense introduced as a witness Ananias Diokno, a general of the revolution, who testified that Pajarillo was at that time a jefe stationed in the pueblo of Sapián with his forces of macheteros and some guns. Notwithstanding that the prosecution tried to deny that Leocadio Pajarillo was vested with the character of jefe or revolutionary officer, the record shows sufficient evidence in proof of the fact that he did take some part in the insurrection of the Filipinos against the Americans, or, at the least, that he rendered protection and aid to those who participated in that insurrection.

"However, the Supreme Court of these Islands has decided that the simple fact of a crime having been committed during the revolution, by persons pertaining to the forces thereof, is not a sufficient ground for the granting of amnesty, unless it be proved that the crime committed was of a political nature or grew out of political feuds or dissensions. (U. S. vs. Luzon, 2 Phil. Rep., 380; U. S. vs. Mabilangan, 2 Phil. Rep., 397; U. S. vs. Cajayon, 2 Phil. Rep., 570.) Affirmative proof is required that the crime had its origin in internal political feuds or dissensions and that facts be proved at the trial which bring the case within the conditions prescribed in the said proclamation of amnesty. (U. S. vs. Pascua, 1 Phil. Rep., 631, and U. S. vs. Mabilangan, already

cited.) And it has also been decided that when the evidence adduced in a trial for murder does not show" that the killing was in any way connected with the revolution or due to political motives, amnesty, under the proclamation of July 4, 1902, must be denied. (U. S. vs. Correa, 1 Phil. Rep., 549.)

"Leocadio Pajarillo testified that he captured the ,president, Elias Oro, and his deputies, one of whom was Ciriaco Occeño, because he had information that they were going to surrender to the Americans. The evidence as a whole, adduced at the trial, does not in any manner corroborate the allegation of Leocadio Pajarillo in this particular; the record shows that those captured were as much in sympathy with the revolutionary government as Leocadio Pajarillo himself. Only a month prior to the day of the crime the most influential and prominent men of Sapián resolved, under the presidency of Elias Oro, to collect a monthly subscription of funds for the revolution, in compliance with a circular issued by the general of the expeditionary forces of the province; and, a few days after the crime, Elias Oro himself appeared, not before any American authority, but before Col. S. Hontiveros, who was then camped in Mambusao, to report the vexation to which he was subjected by Leocadio Pajarillo. Judging from the fact that, after the capture of Elias Oro and his deputies, Leocadio Pajarillo set himself up as the chief officer of the pueblo and had himself chosen as its president, it is seen that the real object that Leocadio had in view in capturing the president and his deputies was no other than that of overthrowing and suppressing the former's power and influence in order that he himself might assume the command and political supremacy in the pueblo. It has been insinuated by the defense that this act is one eminently seditious; yet, withal, such seditious act not having been committed nor directed against either the Spanish sovereignty or the American sovereignty, it does not constitute the crime of sedition that is pardoned, as an eminently political crime, under the proclamation of amnesty. We do not believe that the intention of the President of the United States was to include in his proclamation of July 4, 1902, any seditious act whatever not contrary to the sovereignty legally established, in such wise as to comprise under its protection the acts executed by revolutionists against the revolutionary government or its agents, which is what occurred in the present case. Leocadio Pajarillo, by capturing Elias Oro and his deputies, did not rebel against the Spanish Government, nor against the American Government, but against the government of the revolution of which Elias Oro and the other municipal officers were the representatives in the municipality of Sapián.

"The record does not show, either, that the capture of Elias Oro, nor, much less, the death of Ciriaco Occeno, was ordered by a superior, officer of the accused Leocadio Pajarillo. They were the personal and voluntary acts of the said accused. Nor was it proved that by such acts the cause of the revolution was furthered and strengthened, but, on the contrary, such acts were the subject of investigation by the revolutionary authorities themselves. The only question that remains for discussion is whether the capture of Elias Oro and the shooting of Ciriaco Occeno were, in effect, the result of internal political feuds or dissensions between the accused Pajarillo and the municipal officers of that epoch in Sapián. The record of the trial does not reveal the existence of any animosity, prior to the crime, between the accused, Leocadio Pajarillo, and his victims. Both Elias Oro and Ciriaco Occeño and the other deputies, far from belonging to a contrary band, fought with Leocadio Pajarillo himself, in the revolutionary ranks, and neither during the insurrection against Spain, nor during the insurrection against the United States, did Elias Oro and his deputies have dissensions and feuds, of a political character, with the accused. That not all the municipal officers of Sapián were killed, and only one of them, gives much color to the theory that the motive which impelled Leocadio Pajarillo to take the life of Ciriaco Occeno, was a purely personal one, and had no political character and no connection whatever with the revolution. The Supreme Court of these Islands has been quite liberal in its application of the terms of the Proclamation of Amnesty, but, even so, after consulting the precedents, we do not find that its liberality ever extended to cases where, as in the present one, the political character of the crime under prosecution has not been proved in a positive manner.

"In view of all the preceding reasons, our opinion is that the benefits of the amnesty should be denied to the accused, Leocadio Pajarillo.

"The findings of fact established by the court, in view of all the evidence adduced at the trial, are the

following:

"1. That the accused in this cause are the authors, by direct participation, of the death of Ciriaco Occeño.

"2. That the said death, on account of the treacherous and unexpected manner of its execution, must be qualified as murder.

"3. That the accused, Leocadio Pajarillo, has not proved facts which entitle him to be included within the terms of the Proclamation of Amnesty for the purpose of receiving the benefits thereof.

"For all the foregoing reasons, and the concurrence of no other circumstance modifying the responsibility except the qualifying circumstance of treachery having satisfactorily been proven, the court finds that Leocadio Pajarillo, Tranquilino Pajarillo, Juan Pajarillo, and Francisco Orleans are guilty of the crime of murder and sentences each of them to the penalty of cadena perpetua, with the accessories of article 54 of the Penal Code, to indemnify jointly and severally the heirs of the deceased in the sum of P1,000 Philippine currency, and each to pay one-fourth part of the costs of the trial."

After a thorough review of the original record, including the testimony of all the witnesses taken at the trial, we are satisfied, beyond a reasonable doubt, that the evidence sustains the judgment of conviction by the trial judge.

The theory of the defense as presented by the principal witness for the accused, Hermenegilda Oro, the widow of the deceased, corroborated by four alleged eyewitnesses of the crime, is that Ciriaco Occeño was murdered by the revolutionary officer, Vito Navarra, and three of his soldiers; the theory of the prosecution as presented by the complaining witness, Maxima Occeño, sister of the deceased, corroborated by seven alleged eyewitnesses of the crime, is that the deceased was murdered by the four defendants. The deceased was done to death by one party or the other. The contradictions in the evidence of record can not be attributed to possible mistakes of the witnesses as to the identity of the murderers. Leocadio Pajarillo and his codefendants must have been well known, personally, or by sight, to most if not all of the witnesses; and the details given by the opposing groups of witnesses are of such character as to preclude the possibility that they could have mistaken Leocadio Pajarillo and his codefendants for Vito Navarra and his three soldiers. It will be seen at once, therefore, that the adjudication of the guilt or innocence of the defendants necessarily involves a finding that one set or the other of the witnesses testified falsely, and that this false testimony was given knowing it to be false and as a result of a conspiracy entered into for that purpose by the perjurers.

The trial judge was of opinion that the testimony of the witnesses for the defense is false in all its essential and material details, and that the story told by the witnesses for the prosecution is true and furnishes a substantially correct account of the killing of Ciriaco Occeno as it actually occurred. He arrived at his conclusions after seeing and hearing the witnesses testify in open court during the course of a hotly contested trial at which most of them were subjected to rigid and exhaustive cross-examination. We find nothing in the record which puts in doubt the soundness of his conclusions as to the relative credibility of the witnesses and the inferences to be drawn from the testimony furnished by them. On the contrary, we are satisfied that he correctly gauged the value of the evidence, and that the probative facts as found by him were established at the trial beyond a reasonable doubt.

The accurate and quite exhaustive summary of the testimony set out in the opinion of the trial court renders it unnecessary for us to enter at this time upon an extended examination in detail of the evidence of record; we shall limit ourselves, therefore, to an attempt briefly to indicate the line of reasoning, based on a general review of all the testimony taken as a whole, which inclines us to accept the findings of the trial court and strengthens us in our belief that he accurately gauged the respective credibility of the witnesses for the prosecution and the defense.

The defendants are shown to be members of a prominent and influential family in the community where the crime was committed. Since the commission of the crime, one of them, Leocadio Pajarillo, held the office of municipal

president for a period of four years and had been elected a member of the Philippine Assembly not long before this case was brought on for trial; and another, Juan Pajarillo, held the office of municipal president for a period of two years. Through the filing of the complaint and the preliminary proceedings in the court of the justice of the peace they had been fully apprised of the nature of the charges against them, and of the evidence upon which these charges were based, long before the trial was held in the Court of First Instance. Thus they were given every opportunity to concert their defense, and it would seem that if the story told by the witnesses for the prosecution were false, the defendants could not have failed to discover and develop the inherent weakness of such a fabrication and to lay bare the improper motives which, if they were testifying falsely, must have actuated the principal witnesses for the prosecution. And yet the record fails utterly to disclose the existence of any other motive actuating the two sisters and the brother-in-law of the deceased in testifying against these defendants than an intense desire to vindicate the memory and revenge the death of their murdered brother. It is impossible to believe that, without some exceptionally powerful motive, these members of the family of the deceased would enter into a conspiracy to bear false witness against the defendants in this case, and thus fasten such a Crime upon four of their neighbors whom they know to be innocent, and at the same time let the real murderers of their brother go unpunished, well knowing, as they do, who those murderers are; and we find it almost as difficult to believe that if such motive did exist, it could have remained unknown to these defendants. The absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends, under the circumstances of this case, to sustain the conclusion that no such improper motive existed and that their testimony is worthy, of full faith and credit.

True, the widow of the deceased, their daughter, and one of his sisters testified on behalf of the defendants. But proof of the wicked and perverted motive which actuated the widow, and doubtless indirectly influenced those who were subject to her control, is not lacking in the record; and when four members of a powerful, influential and well-to-do family are on trial, with their lives or liberty at stake, it requires no great effort of the imagination to understand that if they are in fact guilty of the crime with which they are charged, motives will not be wanting to induce potential witnesses for the prosecution to forget their wrongs and testify on behalf of the defense. Of course, we would not be justified in assuming such motives for the purpose of discrediting the witnesses for the defense, but absence of proof as to the existence of improper motives actuating some of the witnesses for the defense in this case has by no means the persuasive force in support of their probable credibility that springs from absence of proof of improper motives actuating the principal witnesses for the prosecution.

The witnesses for the prosecution are for the most part ignorant and simple-minded peasants. It appears that the prosecuting witness is not able to read or write. They were assembled at the trial from widely separated municipalities in the Island of Panay, Iloilo, Capiz, Mambusao, Lutugan, and Sigma. The story told by them of the murder, of the local conditions at the time when it was committed, of the incidents which led up to it and of succeeding events, is consistent with itself, convincing in its directness and simplicity, and is marked with all the indicia of truth. Their testimony differed only on matters as to which such differences might naturally be expected, as a result of their different points of observation and their varying individual capacity to recall the details of incidents which took place a number of years prior to the date of the trial. Exhaustive cross-examination instead of serving its apparent purpose, that of impeaching these witnesses, "only added to the weight of their testimony." Able and experienced counsel on appeal have failed utterly to develop any just criticism of the material testimony of these witnesses. Such apparent contradictions, omissions, and inaccuracies as are developed in the brief of the appellants add to, rather than detract from, the credibility of the recorded testimony. While not in their nature of such gravity as to put in doubt the truth of the material testimony of the witnesses for the prosecution, these contradictions and omissions tend very strongly to negative any suggestion that this testimony is a mere fabrication, a story learned by rote before the trial to be repeated, parrot-like, on the witness stand. Thus,

the fact that these witnesses are not in complete accord as to the precise words which Hermenegilda Oro used when she appeared at the window and told the defendants that their victim was already dead, and that they are not all agreed as to the exact number of shots fired, and that none of them attempted to name the defendant whose shot entered the breast of the deceased, in no wise tends to put in doubt the substantial truth of the facts to which they testified, or that they were all endeavoring to give a true account of the incident as they saw it and remembered it, though it does suggest that each of them was speaking from his or her own information and belief; And yet if the story told by the witnesses for the prosecution is false, it must have been fabricated for them by some interested person. Ignorant and simple-minded people that they are, they might have been capable of giving false testimony, but they were utterly incapable of forging a chain of evidence that would bear the slightest resemblance to the truth. Some powerful influence must have been at work to assemble so many false witnesses from different localities and weld their falsehoods together in such a manner that each corroborated all the others, and all were unassailable on cross-examination. Even with the connivance and assistance of the prosecuting officer in charge of the trial in the court below, it would seem that the story told by these witnesses, if false, must have broken down under the cross-examination of counsel instructed by these defendants, intelligent men that they are, and fully and accurately informed as they must have been of the life history of all of the witnesses and of the details of all the occurrences to which these witnesses testified. Without the connivance of the prosecuting officer in charge of the trial in a wicked conspiracy to convict four men known to him to be innocent and acquit four men known to him to be guilty of one of the gravest offenses penalized in the code, it seems to us quite impossible that these ignorant witnesses could have borne themselves in open court so as to deceive the skilled and experienced judge who presided throughout the course of the trial, or that their testimony, when reduced to writing should be unassailable at any material point, despite the rigid scrutiny to which it was subjected by able counsel on appeal. But the record clearly discloses that, the prosecution throughout the course of the trial in the court below, from the time when the information was filed and the witnesses assembled, fifteen days before it began, until the, appeal was taken to this court, was under the direct and active personal control of an American attorney, detailed from the Attorney-General's Office in Manila for that purpose. In the absence of all evidence to connect him with such a conspiracy, and in the absence of any showing that any of the prosecuting officers were directly or indirectly interested in the local feuds or neighborhood quarrels of the distant province where this case was tried, there is no reasonable ground on which to base even a suspicion that they lent any aid or comfort to the alleged conspirators. Indeed, as we have said before, in the absence of all evidence disclosing a motive for the bearing of false witness by the principal witnesses called for the prosecution, or disclosing the existence of a conspiracy to suborn these witnesses, and in view of the convincing character of the testimony given by them, we have no reason to question the findings of the trial court as to their credibility and honesty in testifying to, facts which, if true, establish the guilt of these defendants beyond a reasonable doubt.

If the testimony of the witnesses for the prosecution is true, it follows necessarily that the account of the death of her husband, as given by his widow, Hermenegilda Oro, and the witnesses who were called to corroborate her, is false in all its material details. The Attorney-General's brief contains a critical review of the testimony for the defense, wherein he comments at some length on what he regards as the inherent weakness and the patent improbability of this testimony; but we are compelled to admit that, aside from the powerful impeachment of the testimony of Hermenegilda Oro, which is furnished by the recorded history of this case, we do not find such inconsistencies or contradictions, such palpable improbability or inherent weakness in the evidence offered by the defense, as would justify us in holding it to be false if there were any reasonable doubt in our minds as to the credibility of the witnesses for the prosecution or the truth of the story told by them. Some contradictions there undoubtedly are; the evidence in support of the alibi set up by the different defendants is not very satisfactory; taken as a whole the written record of the testimony submitted by the defense is not convincing, but, as we have said, these defects in themselves are not so marked as to sustain a finding, based solely on a critical review of the

recorded testimony, of the falsity of this evidence beyond a reasonable doubt. Under the circumstances, however, the opinion of the trial judge who saw and heard these witnesses testify is of the utmost value, and he tells us that from their appearance and manner of testifying on the witness stand he was as strongly convinced that they testified falsely as he was that the testimony of the witnesses for the prosecution was worthy of belief. This, together with our belief in the story told by the witnesses for the prosecution, satisfies us as to the falsity of the story told by the defense, and we are confirmed in our conclusion, beyond a reasonable doubt, by the conduct of the widow throughout these proceedings, to which reference is made in the opinion of the trial judge. We agree with the trial judge that the value of the testimony of this witness is practically destroyed by the convincing testimony of the prosecution tending to disclose her illicit relations with the defendant Leocadio Pajarillo before the crime was committed and the continuance of those relations after the death of her husband, taken together with her remarkable conduct in continuing to live quietly in the same province with the four men, who, she now alleges, murdered her husband before her eyes, and only pressing her complaint against them, first in 1906, just at the time when the charges against the defendants were originally filed in the court of the justice of the peace, and again, in the year 1909, just when this case was about to come on for trial.

Accepting, as we do, the material testimony for the prosecution, and rejecting, as we do, the material testimony offered by the defense, the judgment of the court below, convicting and sentencing these defendants must be affirmed, with the costs of this instance against the appellants, unless they are entitled to the benefit of the Amnesty Proclamation by the President of the United States, dated July 4, 1902. In the court below the protection afforded by the plea of amnesty was claimed on behalf of Leocadio Pajarillo; and in this court, counsel urges on behalf of all the appellants that even if the court be of opinion that the evidence sustains the contention of the prosecution that these defendants and appellants are the four individuals who fired upon and killed Ciriaco Occeno, deceased, as charged in the information, nevertheless, upon the facts developed by the Whole record, they are entitled to the benefits of the Amnesty Proclamation.

The declarative portion of the Amnesty Proclamation is as follows:

"Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, by virtue of the power and authority vested in me by the Constitution, do hereby proclaim and declare, without reservation or condition except as hereinafter provided, a full and complete pardon and amnesty to all persons in the Philippine Archipelago who have participated in the insurrections aforesaid or who have given aid and comfort to persons participating in said insurrections, for the offenses of treason or sedition and for all offenses political in their character committed in the course of such insurrections pursuant to orders issued by the civil or military insurrectionary authorities or which grew out of internal political feuds or dissensions between Filipinos and Spaniards or the Spanish authorities or which resulted from internal political feuds or dissensions among the Filipinos themselves during either of said insurrections.

"Provided, however, That the pardon and amnesty hereby granted shall not include such persons committing crimes since May first, nineteen hundred and two, in any province of the Archipelago in which at the time civil government was established, nor shall it include such persons as have been heretofore finally convicted of the crimes of murder, rape, arson, or robbery by any military or civil tribunal organized under the authority of Spain or of the United States of America, but special application may be made to the proper authority for pardon by any person belonging to the exempted classes, and such clemency as is consistent with humanity and justice will be liberally extended."

In the case of the United States vs. Luzon (2 Phil. Rep., 380), this court laid down the following proposition (p. 381):

"To entitle a person to the benefits of this proclamation two things, at least, must concur: (1) He must have participated in the insurrections against Spain or the United States. (2) The crime with which he is charged

must be political in its nature. Common crimes, such as murder and robbery, are not included within the amnesty unless they were committed under circumstances which clothe them with a political character. This court has constantly adhered to this doctrine."

While we are of opinion that the crime of murder committed by these appellants is not one of those included in the Amnesty Proclamation, we are not entirely agreed with the judge of the trial court as to the precise grounds upon which the claims of its benefits should be denied.

We base our denial of the benefits of the Amnesty Proclamation strictly upon the proposition that not only is there nothing in the record which would sustain a finding that the crime of murder of which these appellants are convicted was political in character, but that on the contrary the evidence strongly tends to disclose a motive for the slaying of the deceased wholly inconsistent with such a characterization of the offense.

The trial judge seems to have laid considerable stress on his finding of a failure of proof that at the time when the crime was committed these appellants were participating in an insurrection or in a seditious uprising against Spain or the United States. He was of opinion that the movement headed by Leocadio Pajarillo which resulted in the overthrow of the local municipal officers on the day of the murder was directed rather against the government set up by the leaders of the insurrection than against the sovereignty of the United States, and that it had for its object merely his own material profit, selfish aggrandizement, and political advancement in the municipality where he resided. From these premises the trial judge concluded that whatever political character the offenses committed on that occasion may have had, it did not bring them within the terms of the Amnesty Proclamation.

We think, however, that under the liberal construction which should be given that instrument, the offenses committed by Leocadio Pajarillo and his partisans, which were incident to their attempt to seize control of the municipal insurrectionary government, must fairly be held to have "resulted from internal political feuds or dissensions among the Filipinos themselves" during the insurrection then pending, and that the participants in the overthrow of the local municipal insurrectionary governments were at the same time participants in one of the insurrectionary movements against the United States contemplated in the Proclamation. In applying the provisions of the Amnesty Proclamation we have never stopped to inquire to what degree particular leaders of the various insurrectionary movements may have been impelled by the lust of personal aggrandizement and political advancement, nor have we sought to discover the reasons for the "internal political feuds or dissensions among the Filipinos themselves" to which reference is made in the Proclamation, provided it affirmatively appears that such feuds or dissensions could fairly be characterized as political. We are of opinion, therefore, that all that was done by Leocadio Pajarillo and his partisans on the day of the murder, which under the most liberal construction of the evidence of record can be said to have been an incident to the movement to seize the local municipal, officials and set up a new municipal government, must fairly be held to be included within the provisions of the Amnesty Proclamation.

The question then presents itself, whether the shooting of Occeno was or was not an incident of the political movement participated in by Leocadio Pajarillo and his partisans on the day the shooting took place. This question we think must be answered in the negative, and in this conclusion we are agreed with the trial judge who rested his denial of the plea of amnesty not only on the ground that the political movement led by Leocadio Pajarillo was not such a movement as was contemplated in the Amnesty Proclamation, but that the shooting of Occeno had no political significance whatever, and was merely the outcome of a personal difference with the deceased.

Accepting as true all the evidence of record, including the testimony of the witnesses for the defense, which tends to disclose that, on the day of the murder, Leocadio Pajarillo was at the head of a movement looking to the capture of the local municipal officers and the seizure of control of the local municipal government, and accepting

as true his claim that at that time he was a member of the branch of the insurrectionary forces known as macheteros, and that he joined in the movement against the local officials because he had heard that the acting president of the town was contemplating a surrender to the American forces, we still do not think the evidence is sufficient to maintain a finding that the cold-blooded murder of Occeno was committed in furtherance of that movement. None of the other officials were killed and it does not appear that any attempt was made to kill them. Even the president, against whom it is alleged the suspicion of disloyalty was especially directed, was merely captured, apparently for the purpose of bringing him before higher authority for discipline, or at least to hold him in detention until his captors had secured control of the town. Aside from the personal motive attributed, to Leocadio Pajarillo by the witnesses for the prosecution, no reason suggests itself or has been suggested for the adoption of extreme measures in the case of Occeno. Navarro, whose soldiers were placed at the disposition of Pajarillo on that occasion, testified that Pajarillo reported to him that Occeno had been shot while attempting to escape, thus indicating that no excuse could be found at that time for the deliberate shooting of the deceased. The shooting did not take place under the strain of excitement incident to the movement, or in the heat of an altercation arising out of the unusual incidents of the day. Occeno was shot unarmed at the cold, gray dawn of the day, in his own house, through his partially opened door, without being given an opportunity to recognize his assailants, much less to enter into a discussion with them, or to learn their object in attacking him. The attacking party did not contain any of the revolutionary soldiers who were operating under the orders of Leocadio Pajarillo, but consisted only of Pajarillo himself, his two brothers and his brother-in-law, and it is manifest that they had agreed upon his death before they sought him out at his home. The evidence strongly tends to disclose, if it does not conclusively establish, the fact that the leader of that party was the paramour of the wife of the victim of the tragedy. It is fair to assume that he had reason to fear the enmity of the man he had wronged on the discovery of his illicit relations with his wife. In any event the personal motive for the commission of the crime stands out strongly from the pages of the record, and nothing that is contained therein justifies the conclusion that it was induced by any demand of political necessity or expediency.

We are of opinion, therefore, that the defendants and appellants have not shown that the crime which they committed was political in character; that, while it is true that it was committed on the occasion of an internal dissension among Filipinos during the course of an insurrection, it did not result from such dissension, and that these defendants and appellants are not, therefore, entitled to the benefits of the President's Proclamation of Amnesty.

Ten days hereafter let judgment be entered affirming the judgment of the court below, with the costs of this appeal against the appellants, and ten days thereafter let the record be returned to the court wherein it originated. It is so ordered.

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

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