

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL RODRIGUEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6344. March 21, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal by Manuel Rodriguez, Cipriano Galvez, Raymundo Revilla, Doroteo Rojas, Feliciano Pantanilla, Roman Villaister, Pedro Villanueva, Nicomedes Abella, Sabino Raymundo, Geronimo Guijon, Martin Sauler, Eusebio Bustamante, Victoriano Oalipusan and Valentin Multialto from a judgment of the Court of First Instance of the Moro Province, Hon. Herbert D. Gale presiding, convicting them of the crime of murder and sentencing them each to death.

From the proofs presented by the Government, it appears that the appellants, with nine others, being members of the second company of the Constabulary stationed at Davao, mutinied on the 6th day of June, 1909, attempting, during the course of such mutiny, to kill one of their superior officers, Lieutenant Goicuria; that immediately after such revolt the mutineers, having taken arms and ammunition from the depositary, left the vicinity of Davao and marched toward the mountains of Lipada; that on the 8th day of June, 1909, said mutineers returned to Davao for the purpose of attacking the town; that the inhabitants thereof, having received previous notice of the proposed attack, prepared themselves to meet it; that J. L. Burchfield, P. C. Libby, A. M. Templeton, and Roy Libby, armed with rifles, having been detailed by those commanding the defense of the town, on the afternoon of the day referred to, advanced to the cemetery within the limits of the town, forming an outpost for the purpose of awaiting the coming of the mutineers; that about 4.15 o'clock they sighted the mutineers; that immediately thereafter they heard a shot, followed by others, which came from near the cemetery, where the mutineers had halted and dismounted; that after a few shots had been exchanged Roy Libby was struck with a ball and killed; that the outpost retreated to the convent and took refuge therein; that the mutineers advanced against the town, attacking it at various points and especially the convent, where a portion of the residents of the town had gathered, including the women and children, for the purpose of defending themselves; that no other person except Roy Libby was killed, although several others were more or less severely wounded.

What with the confession of some of the accused, the testimony of others, and the evidence presented by the witnesses for the prosecution, there remains so little a question of fact in this case that it is substantially unworthy of discussion. That the appellants with others revolted against their superior officers on the 6th of June; that they returned to Davao on the 8th and attacked it viciously and persistently, killing one of its defenders and wounding several others; and that they all took a direct and active part therein, is not only absolutely undoubted from the testimony of the prosecution but is substantially admitted by all of the defendants in the case. Some of the appellants sought to defend themselves upon the ground that they had been forced, by threats and intimidation, to take part in the mutiny and the attack upon Davao by other members of the mutineer band. The evidence in no way justifies this defense and it is utterly impossible under any construction of the evidence to sustain it. All of the appellants, however, agree in presenting the defense that they entered the town of Davao on the 8th of June,

not for the purpose of attacking it but for the purpose of surrendering to their superior officers and the governor of the district. Not only is it impossible from the testimony of the prosecution to arrive at such a conclusion of fact, but it is almost as nearly impossible to arrive at such a conclusion from the evidence presented by the appellants themselves. No defense upon the facts worthy of the name has been presented.

As to whether or not there was present premeditation *conocida*, qualifying the crime as murder, a simple reading of the proofs presented by the Government is sufficient to demonstrate that beyond question or doubt. It appears that all of the appellants, on or about the 8th day of June, at about 11 o'clock in the forenoon, went to the house of Genon Rasay, some distance from Davao, in order to obtain information as to whether or not reinforcements had been landed at Davao. On being informed that, to the knowledge of the persons questioned, none had been landed, they asked the elder Rasay to permit them to leave at his house the three women that accompanied them, as they were going to march on Davao and attack it. The appellant Rodriguez also requested that, in case he should be killed in the attack, he, Rasay, should treat one of the women, who was the wife of Rodriguez, as his servant. Having left the women in the house of Cenon, they took up the march to Davao. On arriving near the river Bagoo, they were overtaken by Ignacio Rasay, a kinsman of Cenon Rasay, and suspecting that he was going to Davao for the purpose of warning the town; against the meditated attack, they halted him and told him that, if he should give any warning of their approach, they would cause damage to his family. He having assured them that such was not his purpose, they permitted him to proceed. The appellants continued on their way and arriving at the cemetery near Davao heard a shot, which they claim came from those who had been sent out to watch for their approach. On seeing this advance guard, the accused dismounted from their horses and began to fire forming in a skirmish line and advancing steadily. Overwhelmed by the number of the attacking party, the outpost retreated toward the village, pursued by the appellants. There followed an attack upon the town, more or less general, of the kind and character generally to be expected from such a body of men. The attack was, in a large measure, unsuccessful and the mutineers withdrew when they saw the futility of further fighting.

The learned trial court found premeditation *conocida* as the element qualifying the crime as murder. The learned counsel for the appellants excepts to this finding and asserts that, inasmuch as the appellants did not know even of the existence of the deceased, Roy Libby, at the time of his death, much less that he was at the time in the village they attacked and one of the outpost of four, his death could not possibly have been premeditated. He argues that, in order that the killing be premeditated, the accused must have resolved to kill a predetermined person. We do not stop to discuss this question at length for the reason that it has already been determined by this court adversely to the learned counsel's contention. In the case of the United States vs. The Moro Manalinde, "the accused made up his mind to kill two undetermined persons, the first whom he should, meet on the way, in compliance with the inducement of a third person." In its decision the court said:

"As to the other circumstance it is also unquestionable that the accused upon accepting the order and undertaking the journey in order to comply therewith, deliberately considered and carefully and thoughtfully meditated over the nature and the consequences of the acts which, under orders received from the said Datto, he was about to carry out, and to that end provided himself with a weapon, concealing it by wrapping it up, and started on a journey of a day and a night for the sole purpose of taking the life of two unfortunate persons whom he did not know, and with whom he had never had any trouble; nor did there exist any reason which, to a certain extent, might warrant his perverse deed. The fact that the arrangement between the instigator and the tool considered the killing of unknown persons, the first encountered, does not bar the consideration of the circumstance of premeditation. The nature and the circumstances which characterize the crime, the perversity of the culprit, and the material and moral injury are the same, and the fact that the victim was not predetermined does not affect nor alter the nature of the crime. The person having been deprived of his life by deeds executed with deliberate intent, the crime is considered a premeditated one, as the firm and persistent intention of the accused from the moment, before said death, when he received the order until the crime was

committed is manifestly evident. Even though in a crime committed upon offer of money, reward or promise, premeditation is sometimes present, the latter not being inherent in the former, and there existing no incompatibility between the two, premeditation can not necessarily be considered as included merely because an offer of money, reward or promise was made, for the latter might have existed without the former, the one being independent of the other. In the present case there can be no doubt that after the crime was agreed upon by means of a promise of reward, the criminal by his subsequent conduct showed a persistency and firm intent in his plan to carry out the crime which he intentionally agreed to execute, it being immaterial whether Datto Mupuck did or did not conceive the crime, once Manalinde obeyed the inducement and voluntarily executed it." (U. S. vs. The Moro Manalinde, 14 Phil. Rep., 77.)

The trial court found that the crime charged was committed with the aggravating circumstances following:

8. When craft, fraud or disguise is employed.
9. When advantage is taken of superior strength or means are employed to weaken the defense.
10. When the act is committed with abuse of confidence.
11. When advantage is taken by the culprit of his public position.
13. When the crime is committed on the occasion of a fire, shipwreck, or other calamity or misfortune.
15. When it is committed at night, or in an uninhabited place, or by a gang.
16. When the crime is committed in contempt with insult to the public authorities.

As to number 8:

We do not believe that this circumstance was present. This circumstance is characterized by the intellectual or mental rather than the physical means to which the criminal resorts to carry out his design. This paragraph was intended to cover, for example, the case where a thief falsely represents that he is the lover of the servant of a house in order to gain entrance and rob the owner (*astucia*); or where (*fraude*) A simulates the handwriting of B, who is a friend of C, inviting the latter, without the knowledge of B, by means of a note written in such simulated hand, to meet B at a designated place, in order to give A, who lies in wait at the place appointed, an opportunity to kill C; or where (*disfraz*) one uses a disguise to prevent being recognized; and cases of that class and nature.

We are unable to find from the facts proved any element which warrants the conclusions of the learned trial court as to the presence of this circumstance in the commission of the crime of which the appellants were found guilty. They boldly marched from the mountains of Lipada to Davao, partly, at least, in the daytime, with the purpose of attacking the town, which purpose they communicated to at least three persons, one of whom was permitted to precede them to the town. They advanced against the town at about 4.15 in the afternoon without any effort at concealment. They were in no way disguised, but, on the contrary, each wore the greater portion of the Constabulary uniform in which he was clad at the time of the mutiny. While it appears that some of them had cloths wrapped about their heads, it does not appear that this was done as a disguise, but was following rather the custom of the country in which they had been reared. We find in all the case nothing of craft, fraud or disguise.

As to number 9:

This circumstance depends upon the relative strength of the one attacking and the one attacked. It can hardly be said that advantage is taken of superior strength or means are employed to weaken the defense when twenty-three men, in the daytime, openly and without stratagem of any kind, attack a town of the size of Davao. The results of the attack clearly show that the strength of the attacking party was not sufficient to accomplish the purpose in view. They demonstrate, under the circumstances, that no means were employed to weaken the defense, outside of

such as are inherent in the situation when one body of men attacks another with deadly weapons.

As to number 10:

For the existence of this circumstance it is necessary that there exist a relation of trust or confidence between the person committing the crime and the one against whom it is committed and that the former make use of such relation to commit the crime. For example, where one commits a robbery in a house in which, as a friend of the owner, he is at the time a guest. No relation of this nature existed between the appellants and the citizens of Davao or the deceased. The evidence fails to disclose a single fact upon which the existence of this relation can be based.

As to number 11:

In order that this aggravating circumstance exist it is necessary that the person committing the crime be a public official and that he use the influence, prestige or ascendancy which such office gives him as the means by which he realizes his purpose: The essence of the matter is presented in, the inquiry, "Did the licensed abuse his office in order to commit the crime?" We do not believe that the facts of this case warrant the finding of the trial court in this particular, (Supreme court of Spain, decisions of 4th March, 1872; 18th December, 1871.)

As to number 13:

The reason for the existence of this circumstance is found in the debased form of criminality met in one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune to despoil them.

As is readily seen from the facts, no such condition as is described in this paragraph existed in Davao on the occasion of the attack.

As to number 15:

The second paragraph of this subdivision reads:

"The courts shall take this circumstance into consideration according to the nature and characteristics of the crime."

In this case, under all the circumstances, including those presented in the discussion relating to paragraph 9, the fact that there were more than three armed persons in the attacking party is not sufficient to call for the application of the provisions of this paragraph.

As to number 16:

The supreme court of Spain has held "that the circumstance of contempt of or insult to public authority, provided for in paragraph 16 of the Penal Code, can exist only when such authority is engaged in the exercise of its functions and he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed in which that circumstance appears;" the court further saying that such aggravating circumstance was not present in the case before it "because D. Jose Torres, although he was municipal judge, was the object of the murder involved in that case."

In the case at bar, if the crime was committed with contempt of and insult to the public authorities, those authorities must have been the public authorities of Davao. But the persons exercising that authority were the very persons against whom, among others, the crime charged in this action was being committed.

After diligent investigation and extended consideration; we have been unable to find that any aggravating circumstance attended the commission of this crime.

There being present no aggravating circumstance and there existing no extenuating circumstances, the penalty imposed must be in its medium degree.

The judgment of the court below is hereby modified and the appellants are each sentenced to cadena perpetua, to the accessories provided by law, to pay, jointly and severally, to the heirs of the deceased Roy Libby the sum of P1,000 and to pay the costs of the trial.

So modified, the judgment is affirmed, with costs against the appellants.

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

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