

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO BALAGTAS AND GREGORIO JAIME, DEFENDANTS AND APPELLANTS;

G.R. No. 6432. March 22, 1911

Ponente: TRENT, J.

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TRENT, J.:

The defendants in this case, Pedro Balagtas and Gregorio Jaime, were convicted of the crime of murder by the Court of First Instance of the city of Manila, Hon. Charles A. Low presiding, and each sentenced to the maximum penalty of death. Jaime appealed, and the case as to Balagtas is before us en consulta.

The two defendants lived in the same house on Calle Lemery, district of Tondo, city of Manila. About dark on the 4th day of May, 1910, the deceased, Simeon Flores, visited the house where the defendants were living and about thirty minutes after arriving the deceased and the two defendants left the house, going toward Gagalangin, passing along Calle Lemery where they saw Valentin Franco and Braulio Capulong conversing in front of Franco's house. Franco asked Balagtas where they were going and received the reply: "We are just going there," without mentioning any particular place. When the deceased and the two defendants arrived at the place on Calle Gagalangin where the street car track crosses, the three turned and entered a narrow street (callejon) which leads to the railroad track. They continued some distance along this street, walking in single file, the deceased being in the center. When they were about ninety yards from any house and while in an obscure place on the railroad track, at about eight o'clock at night, the deceased was knocked down, and while down was struck two or three blows in the face and rendered practically unconscious. While in this unconscious condition, but still groaning, the two defendants, one taking him by the head and the other by the feet, carried him across the embankment, which was alongside the railroad track, and threw him into a small pond of water, face downward. The defendants then returned to their house. The deceased remained in that position until the following day when his body was found there by the policemen Hartpence and Solis who conducted the body to the morgue where it was later identified as that of Simeon Flores by Valentin Franco, a friend and neighbor of the deceased.

No one except the deceased and the two defendants were in that immediate vicinity when this crime was committed so as to how and under what circumstances the deed was executed we must look to the confessions and testimony of the defendants and the wounds upon the body of the deceased.

Pedro Balagtas was arrested on the morning of May 6, 1910, and Gregorio Jaime was arrested on that same afternoon. Each of these defendants, in the presence of George R. Hartpence, Catalino Fernandez, and Eugenio Dizon, on the same day of their arrest, gave a detailed statement leading up to and the cause of the death of Simeon Flores. In his confession, Pedro Balagtas stated that the deceased was knocked down by Gregorio Jaime, and while upon the ground Jaime struck him two or three times in the face; while, on the other hand, Jaime stated that these acts were performed by Balagtas. These two men were taken by Hartpence separately and each pointed out the exact place where the killing occurred.

Pedro Balagtas, testifying in his own behalf, said:

"I had come from work I was doing at 6 o'clock and Simeon Flores called Gregorio Jaime and myself. I went with them and while we were walking, Simeon Flores bought some vino and gave it to Gregorio. Then we walked towards Gagalangin and when we got in front of the switch we turned into an alley. When we went into this alley Simeon Flores said he was going to see a friend of his on Calle Solis; that he was going to a duplo party; we kept on walking until we got to the railroad tracks. I was walking ahead and suddenly I heard them quarreling behind me. I did not pay any attention to them at first because, in the first place, I am sick and I did not want to meddle in their affairs. When they were quarreling I suddenly heard Simeon Flores fall behind me and I looked back and saw Simeon Flores with his face down on the ground. I heard Simeon Flores ask Gregorio Jaime why Gregorio did not give him the things he promised to give him.

"Gregorio pulled the body to where there was water and he asked me to help him and said if I didn't help him he would implicate me too. As I could not fight with him I helped him with my arms. He took hold of both knees of the man and I took hold with my one arm and I pushed the body into the water. He (Flores) was still groaning. I never had a fight with him (Flores) and we never quarreled. He (Gregorio Jaime) killed Simeon Flores with a piece of wood something like a board was all I could see. Gregorio and Flores had been drinking some vino.

"Q. Why did you not notify the officers about that? - A. He (Gregorio) told me that if I should report this matter I could never be sure of my life.

"Q. Did you make any confession to him (Hartpence) ? - A. I told him exactly what I have stated here. I told him that. I pointed out the place to him where this crime was committed."

The other defendant, Gregorio Jaime, related what occurred in the following language:

"When I returned from work about 6 o'clock on the evening of May 4, Pedro Balagtas and Simeon Flores were at my house. He, Pedro, asked me to loan him ten cents. He said he was going to send for some vino so he could start his meal. I gave him the ten cents and he gave it to my wife and sent my wife to buy some vino. When the vino arrived he took his supper and Simeon Flores drank some vino. Then after he had his supper Pedro said, let us go to the duplo, and Simeon Flores said, 'That is right, let us take Gregorio with us.' I asked them where the duplo was and Pedro said, 'At my compadre's house, at Palampo.' Then we started and dressed up and went to Calle Lemery; we met on our way Valentin Franco and another man and Valentin Franco asked Pedro where he was going and Pedro said, 'We are just taking a walk,' Then we walked on towards Gagalangin. When we got down on the other side of the bridge there is a Chino store and the two of them went in and drank some vino. When we got into the alley I saw that Pedro had a club, and I asked Pedro where he had that club because I did not see it before, and he said he had it stuck inside his shirt. I asked him why we had come through Gagalangin because I understood we were going to Palampo; he said he was going for a friend; he was going to get a friend there. We walked on ahead through the fish ponds in the direction of the railroad tracks. When we came near the railroad track we went towards the place where there was a pond and from there went toward Calle Solis. When we were some distance from the railroad track, about from here to that house (indicating Justice Johnson's house, estimated at one hundred yards distance), I was ahead of them and they were together by the railroad track. I heard a noise and I turned my face and I saw Simeon Flores with his face down. And I saw Pedro Balagtas strike him again on the neck with a piece of wood, a square piece of wood. When I saw him strike Simeon Flores again with the piece of wood I ran away and Pedro called me and said, 'Why are you running away ? If you don't come back I will report you as one of the authors of this.' So in view of that I returned to that place where he was and I stood at a distance from him about that far (five feet). I stood there and I saw Pedro turn over the body of Simeon Flores and strike him again three times on the neck. He told me when we went back to the house that the reason he killed Simeon Flores was because he had ill feelings for him.

"Q. Did you help put the body into the water? - A. He asked me to help him and I pushed the body, but I did not use my arms to help him.

"Q. Who took the clothes off the deceased? - A. When we were near the ditch he asked me to help him and I saw Pedro Balagtas take off his clothes.

"Q. What did you do that for? - A. I don't know what he did it for because the train was coming and then I told him "The train, the train is coming now, but he did not leave the place. When I saw the train coming I started to run away and he followed me, carrying with him the clothes."

The body of the deceased was examined on May 5 by Dr. Oscar Teague who holds an M. D. diploma from the University of Berlin. The doctor, who was called as a witness, on being asked to state the result of his examination, or autopsy, replied as follows:

"It was the body of a large Filipino man. There was indication that the man had been dead for some time. I found on the lower side of the face, just below the jaw, three wounds each about two centimeters and a half long, the edges of the wounds being smooth, with no contusions. There was considerable swelling of the right side of the face and on the right side of the neck extending almost from the right ear down to the lower part of the neck. On cutting through the skin of this region there was found to be a large amount of blood underneath the skin and outside of the blood vessels. On seizing the jaw about the middle it was found to be easily moved from side to side and on passing my finger into the mouth I found that the jaw was completely fractured in two places. On the right side about two centimeters from the median line - from the middle and on the left not quite so far. On the back of the neck, just below the lower mark of the hair line there was a wound about six centimeters long. This passed clean through the skin and the edges were smooth. There was no contusion in the neighborhood of this wound.

"The internal organs with the exception of the Jungs were, so far as I could determine, uniform. The man had been dead for some time, but so far as I could determine the organs were all uniform. The lungs were full, very largely extended. On opening the chest they bulged forward whereas ordinarily the lungs are collapsed and on following up the bronchial tubes I found particles of food matter - vegetable food matter extending deep into the lungs, especially into the right one. Evidently the man had been vomiting and inhaled these particles into the lungs. The wound at the back of the neck was slight. The wounds under the jaw were not of a nature to indicate that they were the cause of the death. There was a considerable loss of blood but I would not consider that it was enough lost to cause death. But considering from the lungs the cause of death may have been from suffocation. The fact that the blood inside of the heart was not clotted would also indicate that suffocation may have taken place. But I am unable to state definitely the cause of death. It may have been from a contusion of the brain, this being evidently a severe blow which caused the fracture of the jaw. There was not hemorrhage in the brain, nor fracture at the base of the skull. The wounds were evidently made with a cutting object of some kind as they were about the same length; the three wounds under the jaw could have been made by the same instrument. The general direction of the wounds indicate that the instrument passed through the skin and went directly to the jaw. There was no indication that the jaw was dislocated at the swing, and the large blood vessels of the neck, so far as I could determine, were not injured. The wounds were the cause of his death - the direct cause possibly. The indications were such that death may have been due to suffocation. The disturbed condition of the lungs and the blood in the heart were all evidences of suffocation."

There is no material difference between the confessions made by the defendants in the presence of Hartpence, Fernandez and Dizon and their testimony given on the trial. The defendants themselves do not contradict each other in a number of material details. They practically agree as to the time that they, in company with the deceased, left the house, the route travelled, the house and place of the killing, and as to their return together. While they agree that at the time Flores was knocked down they were walking in single file, with the deceased in the middle, they do not agree as to which one was in front nor as to which one knocked the deceased down. Balagtas says that he was walking in front; that he heard them (the deceased and Jaime) quarreling behind him; that he heard Flores fall and that when he looked around he saw Flores with his face on the ground and Jaime striking him two or three times while he was down. Jaime testified that he was ahead and that Balagtas, who was

behind, knocked Flores down. They both admit having assisted in throwing Flores' body into the water.

The record clearly establishes the guilt of each of the defendants as principals of having caused the violent death of Simeon Flores. The trial court qualified this crime as murder, saying:

"The element of treachery is clearly shown by the evidence, and also that of premeditation. There are also two aggravating circumstances, to wit; that the crime was committed at night and in an uninhabited place."

If there were present in the commission of this crime either one of the qualifying circumstances - alevosia or known premeditation - the crime would be that of murder. There is not the slightest proof in the record to show that the defendants had, prior to the moment of the killing, resolved to commit this crime, nor is there any proof that the death of Flores was the result of meditation, calculation, or reflection. But on the contrary the record discloses that the defendants were, before leaving the house, engaged in a friendly conversation with the deceased, bought and drank some vino, and agreed to go out for a walk and visit the duplo-a debating society. On their way to this place they stopped and conversed with Valentin Franco, and also they, or at least two of them, stopped in a tienda and took another drink. In the absence of proof of overt acts showing that the defendants had meditated upon the commission of this crime prior to its execution, it was error to hold that the deed was committed with known premeditation, (U. S. vs. Donoso, 3 Phil. Rep., 234.)

The Attorney-General is of the opinion that there was present the qualifying circumstance of alevosia.

"There is treachery (alevosia) when the culprit commits any crime against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal, arising from the defense the injured party might make. (No. 2, art. 10, Penal Code.)

It is not contended that the defendants did, prior to or at the commencement of the attack, use or employ any means or methods which can legally be regarded as treacherous. But it is insisted that the fact that the defendants threw the deceased into the water, face downward, while he was still alive and in a helpless and defenseless condition, constitutes treachery. With this proposition we can not agree. When the body was examined by the doctor, three wounds, each about two and one-half centimeters in length, were found on the lower part of the face. The jaw was fractured in two places. There was also on the back of the neck, just below the hair line, another wound about six centimeters in length which passed through the skin. On cutting through the skin at three places near these wounds a large amount of blood outside of the vessels, was found. The internal organs, except the lungs, were uniform. The doctor was not certain whether the wounds, or the suffocation, or both, was the cause of the death of the deceased. But assuming that the deceased would have recovered from the effects of the four wounds, if he had not been thrown into the water, yet we still think that the proofs fail to show that there was present treachery, as the knocking down of the deceased, striking him while on the ground, and throwing him into the water were all done in so short a time and one movement followed the other in such rapid succession, constitute one and the same attack. In order that treachery may be considered as a qualifying circumstance to raise the classification of the crime, or as an aggravating circumstance to augment the penalty, it must be shown that the treacherous acts were present at and preceded the commencement of the attack which caused the injury complained of. After the commencement of such an attack and before its termination an accused person may have employed means or methods which were of a treacherous character, and yet such means or methods would not constitute the circumstance of alevosia. One continuous attack, such as the one which resulted in the death of the deceased Flores, can not be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein and considered as a qualifying" or aggravating circumstance.

Nocturnity is not necessarily an aggravating circumstance, and the same should be taken into consideration

according to. the circumstances surrounding the commission of the crime. Where it is not evident that the defendants had purposely sought the nighttime to perpetrate the crime, nocturnity can not be considered as an aggravating circumstance. While it is true that the defendants in the case under consideration killed the deceased about eight o'clock at night, it is not shown that they purposely sought this hour for this purpose.

As to the aggravating circumstance of the crime having been committed in an uninhabited place, also taken into consideration by the court below, the record discloses that this crime was committed on the railroad tracks, within 90 yards of inhabited houses. The houses were sufficiently near for the inmates to have heard calls for help if the deceased had cried out in a loud voice,

"An uninhabited place is one where there are no houses at all, a considerable distance from town, or where the houses are scattered at a great distance from each other." (U. S. vs. Salgado, 11 Phil. Rep., 66.)

In the commission of this crime there not having been present any of the qualifying circumstances set out in article 403 of the Penal Code, the crime must be classified as that of homicide, and in the absence of any of the extenuating or aggravating circumstances mentioned in articles 9 and 10 of said code, the penalty must be imposed in its medium degree.

The judgment appealed from is, therefore, reversed and each of the defendants is condemned to fourteen years, eight months, and one day reclusion temporal, to indemnify, jointly and severally, the heirs of the deceased in the sum of P1,000, to the accessory penalties as provided by law, and each to pay one-half of the costs. So ordered.

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

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