

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FILOMENO DE TORRES, DEFENDANT AND APPELLANT.***G.R. No. 6771. January 09, 1912*

Ponente: ARELLANO, C.J.

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On July 8, 1908, Nicomedes Pasia, an itinerant peddler, accompanied by his son Candido, about 12 years of age, arrived from his town of Ibaan, Batangas, at the town of Pagsanjan, La Laguna. There he found his brother, Santos Pasia, and lodged in the latter's house, wherein also lodged Albino Magtibay and Filomeno de Torres. Before returning to Ibaan, Nicomedes Pasia counted the proceeds of his sales and found them to be P540.50, an operation which Magtibay and Torres witnessed.

The next day Nicomedes Pasia and his son Candido took the steamer for Calamba, and Magtibay and Torres also embarked in the same steamer. On the morning of July 10. Torres, Magtibay, the boy Candido, and Nicomedes Pasia were seen, one behind the other, in the road that passes through a barrio of Lipa adjacent to a barrio of Ibaan. On the same morning they were seen ascending the slope of a trail in a wooded spot called Madrecacao, and also when they were descending the slope, each with a bundle, the boy Candido in front, behind him Magtibay, then Nicomedes Pasia and Torres last. The traveler who had met them in the road leading down the slope heard the boy soon afterwards crying out: "Why are you killing my father?" This caused him to turn back to the place whence the cry came, and concealing himself in the underbrush he saw at a distance of some 20 feet Nicomedes stretched out on the ground and Torres dragging him by the legs in order to remove him to a place covered with bushes, while Magtibay was chasing the boy.

It was about 10 o'clock in the morning of that same day when Magtibay and Torres were seen also at some 1,500 yards from the said sitio of Madrecacao with their hands and the cuffs and bosoms of their shirts stained with blood, going in the direction of the town of Rosario. At noon Magtibay and Torres arrived by calesa at an eating place in the pueblo of Rosario, where they met an acquaintance, whom they cautioned not to tell that he had seen them at that time and place. On the following day, the 11th, the corpses of Nicomedes Pasia and Candido Pasia, almost beheaded and partly disemboweled, were found in the sitio of Madrecacao. From that time on, Magtibay and Torres appeared no more around Ibaan. The first to be arrested was Magtibay, upon whom was pronounced sentence of death, which was affirmed by this Supreme Court, as appears on page 151 of volume 9 of the Official Gazette.[1] When Torres was arrested, the present cause was prosecuted against him and he was therein sentenced to the same penalty.

The sentence, which comes before us for review, is entirely suited to the merits of the case and in conformity with law, according to the minute exposition of the conclusions of fact and of law on which it is based, in the aforesaid decision already published in the Official Gazette, to which we refer throughout, as the merits of that case are identical with those of the case at bar.

But the defense in this instance avers that there is no ground for holding that there was either deliberate

premeditation or the circumstances of superior strength and uninhabited place; and that therefore Filomeno Torres should be sentenced only to life imprisonment.

The penalty for the complex crime of robbery with homicide is life imprisonment to death. (Penal Code, 503, 1.)

As established in the judgment cited, there is no mitigating circumstance that can be held in the accused's favor. And this Supreme Court has constantly refused to apply article 11 of the Penal Code in favor of persons convicted of robbery, much less those convicted of robbery with homicide.

It being established that when the penalty prescribed for the crime be composed of two indivisible ones, as in the present case, the greater will be applied if in the act there concurred any aggravating circumstance, it necessarily follows that in this case, where the penalty provided is life imprisonment or death, the greater must be applied, especially as there is no mitigating circumstance to offset the generic aggravating circumstances of deliberate premeditation, abuse of superior strength and uninhabited place.

The defense claims that none of these three should be taken into account and argues against the facts held by the lower court to demonstrate the elements that constitute such circumstances; but a proper estimation of these circumstances has already been made in the decision in the case against Magtibay, to which we have referred.

What might have been averred is that deliberate premeditation, according to the precedent established by this Supreme Court, is inherent in the crime of robbery and should not be taken into account separately.

"It is incontrovertible—says a decision of the supreme court of Spain—and quite evident, that for its execution the crime of robbery requires in the majority of instances, and always when employing force on things, some premeditation, wherefore this court has repeatedly declared that this circumstance should be regarded as inherent in said crime." (Decision of December 7, 1885.)

But the same court has also laid down the principle, strictly applicable to the case at bar, "That if the trial court considers deliberate premeditation as an aggravating circumstance, isolating for the purpose of such characterization the established fact that the culprit took pains to accompany the persons robbed for the purpose of consummating the robbery in a place which seemed to him best suited therefor, it is beyond doubt that he does so intentionally, because this conduct on the part of the accused demonstrates studied and persistent thought, which characterizes said circumstance in accordance with intelligent construction of the law and the legal precedents established." (Decision of February 25, 1881.)

The judgment appealed from is affirmed, with the costs of this instance.

Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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[1] 17 Phil. Rep., 417.

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