

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO CALLAPAG, DEFENDANT AND APPELLANT.

G.R. No. 7041. January 23, 1912

Ponente: CARSON, J.

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CARSON, J.:

In this case Juan Queja, Lino Barbaran, Eduardo Castañeda, Melecio Antonio, and Francisco Callapag were charged by the fiscal of Isabela Province with having assassinated one Geronimo Canmayo.

Before pleading to the complaint and on motion of the fiscal the charge was dismissed as to Eduardo Castañeda and Melecio Antonio for lack of evidence against them. After pleading to the complaint and before entering upon the trial, the fiscal entered a motion to dismiss the case against Juan Queja and Lino Barbaran, in order that they might be used as witnesses for the prosecution. This motion was granted by the court, and of the five defendants originally accused of this murder only Francisco Callapag was actually placed on trial. He was found guilty as accessory after the fact (*encubridor*), and was sentenced to twelve years and one day of reclusion temporal and to the payment of the costs of the proceedings. From this judgment of conviction he has now appealed to this court.

It appears that Geronimo Canmayo on July 1, 1910, was appointed a corporal of police of the municipality of San Pablo, Isabela Province, and that he was killed by wounds inflicted upon him with cutting instruments on the night of July 5, 1910. The motive for the crime, suggested, but not quite satisfactorily established, was jealousy and enmity between the deceased and the accused, who were policemen in that municipality.

The prosecution introduced four witnesses, two of whom were the above-mentioned Juan Queja and Lino Barbaran, former co-defendants of the appellant. A careful examination of the testimony of these witnesses satisfies us that the appellant, jointly with these two witnesses, and perhaps others, attacked and killed the deceased on the night of the 5th of July, 1910. The statements of these witnesses are not wholly consistent. Each of them was manifestly influenced in making his statement by an anxious desire to minimize his own guilt, and to make his participation in the commission of the crime appear as slight as possible. As a result there are some contradictions in their evidence, and some inconsistencies in the statements of each. But reading all of their testimony together, and keeping in mind the admissions of the accused himself, we are convinced beyond a reasonable doubt that the accused joined with them in unlawfully doing the deceased to death.

The trial judge, although he appears to have been morally convinced of the guilt of the accused, held that the defendant could not be found guilty upon the uncorroborated testimony of his accomplices; the more so, that their statements are somewhat contradictory and in some respects inconsistent. He found that the defendant was not proven guilty as principal. He, however, found him guilty as an accessory after the fact (*encubridor*) and sentenced him to twelve years and one day of reclusion temporal, basing his conclusions strictly upon the admissions of the appellant that he knew of the commission of the crime, was present immediately after it had been committed, and did not report it to the authorities.

The Attorney-General does not take issue with the judge of the lower court in his finding that the evidence was

not sufficient to convict the defendant as principal, the testimony of the accomplices not having been corroborated; nor does he question the finding of the trial judge that the defendant should have been convicted as an accessory after the fact (*encubridor*). But he suggests that the penalty of twelve years and one day of reclusion temporal is not the penalty prescribed by law for an accessory after the fact, and asks that it be reduced to two years eleven months and twelve days of *prision correccional*. In this recommendation the fiscal is manifestly correct if the defendant was properly convicted as an accessory after the fact. This court has on a number of occasions, however, decided that the mere silence of one knowing of the commission of a crime is not an offense under the Penal Code and does not in itself make the person an accessory after the fact. In the case of the United States vs. Romulo (15 Phil. Rep., 408) we considered at some length this precise question. In the case of the United States vs. Caballeros (4 Phil. Rep., 350) we stated that it was not an offense punishable under the Penal Code to refrain from reporting an offense to the proper authorities. We held in the case of U. S. vs. Romulo (*supra*) that if a party actually and actively deceives the authorities with reference to the commission of the crime of murder, or offers assistance to the perpetrators of the crime, enabling¹ them to escape the vigilance of the authorities, then such a person is an accessory after the fact, but as we have before observed there is a distinction between such conduct as this and mere silence and nothing more. Adhering to the doctrine previously established and followed by this court, we do not think that the defendant could be held as an accessory after the fact merely because he did not report the offense to the proper authorities.

As we have said, however, we are of opinion that the evidence is sufficient to establish defendant's guilt as principal. This court has frequently discussed the question of the admissibility of the testimony of accomplices and the relative weight to be given to their testimony, and while we have announced that the testimony of an accomplice should be received with great caution and weighed with scrupulous care we have nevertheless definitely held that it is competent and admissible. (U. S. vs. Ocampo, 4 Phil. Rep., 400.) This case was again before the court upon a motion for a rehearing. (See U. S. vs. Ocampo, 5 Phil. Rep., 339.) In our decision upon this motion the court said: "It is contended, however, that the evidence in this case rests on the uncorroborated testimony of accomplices, and this court is requested to lay down the rule that a finding of guilt can not be sustained upon such evidence. We are of opinion, however, that the lack of corroboration merely affects the credibility of the witness, and in no wise affects his competence, and that if his testimony satisfies the court as to the guilt of the accused, beyond a reasonable doubt, it is sufficient."

In the present case, the testimony of the witnesses Lino Barbaran and Juan Queja, together with the admissions made by the defendant himself and the statements of Dominga Bulan, satisfy us, beyond any reasonable doubt, of the guilt of the accused.

The defendant acknowledges that he was in the neighborhood of the crime; he claims that he left his house and followed Lino Barbaran and Juan Queja down to the river bank when they came and reported that "the thing had been terminated;" he offers no satisfactory explanation of his conduct in this connection. He was present when the body was disposed of and had full knowledge of the whole affair. Upon a consideration of the whole case and of the evidence of the witnesses for the prosecution, we conclude that he acted as a principal jointly with others, was present when the crime was committed, and took part therein, and we so find. We do not undertake, however, to lay down the precise conditions under which the crime was committed, nor to hold that there were any qualifying circumstances other than that of nocturnity.

We therefore convict the defendant of the crime of homicide, with the aggravating circumstance of nocturnity, and, reversing the judgment and sentence of the court below, we impose upon him the penalty of seventeen years four months and one day of reclusion temporal, together with the accessory penalties prescribed by law, and the costs in both instances.

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

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