

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS CUEVA AND PLATON CUEVA, DEFENDANTS AND APPELLANTS.

G.R. No. 7162. December 03, 1912

Ponente: MAPA, J.

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MAPA, J.:

This case was prosecuted for the crime of murder. Upon the evidence adduced therein the Court of First Instance found the two defendants guilty and sentenced them to the penalty of fourteen years eight months and one day of reclusion temporal, to an indemnity of P1,000 to the heirs of the deceased, and to payment of the costs of the trial; from which judgment they appealed to this court. While the appeal was pending the defendant Tomas Cueva died and the case is therefore dismissed with respect to him, wherefore this decision deals only with other defendant, Platon Cueva.

And his guilt is certainly proven in the case. The evidence amply demonstrates that said Platon cooperated in the execution of the deed by holding the victim by the right arm while his brother and codefendant inflicted the wounds that produced death. The responsibility he has incurred by virtue of such cooperation, without which the deed could not have been committed in the way it was, is beyond doubt that of principal, as was rightly held in the judgment appealed from.

The Attorney-General maintains in his brief that the crime should be classified as murder and not homicide, from the concurrence in its commission of the qualifying circumstance of treachery (alevosia), for, he maintain, when Platon held the victim by the right arm, he prevented the latter from defending himself, and what is still worse kept him from fleeing from the danger that threatened his life.

In support of his contention the Attorney-General cites the case of *U. S. vs. Feria et al.* (2 Phil. Rep., 54), wherein this court laid down the principle:

"Where the deceased was suddenly seized and held by one defendant while the remaining defendant inflicted mortal wounds upon him, the necessary element of treachery (alevosia) is present, even tho deceased was armed with a pistol at the time of the killing."

The deceased's widow, the only eyewitness, relates what she saw, with reference to the way or manner in which the assault was committed in the case, as follows:

"The death," says the witness, "occurred in that Platon Cueva held his hand and Tomas caused it; that is, it was he who struck the blow in the left side.

"Q. How and in what way? - A. That morning, while I was suckling my infant, my husband went toward the beach, and thereupon I heard the voice of my husband saying to them: 'Why are you going to kill me?' and then I saw that my husband was covered with blood and Tomas Cueva was withdrawing a sharp piece of bamboo."

She added immediately that he was withdrawing it from the left side of the deceased and that Platon Cueva was holding him by the right arm.

* * * * *

"Q. Who first reached the place to which you refer, your husband or Tomas? - A. I don't know who arrived first; I only looked there after heard my husband's voice saying: 'So you're going to kill me?'"

"Q; It is true, is it, that you knew nothing more about the death of your husband than you heard from him? - A. Upon hearing my husband's voice I was at once seized with fear, for a day had not passed since the question before the teniente, and in fact when I looked out of window I saw Tomas pulling the piece of bamboo out of my husband's body and Platon Cueva just letting go of my husband's hand."

From the foregoing it clearly appears that the witness did not see the commencement of the affair or the beginning of the assault that resulted the death of the victim, for when she looked out of the window of her house, alarmed by the words she had heard him utter, she saw him already covered with blood and at that instant one of the defendants was releasing his right arm and the other was withdrawing the weapon with which he had just wounded him in the left side. The witness did not see the whole or the way in which it developed, but only one phase of it, or rather end or conclusion of it. What she saw and averred at the trial does no exclude the possibility that a quarrel or struggle between the deceased the defendants may have immediately preceded, or at least some dispute that would have put him on his guard as a timely precaution against the assault. Not only does the contrary not appear positively, but it would seem to be inferred from the phrase: "So you're going to, kill me?" heard by the deceased's wife, that some words of defiance or challenge passed between him and the defendants before he was assaulted. However that be, the fact is that the manner, form and circumstance in which the assault began do not appear to be determined in the present case, and, this being so, ground is evidently lacking to establish with that the victim was wounded by one of the defendants while the other was holding him by the right arm, that it was not a mere accident of the possible struggle among the participants, and it is therefore impossible conclude legitimately, in view of this fact alone, accidental at times, completely destitute in the present case of circumstances and details that might determine its genuine juridical nature, that the defendants acted treachery or with impunity and without risk to their persons arising fro defense the already forewarned deceased might have offered, as he must have done, to judge from his own words quoted above, against their assault, which essentially constitutes and characterizes the circumstance *aleviosa*. It is not legally proper to qualify an act as treacherous the details that constitute it and the circumstances that preceded a concurred in its execution do not appear.

The principle laid down by this court in the case of *U. S. vs. Feria* which is cited in the Attorney-General's brief, is not applicable here facts in that case and in this are not identical. Therein it was prove certain and positive manner, and expressly so stated in the decision, that the victim was caught and held by one of his assailants unexpectedly and suddenly, allowing him, therefore, neither time nor place to prepare defense, which does not happen in the case at bar, wherein the solitary only appears to be proved that one of the defendants was holding the victim by the right arm while he was wounded by the other, without any record, as stated above, either of the circumstances that immediately preceded the exact moment of the affray, or of the manner and conditions where under the affair developed and took place, knowledge whereof would be absolutely necessary and indispensable in order to be a to determine with exactness whether that act was or was not treacherous under the law. The suddenness and unexpectedness of the act of seizing and holding the victim, thereby depriving him of any offensive or defensive action from the first instant, are what characterize the treachery in the case against *Feria*, this being also what distinguishes that case from the present, wherein it does not appear to be definitely demonstrated that the victim was seized and held suddenly or unexpectedly.

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

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

DISSENTING**TORRES, J.,**

In spite of the respect to which the opinion of the majority is entitled wholly of the opinion that the case at bar should be classified as murder, from the concurrence of the specific circumstance of treachery (alevosia) which appears to have been proven at the trial by the testimony of Marciana Mamaboy, who upon hearing from her house the cries of the victim arose and then saw Tomas Cueva at that instant withdrawing from the left side of the victim's abdomen the weapon with which he had attacked him, while Platon Cueva was holding him by the right arm; and that when she went to her husband, who was stretched out on the ground mortally wounded, he told her that Tomas Cueva had inflicted the wound he had with a sharp pointed piece of bamboo, while Platon Cueva had held him by the right arm.

This statement the victim, Jose Tilapan, repeated under oath before the justice, of the peace, Antonio Minosa, who conducted the preliminary investigation, further adding, as he had shortly before said to his wife he felt very badly from the severity of his wound and that he was sure would die from it.

This statement under oath made a few moments before death by a person mortally wounded, who did in fact die a little later, before competent authority, constitutes along with the testimony of the eyewitness Mamaboy complete and definite proof of how the crime was committed.

Since two witnesses watched the commission of the crime, one of them the victim himself, whose testimony goes back to the beginning of the assault and is not open to question in view of the circumstances under which it was given; and such proof of the treachery (alevosia) corroborated by the bad feeling that existed between the assailants and the victim, by the presence of Platon in the commission of the assault by the bond of relationship that unites them, I therefore believe that surviving defendant should be found guilty of murder, although in its minimum degree, by the application of article 11 of the Penal Code as last amended.

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