

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS, NALUA AND KADAYUM, DEFENDANTS AND APPELLANTS.*G.R. No. 7311. August 05, 1912*

Ponente: CARSON, J.

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The death penalty having been imposed upon both defendants in the Court of First Instance, the record of the proceedings has been brought here for review in accordance with the provisions of law in such cases.

From the evidence of record it conclusively appears: That on the morning of the 21st day of June, 1911, Frederick Michaelis, a sergeant in the United States Army stationed at Ludlow Barracks, Parang, Moro Province, was on the target range at about 10 o'clock in the morning, practicing with his revolver; that while he was practicing, the two defendants, both of whom are Moros, were watching him from a position a little to one side of the target range; that after he stopped firing from his revolver, presumably having emptied it, the two defendants got up from the place where they were sitting, and walked toward the place where Sergeant Michaelis was standing; that when they got close to him they suddenly leaped upon him, and while one held his arms the other stabbed him with a dagger; that after fatally wounding him With the dagger they seized his revolver and made their escape; and that the wounded man died of his wounds within a few minutes after they had been inflicted.

There can be and is no question as to the truth of the facts just set forth. The only questions raised by counsel for the defense in this instance are: (1) As to the characterization of the offense by the trial judge, and whether it should be held to have been committed with aggravating circumstances; and (2) whether under the provisions of article 11 of the Penal Code the defendants are or are not entitled to have the fact that they are members of a noncivilized or semicivilized tribe taken into consideration as an extenuating circumstance, for the purpose of reducing the penalty to be imposed upon them by at least one degree.

We agree with the trial court that upon the facts proven at the trial and briefly summarized above, there can be no reasonable doubt that the defendants are guilty of the complex crime of robo con homicidio (robbery on the occasion of which murder was committed), as defined and penalized in article 503 of the Penal Code, We agree also with the trial court that the commission of the crime was marked by the aggravating circumstance of alevosia (treachery). The sudden and unexpected onslaught of the two Moros, one of whom held the victim by the arms while the other stabbed him to death, was a form of attack, which, in the language of the definition of the aggravating circumstance of alevosia (treachery) tended directly and specifically to insure the execution of the crime without risk to the attacking parties arising from any defense which might have been offered by their victim. (Subsec. 2, art. 10, Penal Code.)

We do not, however, agree with the trial court as to the existence of the aggravating circumstances of deliberate premeditation (premeditacion conocida). The evidence undoubtedly discloses that the murder and robbery were premeditated, and executed in accordance with a previously concerted plan. But it does not affirmatively appear

that a sufficient time elapsed between the conception and the perpetration of the crime for that calm and deliberate reflection upon the nature and the consequences of the contemplated act, as a result of which, it might fairly be expected that an aroused conscience would induce a reasonable man to relent and to turn from the commission of the deed, in the absence of a fixed and resolute purpose of mind to accomplish his design at all costs. Following the rule laid down by the supreme court of Spain, this court has always held that to justify an increase of the penalty on the ground of the existence of deliberate premeditation (*premeditacion conocida*), it must affirmatively appear that an appreciable and, indeed, a substantial time elapsed between the conception and the commission of the crime. (U. S. vs. Gil, 13 Phil. Rep., 530; U. S. vs. Blanco, 18 Phil. Rep., 206.) Our finding in this regard, however, has no effect upon the penalty to be imposed upon the convicts in this case; because, it appearing that the grave aggravating circumstance of *alevosia* (treachery) marked the commission of the crime, the penalty prescribed by the code must be imposed in the maximum degree in the absence of extenuating circumstances.

We can not agree with counsel for the defendants that they are entitled to the benefits of the provisions of article 11 of the Penal Code, on the ground that they are shown to be members of an uncivilized or semicivilized tribe. Taking into consideration all the circumstances of the case, we are satisfied that the offenders thoroughly understood the gravity of the crime committed by them when they made the assault upon their defenseless and unsuspecting victim; and we have no reason to believe that the crime committed by them was prompted by peculiar tribal customs or ancient traditions of their race, which might have led them to believe that the act committed by them was not in violation of the known laws of the community wherein they resided. Indeed, it is very clear that the commission of the crime had its origin solely in cupidity, and that the criminals were actuated by no other motive than a desire to possess the pistol of their victim, in utter disregard of the value of human life.

The penalty prescribed for the commission of the crime of robbery with homicide is either life imprisonment or death. The commission of the offense being marked with one grave aggravating circumstance and no extenuating circumstances, the penalty prescribed was properly imposed in its maximum degree by the trial court.

The sentence of death imposed by the trial judge upon both and each of the defendants should therefore be, and is hereby, affirmed, with the costs of this instance against the defendants. So ordered.

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

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