

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PATRICIO CAMPO, DEFENDANT AND APPELLANT.*G.R. No. 7321. November 05, 1912*

Ponente: CARSON, J.

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The appellant, Patricio Campo, was convicted in the court below of the crime of homicide as defined and penalized in article 404 of the Penal Code, and sentenced to twenty years of reclusion temporal and the payment of the costs of the proceedings. The penalty prescribed by law was imposed in its maximum degree because the trial judge was of opinion that the commission of the crime was marked with the aggravating circumstances of alevosia (treachery).

Accepting, as we do, the findings of the court below as to the credibility of the witnesses, we are of opinion that the evidence of record leaves no room for reasonable doubt that the appellant unlawfully and treacherously (con alevosia) took the life of one Isidro Palejo, at the time and place mentioned in the information. It is very clear therefore that the crime actually committed by the appellant, as disclosed by the evidence, was that of asesinato (murder), which, as defined and penalized in article 403 of the Penal Code, is the unlawful taking of life of another, other than parricide, when the act is marked by any of the following qualifying aggravating circumstances: (1) With treachery (alevosia); (2) for a price or promise of reward; (3) by means of an inundation, fire, or poison; (4) with deliberate premeditation; (5) with deliberately and inhumanly increasing the sufferings of the offended party.

The trial judge, nevertheless, properly convicted the defendant of the crime of homicide, marked with the generic aggravating circumstance of treachery (alevosia), and justified his action in this regard on the ground that information upon which the defendant was tried, he was charged, not with murder (asesinato), but with homicide (homicidio).

The action of the trial judge in this regard must be sustained. We invariably held that an accused person cannot be convicted of a higher offense than that with which he is charged in the complaint or information on which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, an accused person cannot be convicted in the courts of these Islands of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein. He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial, and to convict him of a higher offense than that charged in the complaint or information on which he is tried would be an unauthorized denial of that right. (U. S. vs. Sevilla, 1 Phil. Rep., 143; U. S. vs. Pascua, 1 Phil. Rep., 631; U. S. 4 Phil. Rep., 114; U. S. vs. Nery, 4 Phil. Rep., 158; U. S. Phil. Rep., 242; U. S. vs. Luzon, 4 Phil. Rep., 343; U. S. vs. 5 Phil. Rep., 464; U. S. vs. Torres, 5 Phil. Rep., 501; U. S. Santos, 5 Phil. Rep., 565; U. S. vs. De Guzman, 8 Phil. Rep., vs. Rojo, 10 Phil. Rep., 369; U. S. vs. Gellada, 3, 5 Phil. Rep., 391.)

Perhaps, however, it should be observed that, when speaking in this connection of the offense charged in the

complaint, we refer to the offense of which the court would be justified in holding the defendant guilty o proof of the facts alleged in the body of the information. For, except a very early case (U. S. vs. Dinsing, 1 Phil. Rep., 738), wherein view appears to have been taken, apparently without extended discussion, but which has long since been overruled, we have uniformly and frequently laid down the rule that an accused person may be convicted of "any crime described and charged by the facts set out in the information," irrespective of, and without regard to the designation or characterization of the crime set forth in the title of the complaint or information by the private complainant or the public prosecuting officer. (U. S. vs. Supila Rep., 671; U. S. vs. Treyes, 14 Phil. Rep., 270; U. S. vs. Phil. Rep., 391; U. S. vs. Lim San, 17 Phil. Rep., 273; U. S. Guzman, 19 Phil. Rep., 350.)

The information in this case charges the defendant with the commission the crime as follows:

"That on or about December 7, 1910, in the municipality of Santo Niño, Province of Cagayan, P. L, the said Patricio Campo did willfully, illegally and criminally and with a blunt instrument attack and strike Isidro Palejo, upon his head various wounds and bruises which caused the death of the said Isidro Palejo. An act committed in violation of the law."

It will be seen that the information does not charge that the unlawful t of the life of the deceased was marked with treachery, or any one of the five qualifying circumstances in the absence of which the act ca held to be asesinato (murder) as denned in article 403 of the Code Manifestly, therefore, in accordance with the doctrine laid down in the cited above, the trial judge properly declined to convict the defendant that crime, although the evidence introduced at the trial conclusively established the fact that he had committed it.

It is suggested in the brief of the Attorney-General that since alevosia (treachery) is not expressly charged in the complaint, improper for the court to take it into consideration in imposing the prescribed penalty for the homicide of which the appellant was convicted. In sup of this contention reference is made to a decision of the supreme court Spain wherein that court, in discussing the penalty to be imposed on convicted of homicide, held that the generic aggravating circumstance o alevosia (treachery) should not be taken into consideration "because it really exists, it increases the penal responsibility " by converting the homicide into murder; and if it is not sufficiently proved, for the same reason it is rejected as constituent it must be rejected as generic, for that w legally unjustified cannot in any way be regarded as aggravating." (V Penal Code, Vol. I, p. 253.) But this comment of the supreme court of Spain is to be construed with reference to the judicial system of procedure force in the jurisdiction wherein it was made. Under that system, if proof had been sufficient to establish the existence of the attendant circumstance alevosia, it would have been the duty of the court convict the defendant of the crime of asesinato (murder); and what the court really held was, that in tfhe case then under consideration, alevo (treachery) had not been proven, and for that sufficient reason could be taken into consideration either as a qualifying circumstance (circunstancia cualificativa) or as a generic aggravating circumstance.

Under our Penal Code, the penalty prescribed for the offenses defined therein must be imposed in a more severe degree, within the prescribed when it appears that the commission of those offenses is attended by one or more of the generic aggravating circumstances expressly set out chapter 4 book 1 of the Code: and we have uniformly held that, although the information contains no allegation as to the fact that the commission of the crime charged was marked with one or more of these generic aggravating circumstances, nevertheless that fact may be proven the trial, and, if proven, must be taken into consideration in imposing penalty.

This rule of practice is justified on the ground that the introduction o evidence is admitted only for the purpose of showing the precise manner which the offense actually charged in the complaint was committed; and not for the purpose of changing the legal characterization or designation the offense charged in the information, or of showing that the offense committed was in fact a higher offense than that charged in the information. It follows,

of course, that proof of the existence of one more aggravating circumstances not expressly charged in the complaint and should serve no other purpose than that of aiding the court in determining whether the penalty should be imposed in a more or less severe form, within the limits prescribed for the offense charged in the complaint or information.

Proof that the commission of an offense charged in the complaint or information was marked by an aggravating circumstance not mentioned therein should not and will not be denied its logical and normal effect increasing the severity of the penalty to be imposed within the limits prescribed by law for that offense, on the sole ground that, had the aggravating circumstance been set forth in the complaint or information proof of its existence would have justified the treatment of that circumstance as a qualifying circumstance, and the conviction of the a of a higher offense than that actually charged.

As throwing some light on this holding, attention is directed to the that, when a conviction is had on a complaint or information charging the crime of assassination, and it appears that the unlawful taking of the of another was marked with two or more of the above, set out circumstances, any one of which is sufficient to qualify the crime as that of assassination, then under the practice of this court, adhering to the practice established in the supreme court of Spain, any one of these circumstances may be treated as the qualifying circumstance which raises crime to that of assassination, and the others are then treated as general aggravating circumstances to be taken into consideration in determining degree of severity with which the penalty prescribed for that crime should be imposed.

Since the existence of this aggravating circumstance alone, in the absence of proof of any extenuating circumstance, is sufficient to sustain the of the trial court in imposing the penalty in its maximum degree, it necessary for us to consider the questions which have been raised as to existence or nonexistence of other aggravating circumstances.

The judgment of the court below convicting the defendant and appellant of the crime of homicide with which he was charged, marked with the aggravating circumstance of alevosia, and sentencing him therefor is affirmed, with the costs of this instance against the appellant.

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

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