

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIPE BAÑAGALE, DEFENDANT AND APPELLANT.

G.R. No. 7870. January 10, 1913

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal by the defendant, Felipe Bañagale, from the judgment of January 26, 1912, whereby the Honorable Isidro Paredes, judge, sentenced him to the penalty of death, to be executed in the place and manner prescribed by Act No. 1577, after such judgment should have been reviewed and affirmed by the honorable Supreme Court, to pay an indemnity of P1,000 to the family of the deceased and the costs of the trial. From this judgment the defendant's counsel appealed.

On two different occasions prior to the month of July, 1911, Felipe Bañagale tried to make love to Alexandra Solis, the wife of Domingo Posada, which couple had for about four years from the date mentioned been Bañagale's tenants on shares and lived in a little house situated on the coconut land of their landlord, in the barrio of San Gregorio of the pueblo of San Pablo, Laguna. Alejandra Solis, however, rejected the advances of her landlord, Bañagale, saying to him "that she was not independent, and did not wish to have trouble." Then the defendant, in view of her refusals, threatened her by saying "that if she did not accept his love, something would happen to them."

About 10 o'clock on Friday morning, July 21, 1911, Mariano Ilao by order of Felipe Bañagale, invited Domingo Posada to look for a horse belonging to the defendant, which he had missed. On this occasion Ilao entered Posada's house unaccompanied, while Bañagale remained in the street, in front of the house, waiting for them. Presently Posada, provided with a bolo and dressed in a white undershirt, a pair of dark trousers and a buri hat with a coffee colored band, came down from his house, following Mariano Ilao, and in the street they were met by Felipe Bañagale. The three men being now together started to range the coconut land in that place in search of the said horse, and shortly afterwards met Maximino Atienza, who also carried a bolo and joined the party. Thereupon all four continued to scour the coconut lands, crossed a river of the barrio of San Joaquin and then another river until finally they arrived at the barrio of San Vicente, where Mariano Ilao, feeling sick and hungry, remained in a small warehouse and his three companions went on, but they had scarcely gone a distance of 30 brazas when Ilao heard cries: "Spare my life," and, believing that the cry had been uttered by the thief in whose possession his three companions had probably found the horse they were looking for, he arose and went toward the place whence the cry proceeded, and upon his arrival within about 9 meters from his companions he saw from where he was that Domingo Posada was lying motionless and prostrate on the ground, apparently dead, while Bañagale and Atienza, each with his bolo dyed in blood, were standing on either side of the corpse. Seeing Ilao approach, they called to him by making signals with their bolos, but he was afraid they might kill him, so he ran back home, where he arrived at dusk.

On Saturday morning, when the deceased's wife noticed that her husband had not returned home at any time during the preceding night, that of Friday, July 21, she sent word to her father, Mariano Solis, of what had

occurred. On the morning of that same day, Saturday, Felipe Bañagale appeared at the little house where Alejandra Solis lived and inquired of her whether her husband, Posada, had returned home yet. On the third day, Sunday, Mariano Solis went to the house of his daughter to obtain information relative to the disappearance of her husband. She then told her father that her husband, Posada, had left the house on the previous Friday morning, upon the invitation of Mariano Ilao, to look for a horse that had been lost, and that they both had gone away in company with Felipe Bañagale, who returned to the said house on the following Sunday. There he met Mariano Solis, who begged him to assist in searching for Posada, inasmuch as the latter had disappeared in his company on entering his coconut land.

One day in the following month of August, the justice of the peace of the pueblo of San Pablo, having received confidential information as to what had occurred, sent for Mariano Ilao and began a preliminary investigation, as a result of which, on the afternoon of the 11th of the said month of August, a skeleton with clothing and a hat was found in the barrio of San Vicente, in the place indicated by Ilao, by some policemen, several residents, the father-in-law of the deceased Posada, and the said justice of the peace. The latter ordered that the bones and wearing apparel found be gathered up, and they were exhibited by the prosecution as the corpus delicti.

For the foregoing reasons, the provincial fiscal, on the 30th of September following, filed an information in the Court of First Instance of Laguna, charging Felipe Bañagale with the crime of murder, and, this case having been instituted, the judgment aforementioned was rendered.

The facts related show that the unfortunate Domingo Posada met a violent death at the hands of two men who assaulted him with bolos in an uninhabited tract of land planted with coconut trees, and that the only known motive of the assault was because the deceased's faithful wife refused to yield to her landlord, Felipe Bañagale, who sought to make her his concubine. These facts constitute only the crime of homicide, punished by article 404 of the Penal Code, for lack of proof that its perpetration had been attended by any of the qualifying circumstances enumerated in article 403 of the same Code, as the record does not show how or in what manner the assault commenced, whether there was trouble or any dispute or quarrel between them, and account must be taken of the fact that the deceased also carried a bolo on that occasion, although this weapon was not afterwards found in the place of the crime.

It could not be ascertained in a satisfactory manner whether in the present case there was a conspiracy between the assailants and plain deliberate premeditation for the perpetration of the crime, inasmuch as it is not enough to suspect and to presume the existence of said circumstance, even on the part of the principal supposed to be interested in the death of the husband of the woman courted, but it is necessary that the criminal intent to kill Domingo Posada should have been evident and manifest, and that by prior acts on the part at least of the defendant, Bañagale, it should have been clear that the latter, on conceiving the crime, resolved, after mature deliberation and reflection, to carry it into execution and performed acts that demonstrated and decided his criminal purpose. The record does not show whether Bañagale, upon extending the invitation to Domingo Posada through Mariano Ilao, did so for the purpose of killing the former, inasmuch as there is no proof that he had resolved upon doing so, through deliberation, meditation, and reflection, and performed acts revealing his criminal purpose, some days or even hours prior to carrying out his criminal determination to kill the unfortunate Posada. Article 10, circumstance 7, of the Penal Code establishes the requisite that the criminal should have acted, in the perpetration of the crime, with deliberate premeditation or that he should have prepared for its commission by outward acts such as denote in the agent a persistent criminal purpose and a meditated resolution to consummate the deed.

The commission of the crime may not be deemed to have been attended by the qualifying circumstance of alevosia or treachery, inasmuch as no person, other than the two assailants and the deceased, was present at the

time, for Mariano Ilao only heard the latter cry out and when he came up within a certain distance to see what had occurred the crime was already consummated, the alleged struggle was over and the victim was lying prostrate and dead on the ground. There is no evidence of record that there was a struggle or fight between the assailants and the assaulted, though there may have been, since the latter also carried a bolo, and, therefore, it may not be held that the crime was attended by any qualifying circumstance such as that of treachery, without decisive and conclusive proof thereof.

The guilt of the defendant, Felipe Bañagale, is evident and fully proved in this cause, as the perpetrator of the homicide charged (together with Maximino Atienza, who was not included in the case, as he died after the commission of the crime), for, notwithstanding his denial and plea of not guilty, the record shows decisive and conclusive proof of his responsibility and such that produces in the mind, beyond all peradventure, the most complete conviction that the said Banagale, together with the aforementioned Maximino Atienza, took a material part in the assault and killing of Domingo Posada.

Indeed, the following facts were duly proved at the trial, to wit, that Domingo Posada left his house on the morning of July 21, 1911, in company with Mariano Ilao, who expressly invited him to do so, and on the way they were joined by the defendant, Bañagale, who had been waiting for them in the street, where he was seen by Posada's wife, and the three men together penetrated into the lands planted in coconut trees, until they met the said Maximino Atienza, who also joined the party; that Mariano Ilao, upon responding to the cry he had heard issue from the place where subsequently the remains were found, positively saw, without any doubt whatsoever, that Domingo Posada was lying prostrate on the ground and apparently dead at a distance of about 9 meters away from him, as he did not approach nearer for fear of the two assailants, who made signals to him with their bolos, which were dripping with blood; that the skull and other bones of the deceased, and the clothes he wore on leaving his house, were minutely examined, and the clothes were identified by his widow, Alexandra Solis, and by the latter's father, the deceased's father-in-law, Mariano Solis; and that the autopsy held by two physicians showed that the cuts or fractures in the back of the skull, the left side of the lower jaw, the second vertebra, the first cervical vertebra and in the left collar bone, Were produced by a short pointed instrument and must necessarily have been mortal Wounds and have caused instant death to the victim.

When, on August 11, 1911, an order was issued by the justice of the peace of San Pablo for the arrest of Felipe Bañagale, as a result of the preliminary investigation made by that official of the facts related, the policemen who went in search of him were unable to find him in his residence, neither was he to be found in the town nor the adjacent barrios, despite the means employed for his arrest, on which occasion the agents of the authorities were accompanied by a son of the defendant, named Paulino. However, about the 28th of August, 1911, Bañagale, having heard that a warrant had been issued for his arrest, gave himself up. Later, early in the evening of a date not recorded, but subsequent to the institution of this case and while the same was pending before the Court of First Instance, Mariano Ilao went to a Chinese store in the town of San Pablo to buy some wine and while there Bañagale, who was out on bail, approached him, secretly called him aside to a dark place behind the store where he told Ilao that he would give him P500 if, in the hearing of the case against the accused, witness would change or retract the testimony he had given in the justice of the peace court. Thereupon they separated, but Ilao, notwithstanding his promise to the defendant, did not change his previous testimony, as the latter had proposed that he should, but, on the contrary, he persisted therein.

The defendant, desirous of knowing in what state of mind he might find the unfortunate wife of his victim, who during all the night of the 21st was awaiting the return of her husband, went to her house to inquire of her whether Domingo Posada had returned home yet, which procedure on defendant's part shows that he knew that the husband of Alexandra Solis had left and was absent from his house, and that the defendant was not unaware of the

reason of the absentee's disappearance, for he exhibited no surprise when the woman replied to him that her husband had not yet returned, nor did he inquire of her where he had gone or the reason of his absence, when in fact the disappearance of Domingo Posada ought not to have been entirely a matter of indifference to the defendant, since the deceased was a tenant on shares of the latter. If, on that occasion, Bañagale showed no interest whatever in the fate of his tenant on shares, it was because he was one of those who deprived him of his life.

From the third day after the crime, on July 23, the date when Mariano Solis, the deceased's father-in-law, learned of the occurrence, and for several days afterwards, the latter engaged in the search for his son-in-law. He was accompanied, among others, by the defendant Bañagale who, according to the testimony given by the said Solis, again presented himself at the house of the deceased on the date above mentioned, and after the witness had, in company with the defendant and others, scoured several barrios, Bañagale objected to the plan of visiting the barrio of San Vicente, where the body of the deceased was afterwards found, and induced Solis to request certificates from the lieutenants of the barrios of Soledad, Santa Maria, and San Gregorio, where they had been, in order to prove that they had been in the said barrios in search of Posada; and as Solis stated that he was going to report the matter to the authorities with the information that the deceased, on leaving his house, was in the company of Mariano Ilao, Bañagale, having heard that statement, told Solis not to include Ilao in that report or denunciation, because he, the witness, already had three certificates issued by barrio lieutenants, and further said that if Solis should inform any person or authority of the facts, he would fight the case by the employment of legal counsel and the expenditure of all the money necessary.

Mariano Ilao, brother-in-law of the defendant, who also stood up with him at his marriage, was the only witness who, though not an eyewitness to the assault, testified that upon approaching the place whence the cry had issued he had heard some one begging for mercy and saw, at a distance of about 9 meters away from him, Domingo Posada prostrate and motionless on the ground, and, standing on either side of the latter, the defendant, Bañagale, and Maximino Atienza, now deceased, each holding his bolo, the blade of which was apparently covered with blood; and that he did not proceed to the spot where the two latter were standing beside Posada's body, because, upon their making signals to him with their bolos for him to approach, he was seized with fear lest they might also kill him, wherefore he immediately ran away from the place. This testimony, given with simplicity and voluntarily without subterfuges or evasions, which obscure the details related by a witness, is conclusive and decisive, and worthy, by the truthfulness it reveals, of consideration and credence, and does not appear to have been disproved, notwithstanding the very many and insistent cross-questions which were addressed to the witness, whose said testimony is corroborated by other evidence found in the record relating not only to the points before mentioned, but also to other facts and details, all tending to prove the responsibility of the defendant Bañagale.

The witness Ilao testified that it was he who, in obedience to the defendant, entered the house of Domingo Posada to invite the latter to go in search of a strayed horse. He also gave a detailed description of the clothes the deceased was then wearing and of his bolo. These particulars were corroborated by the deceased's wife, who, after her husband's remains had been discovered, identified the undershirt, trousers, and hat which the deceased wore when he left his house at Ilao's invitation. She also testified that, on the occasion just mentioned, the defendant Bañagale was standing in the street near her house waiting for Posada and Ilao to come down therefrom.

The expert examination made of the bones found by the justice of the peace in the place designated by the witness Mariano Ilao, confirms the latter's statements, to wit, that he saw the defendant and the said Atienza standing on either side of Posada's corpse and each holding a bloody bolo, especially since the said bones showed cuts and marks produced by bolos.

So the statements and revelations made by the witness Ilao appear to have been fully corroborated at the trial; and

it is to be noted that, without exaggerations or the statement of unnecessary details, which obscure the relation of facts, this witness merely testified to what he had seen and simply told the truth without ulterior consideration whatsoever, and that he refused the offer of P500 with which Bañagale attempted to corrupt him by inducing him to give false testimony and violate his oath.

The record does not reveal a jot of evidence, even circumstantial, that the witness Ilao, in relating the facts and accusing the defendant Banagale, as well as Atienza, acted under any impulse of revenge, hatred, or animosity toward the former, his brother-in-law, nor that he was instigated or moved by anyone to prefer very serious charges against him by perverting the truth as to what occurred and relating facts which did not take place.

The fact that, in spite of his intimate acquaintance with Domingo Posada, he did not recognize the voice he heard of the person who cried out begging for mercy, is not an indication of lack of truthfulness in his testimony, since Domingo Posada's cry was uttered in a moment of terror, fright, and horror which must have overwhelmed him upon seeing himself unexpectedly attacked by two men, one of them his landlord Bañagale; and the witness Ilao, in testifying that he did not recognize the deceased's voice, though he afterwards saw him lying prostrate on the ground, thereby evidenced good faith and truthfulness on the stand, since he merely testified to what really and actually occurred and did not state that he recognized the voice of the person who uttered the cry, when, in testifying, he could have said that the voice was Domingo Posada's.

The defense maintains that the testimony of the witness Mariano Ilao is improbable, relative to his having seen Domingo Posada lying motionless and prostrate on the ground at a distance of 9 meters away from him in a place covered with a considerable growth of tall grass which must have made it impossible to see Posada's body; but the justice of the peace, who visited that place with agents of the authorities, and the witness Ilao, the deceased's father-in-law, and others testified that the said place where the remains of the deceased were found was clear and could be seen from a distance of 9 meters away, as the witness Ilao stated.

With respect to the testimony of Alejandra Solis, the deceased's widow, the record discloses no evidence or fact whatever in contradiction thereof. This witness, who was able to walk about the house, though only about 28 days before she had given birth to a child, corroborated the testimony of the witness Ilao, to the effect that her husband left her house in company with Ilao at the latter's invitation, and further testified that on that occasion Bañagale was in the street near her house waiting for her husband, and that when the latter had left with Ilao they were joined by the defendant Bañagale; it is, therefore, an incontrovertible fact and one duly proved, that when her husband left his house to search for a strayed horse, he was accompanied by Mariano Ilao and by the defendant Bañagale. This woman, who, from the beginning, showed that her only desire and interest had been for the return and appearance of her husband, and notwithstanding the covert threat which the defendant had addressed to her when she rejected his amorous advances, did not manifest any prejudice toward the defendant, for at first she accused Mariano Ilao of having caused the disappearance of her husband, not believing perhaps that her landlord could commit such a heinous crime, and changed and withdrew her accusation against Ilao only when she learned of the truthful revelations which the latter had made to the justice of the peace. After that, convinced of the truth of the facts related by the witness Ilao, she accused the defendant Bañagale of the crime.

The absence of the defendant, Felipe Bañagale, from his house and residence, on the 12th of August, 1911, and following days, owing to his concealing himself and keeping beyond the reach of the officers of the law who, accompanied by his son Paulino, were vainly hunting for him in his two houses and in the town and barrios of San Pablo, constitutes further circumstantial evidence of his guilt and is virtually corroboration of the damaging testimony of Mariano Ilao and the widow of the deceased, for, although he was aware that a warrant for his arrest had been issued by the justice of the peace of the said pueblo (as proven by the written petition presented in his name by the attorney, Jose Agoncillo, on the 15th of August, requesting the justice of the peace to cancel the said

warrant, on the ground that it was issued without previous accusation or legal complaint), the said defendant did not surrender to the authorities until the 28th of August, and did so undoubtedly because he feared that he would finally be arrested. An innocent man with a clear conscience, even when aware of the search made for him by the officers of the law, will not conceal himself or evade an investigation of the unlawful acts charged against him, nor will he take any steps whatever to prevent the discovery of the guilty party, as did this defendant by proposing to Mariano Ilao that, in consideration of an offer of P500, he should, in the hearing of the case instituted against Bañagale, change or retract his testimony previously given in the justice of the peace court, a proposition which the defendant decided to make to the witness Ilao, because he was aware that the latter was the only person who saw Domingo Posada after death in the coconut grove and, standing on either side of the corpse, the defendant and his co-principal in the crime, Maximino Atienza, and he well knew that the testimony of the witness Ilao would be conclusive and decisive evidence in establishing his guilt. So it was that when the defendant heard Mariano Solis, the deceased's father-in-law, casually say that he would report the matter to the authorities, as during several days of search he had been unable to find Posada either dead or alive, he, Bañagale, suggested to Solis that the latter should not include Mariano Ilao in his complaint. This suggestion was boldly made by the defendant, not in the interest and behalf of Ilao, a relative of his by marriage, but undoubtedly because he feared lest Ilao, the only eye witness to the crime, though after its consummation, might tell the truth, as in fact he did. The defendant's conduct undoubtedly amounts to an additional corroboration of the direct' and circumstantial evidence of his participation in the crime under prosecution.

The defendant abstained from testifying in this case and maintained silence during the entire trial. He preferred not to explain where and when he separated from Domingo Posada in the morning or the afternoon of July 21, 1911, why he absented himself from his house, concealed himself for many days after it became publicly known in the pueblo of San Pablo that the remains of the deceased had been discovered, did not surrender to the authorities though he knew, through his children and other relatives, that his arrest had been ordered, and only did so when he realized that he would finally be arrested and would then have to appear and answer the charges preferred against him.

The testimony of the three witnesses, bearing on the alibi set up by the defendant's counsel to prove that on the day and at the hour the crime was committed Bañagale was in the pueblo of Biñan, quite a distance from San Pablo, was insufficient to invalidate the direct and circumstantial evidence which clearly showed that on the said 21st of July he was in the pueblo of San Pablo and in the place of the crime and did take part in the perpetration thereof. Besides the conclusive testimony of Mariano Ilao, the victim's widow, Alejandra Solis, positively testified, and in agreement with the former, that Bañagale was near her house waiting in the street for Posada and Ilao to come down out of the building, on the morning of the 21st, several hours before the crime; that on the following day, Saturday, the defendant returned to her house to inquire of her, the widow, whether her husband had yet returned, and that on the next day, Sunday, Bañagale again appeared at the said house for the same purpose, to wit, to inquire about the return of the unfortunate Posada, whom he, assisted by Maximino Atienza, had killed on the previous Friday morning; that on this last occasion the defendant met the widow's father, Mariano Solis, in the house (a detail corroborated by the latter) and, at Solis's request, accompanied him with others to search in several barrios for Domingo Posada, who not many days before had been killed by the defendant. All that unimpeachable evidence shows that Felipe Bañagale was not away in Biñan, but was present in the place of the crime.

The testimony before referred to, of witnesses, two of whom were relatives of Banagale and the third simply a day laborer in his employ, contains details which raise the presumption that there was collusion; and, therefore, it cannot be considered as sufficient to overcome the force and efficacy of the testimony given by the said witnesses Mariano Ilao, Alejandro Solis, and Mariano Solis, whose statements on the stand were made with a clearness and

simplicity which render them credible; indeed, it was owing to the same that the crime in all its details could be reconstructed as it occurred.

The testimony of the witnesses Agustin Calabia and Miguel Banatlao, sons-in-law of the defendant, did not avail to disprove the truth of the fact, as averred by the witnesses for the prosecution, that Bañagale, on the date aforementioned and in the company of the victim, of Mariano Ilao and Maximino Atienza, went into the coconut grove for the purpose of committing the crime, inasmuch as the said two witnesses, Calabia and Banatlao, merely denied that Bañagale was in the company of those men and virtually stated that, on the morning in question, they had seen Posada Atienza, and Ilao walking along together, thus corroborating the statement made by the latter, with no other difference than that, according to Ilao and the widow Solis, Bañagale went from Posada's house with those three men, while the aforesaid witnesses for the defense, relatives of the defendant, testified that, though they saw the three men, they did not see Bañagale in their company.

The trial judge, weighing the evidence adduced by both sides, in accordance with the rules of sound judgment and common sense, held that the defendant Bañagale's guilt had been established, and, therefore, it may not now be said that there can be any reasonable doubt of the defendant's participation in the crime, to offset the conviction acquired of his responsibility, as no grounds exist on which may be based an opinion different from that formed by the judge of the lower court, with respect to the credibility of the witnesses for the prosecution.

In the commission of the crime, there is to be considered the attendance of the aggravating circumstance of abuse of superior strength and that of the perpetration of the crime in an uninhabited place, in the midst of a field planted in young coco-palms where there were no inhabitants, for, notwithstanding the victim's cry upon being assaulted by his two assailants, no other person, except these three and Mariano Ilao, was aware of the commission of the crime. These aggravating circumstances are not counterbalanced by any extenuating circumstance whatever.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from have been completely refuted, we decide that the crime under prosecution must be classified only as homicide and that, with a reversal of the said judgment, we should and do hereby sentence the defendant Felipe Bañagale, as the perpetrator of that crime, to the penalty of twenty years' imprisonment, to the accessories of article 59 of the Penal Code, to pay an indemnity of P1,000 to the widow and heirs of the deceased, without subsidiary imprisonment in case of insolvency, in view of the nature of the penalty, and to the payment of the costs in both instances.

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

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