

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. ANACLETO ALEGADO, DEFENDANT AND APPELLANT.*G.R. No. 8448. October 10, 1913*

Ponente: CARSON, J.

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The only real question raised on this appeal is whether or not this appellant was present and took part in the murderous assault in the course of which, as alleged in the information, Francisco Alcuítas lost his life. There is no question as to the facts alleged in connection with the assault except only as to the part taken therein by this appellant. There is direct conflict between the testimony of the witnesses called for the prosecution and those called for the defense. If the witnesses for the prosecution are to be believed, there can be no doubt that the accused was present and took direct part in the commission of the crime with which he is charged. If the witnesses for the defense are to be believed, he was not present on that occasion and had no guilty connection therewith. The trial judge accepted as true the testimony of the witnesses for the prosecution and declined to believe the witnesses called in support of the alibi set up on behalf of the accused. There is nothing in the record which would justify us in holding that the trial judge, who saw and heard the witnesses testify, erred in this regard; and upon a careful review of all the evidence we do not find anything which would justify us in disturbing his findings as to the degree of credit which should be accorded the various witnesses called at the trial.

Counsel for appellant contends that the trial judge erred in taking into consideration the flight of the accused as evidence against him. Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings. It appears that a warrant of arrest was issued for the accused in this case by the justice of the peace of the municipality wherein he lived on November 26, 1909, but that he was not arrested until March 23, 1912, and we are of opinion that this fact, taken together with all the other evidence in the record, sufficiently sustains the holding of the trial judge as to his flight. We are of opinion furthermore that the unexplained flight of an accused person may as a general rule be taken into consideration as evidence having a tendency to establish his guilt. In the case of *Allen vs. United States* (164 U. S., 492) appellant assigned as error the following instruction given to the jury by the trial judge:

"Now, then, you consider his conduct at the time of the killing and his conduct afterwards. If he fled, if he left the country, if he sought to avoid arrest, that is a fact that should be taken into consideration against him, because the law says unless it is satisfactorily explained—and he may explain it upon some theory, and you are to say whether there is any effort to explain it in this case—if it is unexplained the law says it is a fact that may be taken into account against the party charged with the crime of murder upon the theory that I have named, upon the existence of this monitor called conscience that teaches us to know whether we have done right or wrong in a given case."

In discussing this assignment of error the Supreme Court of the United States said:

"In the case of *Hickory vs. United States* (160 U. S., 408, 422), where the same question, as to the weight to be

given to flight as evidence of guilt, arose, the court charged the jury that 'the law recognizes another proposition as true, and it is that "the wicked flee, when no man pursueth, but the innocent are bold as a lion." That is a self-evident proposition that has been recognized so often by mankind that we can take it as an axiom and apply it to this case.' It was held that this was error, and was tantamount to saying to the jury that flight created a legal presumption of guilt, so strong and conclusive, that it was the duty of the jury to act on it as an axiomatic truth. So, also, in the case of *Alberty vs. United States* (162 U. S., 499, 509), the court used the same language, and added that from the fact of absconding the jury might infer the fact of guilt, and that flight was a silent admission by the defendant that he was unwilling or unable to face the case against him, and was in some sense feeble or strong, as the case might be, a confession. This was also held to be error. But in neither of these cases was it intimated that the flight of the accused was not a circumstance proper to be laid before the jury as having a tendency to prove his guilt. Several authorities were quoted in the *Hickory* case (p. 417), as tending to establish this proposition. Indeed, the law is entirely well settled that the flight of the accused is competent evidence against him as having a tendency to establish his guilt. (Whart. on Homicide, par. 710; *People vs. Pitcher*, 15 Michigan, 397.)

"This was the substance of the above instruction, and although not accurate in all its parts we do not think it could have misled the jury."

We find no error in the proceedings prejudicial to the rights of the accused, and the judgment of conviction and the sentence imposed by the trial court should therefore be affirmed, with the costs of this instance against the appellant. So ordered.

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

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