

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEONARDO BULFA, DEFENDANT AND APPELLANT.*G.R.No. 8468. August 20, 1913*

Ponente: TORRES, J.

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This case is before us for review of the judgment of November 29, 1912, whereby the Honorable Jose" C. Abreu, judge, sentenced the defendant, convicted of the crime of robbery with homicide, to the penalty of death by hanging; to pay an indemnity of P1,000 to the heirs of the deceased, and to the payment of one-half of the costs, and dismissed the case with respect to the other defendant, Benito Escamante, with the other one-half of the costs de oficio. It was furthermore therein ordered that an investigation be made by the fiscal to ascertain whether Apolonio Salasayo took part in the crime under prosecution, in order that, should it be found that he did, the proper information and other proceedings might be filed against him.

On or about the 17th of January, 1912, at a late hour of the previous night or early in the morning of this date, Leonardo Bulfa, accompanied by a neighbor of his, Benito Escamante, went from a hill near the pueblo of Ayuquitan, Oriental Negros, to the vicinity of the house of Filomeno Catipay and Vicenta Salasayo, situated in the barrio of Siapo, where they were met by Apolonio Salasayo, a brother of Vicenta, and immediately thereupon Bulfa, by a palmleaf torch, set fire to Catipay's house on the side next to the stairs. The spouses inhabiting the dwelling, being awakened by its burning, at once endeavored to put out the fire and for this purpose the husband, Catipay, tried to climb to the roof of the house. Just at this moment Bulfa gave him a lance-thrust in the side, toward the shoulder, as a result of which he fell heavily to the floor and died within a few moments. Directly after this assault the defendant, Bulfa, forced his way into the house by breaking the door and, by threats, compelled the wife of the deceased to show him the money the spouses had stowed away; this was found in a palm-leaf sack under a heap of corn and more than P1,000 of it was taken by the robber. Immediately after the robbery Bulfa left with Escamante. Apolonio Salasayo had already departed from the scene of the crime. The house, together with the corn and other effects therein contained, was reduced to ashes, and, including its contents, was worth about P500.

Upon the foregoing facts, and after the proper preliminary examination had been made, the provincial fiscal filed an information in the Court of First Instance of Oriental Negros, on September 27, 1912, charging Leonardo Bulfa and one named Benito with the crime of robbery with homicide; and, after trial, the judgment aforementioned was rendered.

The case at bar concerns a horrible crime which indicates the highest degree of wickedness on the part of its perpetrator.

The trial record discloses full proof of the commission of the complex crime classified in the Penal Code as robbery with homicide, which is an exceedingly serious one and severely punished in article 503 of the Code by two indivisible penalties, cadena perpetua to death. It is unquestionable that the unfortunate Filomeno Catipay

was violently killed at the time his house was set on fire by the perpetrator of so ferocious an assault made with the purpose of robbing the victim, and that all the aforerelated facts were premeditated and carried into execution one after the other, but connectedly, with the sole intent of robbery, for the deceased and his wife, Vicenta Salasayo, together with their young son, being asleep in their house built of bamboo and straw, were awakened at a late hour of the night, between the 16th and 17th of January, 1912, by the heat they felt from the fire that was making its way into the house, to extinguish which the husband directed the wife to get some water, while he endeavored to climb up the wall to reach the burning roof and at this juncture received a lance-thrust in his side, toward the shoulder, inflicted from the outside and through the wall. As a result of this injury Filomeno Catipay fell heavily to the floor of the house, mortally wounded, and for this reason his wife desisted from getting the water. Thereupon a man entered the house by forcing the door, which was closed, and, bolo in hand, threatened Vicenta Salasayo with death and commanded her to disclose the place where their money was kept. The woman, stricken with terror and fright, designated a place under a heap of corn where there was a sack that contained more than P1,000, the savings of many years, and the robber, whom she then recognized, after taking possession of the money, left the premises, but not before the woman had succeeded in escaping with her son, for nearly the whole house was in flames. The clothes, corn, and other effects contained in the building and worth about P500 were burned. The robber, who turned out to be Leonardo Bulfa, together with his companion, Benito Escamante, who was outside of the house on the stairs, then left the place and went to Mount Bayauan where they divided the stolen property.

It is undeniable that the facts above related must be classified as robbery with homicide, inasmuch as the hapless Catipay was killed for the purpose of robbing him, free from all danger and without the possibility of the least resistance.

On the following day, the 18th, the widow of the deceased denounced the crime to the justice of the peace of the pueblo of Ayuquitan and a warrant was issued for the arrest of Leonardo Bulfa as the principal perpetrator of the deed, for he was recognized by the woman Vicenta at the time of the robbery as she had previously known him through his having been a resident of the barrio where the offended parties resided. Criminal proceedings were afterwards instituted against the defendant, who entered a plea of not guilty, though he did not testify in the case; and notwithstanding the unproved allegations of his counsel, the trial record furnishes complete and convincing proof of his guilt as the principal perpetrator of the crime under prosecution. This conclusion is strengthened by the testimony of Benito Escamante who testified that some days prior to the date of the crime he, upon the defendant's invitation, accompanied him from the barrio of Amio of the pueblo of Tolon, Negros Oriental, to the pueblo of Ayuquitan, barrio of Siapo, where the house of the deceased was situated) that two days afterwards at a late hour of the night between the 16th and 17th, upon their arrival in the vicinity of the house robbed, where they were joined by Apolonio Salasayo, a brother of the widow, the defendant set fire to the said house, whereupon Apolonio left; that just at the moment the deceased, Catipay, was climbing up the wall of the house to the burning roof, the defendant Bulfa struck him a thrust with a lance from the outside through the wall and immediately thereafter forced open the door and entered the house to commit, through intimidation, the robbery of money aforementioned. This testimony of Benito Escamante, corroborated by Vicenta Salasayo, both of them eyewitnesses to the acts committed by Leonardo Bulfa, proves in a satisfactory manner and beyond all doubt the direct participation of the defendant as the sole proved actual perpetrator, fully convicted, of the said complex crime of robbery with homicide, inasmuch as he alone it was who conceived and planned its execution, for which purpose he invited Benito Escamante to accompany him, and, in going to the place of the crime, was provided with a lance and a bolo; with the lance he treacherously assaulted the unfortunate Catipay on an occasion when the latter was busy with the fire and did not expect that a lance would be thrust through the wall from the outside to inflict upon him a fatal wound; and with the bolo he entered the burning house, threatened and intimidated the

wife of the deceased to compel her to disclose the place where the money was kept at which time he was perfectly recognized by her as an old acquaintance. No weight whatever can be given to the allegations of the defense to the effect that the defendant committed the crime by order of his brother-in-law, Apolonio Salasayo, and that Vicenta delivered the stolen money to the defendant in order that he might not kill her or denounce her brother. These averments were wholly unsustained at trial and completely disproven by the positive testimony of the offended party Vicenta Salasayo and the witness Escamante.

Account must be taken of the attendance of the aggravating circumstances that the homicide was committed with treachery, in the small hours of the night, and in the midst of the silence and darkness thereof, in an inhabited house, and by means of the burning of a house or home in which the defendant was not unaware there were inhabitants.

Thus, four aggravating circumstances are to be considered in applying¹ the penalty prescribed by law, to wit, Nos. 2, 4, 15, and 20 of article 10 of the Penal Code, with no mitigating one to offset their effects. Owing to the nature of the complex crime in question, the special circumstance established in article 11 of the Penal Code, as amended by Act No. 2142, is not applicable, and although it were, it would offset but one of the said aggravating circumstances, three of which would still subsist and determine the imposition of the adequate penalty in the maximum degree, in accordance with rule 1 of article 80 of the Penal Code.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, it is proper to affirm, and we hereby do, the said judgment, with the costs against the appellant, and the death penalty imposed shall be executed in accordance with law. In case of pardon, and unless specifically remitted therein, the defendant shall also be considered to have been sentenced to the accessory penalties prescribed in article 53 of the Penal Code. So ordered.

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

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