

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MODESTO MACUTI, FLORENTINO MACUTI, AGATON MACUTI, JUAN GELLADUGA, DONATO GELLADUGA, AND ANTONIO GELLADUGA, DEFENDANTS AND APPELLANTS.**

*G.R. No. 8908. November 26, 1913*

Ponente: TRENT, J.

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**TRENT, J.:**

The six defendants in this case were convicted of the crime of homicide, and with the exception of Modesto Macuti, were sentenced to fourteen years eight months and one day of reclusion temporal, Modesto Macuti, being only sixteen years of age, was sentenced to six years and one day of presidio mayor. From this judgment all appealed; but during the pendency of the case in this court Modesto Macuti withdrew his appeal, which leaves for our consideration only the case made against the remaining five defendants.

Antonia Maglonob, the wife of the deceased Martino Jalea, testified that all six of the defendants arrived at their house on the evening of February 18, while her husband was working on a cart which he was repairing. After finishing his work on the cart the Gelladugas entered the house and drank some tuba with her husband, the Macutis remaining outside. After drinking the tuba Juan Gelladuga invited Martino to accompany them to another place which he did not name to drink some more tuba. To this Martino assented and all the accused and Martino then left the house.

Isidoro Ariguin, the only witness for the prosecution who saw the fight, testified that this same crowd came to his house that night after prayer time. Florentino Macuti had been there that morning and saw a bottle of vino which he had prepared for his sick wife, and that was the reason Florentino returned that evening with his friends. His visitors were all intoxicated, and as they were very noisy and looked quarrelsome, he gave them the bottle of vino and requested them to leave the house because of his sick wife. This they did, but just after leaving the house Agaton Macuti and the deceased began fighting. Florentino Macuti interposed and took a stick away from the deceased. This defendant was the first one to hit the deceased. In response to the question, "Who beat him?" witness replied, "They beat him [naming and pointing out each of the six defendants] and they were his companions." But later in his testimony, after giving the account of the struggle between Agaton and Florentino Macuti on the one side and Jalea on the other for the possession of the stick, he was asked specifically what Juan Gelladuga was doing while Florentino Macuti and Jalea were fighting, to which he merely replied that he was downstairs. He gave the same answer on being asked what Donato and Antonio Gelladuga were doing. Although at the beginning of his testimony this witness stated that all of the defendants beat Jalea, it will be noted that in his detailed account of the actions of his guests after they left his house and up to the time he saw them all gathered around the deceased, he only mentions two persons as engaged in the fight with the deceased, they being Florentino and Agaton Macuti. In answer to a direct question as to what the three Gelladugas were doing, this witness merely stated that they were downstairs. Again, this witness stated positively that he did not see who wounded the deceased, but only heard Jalea cry out, "Help me, because Modesto has wounded me," and on

running downstairs, saw Jalea covered with blood. This testimony does not by any means produce "an abiding conviction beyond a reasonable doubt" that the three Gelladugas engaged in the struggle for the possession of the stick or inflicted any of the knife wounds. On hearing Jalea's cry for help and going downstairs, he found all the defendants surrounding Jalea, who was standing up, but he did not know if they were inflicting punishment on him or assisting him. On seeing Jalea covered with blood he became frightened and retired to his house. Florentino Macuti wanted to come up into his house, but witness had already shut the door and refused to open it, whereupon Florentino told him that there was a dead man in the cornfield. Witness replied to Florentino, "You have killed this man and you will have to be responsible for it." After shutting up his house, witness opened the window a little, and looking out, saw Modesto and Agaton Macuti tie a rope around the arms, the waist, and the knees of the deceased; and then the accused carried him away by means of three bamboo sticks about 6 or 7 feet in length. The moon was shining, so that he could see these occurrences plainly.

Valentin Altana, merchant, testified that he had just arrived at his home from his place of business on the night in question and was resting on the steps of his house when he heard Jalea cry out, "Help me, Modesto Macuti has wounded me." He recognized Jalea's voice because he had known the deceased a long time. On running to see what was the matter he saw that Jalea's stomach was bloody and that he was standing up surrounded by all of the defendants. He did not see any of the defendants strike Jalea. On seeing that Jalea was wounded, he ran back to his home because he was afraid. His home was about 50 brazas and Isidoro Ariguin's house was about 10 brazas from the scene of the trouble. He approached to within about 5 brazas of the defendants and could recognize them because the moon was shining brightly. He had known all of the defendants a long time.

Manuel Balabaran testified that his house was only about 1 braza from Ariguin's house. He was well acquainted with all the accused and the deceased. On the night in question, after prayers, he heard Martino cry out, "Help me, because Modesto has wounded me;" and he immediately shut his house up as he was afraid and because his wife had just given birth to a child.

Clemente Jalea, brother of the deceased, stated that he found the body of his brother buried in the mud in a small creek called Salong, about 400 brazas from Ariguin's house. He found a rope tied around his brother's stomach, and two bamboo sticks near it, and a little farther away another bamboo stick. These sticks and rope were introduced in evidence without objection. The certificate of the president of the municipal board of health was also introduced without objection which showed that there were eight wounds on the body of the deceased, seven of which would have healed in seven days with medical attention, while the eighth had penetrated the heart, producing death.

The defense introduced two of the accused, Modesto Macuti and Juan Gelladuga. With some variations and omitting details, the testimony of these two defendants was that Jalea wanted to go back into the house to fight with a mountain man with whom he had started a quarrel; that Florentino tried to prevent him and grabbed a stick which Jalea was carrying. In the struggle for the possession of the stick Florentino fell to the ground and Jalea commenced beating him, whereupon Modesto approached and ordered Jalea to let his father alone. Jalea then turned on Modesto and struck him a blow with the club which stunned Modesto. While in this dazed condition, Modesto drew his penknife and wounded Jalea. Modesto further testified that he returned to the scene of the fight later on in the night when it was very still to see if he had really killed Martino. Isidoro Ariguin saw him and made him go and get his (Modesto's) father's cart and carabao. They placed the body on the cart and took it to the creek where Ariguin took hold of the feet and pulled the body off the cart and buried it in the mud. Ariguin then ordered him to wash the blood off the cart, after which they returned to Ariguin's house. By Ariguin's orders he then placed leaves over the spot where the deceased had fallen and Ariguin set them on fire, after which witness returned to his own home.

Called in rebuttal, Isidoro Ariguin denied that he had assisted Modesto in burying the body or that there had been any quarrel between Jalea and the mountain man.

The trial court characterized the testimony of Modesto as manufactured for the purpose of shielding the other guilty persons, and that of Juan Gelladuga as utterly unreliable. There is direct conflict between the evidence for the prosecution and the evidence for the defense in many particulars, and the credibility of the witnesses was for the lower court to determine. Under the circumstances of this case, there is nothing which would warrant us in saying that the lower court erred in accepting the testimony of the witnesses for the prosecution as true and in declining to believe the witnesses for the defense.

But we see no reason, however, for not accepting their testimony where it is corroborated by the testimony for the prosecution. As to the struggle for the possession of the stick which Jalea carried, the two defendants tell substantially the same story as does Ariguin. There is nothing in the record which implicates the three Gelladugas in any way in this contest. Again, the confession of Modesto that he wounded the deceased is corroborated by the declaration of the deceased (which must be considered as part of the *res gestæ*, and which was heard by three of the witnesses for the prosecution) that Modesto was the one who wounded him. The deceased was certainly in a much better position to see who wounded him than anyone else. Had all the defendants or even three or four of them set upon him with knives, it is hardly probable that he would call out only one of their names. Rather, he would indicate that a number were attacking him with knives. We have carefully examined the testimony of Modesto and fail to find any justification for the statement of the trial court in its decision that he testified that he wounded Jalea only once. We find him saying in one place that he inflicted wounds on the deceased, and again that he did not know how many times he struck the deceased with his knife because he was in a dazed condition. In another place we find him answering questions propounded by the fiscal in which the latter refers to the first wound he inflicted upon Jalea.

Ariguin, the principal witness for the prosecution, describes the fight for the possession of the stick as being between Jalea and the two Macutis, Florentino and Agaton. He does not implicate any one of the Gelladugas in this fight, and further says that he did not see who wounded the deceased. The deceased cried out that Modesto wounded him, and this is confirmed by the confession of Modesto himself. The fact that all six of the defendants gathered around the deceased immediately after he was wounded does not tend to show that they all participated in the fight. Altana evidently arrived on the scene at about the same time as Ariguin, since both were prompted to come by Jalea's cry for help and both found him standing surrounded by the six accused, Ariguin saying that he could not tell whether they were inflicting punishment on the deceased or not, and Altana saying positively that they were not doing him harm. Indeed, not the slightest motive for the Gelladugas attacking the deceased can be divined from the evidence of record. The three Macutis, on the other hand, by reason of their kinship, might be expected to assist each other. This, we think, is what happened. Far from any indication that there was any enmity existing between any of the members of this party, the testimony of all the witnesses, both for the prosecution and for the defense, so far as it touches upon the point, is that all the parties concerned were good friends up to the time of the fight. There is no indication even that as they were leaving the house there was any ill feeling or resentment between the deceased and any one of the accused persons. The fight having occurred immediately after leaving the house, there could hardly have been time for the six accused to formulate a conspiracy to effect the death of Martino.

In *United States vs. Guevara* (2 Phil. Rep., 528), it was held that the mere presence of the defendant at the time and place of the commission of the crime, is not of itself sufficient to show such an act of simultaneous cooperation as to make such a defendant an accessory to the crime. In *United States vs. Cabonce* (11 Phil. Rep., 169), which also affirmed this doctrine, it was added that even though doubt might exist as to the innocence of

Simon Cabonce (one of the defendants) on account of certain data which appeared in the record, that was not sufficient to warrant a finding of guilt under the provisions of section 57 of General Orders, No. 58, which provides that a defendant in a criminal case shall be presumed to be innocent until the contrary is proved, and that his guilt must be proved beyond a reasonable doubt. The case of *United States vs. Locson* (20 Phil. Rep., 516), also affirms this doctrine.

The facts of the case at bar, as to the Gelladugas, are within the doctrine enunciated in the above cited cases of this court, and they must for that reason alone be acquitted of direct participation in the crime.

Assuming that Florentino and Agaton Macuti were fighting with Jalea at the time Modesto Macuti stabbed him, can they be held responsible as principals? We have already stated that the record shows no prearranged plan to kill the deceased. It has been the constant holding, not only of this court, but also of the supreme court of Spain, that in the absence of a previous plan or agreement to commit a crime the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and that each of the participants is liable only for the acts committed by himself.

In *United States vs. Magcomot* (13 Phil. Rep., 386), two of the defendants (brothers) were quarrelling with the deceased, when their father suddenly appeared and without warning to anyone inflicted a death blow upon the deceased. This was the only blow struck. The lower court sentenced the father and one brother to life imprisonment and the other brother, who was under eighteen years of age, received a penalty of seventeen years and four months. On appeal this court, after reviewing the authorities, acquitted the two brothers upon the ground that there had been no concerted action between them and their father to inflict the fatal blow, and that this lack of concerted action made each of the defendants liable for only those acts he himself committed against the deceased.

In *United States vs. Manayao* (4 Phil. Rep., 293), it appears that Simeon Manayao and one Margarejo, who were rivals in a love affair, had a quarrel in a store in which a number of friends of each took sides. After leaving the store and while on their way home the quarrel was renewed between the defendant Simeon and his brother on one side, and Margarejo and a friend on the other. Finally the parties came to blows and Simeon stabbed Margarejo with a knife with fatal results. This was the only wound inflicted upon the deceased and the evidence failing to show concerted action on the part of the defendants in the use of the knife or the infliction of the blow, or that the brother of Simeon had any reason to believe that the latter was intending to make a deadly assault on the deceased, Simeon alone was held responsible for the crime and his brother acquitted.

In *United States vs. Reyes* (14 Phil. Rep., 27), Javier and Legaspi were having a quarrel in which Legaspi was using a club. While Javier was holding Legaspi in such a manner as to prevent him from using the club with much effect, Reyes intervened as peacemaker and was struck on the arm with the club by Legaspi. This so enraged Reyes that he wrested the club from the hands of Legaspi and struck the latter two fatal blows on the head with the club, this while Javier was still holding Legaspi in such a manner that Reyes was permitted to strike the fatal blows without serious hindrance on the part of Legaspi. This court held on appeal that there was no concerted action between Reyes and Javier to cause the death of the deceased and Javier was therefore acquitted.

In *United States vs. Lagora et al.* (R. G. No. 8148, not reported), it appears that Teofila Lagora left her father's home for the second time in order to live with the deceased Santiago Morales. Her father, accompanied by his son Tomas, both armed with bolos and clubs, went to the sitio of Bonot and met the other defendants Canuto Arong and Irineo Alcantara who were likewise armed with bolos. Benito Lagora, the father of the girl, immediately inquired where his daughter was, and on being informed that she was hiding in the field near the house he went to the place where she was. Benito started to administer physical punishment to his daughter when the deceased

Santiago Morales ran to her aid and placed himself between her and her father in order to ward off the assault. The father pushed him and he fell to the ground face upward on top of Teofila who was at that moment behind him. Just as soon as Santiago fell Benito jumped upon him and caught him by the neck and almost at the same time the defendants Canuto Arong and Irineo Alcantara also came up and seized both of Santiago's hands. While Santiago was in this position and unable to defend himself Tomas Lagora suddenly stabbed him with the bolo he was carrying. The lower court held all four of the defendants guilty as principals. In acquitting all the defendants with the exception of Tomas Lagora of the crime charged this court said:

"The fact that all four of the appellants were armed with bolos does not show that they had intended to kill the deceased or to do him any injury, as none except Tomas even attempted to use their weapons, although they had every opportunity to do so. Under these circumstances, the three codefendants of Tomas Lagora can not be held responsible for his own acts."

Under the doctrine of these cases, Florentino and Agaton Macuti must be absolved from any responsibility for the killing of Martino Jalea.

There remains to be considered the evidence as to the burial of the body. As to this the Attorney-General states that the evidence only shows Modesto and Agaton Macuti to have been implicated in carrying the body to the creek and burying it in the mud; and therefore asks that Agaton be convicted as an encubridor, while the remaining four appellants be acquitted. We are of the opinion, however, that the evidence shows all six of the accused to have assisted in hiding the body. The only direct testimony offered by the prosecution upon this point is that of Isidoro Ariguin. He testified as follows:

"Q. Who carried him off?—A. Agaton and Modesto were those who carried the body afterwards.

"Q. Look at these objects which I present you [showing to witness three bamboo sticks and a rope—sticks about 6 or 7 feet in length and between 2 and 3 inches in thickness—bamboo poles cut off] and state if you know them.—A. These are only pieces of bamboo to indicate the manner in which the accused carried the deceased.

"Q. And the rope which we will mark as Exhibit A—do you know this?—A. Yes, sir. That is the rope with which they tied the corpse. This is the rope that they had tied around the stomach of Martino Jalea. They went to a place that is called Catlagan and in a small creek there they buried the corpse. This creek is in the barrio of Solong and to this place the accused went."

Again, on being asked if he later saw the body of the deceased, this witness replied that he did not, for the reason that the accused took him away. The word accused appears in the testimony of this witness in several places, and always indicates that he referred to all of the defendants collectively. In addition to this, we have the testimony of the brother of the deceased that three bamboo sticks were found near the body. A rope was tied in three places around the body, three bamboo sticks were used in carrying the body, and the only explanation is that these sticks were inserted between the body and the rope, one underneath the arms, one around the waist, and one at the knees, and that two of the accused carried each one of these sticks in the same manner as pingas are used in this country to carry burdens. It is not reasonable to suppose that if only two of the accused carried the body away they would use three bamboo sticks each six or seven feet in length. Again, the accused were all six of the defendants. Several times in his declaration this witness uses this term without qualification whatever. It is true that he mentioned Modesto and Agaton Macuti as the ones who tied the rope around the body and, in answer to the question, "Who carried him off?" replied that these two were the ones. But his answer to the very next question modifies his answer to the preceding question. The trial court interpreted the testimony of this witness to mean that all six of the accused assisted in carrying the body away.

In *Ware vs. Stephenson* (10 Leigh (Va.), 155, 165), the court said: "In ascertaining the facts established by it, we

must look to all of it, and especially in ascertaining the facts established by any one witness, everything stated by him, as well on his cross-examination as on his examination in chief, must be considered. Facts imperfectly stated in answer to one question may be supplied by his answer to another; and when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by the facts disclosed in another."

Such was the rule stated by the court in *Bruch vs. Philadelphia* (181 Pa., 588), where the testimony of the plaintiff could be construed to show that he was exercising ordinary care or that he had been guilty of contributory negligence, the court said; "While we will not undertake to say the interpretation put upon plaintiff's testimony by the learned judge of the court below was clearly a wrong one, we are of the opinion it was not clearly the only one of which it was susceptible, and was not clearly the right one; hence, the evidence would have been for the jury if that method of trial had been adopted; and the referee having been substituted for the jury, his finding of fact is conclusive on defendant."

In *Mexican Cent Ry. Co. vs. Henderson* (114 Fed., 892), where a similar question was presented to the court for consideration, it was said: "The jury had the witness before them. His testimony was expressed to them not alone in arbitrary characters which constitute the words he used, but also by his manner in their use. Whatever may be the fact, it does not unquestionably appear on the surface of the language in which his testimony is reported to us that he thought, or that he intended to admit, or believe that he was admitting, that he had not done, on the morning he started out with his engine, all that his duty as an engineer and the rules and practice of the company required him to do to satisfy himself that the step in question was in condition for use."

In *People vs. Wallace* (109 Cal., 611), which was an action for seduction, the prosecuting witness testified that she did not consent to sexual intercourse and the defense therefore claimed that it was a case of rape and not of seduction. But the supreme court held that she intended to convey the meaning by these words that she did not consent in terms because she did not think it was right, but yielded to the persuasions of the defendant. "The jury very properly subordinated the literal terms used by the witness to the substance and effect of her evidence."

The emphasis, gesture, and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this court has no such assistance in the examination of the testimony and we must therefore rely upon the good judgment of the lower court. In this case the interpretation placed upon the testimony of the witnesses by the trial court appears the most reasonable and probable from the record itself. Certainly, we would not be justified in reversing a finding of fact made by the lower court under these conditions.

These defendants having participated in the burial of the deceased with full knowledge of the commission of the crime, and having neglected to inform the authorities of the facts known to them, the case as to them is directly within the doctrine of *United States vs. Leal* (1 Phil. Rep., 118); see also *United States vs. Romulo* (15 Phil. Rep., 408).

We therefore conclude that the five appellants did not directly participate in the commission of the crime and their conviction of the crime of homicide cannot be sustained by the evidence of record. The judgment of the lower court sentencing them for that crime is therefore set aside. The evidence does show, however, that they assisted in concealing the body, and they are therefore guilty, under the provisions of paragraph 2 of article 15 of the Penal Code, as *encubridores*. In accordance with article 68 the penalty inflicted should be two degrees lower than that provided for the consummated crime, which, in this case, is *prision correccional*.

The record shows that these appellants were intoxicated at the time the crime was committed. This is a mitigating

circumstance under paragraph 6 of article 9 of the Penal Code, except when the intoxication is habitual. When the record is silent as to whether the intoxication is habitual or not, as is the record in this case, the accused will be favored with the presumption that his intoxication is not habitual. (U. S. vs. Fitzgerald, 2 Phil. Rep., 419; U. S. vs. Dayutal, 4 Phil. Rep., 93; U. S. vs. Highfill, 4 Phil. Rep., 384.) The intoxication of the five appellants must therefore be considered as a mitigating circumstance, and there being no aggravating circumstances, the penalty should be applied in its minimum degree.

Therefore, we hereby sentence each of the five appellants, Florentino Macuti, Juan Gelladuga, Donato Gelladuga, Antonio Gelladuga, and Agaton Macuti to two years of prision correccional, together with the corresponding accessory penalties; to indemnify the heirs of the deceased jointly and severally in the sum of P1,000, and to the corresponding subsidiary imprisonment in case of insolvency (this liability being contingent upon the insolvency of the principal, Penal Code, art. 125); and to the payment of one-sixth of the costs of the cause.

Arellano, C. J., Torres and Carson, JJ., concur.

Johnson, J., concurs in the result.

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