

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EULALIO CORNEJO, DEFENDANT AND APPELLANT.

G.R. No. 9773. November 20, 1914

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On the night of November 2, 1913, Zacarias Cabello was preparing a supper in his house which was to be served outside in the yard (called in the record a plazuela or small square). Some of the guests had already arrived in the yard by 7 o'clock, and about five of them were in the house upstairs. Among these latter was Agaton Salazar, who had gone there to assist the host in preparing the meal. Shortly afterwards Pedro Reyes and Eulalio Cornejo arrived. These two men induced a boy 12 years of age to call upstairs to Agaton Salazar and have him come down. The boy did so and Agaton Salazar descended, holding his shirt in his hands and wearing a pair of wooden clogs. Pedro Reyes told Salazar that he needed him and they, with the defendant, went aside to the south of the house. Reyes led the way, Salazar followed him and behind the latter went Cornejo. After they had gone a few yards, Reyes, without saying a single word, turned halfway around and struck Salazar a blow on the head with a palma-brava club he was, carrying and immediately followed it up with two more blows. When Salazar stooped over, Cornejo struck him several blows in the face with a bolo, and then the two assailants immediately took to flight. Such was the uniform testimony given by the owner of the house, Cabello, the boy aforementioned, named Eulalio Villamil, and Potenciano Lasala, all of whom were eyewitnesses to the affair, which took place in the municipality of Taal, Province of Batangas.

According to the medical examination, the blow was inflicted with a palma-brava club with sharpened edges which fractured two bones in the frontal parietal region and caused a very serious injury. The victim did not regain consciousness from the time he was struck until he died, six days afterwards, and the physician believed that this wound was the cause of his death. The examination further showed that the deceased received another wound in the cheek, not of a serious nature, caused by a cutting instrument, and still another light one, likewise effected by means of a cutting instrument, which split his lips and an incisor tooth on the left side; finally, there were several bruises on the right wrist and the back of one of the forefingers, black and blue spots on the eyelids and both lips, and bleeding at the nose.

Inocencio Acheron testified that on Sunday, November 2, 1913 (the day of the occurrence), he had left his house and his barrio about 8 o'clock in the morning in search of some cows and, while passing by the barrio of Halang of the same municipality of Taal, he saw Reyes and Cornejo, old acquaintances of his, in a shack. The former was engaged in putting an edge on the corners of a palma-brava club, and the latter was sharpening a bolo. While witness was talking with them, the idea occurred to him to ask why they were so busily engaged in that way, and they replied that they were going to kill a bachelor of the barrio of Talon.

The defendant admitted having been at the house of Zacarias Cabello because he had been invited by one Primitivo Magsino, who also went there to escort his sister Maria back home. He heard, but did not see, the quarrel between Reyes and Zalazar. He went home about 7 o'clock, but as his mother told him there was nothing

to eat, he went to his uncle's house and there spent the night; the next day he went to Lipa. However, in his same testimony, defendant said that after the quarrel between Reyes and Salazar he remained for an hour on the bench where he was seated, without moving. Primitivo Magsino testified that five minutes after Salazar entered the house, witness, his sister, the defendant, and a man named Vicente went away. Zacarias Cabello denied that either Primitivo or Vicente had been at his house that night, though he asserted that Maria was there and that he sent Potenciano Lasala to accompany her on her return home. The defendant's mother told the policeman who was looking for him that night, that he had not returned home. Cabello himself went to the house of the defendant that night in order that they might arrest him, but neither then nor on the following days could he be found there, nor in the field where he was in the habit of working before the crime was committed.

The Court of First Instance of Batangas tried and sentenced the defendant for murder, and stated that he had not the least doubt of his guilt. He classified the crime as murder "because the killing of Agaton Salazar was attended by the two circumstances of treachery and deliberate premeditation, although one of these is sufficient for the qualification of the said crime. The record sufficiently proves that there was treachery, for the defendant Eulalio Cornejo and the fugitive Pedro Reyes attacked the deceased in a manner which he did not expect and in such wise that he had no time to defend himself from their assault. It is also proven that there was premeditation, because, as above mentioned in the statement of facts, on the morning of the day of the occurrence, the defendant Eulalio Cornejo and Pedro Reyes prepared the weapons with which they attacked the deceased that night."

Of the two qualifying circumstances mentioned, one was held to be a generic aggravating circumstance which should increase the penalty; but it was offset by the extenuating one of article 11 on account of the defendant's lack of education. Eulalio Cornejo was accordingly sentenced to seventeen years four months and one day of cadena temporal, to the accessory penalties, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs.

The defendant appealed. After a consideration of his appeal, we find that the evidence was duly weighed in accordance with the merits of the case, and that the finding of the qualifying circumstance of treachery was proper. There was treachery if the attack was sudden and unexpected and not preceded by a dispute and the deceased was unable to prepare himself for his defense, though he was face to face with his assailant. (Decisions of November 16 and 23, 1900; November 21, 1901; and May 20, 1903.)

We also find that the aggravating circumstance of deliberate premeditation was also properly taken into account in accordance with the law. When, besides treachery, there is premeditation, the latter constitutes an aggravating circumstance. (Decision of May 9, 1877). This circumstance must be considered when the crime was planned by the guilty party, when he prepared beforehand the means which he deemed suitable for carrying it into execution, and when he had had sufficient time dispassionately to consider and accept the consequences. (Decisions of Dec. 26, 1887, and Sep. 1, 1893.) There is premeditation when there appears to have been a concerted plan to commit the crime (decision of June 4, 1874), as, in the case at bar, where Reyes immediately preceded the deceased and the defendant followed him, the victim being thus caught between two well-aimed blows.

Finally, the opinion of the trial judge is in line with the principles of penal sanction in finding that the defendant was guilty as a principal and nothing else, although it was known that the death of the victim was due to definite action by the co-defendant. For only where there has been no agreement to cause the harm produced can acts,, performed jointly, in common and simultaneously, be separated and the respective parts be defined in a crime where one attacks with a club and the other wounds the victim with a cutting weapon; in such case there would clearly be two separate and distinct injuries. (Decision of January 11, 1905.) But when there was an understanding, all who participated in the preconcerted crime are liable for the means which each of them employed to carry such crime into effect, and for the consequences thereof. (Decisions of December 24, 1901;

March 26,1903; March 22 and 30, and May 31,1905.)

The only modification to be made in the sentence is the degree in which the penalty should be applied. The penalty being cadena temporal in its maximum degree to death, it should be raised to that of death, by reason of the generic aggravating circumstance taken into account. Without this aggravating circumstance the extenuating one of article 11 would reduce the penalty to the minimum degree, as it was in the sentence imposed; but, compensating this extenuating circumstance by that aggravating one, the penalty should be applied in the medium degree, or cadena perpetua.

With the understanding that the defendant is sentenced to cadena perpetua, the judgment appealed from is, in all other respects, affirmed, with the costs of this instance against the appellant.

Torres, Johnson, Carson, Moreland, Trent, and Araullo JJ., concur.

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