

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LOPE ZALSOS AND ROMANO RAGMAC, DEFENDANTS AND APPELLANTS.

G.R. Nos. 14468 and 14469. September 12, 1919

Ponente: TORRES, J.

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TORRES, J.:

On January 31, 1918, the chief of police of the municipality of Initao, Province of Misamis, filed a complaint, in the justice of the peace court of the said municipality, accusing" Romano Ragmac, Lorenzo Caburatan and Anacleto Caburatan of the crime of murder for having killed Eulalio Valencia in the barrio of Gimangpang of that municipality.

The three accused having been arrested the first day of the following February (1918) immediately a preliminary investigation was held in which Marcelino Balabat and Urbano Caburatan testified saying that, on January 29, 1918, there took place a quarrel between the deceased and the accused Romano Ragmac; that during the quarrel Valencia struck at Ragmac several times with his bolo; that Ragmac succeeded in avoiding the blows and in snatching said bolo from Valencia; that with the same he inflicted on Valencia several wounds which killed him instantly; and that Romano Ragmac accompanied by Lorenzo Caburatan, Anacleto Caburatan and Domingo Balabat (who, together with Lope Zalsos, were not present during the fight) carried the corpse to a small boat and then threw it into the sea.

The accused Romano Ragmac testified admitting that he had killed Valencia but alleging that he did so in selfdefense that he put the corpse in a small boat and afterwards threw it into the sea—first having divided same into three parts, putting them into three sacks; that furthermore Lorenzo Caburatan and Anastacio Caburatan, yielding to his entreaties, accompanied him in the small boat though they did not know the contents of the three sacks, as when he begged for their help he only asked that they should accompany him in selling copra—no mention of Lope Zalsos having been made.

On February 5, 1918, the aforesaid chief of police filed another complaint accusing Lope Zalsos, as co-principal, of aforesaid crime. On account of the arrest and petition of Lope Zalsos he case was at once forwarded to the Court of First Instance—the right to a preliminary investigation being renounced.

On July 25, 1918, the provincial fiscal of Misamis filed with the court a separate information against Romano Ragmac and Lope Zalsos accusing them of the crime of murder and alleging as follows: That on the afternoon of January 29, 1918, in the barrio of Gimangpang, municipality of Initao, Province of Misamis, the said accused, without any justifiable motive, intentionally, maliciously, unlawfully and treacherously, with known premeditation and cruelty, assaulted Eulalio Valencia with bolos with which they had provided themselves beforehand and inflicted several wounds upon different parts of his body, the same causing his instant death.

The two cases were set for a hearing on July 25, 1918. With the consent of the counsel for the defense they were heard together and upon the result of the evidence, on July 26, 1918, the court rendered judgment convicting the two accused, Romano Ragmac and Lope Zalsos, of the crime of murder and sentencing both to the death penalty;

to indemnify, jointly and severally, the heirs of the deceased in the sum of five hundred pesos (P500) ; and to pay the costs. The case is brought before this court for review (en consulta) and appeal.

From the testimony of the witnesses Marcelino Balabat, Urbano Caburatan, Joaquin Recoleta, Lorenzo Caburatan, Anacleto Caburatan and Magdaleno Balabat it appears that at about 3 o'clock in the afternoon of January 29, 1918, Romano Ragmac (armed with a bolo) together with Lope Zalsos went into the house of the councilman Marcelino Balabat, (situated in the barrio of Gimangpang, Initao,) and then there found Eulalio Valencia who, coming from Macabebe, spends his time selling in the pueblo pictures and crosses (cruces) ; that on seeing the accused, Eulalio Valencia stood up and politely addressed Romano Ragmac in this manner: "Friend, there is a rumor that you hate me;" that Romano answered that it was not so; that nevertheless Komano caught hold of Valencia's hands and tied them with abaca fibers behind his back; that while this was taking place Lope Zalsos took possession of the bolo of Eulalio Valencia who a few moments before had put same on a table in the house and then placed himself behind Valencia; that Valencia neither spoke nor resisted their tying of his hands; that nevertheless he was pale and trembling; that while Valencia's hands were being tied, Marcelino Balabattold his wife to call the schoolteacher, Joaquin Recoleta, to help him admonish the accused; that, the hands being tied, Romano Ragmac began to drag Valencia by the stairway down below while Zalsos was pushing him from behind; that in this manner Eulalio Valencia was compelled to descend by the stairway to the ground; that at this time Marcelino Balabat cautioned them not to maltreat that man who had committed no crime; that the accused payed no attention; that at this moment Urbano Caburatan who lived at a distance of about 30 feet (5 brazas) from the councilmen's house arrived and also warned the accused in vain; that when Eulalio Valencia reached the ground the school-teacher appeared and gave them the same advice; that they did not heed him either but even pushed him away; that the accused kept on dragging Eulalio Valencia about 30 feet (10 brazas) more when Lope Zalsos, who was behind Valencia, gave him a blow on the neck with a bolo; that afterwards Ragmac, who was in front of Valencia and who was also carrying a bolo, gave him another blow on the neck; that thereupon Valencia fell to the ground at the moment Lope gave him another bolo cut in the center of his face; that likewise Ragmac stabbed him in the abdomen; finally the two accused left him there for a while; that later on the accused returned to the place of the crime, cut the corpse into three parts and put these into three sacks which they loaded into a small boat; and that aided by Lorenzo Caburatan, Domingo Balabat and Anacleto Caburatan, he threw them into the sea.

Accordingto the witnesses Marcelino Balabat and Magdaleno Balabat, the motive which induced Romano Ragmae to kill Eulalio Valencia is the fact that Ragmae attributed to the presence of the Macabebes in the place the existence of the cholera epidemic in his barrio, a disease which attacked his small son in the early part of December, 1917— although the said son was saved and recovered his health after four days. The said witnesses affirm, and the accused Romano Ragmae so admits, that, when his son had cholera, Ragmae told them that he would kill the first Macabebe he should meet.

On the other hand, the accused Romano Ragmae and Lope Zalsos, when testifying as the only witnesses in their own behalf, tried to establish that on the afternoon in question Romano Ragmae dropped in to the councilman's house to take a rest; that after he had seated himself upstairs in the house the Macabebe stood up and said to him, "Are you Romano Ragmae?"; that he courteously answered in the affirmative; that Eulalio Valencia asked the question while trying to draw out his bolo and asserting, "You are bad. You are the one who hates me;" that Romano replied, "That is not so;" that upon seeing the attempt to unsheath the bolo Romano Ragmae started to run downstairs; that Eulalio Valencia, with his weapon drawn, followed to a distance of about 33 feet (about 6 brazas) from the councilman's house; that then and there, Eulalio Valencia struck at Ragmac three times; that Ragmae was able to avoid these thrusts; that, as later Ragmae succeeded in grabbing the said bolo from the hand of Eulalio Valencia, with this he inflicted on his adversary one blow that hit him on the neck and two others which caught him in the abdomen; that Ragmae was alone when he dropped into the house of Marcelino Balabat; that

Domingo Balabat, Lorenzo Caburatan, Anacleto Caburatan, and Lope Zalsos were all innocent, that they had nothing to do with the crime in question; that he was so frightened that he did not tell any body what had happened; that he just cut Eulalio Valencia's body into three pieces, put these into three sacks and, accompanied by Lorenzo Caburatan, Anaeleto Caburatan and Domingo Balabat whom he had begged to help him in this task, threw them into the sea; that during that day, January 29, 1918, he did not see Lope Zalsos; that Lope in turn said that he passed a distance of about 45 feet (about 8 brazas) from the place in question, carrying with him a fish net; that Lope said that on that occasion he saw Romano Ragmac and Eulalio Valencia fighting; that from that distance he cried out to them, "Don't go on doing that for it might drag our barrio into trouble;"* and that he then went away.

The defense alleges that the witnesses Marcelino Balabat, Urbano Caburatan, Lorenzo Caburatan and Anacleto Caburatan testified in a different manner at the preliminary investigation; but, on being questioned, the said witnesses explained that they did do so due to the fact that, although Romano Ragmac was then arrested, Lope Zalsos was not; that these accused threatened to kill them if they testified to the truth, a threat of said accused made at the moment of the crime to some of the aforesaid witnesses, and, after the same, to the others; but that afterwards they testified the truth. It should be observed that the witness Urbano Caburatan testified that he had no hard feeling towards the accused; that his eldest son is married to a sister of Zalsos; that one of his nieces is also married to Romano Ragmac. Ragmac admitted that in fact he had no hard feeling toward either of the brothers Marcelino or Magdaleno Balabat, in whose house his own family was then living; that the witness Magdaleno Balabat, as well as Marcelino Balabat, are his brothers-in-law because the wife of Marcelino is his own sister; and that he is also Zalsos' brother-in-law because his third wife is Zalsos' sister. Zalsos testified that he had no hard feeling towards Marcelino Balabat.

The proven fact that Eulalio Valencia met a violent death at the hands of the accused Romano Ragmac and Lope Zalsos, who inflicted upon him grave and mortal wounds, constitutes the crime of murder mentioned in article 403 of the Penal Code, inasmuch as, after having tied the victim's hands behind his own back and after being sure that said victim could neither defend nor save himself from the assault, the accused, previously armed, attacked him with their respective bolos, thereby employing in the execution of the crime, means and methods which tended directly and specially to assure its consummation—without running any risk to its execution—and with perfect safety to themselves inflicted upon him several wounds. Therefore it is unquestionable that the crime should be classified as murder committed with treachery (alevosia).

In spite of the allegations of the defense, the evidence adduced by the prosecution established, beyond the shadow of a doubt, the guilt of the accused. In fact the accused Ragmac admits having killed the deceased Valencia and having committed the crime when Valencia was defenseless, his hands being tied behind him in the manner stated by the witnesses Marcelino Balabat and Urbano Caburatan. The allegations of the accused Ragmac are not worthy of credence for he has contradicted himself in admitting, at first, having said that he would kill any Macabebe whatever on meeting him in his barrio and afterwards by denying this statement. It is not at all probable that, when Eulalio Valencia tried to unsheath his bolo, Ragmac began to run away, for then he could not have answered Valencia twice, and, furthermore, the deceased placed his own bolo on a table wherefrom the other accused Zalsos immediately took it. The fact is proven that the crime in question was perpetrated and consummated by both of them.

Against the unfounded allegation of the accused Ragmac appears in this case the testimony of Joaquin Recoleta (whose mother is a relative of Ragmac) which has been impugned by the defense as improbable because, after having warned in vain the accused Ragmac in order to prevent the consummation of the crime, the witness immediately returned to the schoolhouse to tell his pupils to go home so that they should not see what was going

on showing by this act that he did not want to have his pupils stay in the schoolhouse and see the outcome. However, it is undeniable, according to the testimony of the witness Recoleta, that the accused Ragmac dragged the deceased from the house down to the ground while Lope Zalsos was pushing same from behind, thereby corroborating the testimonies of the other witnesses, Marcelino Balabat and. Urbano Caburatan, in the sense that the two accused conducted the victim some distance from the house of the barrio's councilman, Marcelino Balabat and consequently, it is beyond the shadow of a doubt, that the two accused had a joint and direct participation in the commission of the crime, that both the two, as co-principals of the same, have incurred the penalty provided for and ratified by law.

If the accused are really innocent, it is not explainable why the witnesses for the prosecution, once free of the fear which the accused had instilled in them, should cease to hide the truth regarding relatives, and on seeing them now imprisoned should relate the facts just as they had happened—and especially so, as Ragmac had been already convicted for similar offenses committed during the last revolution.

In the execution of the crime is to be taken into consideration, on the part of the accused Ragmac, the concurrence of the aggravating circumstance of premeditation which, in the present case, is considered as generic, inasmuch as, after careful and thoughtful meditation, the accused decided to kill, at the first opportunity, whatever individual he should meet from the town of Macabebe, on account of the previous illness of his son—without the detail, that the person who had to be the victim was as yet not determined upon, being an impediment. Inasmuch as he intentionally sought out a native of the town of Macabebe, a human being, there is no doubt that, actuated by the impulse of his prejudice against any individual from Macabebe and obedient to his criminal resolution seriously conceived and selected to carry out vengeance, he perpetrated the crime with premeditation, inasmuch as sometime beforehand he adopted and explained said plan to several. This circumstance is compensated by the mitigating" circumstance mentioned in article 11 of the Penal Code as amended by Act No. 2142, for the reason that the accused had delivered, although without any reasonable ground, that the presence of the natives of Macabebe were the cause of the cholera epidemic which had ravaged the town of Initao, Province of Misamis—an erroneous belief that shows ignorance and lack of culture. Wherefore, the accused Romano Ragmac has incurred in its medium degree the penalty provided by law for such a crime, as has also the other accused Lope Zalsos, there not having occurred in his participation as co-principal any circumstance mitigating or aggravating.

From these considerations it follows that, with the reversal of the judgment in review and on appeal, we must, as we hereby do, sentence each of the accused, Romano Ragmac and Lope Zalsos, to the penalty of cadena perpetua (life imprisonment) ; to the accessories of civil interdiction; to subjection during lifetime to the surveillance of the authorities, (even though they should obtain a pardon for the principal penalty) to suffer absolute perpetual disqualification; to subjection while they live to the surveillance of the authority, if these accessory penalties have not been remitted with that of principal penalty; and to pay the widow and heirs of the deceased, jointly and severally, the sum of one thousand pesos (P1,000) as indemnity, without subsidiary imprisonment in case of insolvency, according1 to article 51 of the Penal Code, together with the costs of both instances share and share alike. So ordered.

Arellano, C.J., Johnson, Araiillo, Street, Malcolm, Avanceña, and Moir, JJ., concur.

Judgment reversed; penalty reduced.

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