

3 Phil. 625

[G.R. No. 1542. April 09, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CORNELIO DEVELA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

COOPER, J.:

The defendants, Cornelio Devela and Silvestre Absolio, are charged with the crime of robbery with homicide, denned and punished under clause No. 1, article 503 of the Penal Code, and were on the 22d day of September, 1903, found guilty. The aggravating circumstances of *alevosia* and *despoblado* were applied and the defendants sentenced by the Court of First Instance to the death penalty.

From the evidence it appears that Luis Oleta, the deceased, was sent by his master to the town of Mauban to take 500 pesos to the store of his principal, and while on the way with the money, on arriving at a place near the shore of the Sabang River, the accused, Cornelio Devela and Silvestre Absolio, armed with a bolo and dagger, seeing that Oleta carried money, approached him and demanded that he deliver it to them. Oleta resisted, throwing a stone at Absolio. Oleta was then attacked by the defendants and wounded, from the effects of which he died a short time afterwards. The body of the deceased showed that he was wounded seven times, six of which were mortal wounds.

The testimony of the prosecution consisted of statements made by the defendants at the time of their capture and also the testimony of the defendant Absolio on the trial of the case.

In his testimony Silvestre Absolio stated that he and his codefendant, Devela, went out from the barrio of Tubigan for the

purpose of getting some clothes which he had ordered from a tailor; that after they had crossed the Sabang River, they met the deceased, Luis Oleta, carrying a sack of money; that they immediately concluded to rob him; that on approaching the deceased the deceased refused to deliver the money to him and offered resistance by throwing a stone which struck him on the thigh; that they struck the deceased blows with a bolo until the money fell from his hand, when they seized it and fled; that at the time they did not know whether the deceased was armed or not; that he was about their size and strength; that the witness is 22 years old and his codefendant is 18 years of age; that he was accustomed to carry the dagger which he had on that occasion; he testified that his companion, Devela, was the first to wound the deceased. It does not appear whether the bolo used by Devela was the ordinary bolo used in working or was of the prohibited character.

The evidence shows clearly the guilt of the defendants.

The question to be determined is whether the aggravating circumstances found to exist by the trial court, to wit, *alevosia* and *despoblado*, which had the effect of raising the penalty from the medium degree, punishable by life imprisonment, to the maximum degree, punishable by death, are sufficiently shown in the case.

By the provisions of article 10, No. 2, Penal Code, *alevosia* exists: "When the culprit commits any crime against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal arising from the defense the injured party might make."

The defendant Absolio testified that at the time of the attack he did not know whether Luis Oleta, the deceased, was armed or not. Had the deceased been armed with a revolver or bolo, not only might he have caused risk to the defendants, but he might have successfully repelled their attack and killed his assailants. Besides it is shown by the testimony of the defendant Absolio that the deceased made a defense by throwing a stone and striking the defendant on the thigh. But it is not necessary to prove that there was or was not a defense actually

made. This would make the existence of the aggravating circumstance depend upon the result of the aggression.

It appears from the evidence that the attack was sudden, without premeditation, and evidently made without taking into consideration the risk which the defendants incurred in committing the robbery. Their purpose was to possess themselves of the money carried by the deceased, without regard to consequences, and without any preparation directly and specially tending to insure them against risk, such as exists where the culprit lies in wait or approaches from behind, unseen; or where an attack is made upon a sleeping person; or where the act of taking life was distinct and separate from that of overpowering the injured party, or after possessing his arms or assuring themselves that he was unarmed. Nor do we think that the evidence was sufficient to show that the crime was committed in an uninhabited place. There is entire absence of proof in the record as to whether there were persons living near the scene of the encounter; but it does appear that the brother of the deceased approached the place directly after he wounding of the deceased, and that it was but a short time after the occurrence before officers of the law were in pursuit of the defendants.

It has been stated that No. 9, article 10 of the Penal Code should be applied as an aggravating circumstance.

It reads as follows:

“9. When advantage is taken of superior strength, or means are employed to weaken the defense.”

This circumstance was not considered by the Court of First Instance nor do we think it sufficiently well marked in the proof to require its application. An illustration of the cases which fall within this provision is where, for example, a strong man has ill treated a child, an old or decrepit person, or one weakened by disease; or where a person's physical strength has been overcome by the use of drugs or intoxicants. In each of these cases there is a marked difference of

physical strength. The case of employment of means to weaken the defense is illustrated by the case of where one struggling with another suddenly throws a cloak over the head of his opponent and while in this situation he wounds or kills him.

As to whether the mere fact of two or more attacking a single person is of itself sufficient to show a superiority of strength within the meaning of this provision, the decisions of the supreme court of Spain, construing this provision of the law, seem to be in conflict.

It is impossible to establish fixed and invariable rules upon such questions. The mere fact of there being a superiority of numbers is not sufficient to bring the case within this provision.

In the absence of aggravating circumstances the defendants should be found guilty, and the punishment assessed should be in the medium degree. The Court of First Instance erroneously found and applied the aggravating circumstances before considered, which raised the crime to the maximum penalty and punishable by death. The sentence of the Court of First Instance must be reversed and reformed, and the defendants convicted and sentenced for the offense of robbery and homicide in its medium degree, punishable by life imprisonment.

We therefore reverse the judgment of the Court of First Instance, and now here sentence the defendants, Cornelio Devela and Silvestre Absolio, to the penalty of life imprisonment, with indemnity to the relatives of the deceased who are entitled to receive the same in the sum of 1,000 Philippine pesos, and to the costs of the proceedings.

Arellano, C.J., Torres, Mapa, McDonough, and Johnson, JJ., concur.

DISSENTING

WILLARD, J.,

In my opinion the judgment of the court below should be affirmed, upon the ground that the aggravating circumstance of abuse of

superiority existed. This view is sustained by the following decisions of this court: United States vs. Teodoro, 1 Official Gazette, 396; United States vs. Jose, March 25, 1903.^[1]

It is also supported by the decisions of the supreme court of Spain of May 9, 1893, March 19, 1888, May 24, 1888, December 23, 1890, and December 21, 1891.

^[1] Not published
