

3 Phil. 414

[G.R. No. 1581. March 15, 1904]**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO GIT,
DEFENDANT AND APPELLANT.****D E C I S I O N****TORRES, J.:**

On December 3, 1902, the provincial fiscal of Occidental Negros filed an information in the Court of First Instance of that district charging Pedro Git, Laurencio Sernal, Julio Occia, Pedro Mijares, and Laureano Mijares as principals, and Basilio Situado, Petronilo Berdaga, and Eugenio Berdaga as accessories after the fact, of the crime of murder, in that one Saturday, prior to the 11th of November, 1902, for the purpose of appropriating to themselves the lands of Miguel Pastor and of preventing him from presenting any claim whatever, Pedro Mijares and Laureano Mijares, his brothers-in-law, who were working the said lands, proposed to Pedro Git and Laurencio Sernal, while the latter were in the house of the said Laureano, that they kill said Pastor for the sum of 100 pesos, instructing them to kill the said Pastor with clubs for the purpose of avoiding the shedding of blood by which the crime might be revealed and in order that his death might be attributed to the cholera, which was then epidemic; that the said Git and Sernal accepted the proposition and resolved to carry it into effect at 12 o'clock on the said 11th day of November while Miguel Pastor was sound asleep in his house at Bontot in the township of Escalante of that district, in which house they were living as laborers employed by Pastor; that Pedro Git struck Pastor a blow on the back of the neck with a club, being then and there aided by Julio Occia, who was present with a rope provided by Pedro Mijares for that purpose, with which rope the deceased was bound while attempting to defend himself after the blow was struck; that after Pastor was killed his body was buried in the cemetery with the aid of Basilio Situado, Petronilo Berdaga, and Eugenio Berdaga, the first of whom was suspected

of having sustained illicit relations with the wife of the deceased, who on that account had discharged him some days before the occurrence; that the second person above named had found spots of blood in the said house but failed to make a proper investigation, thereby giving occasion for the concealment of the crime. The fiscal asked in his information that the youth, Paulo Sernal, be not prosecuted, as his participation in the crime was not proven.

The complaint having been filed, Paulo Sernal was discharged, and the defense then asked that Pedro and Laureano Mijares be given a separate trial, which petition was granted. Afterwards the case was dismissed as to the defendant Petronilo Berdaga at the request of the prosecuting attorney, and he was accordingly discharged.

Mr. G. A. Barber, a sanitary inspector, having been informed by some of the inhabitants of the place that early on the morning of November 12, 1902, a man had been buried in the cemetery under suspicious circumstances, reported the case to the local president of the town of Escalante, who, accompanied by his secretary, the said inspector, and the justice of the peace, with his witnesses, immediately proceeded to make an examination; they went to the grave where they observed spots of blood on the ground. The body having been exhumed, it was found to be that of Miguel Pastor. When exhumed the corpse was wrapped in a mat. An examination of the body showed that a piece of rope was wrapped around the neck, one end of it being fastened to the left arm, the other free end having been apparently broken. A wound was found on the back of the neck and the right cheek, right eye and nose were bruised.

Claro Singson, the municipal president, and his secretary, Juan Alarcon, stated in their testimony, in addition to the facts above related, that Marcelino Gamao, a member of the municipal council, also stated that he had been informed by the gravediggers that spots of blood were found around the grave in which Miguel Pastor was interred, and consequently, in view of the condition in which the body was found when exhumed, he directed the arrest of the men who had buried the body, the result being the detention of Pedro Git, Pedro Mijares, Basilio Situado, and Laurencio Sernal. This witness testified further that when exhumed the body was dressed in an undershirt and trousers and that there was a white stocking on one of the feet; that the grave was only two or three spans in depth; that after the place was inspected and an examination of the body made by

Dr. Barber, the corpse was reinterred; that about 10 o'clock on the morning of the 12th of November, Apolonio Quintao, a corporal of the Constabulary force, reported to the local president and to the justice of the peace that he had arrested Laureano Mijares, a member of the town council, because Pedro Git and Laurencio Sernal had stated that they had killed the deceased, Pastor, the night before, by orders of the said Laurencio, in consideration of the compensation of 100 pesos.

The witnesses Domingo Sabete, Fabio Dotdot, and Anastacio Cobete testified that, according to information which they had received, Miguel Pastor was killed by Git and Sernal, workmen in his employ, by order of Laureano Mijares. The last witness testified further that the house of Pedro and Laureano Mijares was about 200 brazas away from that of Miguel Pastor. Petronilo Berdaga testified that on the morning of November 12 Pedro Git came to his house and told him that Miguel Pastor had died of cholera and asked him to assist in the burial of the body in the cemetery, but that the witness, being ill, excused himself and ordered his brother Eugenio Berdaga to go with Git and bury the body. That at daybreak he went to the chapel but found that the body was no longer there, but met Pedro Git, Laurencio Sernal, Julio Occia and his brother Eugenio, and also Basilio Situado, who were coming from the direction of the cemetery; that as he observed spots of blood on the floor of the building, he asked from whence this blood had come, to which Git replied that they were part of the fecal matter which had come from the corpse, which statement the witness believed; that after he was arrested and taken to the Constabulary barracks he heard Pedro Git, Laurencio Sernal, and Julio Occia state to the Constabulary corporal that Git was the man who killed Pastor with the aid of Sernal and Occia, by order of Laureano and Pedro Mijares; that Git owed the deceased a certain sum of money which he had refused to pay; that after Git's arrest a pair of trousers, an undershirt, and a shirt of the deceased were found in his possession, which garments the witness recognized, he also being a laborer employed by Pastor.

Laurencio Sernal testified that he lived in the house of the deceased with his brother and Paulo Sernal, and that while asleep on the night of the occurrence he was aroused by a loud cry from Pastor, who called for assistance; that he immediately arose for that purpose and, there being no light, he crawled along the floor on his hands and knees; that just at this time Pedro Git, who was also in the house, lit a light and then witness saw the corpse of Miguel

Pastor lying on the floor, face upward, with a rope fastened to one of the arms and wrapped several times around the neck; this witness further testified that Git was not in the house before the witness went to bed and that he had not seen him up to the time that the light was lit and that he believes that Git was the man who killed the deceased and struck the blows, the noise of which lie heard immediately after the cry; that the said Git immediately left the house and shortly after returned with Pedro Mijares, who was desirous of determining for himself whether Pastor was dead or not, and that upon being convinced that he was, he said: " Pardon me, brother Miguel, for the harm which I have done thee; " that Git and Pedro Mijares then went away and shortly after returned bringing some pieces of split cane with which they made up a sort of crate in which they placed the body after wrapping it in the mat; that thereupon the witness, Pedro Git, Basilio Situado, Eugenio Berdaga, and Julio Occia took the corpse to the cemetery; that Pedro Mijares also saw the rope wrapped around the neck of the corpse; that Situado and Berdaga were called by the said Git and Mijares to help carry the body; that about 4 o'clock on the afternoon of the same day while passing along in front of the house of Laureano Mijares, Pedro Mijares invited the witness to come in, and upon his entering, the said Pedro, in the presence of Laureano, told him that if anything happened that night in the house of Miguel Pastor that he was to keep quiet about it; the witness replied that lie did not understand what they meant; that when the light was lit and he saw Pastor there dead he also saw Julio Occia squatting near the body; that Paulo Sernal, who also slept in the house, did not awake at that time.

Paulo Sernal testified that on the night of the 11th of November lie went to bed beside Miguel Pastor and did not observe that the latter arose from the bed to go to sleep on the floor; that when he awoke on the following morning he missed Pastor, and shortly after he was arrested, together with his brother Laurencio; that he then heard that Pastor had been beaten to death, and that when Pedro Git, his brother Laurencio, and Julio Occia testified before the justice of the peace the witness heard that the latter were the persons who had been guilty of the crime; this witness further testified that he and the persons last named lived in Pastor's house.

Upon this testimony the judge below, considering the crime of murder proven, as also the guilt of Pedro Git as principal and also that of Laurencio Sernal and Julio Occia as accessories after the fact, condemned Pedro Git to death and

Laurencio Sernal and Julio Occia to the penalty of ten years of *presidio mayor* each, with the accessory penalties, and all three of them to the payment to the heirs of the deceased of the sum of 1,000 pesos each and to the payment of three-fifths of the costs. Basilio Situado and Eugenio Berdaga were acquitted, and two-fifths of the costs were declared *de oficio*.

Against this decision there was no appeal by the provincial fiscal or the defendants Sernal and Occia, and accordingly with respect to them the judgment of the court below is final and the case is before us solely with respect to the conviction of Pedro Git, who was condemned to suffer the death penalty.

The facts above stated show that the crime which was committed is murder. The evidence in the case shows that on the night of the 11th of October, 1902, while Miguel Pastor was sound asleep on the floor of his house, he was struck on the back of the neck with a piece of hard wood and a rope immediately wrapped around his neck, one end of which was fastened to his left arm; that the deceased, being for this reason unable to defend himself or to arise, was strangled to death. The postmortem examination shows that his death was caused by the blow on the neck back of the right ear about two inches from the petrous part of the temporal bone, and also by asphyxia, he having been strangled to death with the said cord; that the wound was inflicted with a sharp, pointed instrument which penetrated to the brain.

It is therefore evident that Miguel Pastor was killed under circumstances constituting *alevosia*, the crime having been perpetrated while he was asleep, and consequently the assailant without any risk whatever to himself succeeded in treacherously committing the crime.

The defendant Pedro Git pleaded not guilty, but in his testimony as a witness for the defense said that he killed his master, Miguel Pastor, on the night in question in obedience to orders received from Pedro and Laureano Mijares, brothers-in-law of the deceased; that he struck the deceased on the neck with a piece of *guayaba* wood, used for an axe handle, which was about as thick as a man's arm and while the deceased was sound asleep in his house; that the Mijares brothers, having met the witness in the house of Laureano to which he had been invited by Pedro, after giving him several drinks of wine, proposed to him that he kill Pastor; that although he refused to accede to this proposition

at first, he consented after they offered him a reward of 100 pesos; that they then encouraged him, telling him not to be afraid because one of them was a member of the town council and that it would be easy to attribute the death to the cholera, which was then epidemic in the town; that after he was drunk, Laureano gave him a rope with which to tie the victim in case of resistance, and a box of matches with which to make a light for the purpose of finding the place where Pastor was lying; that accordingly, at midnight, he went to Pastor's house, and having found the place where he was lying, struck him a blow on the neck with the club he was carrying; that Pastor cried out for help, whereupon the witness immediately tied the cord he was carrying to one of the hands of the deceased and then wrapped it several times around his neck and strangled him; that by this means he killed Pastor and while committing the crime called for Laurencio Sernal and Julio Occia, who came to his assistance, holding the deceased by the feet and hands; that after Pastor was dead he reported the fact to Laureano and Pedro Mijares and the latter provided the bamboo with which the body was crated and prepared for burial; that they then called for Basilio Situado and Eugenio Berdaga, who, together with the witness and the said Occia and Sernal, carried the body out to the cemetery and buried it.

The defendant Pedro Git has been unquestionably the material executor, the conscious instrument of the crime planned by the Mijares brothers, he having committed it in consideration of the sum of 100 pesos which they promised to pay him, believing that because of the prevalence of the cholera he could commit the crime with impunity by attributing to that disease the sudden death, disappearance, and burial of his victim.

The guilt of the defendant Git is unquestionable, and is fully proven not only by his own confession but also by the testimony of his codefendants and that of several witnesses who heard his statements before he testified in court. The contention that he acted in proper obedience to orders is untenable, because the order which he received was plainly and manifestly unlawful. The guilt of the Mijares brothers will be determined in a separate case which is being prosecuted against them.

No mitigating circumstances can be considered to have been present in the perpetration of the crime. The mitigating circumstance of drunkenness can not be considered, both because it does not appear that the vice of drunkenness was not

habitual to the defendant, and also because it appears from the evidence that a considerable quantity of wine was given to Git purposely, which he voluntarily accepted before deciding to commit the crime. Against the defendant we must consider aggravating circumstances Nos. 3, 7, 15, and 20 of article 10 of the Penal Code; the crime having been committed in consideration of the promised remuneration of 100 pesos, with evident premeditation, and in the darkness and silence of the night and in the dwelling of the deceased. Consequently the judgment of the court below is supported by the evidence and is in accordance with the law, and, therefore, for the reasons stated, we are of the opinion that the judgment must be affirmed with respect to Pedro Git, with one-fifth part of the costs, the death penalty to be executed in accordance with the provisions of Act. No. 451 of the Civil Commission, enacted September 2, 1902.

Judgment will be entered accordingly and the case remanded to the trial court with a certified copy of this decision for execution. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
