

1 Phil. 265

[G.R. No. 568. April 30, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO CABE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

Late on a night in January, 1901, some ten or twelve men, armed with bolos and firearms, went to the vicinity of the house of Celedonia Bienes, situated in the barrio of Sail Antonio, town of San Nicolas, Pangasinan. Some of them entered the house and seized the brothers Francisco and Daniel Gascon, two of its inmates, and in the house next door captured Sotero Alquero, and, binding the three, took them toward the river Agno. While on the road, before reaching the river, they freed Alquero. Upon reaching the river one of the malefactors, who subsequently proved to be Roman Cabe, acting under orders of Francisco Cabe, shot Francisco Gascon, who was standing with his back toward the aggressor. Immediately after, Roman struck Francisco Gascon a blow with a bolo, separating his head from his body, and then threw the body into the river. Upon this Julian Serios, another of the malefactors, struck Daniel Gascon several blows with a bolo, inflicting upon him five wounds. In consequence of the aggression Daniel fell into the river, where, believing him to be dead, the five men left him. Of the five Daniel was able to recognize only the three defendants Francisco and Roman Cabe and Julian Serios, whom he had known previously. After several hours he succeeded in reaching the bank of the river, got out of the water, and returned to his home. His wounds were several months in healing.

Although the three accused pleaded not guilty to the crime of murder, it is unquestionable that they were, with certain other persons unknown, the sole authors, by direct participation, of the violent death of Francisco Gascon. The evidence in the record shows unquestionably that Roman Cabe, obeying the orders of Francisco Cabe, attacked and killed Francisco Gascon in the presence of Julian Serios and his other companions unknown, who,

although they took no material part in the execution of the crime, nevertheless gave their moral support, it not appearing that they attempted to prevent its consummation. Furthermore, Julian Serios directly attacked Daniel Gascon, the brother of the victim, who did not die, his wounds proving to be not of a mortal character.

The fact that only one witness testified is not an obstacle to our becoming fully convinced as to the certainty of the occurrence and of the guilt of the defendants, because, in addition to the testimony of this witness, we find grave and conclusive circumstantial evidence, based upon proven facts, such as the sequestration of the deceased and of the witnesses Daniel Gascon and Sotero Alquero by the three accused and seven or nine other individuals unknown; the wounds inflicted upon Daniel J the disappearance of Francisco Gascon, his brother; and the self-contradictory statements of the defendants themselves.

It is unquestionable that the killing of Francisco Gascon was committed with treachery (*alevosia*). It was executed while he was bound, in the middle of the river and in the hands of the three defendants, assisted by others. It is evident, therefore, that the crime was consummated without any risk to the aggressors arising from an attempt at defense on the part of the victim. Francisco Gascon and Daniel Gascon were policemen under the Americans. One of them had served the Americans as a guide. The two formed part of a gathering of several persons which was assembled that night at the house of Celedonia Bienes. For the purpose of meeting together at that barrio at a given hour and capturing the two brothers, and Sotero Alquero, who was in a neighboring house, and taking them to the river Agno, 3 miles away, and for the purpose of killing one of them, or rather two—although the murder of Daniel was not consummated—it must be supposed that there was a plan and a concerted action, which shows known premeditation on the part of the principals in this crime. To this generic aggravating circumstance must be added the other arising from the commission of the crime by an armed band in an uninhabited place and in the nighttime. This, although offset by the mitigating circumstance of article 11 of the Penal Code, still leaves the two circumstances first considered, to wit, the qualifying circumstance of known premeditation. These two circumstances being present, no penalty less than the maximum degree of that assigned for the crime of murder can be imposed.

Consequently the judgment of the court below is affirmed, the indemnification imposed in the judgment to be changed to 1,000 pesos.

Cooper, Willard, and Ladd, JJ., concur.

*DISSENTING***TORRES, J.:**

The violent killing of Francisco Gascon, as above related, is a fact fully proven, and constitutes the crime of murder, defined and punished in article 403 of the Penal Code, because in the execution of this crime the qualifying circumstance of treachery (*alevosia*) was present. The deceased was killed while helpless, with arms bound elbow to elbow, and was unable to defend himself against his aggressor. The latter, furthermore, was assisted or accompanied by some eleven or more armed men. Apart from this should be considered the fact that the victim was wounded by a gunshot fired from behind, the aggression being concluded by severing his head from his body by a blow which certainly must have been received on the back of the neck.

Although the body was not subsequently found, the fact is that the deceased has not been seen since the night in question, nor has any information been received as to his whereabouts. Consequently it is unquestionable that he was killed, as asserted by his brother Daniel, the only eyewitness to the crime.

Although the three accused pleaded not guilty to the crime of murder charged against them, it is indubitable that they, with certain other persons unknown, are the authors, by direct participation, of the violent death of Francisco Gascon. An examination of the record discloses as an unquestionable fact that Roman Cabe, in obedience to orders received from Francisco Cabe, attacked and killed the said Francisco Gascon in the presence of Julian Serios and his other companions unknown. These, although they took no part in the material execution of the crime, nevertheless gave it their moral support, it not appearing that they made any attempt to prevent the consummation of this grave offense. Furthermore, Julian Serios made a direct attack upon Daniel Gascon, the brother of the victim, who did not die, his wounds proving to be not of a mortal character.

The fact that we have the testimony of only one eyewitness to the murder is not an obstacle, within the exercise of a sound discretion, to reaching the conclusion that the defendants are criminally responsible. The statements made by Daniel Gascon and the facts which he related have not been disproven, but, on the contrary, have been corroborated by numerous grave and conclusive items of circumstantial evidence, based upon certain and proven facts,

such as the capture of the deceased and the witnesses Daniel Gascon and Sotero Alquero by the three defendants and seven or nine other persons unknown, the wounds inflicted upon Daniel, the disappearance of the latter's brother, Francisco Gascon, and the lack of proof of the exculpatory allegations of the defendants.

These sequestrations do not constitute the crime of illegal detention, because the criminals captured the injured persons, not for the purpose of depriving them of liberty alone, but in order to kill them, this being the final object they intended to attain, at all events with respect to the Gascon brothers.

In the commission of the crime herein prosecuted the only generic circumstance which should be considered present is that established by paragraph 15 of article 10 of the Code, because the crime was committed by the defendants in an armed band in an uninhabited place and under cover of the darkness of night. These three circumstances, included in one paragraph of the Penal Code, constitute, under the rulings of the supreme court of Spain, a single aggravating circumstance, offset in its effects by the mitigating circumstance indicated in article 11 of the Code. The presence of the latter circumstance should be considered in this case, in view of the personal conditions of the defendants, and the political passions of partisanship, hatred, and revenge which impelled them to the commission of the crime. The undersigned does not believe that it is proper to consider that the aggravating circumstance of premeditation was present, inasmuch as the band which captured the Gascon brothers and the witness Alquero was a more or less numerous gang of thieves who, under the guise of revolutionists, were wandering about the country in Pangasinan, committing outrages and abuses, impelled by erroneous beliefs due to their illiteracy, but not necessarily acting by previous agreement. Furthermore, the record does not show that the crime was preceded by reflective meditation upon the murder in question. Circumstances which qualify criminal responsibility, whatever their nature and effect, can in no case rest upon mere presumption, no matter how reasonable or probable, but must be based upon facts which the judicial mind considers to be of unquestionable existence, and which show clearly and indubitably that the criminal calmly and reflectively meditated upon the perpetration of the crime. This is the unvaried rule of the supreme court of Spain. Such facts do not appear from the record in this case.

Nor should it be considered that there were present in the commission of the crime aggravating circumstances Nos. 6, 9, and 14 of article 10 of the Penal Code. The manner in which the accused killed Francisco Gascon does not imply unnecessary cruelty, nor does it show that it was their intention to deliberately augment the evils inherent in the crime or to

increase the pain of their victim by the infliction of other unnecessary sufferings, but rather the decided purpose to kill Francisco Gascon. Although the malefactors were numerous and were armed, the existence of the circumstances of abuse of superiority and the assistance of armed men should not be considered as aggravating circumstances, since it does not appear from the record that these circumstances were present as defined in the Penal Code. The fact that the criminals were armed and that they were more than three in number has already been considered. The so-called abuse of authority is involved or inherent in the *alevosia*, the circumstance by which the crime is qualified, according to the decisions of the supreme court of Spain.

From the foregoing it is to be inferred that the three defendants should be punished by the infliction of the medium degree of the penalty assigned for murder in article 403 of the Penal Code, and should be condemned to the corresponding civil responsibility in *solidum*, without any subsidiary personal penalty in case of insolvency, in accordance with the provisions of article 51 of the Code, and to the payment of the costs.

Therefore, for the reasons above stated, the undersigned is of the opinion that the judgment appealed should be reversed, and that the defendants Francisco Cabe, Roman Cabe, and Julian Serios should be condemned each one to the penalty of life imprisonment (*cadena perpetua*), with the accessories of civil interdiction and subjection to the vigilance of the authorities during their lifetime, and in case these criminals should be pardoned as to the principal penalty, then to suffer the penalty of absolute, perpetual disqualification and subjection to the vigilance of the authorities during their lifetime, unless these accessory penalties should have been expressly remitted in the pardon of the principal penalty; also, to the payment, *pro rata or in solidum*, of 1,000 Mexican pesos to the widow and heirs of the deceased, and to the payment each of one third part of the costs of both instances, the judge to act in accordance with law if the prosecuting attorney should file a complaint for the frustrated murder or homicide of Daniel Gascon, in case he has not yet done so.

Mapa, J., also dissented.

