

5 Phil. 466

[G.R. No. 2456. December 28, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELICERIO AMOROSO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The judgment appealed from holds the accused guilty of the murder of Leoncia Bucalan, Canuto as principal and Elicerio as accomplice, and sentenced the first to life imprisonment (*cadena perpetua*) and the second to ten years' imprisonment (*prision mayor*.)

The judge held that premeditation was a qualifying circumstance of the said crime, it having been inferred from the fact that the crime was committed in a dark place where the defendants were in hiding with the instruments necessary to execute the crime.

The fiscal in this instance, in conformity with the legal qualification of the crime, makes the circumstance of the crime consist in *alevosia* and not in premeditation, which, according to him, has not concurred in the commission of the act under prosecution.

We believe that neither circumstance should be taken into account, and that the crime should therefore be qualified as simple homicide and not murder. Premeditation should not be taken into account as there is nothing in the cause that can serve as a ground to determine when the accused conceived the determination to commit the crime, nor, consequently to determine if the said criminal resolution was meditated, reflected upon, and persisted in which is that which constitutes the circumstance of known premeditation, as has been repeatedly held in the decisions of this court. Neither the facts set

forth by the judge in the judgment appealed from as grounds for his findings, nor the threats uttered prior to the crime by the defendants against the deceased are sufficient in themselves to constitute that circumstance, said threats not having been followed by subsequent acts revealing on the part of the defendants, aside from the execution of the crime, a firm and decided purpose to carry out the said threats and that they coolly and with reflection had persisted in their purpose for carrying out the same.

As regards *alevosia* the merits of the trial are also not sufficient to estimate their concurrence in the commission of the act under prosecution. With relation to this point the only eyewitness, Gregorio Parino, said as follows:

“We came down together (the deceased and myself) by the kitchen stairs of said house without knowing that the defendants were under the house where my wife was assaulted by the defendant Canuto, she being unable to say anything but ‘Jesus, Mary and Joseph succor us.’”

As is seen, the witness simply says in general terms that his wife was assaulted by one of the defendants without being able to say the manner and form in which it was done, for which reason it is not possible to establish with all certainty based on known facts, and not on mere conjectures or deductions more or less founded, as would be necessary to establish *alevosia*; that the defendants used means and methods which tended directly or indirectly to make impossible every defense on the part of the deceased and her companion Gregorio Parino who was also assaulted on that occasion.

The evidence sufficiently shows the guilt of the defendants. Both should be qualified as principals of the crime under prosecution, for though Elicerio did not inflict any wound on the deceased, it is a clear and evident deduction from the facts proved in the trial that he accompanied his co-defendant to the place of the crime, armed with an axe, by virtue of a prior agreement between the two tending to assure

their cooperation in the execution of the crime. His presence there with the deadly arm which he carried contributed to increase the offensive power of his said co-defendant, it being probable that without it the latter would not have; decided to assault the deceased on seeing her accompanied by Gregorio Parino. His cooperation was moreover real and effective, he having assaulted the latter at the precise moment that he came to the defense of the deceased, wounding him severely and preventing him in this manner from making the said defense, which resulted in the deceased being left at the complete mercy of her assailant. Without his said cooperation the crime would perhaps not have been consummated by reason of the timely intervention of Parino in the quarrel. In view of all of the circumstances of the case we hold that the defendant Elicerio cooperated in the execution of the act by acts without which the latter would not have been effected and that he is therefore co-author of the same in accordance with the Penal Code.

The aggravating circumstance of nocturnity should be taken into account, and there being no extenuating circumstance, there should therefore be imposed upon the defendants the penalty for the crime of homicide in its maximum degree, though we believe that the discretional power granted to the courts by rule 7 of article 81 of the Penal Code could properly be exercised; that within the said degree Elicerio is entitled to lesser penalty than his co-defendant Canuto.

With reversal of the judgment appealed from, we sentence Canuto Amoroso to twenty years' imprisonment (*reclusion temporal*) and Elicerio Amoroso to seventeen years four months and one day of the same penalty, and both to pay to the heirs of the deceased an indemnity of 500 pesos, Philippine currency, with the costs of this instance to the said defendants. So ordered.

Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.
