

[G.R. No. 1663. February 28, 1905]

**UNITED STATES, COMPLAINANT AND APPELLEE, VS, FIDELES RANA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

MAPA, J.:

A trial being had against the defendant in this case for the crime of robbery with homicide, the Court of First Instance of La Laguna found the following facts: (1) That on the morning of the 22d day of October, 1903, Mateo Macahasa received from the Chinaman Ang Cho, in the town of Santa Cruz, the sum of 144 pesos as the price for the sale of some copra; (2) that after receiving this amount Mateo Macahasa went on board the banca belonging to Felipe Valdeabella, followed by Fideles Rana, who was in another banca; (3) that when the two defendants arrived at Maitalang on the shore of Laguna, Fideles Rana attacked Mateo Macahasa from the rear, striking him with his bolo in the neck so violently and so treacherously that he prevented all defense on part of the injured party, the latter dying immediately as a result of the wounds received; (4) that after Macahasa was killed Fideles Rana took possession of the money of the deceased with the intention of profiting thereby, and delivered part of this amount to Felipe Valdeabella; (5) that the defendants, Fideles Rana and Felipe Valdeabella, returned together to Lumbang; (6) that Mateo Macahasa was picked up out of the water in Maitalang and his wounds were observed as follows: A wound in the posterior part of the cranium; another wound at the base of the skull, also on the posterior surface, and, lastly, one in the face; (7) that on the day following the occurrence it was learned by the children of the deceased that the latter had left Santa Cruz for Lumbang, carrying a sum of money, and that he had gone on board the banca of

Felipe Valdeabella; (8) that the court of the justice of the peace having made all investigations, Felipe Valdeabella confessed these facts, turning over the money which Fideles Rana had given to him and accusing the latter as the murderer of Mateo Macahasa.

In view of these facts the court found Fideles Rana guilty of the double crime of robbery with homicide and found that said crime was accompanied by the aggravating circumstance of treachery (*alevosia*), sentenced him to the penalty of death and to pay the family of the deceased 1,000 dollars, to return the property taken, and to pay one-half the costs; Felipe Valdeabella was found guilty of being an accessory after the fact in said crime and was sentenced to the penalty of eight years and one day of *presidio mayor*, to return the sum of P59.50 which Fideles Rana gave him, and to pay 1,000 dollars to the family of the deceased and the other half of the costs. Both defendants appealed from the judgment of the court below.

The findings of fact of the court below as they have been stated above are in accordance with the evidence adduced in the case, except the third, as regards the statement made that Fideles Rana attacked Mateo Macahasa from the rear so violently and so treacherously that he prevented all defense on the part of the deceased. It is possible and even probable that it was really so, but the evidence adduced in the case is not sufficient to establish this conclusion. The only eyewitness, Felipe Valdeabella, when asked how the assault took place, answered as follows: "My back was toward them, and when I turned around the banca was turned over, and when I came up near Mateo, Fideles said to me, 'Why do you come here?' and made me go." When asked again where Fideles was when he assaulted Mateo he answered only as follows: "The wound that I saw was inflicted when I was in the water." Valdeabeila made the same statement before the justice of the peace and his clerk at Lumbang; according to the latter two, the only thing that Valdeabella said when he related the manner in which the attack took place was that, when he turned over his banca on passing through a difficult part of the journey, he observed a blow with a bolo and immediately the banca turned over.

These details are not sufficient to prove the fact that Fideles Rana assaulted the deceased from the rear or that he did it so unexpectedly and in such a way as to prevent all defense on the part of the deceased. This fact can not be deduced with any degree of certainty from the locations of the wounds which the deceased received, because one of the wounds was in the posterior surface of the cranium, another in the posterior surface of the neck, and the other in the face, and there is an absence of proof as to which one of these wounds was the first inflicted by the aggressor. Of course, from what the clerk of the justice of the peace states, the wound in the skull was not the first inflicted, because, according to this witness, Felipe Valdeabella testified in the justice of the peace court that after the banca had turned over "Fideles approached Mateo, took him from the water, and gave him a blow in the head * * *" As the aggravating circumstance of treachery (*alevosia*) is an important one, in considering it, it should by all means be based on some positive conclusive proof and not merely upon hypothetical facts, drawn more or less logically, because it is necessary that the existence of this circumstance in the commission of the crime should be proven as fully as the crime itself, in order to aggravate the penalty incurred by the guilty party. There is in this case no foundation for the consideration of the circumstance of treachery (*alevosia*), and therefore the judgment appealed from should be modified as to this part. There being no aggravating circumstance and no extenuating, the penalty prescribed by subsection 2 of article 80 of the Penal Code, providing that when there are two indivisible penalties the lesser one of these two penalties shall be imposed, is applicable and therefore we sentence Fideles Rana to *cadena perpetua* by virtue of the provisions of paragraph 1, article 503, of the same code.

As regards Felipe Valdeabella, his guilt has been correctly found by the court below and the penalty imposed upon him in the judgment appealed from is in accordance with the law.

We therefore reverse the judgment appealed from as regards the death penalty imposed upon Fideles Rana and we sentence him to *cadena perpetua*. We affirm the judgment below as to the other parts, with the costs in this instance against both defendants, one-half each. So

ordered.

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

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