

3 Phil. 447

[G.R. No. 1575. March 24, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LAUREANO MIJARES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On December 3, 1902, an information was filed in the Court of First Instance of Occidental Negros by the provincial fiscal charging Pedro Mijares, Laureano Mijares, Pedro Git, and others with the crime of murder, in that one Saturday prior to November 11, 1901, for the purpose of appropriating to themselves certain lands belonging to Miguel Pastor, and of preventing him from making any claim with respect thereto, his brothers-in-law, Pedro Mijares and Laureano Mijares, who were working the said lands, proposed to Pedro Git and Laurencio Sernal in the house of Laureano, that they kill Pastor, promising a remuneration of 100 pesos and charging them to commit the crime with clubs to avoid the shedding of blood by which the crime might be revealed and in order that it might be attributed to the cholera, which was then epidemic ; that this proposition having been accepted, Git and Sernal determined to carry it out about midnight on the said 11th day of November, while Pastor was sound asleep in his house in Bontot, of the township of Escalante, in that province, in which house Git and Sernal were living as laborers employed by the deceased; that Pedro Git struck the deceased a heavy blow on the neck with a piece of wood and immediately thereafter, with the assistance of Julio Occia, Pastor was bound with a rope, which had been furnished for that purpose by Pedro Mijares, and thus prevented from defending himself; that as the result of the injuries inflicted upon him Pastor died, and his body was buried some hours after in the cemetery to which it was taken with the assistance of Basilio Situado, Petronilo Berdaga, and Eugenio Berdaga, of whom the first named was suspected of having sustained illicit relations with the wife of the deceased, for which reason the

latter, some days before, had expelled him from his house; that Petronilo Berdaga found spots of blood in the house but did not make any investigation, thereby giving an opportunity for the concealment of the crime. These facts are proven by the confessions and the testimony hereinafter cited. On motion by the attorney for the defendants Pedro and Laureano Mijares, the judge directed that they be given a separate trial from the other accused. This case was therefore prosecuted separately from the principal case, No. 386, tried in the same court in which Pedro Git and others are defendants charged with the same crime of murder. In that case judgment was rendered April 23, 1903, convicting the defendants Laureano Mijares and Pedro Mijares and sentencing them to the death penalty, to be executed in the manner prescribed by the law of the Civil Commission upon that subject, the payment of an indemnity of 1,000 pesos to the heirs of Miguel Pastor, and to the payment of one-half of the costs by each one.

It appears from the record that the defendants Pedro and Laureano Mijares upon being arraigned pleaded not guilty to the crime of murder with which they are charged in the information.

The crime upon which this prosecution is based was discovered under the following circumstances: Maximino Gamao, about 8 o'clock in the morning of November 12, 1902, went to the cemetery of Escalante to get a carabao of his which was staked out there, and while passing by a grave he observed spots of blood on the grass around the edge. The gravediggers who were there at that time told him that Miguel Pastor had been buried in that grave; Gamao immediately informed Claro Singson, municipal president of Escalante, of these facts and that officer immediately went to the cemetery accompanied by Juan Alarcon, the municipal secretary, the justice of the peace, and Agustin G. Barber, the provincial sanitary inspector. The statements made by their informant were corroborated by their own observations and they then proceeded to exhume the body which had been buried in a grave barely knee-deep. In the grave they found the body of Pastor, which Avas immediately identified by the persons there present. The body was found to be wrapped in a mat covered with blood. A hemp cord was found wound five times around the neck of the corpse, one end of which was bound to one of the arms. The face of the corpse was bruised and a large wound was found on the back of the neck, as also other slight abrasions on the face and one of the hands.

From the medical certificate subscribed by Mr. A. G. Barber, the provincial sanitary inspector above named, and by whom the body was examined after it was exhumed in the cemetery, it appears that a deep wound was found on the back part of the head, the skull having been pierced behind the right ear some two inches away from the petrous portion, apparently inflicted by a sharp-pointed instrument; that the nose, mouth, and cheeks were observed to be bruised and swollen, and certain wounds on one of the hands, which indicated that there had been a struggle. The inspector was of the opinion that the deceased had been strangled by means of the cord wound around the neck and that the wound in the skull, penetrating to the brain, from which a large quantity of blood exuded, had been inflicted afterwards, the death of the deceased having been caused by strangulation.

Pedro Git, one of the defendants in the principal case, in which the evidence shows that it was he by whom the crime was actually committed, testified in this case that one Tuesday afternoon, which he said was the 12th of November, 1902, Pedro Mijares asked him to go to the house of his brother Laureano; that he went there and upon his arrival Laureano asked him certain questions concerning conversations he had had with Miguel Pastor concerning the latter's intentions; Laureano informed him that he was angry with his brother-in-law, Pastor, and on this account proposed to him that he kill Pastor; that he did not accept this proposition at first, as he had had no trouble with Pastor, who was, moreover, his employer; that Laureano insisted and in the meantime gave him several drinks of wine telling him not to be afraid as he, Laureano, was a member of the town council and that they could attribute the death to the cholera and bury the body immediately; that both the brothers so plied him with wine that he finally decided to accept the proposition; that they then sent for Laurencio Sernal, who lived in the house of the deceased, and upon his arrival told him that if anything happened that night in Pastor's house, to keep quiet, because they had ordered that Pastor be killed; that Laurencio then said: "I have nothing to do with it;" that after he had supper in Laureano's house, the latter and Pedro told the witness Git not to use a cutting weapon, so as to avoid bloodshed and that he had better use a club; that they then gave him a piece of hemp rope and a box of matches so that he might find the place where Pastor was lying if there was no light in the house,- that by this time the witness was greatly excited and almost out of his mind, and, forgetting his affection for Miguel Pastor,

went to the latter's house, struck a match, and saw that his victim was not lying on the bed but on the floor; that he thereupon struck Miguel, who was lying on his side, a heavy blow on the back of the neck, whereupon the wounded man commenced to call for help; that the witness then tied the rope to one of the arms of the deceased and took several turns with it around his neck, at the same time calling upon Laurencio Sernal and Julio Occia to come to his assistance, which they did, holding the deceased down; that he then went to look for Pedro Mijares and reported Pastor's death to him, whereupon Mijares went to the house for the purpose of seeing whether Pastor was really dead, and, finding him a corpse, said: "Pardon me, brother Miguel;" that upon this Pedro Mijares and the witness left the house to get some pieces of bamboo, with which they returned to the house of the deceased; that with this bamboo Laurencio Sernal made a crate, in which the body was placed after it was wrapped in a mat as though it were a bale of tobacco; in the meantime they went to the house of Laureano Mijares to tell him that his brother-in-law, Pastor, was dead; Laureano ordered them to bury the body at once but did not go to see the corpse nor accompany them to the chapel; that for the purpose of burying the corpse they called upon Basilio Situado and Eugenio Berdaga, who, with the witnesses Laurencio Sernal and Julio Occia, carried the body to the cemetery and buried it before daybreak, Pedro Mijares having remained in the house to get breakfast.

The witness added that when he and Pedro Mijares told Laureano Mijares that Pastor was dead, Pedro demanded of his brother that Tomas Morin, a son-in-law of the latter, should assist in the burial, but Laureano would not consent, saying that Tomas was obliged to look after his wife, who was just recovering from an illness; that the witness had never received the money which Mijares offered him, because they were immediately arrested; that while he was in the house of Laureano Mijares on the day in question, Tomas Morin and his wife and some children were also there but they did not hear the conversation between the witness and Mijares because they were in the kitchen.

Petronilo Berdaga testified that about 3 o'clock on the morning of November 12, Pedro Git, Pedro Mijares, and Julio Occia came to his house and asked him to assist in carrying the body of Miguel Pastor to the cemetery, saying that he had died of cholera; that he declined to go but directed his brother Eugenio Berdaga to do so; that on the following day, in the morning, upon going to the chapel,

they found this man there without the body, which had already been buried, and at that time observed some spots of blood on the floor of the house; that Git assured him that the deceased had been passing blood through the rectum; that he subsequently heard that Pastor did not die of cholera but had been murdered and that his assassins had been arrested.

Paulo Sernal testified that on the night of the murder he went to bed with Miguel Pastor and upon awakening the following morning found that Pastor was not in bed; that subsequently, when they were all arrested, he learned that Pastor had been killed and his body buried. Lauren cm Sernal, Eugenio Berdaga, and Basilio Situado corroborated the testimony of Pedro Git. Sernal testified that when lie was aroused by the cries of Miguel Pastor, in whose house the witness was sleeping, there being no light, he sat up and began to feel around the floor to find the place where Pastor was lying; that when he touched Pastor, Git struck a light and then he saw that Pastor was dead, with one hand tied to a rope which was wound around his neck several times; that Julio Occia was sitting by the side of the corpse, near which he saw a piece of wood about as thick as a man's arm; that he subsequently heard Pedro Git state that it was he who had wound the cord around the 'dead man's neck. Basilio Situado and Eugenio Berdaga testified that they had helped convey Miguel Pastor's body to the cemetery and were told by Pedro Git that Pastor had died of cholera; that Git and Pedro

Mijares went to their house and asked them to render this service, but that they did not see the corpse, which was already wrapped up when they arrived; that when they asked Pedro Git about the drops of blood which Berdaga afterwards observed upon his trousers, Git replied that the deceased had been passing blood, although they subsequently learned that he had been killed and that his body was found with a cord wound around the neck.

Apolonio Quintao, a Constabulary corporal, who arrested the accused, said that after they were all arrested, Pedro Git confessed that they had killed Miguel Pastor by order of one Guiao, the nickname of Laureano Mijares, who had offered 100 pesos to have this done, which money was to be paid after the corpse was buried; that this conversation was heard by several members of the Constabulary and by Git's codefendants; that Laureano had also said that Git's debt to Miguel Pastor would be canceled in addition to the remuneration of 100 pesos if Pastor was killed.

Tomas Morin testified that about 3 o'clock in the morning of the day Miguel Pastor was killed, Pedro Mijares and Pedro Git came to the house of the witness's father-in-law, Laureano Mijares, and informed the latter that Pastor had died of cholera.

Upon this evidence, the court below, on the 23d of April, 1903, rendered judgment convicting Laureano Mijares and Pedro Mijares of the crime of murder and condemning them to the death penalty, to be executed in the form prescribed by the law of the Civil Commission,' to pay the heirs of Miguel Pastor an indemnity of 1,000 pesos, and to pay the costs of the prosecution. The court directed that the judgment be sent to the Supreme Court for review. Both the defendants appealed.

The facts related, fully established by the evidence and by the confession of the material author of the violent death of Miguel Pastor, constitute the crime of murder the evidence shows that late at night on November 11, 1902, while sound asleep, a heavy blow was inflicted upon the deceased with a piece of wood, producing a serious wound on the back of the neck and, while suffering from the stunning effects of this blow, he was strangled with a rope wound around his neck. The assault was made treacherously and with no risk whatever to the assailant which might arise from an attempt at self-defense on the part of the deceased. Consequently there can be no doubt as to the concurrence of the qualifying circumstance of *alevosia* in the commission of the crime.

The result of the ocular inspection conducted by the local authorities and the sanitary officer in the cemetery of the town of Escalante, a few hours after the crime was committed and the body buried; the context of the certificate issued by the physician as the result of his examination of the corpse, upon the neck of which a serious wound was found, and a number of slight abrasions on the face and one hand; and the evidence of strangulation by means of the rope which was found around the neck—all confirm the testimony of Pedro Git, by whom the crime was materially executed, his statements being corroborated by those of the other accused Laurencio Sernal and Julio Occia, who participated in and were eyewitnesses to the perpetration of the crime.

The guilt of Git, Sernal, and Occia, having been determined in the decision rendered a few days ago by this court, and as this prosecution concerns solely

the question of the participation in the crime of the defendants herein, the Mijares brothers, this decision must necessarily deal with them alone.

The evidence for the prosecution with respect to the defendants, Laureano and Pedro Mijares, given the weight it merits in the exercise of sound discretion, is sufficient to fully convince the mind of the guilt of these two men, who doubtless conceived the idea of the treacherous¹ killing of Miguel Pastor and proposed its execution to Pedro Git, of whom they availed themselves for the commission of the crime, promising a remuneration of 100 pesos.

The explicit and insistent testimony of Pedro Git in which he accuses the two Mijares brothers as the instigators of the murder of Miguel Pastor, which charge was first made against them by him when he was arrested and was repeated frequently with all the details of the conference between Git and the Mijares brothers, held on the afternoon of the day of the crime, of the flattering promises they made him, of the conduct of these brothers who plied Git with wine until he was thoroughly intoxicated and prepared to execute their criminal design, all the details of the commission of the crime, and the burial of the body in the cemetery, and the fact that Git immediately notified Pedro Mijares and subsequently Laureano Mijares that Pastor was Mead, and the fact that the testimony of Git has not been contradicted on any essential point but has rather been confirmed by the statements of his codefendants, Sernal and Occia, and by the testimony of the other defendants who were acquitted, show clearly and evidently the truth of his assertion—that is, that Laureano and Pedro Mijares were actual participants in the crime of murder, herein prosecuted as instigators, there being nothing in the record to induce the belief that the charge against them is false.

Pedro Mijares, upon being informed by Pedro Git that his brother-in-law, Miguel Pastor, was dead, which information the brothers were expecting that night, after their proposition to commit the crime had been accepted by him, immediately left his house and went to the house where the crime was committed for the purpose of determining whether, his brother-in-law, Miguel Pastor, was really dead. He., then left the house accompanied by Git for the purpose of making preparations with all possible haste for the burial of the body, and for this purpose requested Basilio Situado and Eugenio Berdaga to assist in carrying the body to the cemetery. While the bamboo crate in which the body was packed

was being prepared, Miguel Mijares and Pedro Git went to the house of Laureano Mijares to tell him that the projected murder had been accomplished and the defendant, Laureano, told them to bury the body at once and refused to send Tomas Morin, his son-in-law, to assist in the burial.

It appears, therefore, that after Pastor was dead, Pedro Mijares took an active part in the concealment of the body, while Laureano Mijares, in whose house the murder was plotted and who proposed to Git the commission of the crime, got him intoxicated and provided him with a rope and matches, locked himself up in his house, and did nothing more than direct that the body should be immediately buried, but without having had the courage to look at the corpse, as did his brother Pedro. Consequently it appears to be absolutely certain that both brothers concurred with Git concerning the commission of the crime, inducing him to kill their unfortunate brother-in-law and be the instrument by which their wicked plans were to be carried into effect, as the witness has frequently testified with the greatest spontaneity and frankness.

It does not appear from the record that Pedro Git had any ill will or personal grudge against Miguel Pastor, of whom he was an employee and in whose house he was living. On the other hand it appears that the deepest resentment and hatred existed on the part of the Mijares brothers against their brother-in-law, Miguel Pastor, on account of the ill treatment he had inflicted upon their sister, Donata Mijares, the wife of the deceased. Consequently there can be no doubt in deciding the cause of Pastor's death that they were moved to do so by the spirit of revenge. This view is corroborated by their conduct subsequent to the death of Pastor.

The defendants pleaded not guilty. They, did not testify as witnesses, but their counsel called in their behalf three witnesses—by name Dolores Labadia, the wife of Laureano; Tomas Morin, his son-in-law; and Onofre Mondoñedo, an herb doctor—who testified that they did not see Pedro Git in the house of Laureano at the time the conference concerning the killing of Miguel Pastor took place. This testimony in no degree overcomes the force of the testimony given by Git against Laureano Mijares, for it is not to be expected that Laureano's wife and son-in-law should testify to his prejudice or that Morin would testify to having been present at the time the agreement was entered into between his father-in-law and Git, together with Pedro Mijares, for the purpose of murdering

Miguel Pastor. With respect to Mondoñedo, the herb doctor, whose testimony to a certain extent is contradictory to that of Tomas Morin, in view of the fact that he did not live in the house and had only gone there for the purpose of visiting some patients whom he said were there, it is very probable that he did not see Pedro Git, or else was not aware of the latter's presence in the house. Consequently the testimony of these witnesses is not conclusive and is not of sufficient weight to overcome the testimony of Git or even to raise a doubt concerning it, in view of the fact that it is corroborated by other circumstantial evidence which, considered with it, leaves no room for a reasonable doubt as to the truth of the charge.

In the opinion of the court, with the exception of the qualifying circumstance which elevates the crime to murder, no generic, aggravating, or mitigating circumstance should be regarded as concurrent in the participation of the Mijares brothers in this crime as instigators. Consequently the penalty prescribed by the law must be imposed upon them in the medium degree.

For the reasons stated, we are of the opinion that the judgment of the court below should be reversed and each of the defendants, Pedro and Laureano Mijares, convicted and condemned 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. Should the principal penalty be remitted by pardon, they shall then suffer the penalty of absolute perpetual disqualification and subjection to the vigilance of the authorities for their lifetime, unless this accessory penalty should be expressly remitted in the pardon of the principal penalty.

They are also condemned to the payment *in solidum* and *pro rata* of an indemnity of 1,000 insular pesos to the heirs of the deceased and to the payment each one of one-half of, the costs of the prosecution.

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

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

DISSENTING

WILLARD, J., with whom concurs

JOHNSON, J.,

I am of the opinion that the judgment should be confirmed and the death penalty imposed. Article 79 of the Penal Code reads as follows:

“Those [circumstances] which consist in the material execution of the offense, or of the means employed for its realization, shall serve to aggravate or mitigate the responsibility solely of those who had knowledge thereof at the time of the act or of their cooperation for the commission of the crime.”

The defendants had knowledge of the aggravating circumstance of *alevosia*, of nocturnity, and of the commission of the crime in a dwelling house at the time of their cooperation to that end, because they themselves suggested to Pedro Git that he should commit the crime in the very way in which it was in fact committed by him.
