

2 Phil. 476

[G.R. No. 1285. August 31, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO LARION,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 23d of January, 1903, the provincial fiscal filed an information charging Pedro Larion and Lopez Tabuac with the crime of murder, alleging that on the 8th day of August, 1902, the accused and other persons, over thirty in number, armed with deadly weapons, entered the barrio of Manunca, in the town of Santa Rita, and with criminal intent, alevosia, and premeditation, willfully killed Santiago Angel, Rafael Espino, Bautista Cajida, Maria Somallo, Eugenio Luna, Lucia Luna, and Leines Ubis.

Abdon Luna testified under oath that, on the morning of the said 8th day of August, upon discovering that there were some malefactors in the fields near the barrio, he sent word by Rufino Lacambra to the municipal president of the town of Santa Rita; that shortly after, at about 8 o'clock in the morning, these malefactors, known as *pulajanes*, entered the barrio of Manunca, in which the witness lived, led by Augusto Ygvia and Antonio Caling; that there were over thirty armed men in the party, and. that Pedro Larion was one of them; that upon their entry a number of the inhabitants of the barrio fled from the invaders, as did the witness, his wife Maria Somallo, and his children Eugenio Luna, 16 years of age, Lucia Luna, 8 years of age, and another child of his 4 years of age, who, together with Rufino Lacambra, got into a boat loaded with hemp which belonged to the latter, the boat in question being at anchor in the river some 10 brazas from the witness's house; that their intention was to escape from the *pulajanes*, but that they had no time to do so because four of them, Pedro Larion, Augusto Ygvia, and two others unknown, attacked the boat on which they had taken refuge; that Larion stabbed the witness's wife in the back with a lance while she was sitting on one of the outriggers of the boat, while Ygvia wounded her in the breast

with a bolo; that in consequence of these wounds Maria Somallo fell dead into the water; that the witness was informed that her body was subsequently found, but that he did not see it himself; that at the same time the two unknown men attacked and killed with lances and daggers the witness's children Eugenio and Lucia, and then attacked the witness, who defended himself with an oar, but was obliged to jump into the water in order to avoid the aggression, as Rufino Lacambra had already done, and swimming ashore, succeeded in escaping from his aggressors; that while the attack on the boat was in progress, the other malefactors robbed several houses in the barrio and killed Santiago Angel, Leines Ubis, Rafael Espino, and Bautista Cajida, and that in the fire which consumed almost all the houses in the barrio the body of Leines was completely and that of Rafael Espino partially consumed; that while going toward the town of Santa Rita, after he got out of the water, the witness met several Americans, accompanied by some police, who were going to the barrio of Manunca, and that he joined this party; that before his arrival at the barrio the band of thieves had decamped, as some seven hours had elapsed. The witness stated that the assault on the boat, and the attack made upon himself and his companions by the malefactors, was almost instantaneous, the whole occurrence not consuming more than two minutes. Upon his return, accompanied by the police, a woman called Benita delivered to him his little boy of 4 years, who Avas found unharmed in the boat.

The statements made by Abdon Luna are corroborated by the testimony of five witnesses, inhabitants of the place, who saw the attack made by the malefactors, whom they called "*pulajanes*." Although it is true that Perfecto Rebutazo, one of these witnesses, did not see the attack upon Abdon Luna and his family, because he fled when the attack was first commenced and hid away in the swamp, it is also true that upon his return he saw the four bodies of Santiago Angel, Rafael Espino, Bautista Cajida, and Leines Ubis, as well as what was left of the burned houses. When he went to the town of Santa Rita some days after he also saw in the town square the bodies of Maria Somallo and her daughter Lucia. However, Doroteo Lacambra, Saturnina Oagabcab, Alejo Amante, and Saturnino Cajida corroborated the testimony of Abdon Luna, saying that they saw Augusto Ygvia, Pedro Larion, and two others attack Maria Somallo, her children, and her husband, Abdon Luna, while they were on board a boat which was anchored in the river of the barrio of Manunca, near Abdon's house. Lacambra, Cagabcab, and Amante saw Larion stab the woman Somallo in the back with a lance while she was sitting on the edge near the prow of the vessel, and saw Ygvia stab her in the breast with a bolo. All the witnesses testify that the malefactors who invaded the barrio committed robberies in several of the houses and killed a number of the inhabitants; that they were armed with lances and bolos, and that they were more than

thirty in number. Lacambra testified that they were led by Augusto Ygvia and Antonio Oaling, and that these men knew Pedro Larion. The witness Cajida stated further that, when he saw some of the malefactors kill Leines Ubis in front of Abdon Luna's house, he commenced to run toward the town. Doroteo Lacambra stated further that he was captured by the malefactors, and that Ygvia made him pay 22 pesos as a condition to setting him at liberty; and further stated that he saw one of Abdon's children thrown out of the boat into the river, this being the same child subsequently recovered by the woman Benita.

The facts related constitute seven crimes of murder, committed by a band of armed malefactors, who also committed robberies in some of the houses of the barrio of Manunca and then set fire to them, almost the whole of the town being destroyed. The crime is murder because Maria Somallo and her two children were killed by means constituting *alevosia*, the mother having been wounded in the back with a lance and at the same time stabbed in the breast with a bolo, the attack with the lance being made in such a manner as to directly and specially insure the commission of the crime, without any personal risk to the aggressors which might result from an attempt at self-defense on behalf of his victim, who at that same moment was attacked by another man with a bolo. With respect to her two minor children Eugenio and Lucia, they being terrorized by the spectacle which they had witnessed, and being incapable of defending themselves owing to their tender years, it is unquestionable that their well-armed aggressors acted without danger to themselves, and when attacking these children ran no risk whatever of personal danger from their unarmed and defenseless victims.

Although the record does not contain evidence showing the details of the killing of the other four men, Santiago Angel, Kafael Espino, Bautista Oajida, and Leines Ubis, whose bodies were found in the barrio after the malefactors left, still there is no difficulty in classifying these crimes as murder, by reason of the circumstance of premeditation, which, at all events, occurred in their perpetration. It is unquestionable that the invasion of the barrio of Manunca by fire and sword, effected by more than thirty armed malefactors, required a previous meeting and agreement on their part. They must have made preparations and adopted a preconcerted plan concerning the manner and details of the commission of these crimes against life and property, which were subsequently carried out. Furthermore, that there was such agreement and preparation is shown by the fact that they gathered together in the fields on the outskirts of the barrio before making the attack, and that Abdon Luna, upon discovering their presence, reported the facts to the municipal president of Santa Rita.

It is to be observed that the malefactors, who are known as *pulajanes* in the Island of Samar,

upon entering the barrio did not commence by plundering or burning, but sought out and killed certain inhabitants of the barrio, especially the Luna family and such persons as happened to be in Luna's house, and this notwithstanding the fact that there was no opposition or resistance on the part of the inhabitants in general, nor upon the part of the deceased, which circumstance indicates beyond a doubt that these malefactors acted with premeditation in the cold-blooded perpetration of these shocking crimes.

The two accused, Pedro Larion and Lopez Tabuac, pleaded not guilty. The latter was discharged in the course of the trial, on motion of the prosecuting attorney. Notwithstanding the exculpatory allegations of Larion, against whom alone the case was continued, and his attempt to prove an alibi, the fact is that the record contains sufficient evidence to fully convince the mind of the guilt of Larion as the author, by direct participation, of the murder of Maria Somallo, as well as of the murder of Leines Ubis.

The testimony of the witnesses Clemente Tabuac, Lopez Tabuac, Telesforo Raj in, and Concepcion Bajin, who supported the alibi, does not overcome the probative force of the testimony of the witnesses for the prosecution, who were eyewitnesses to the occurrence. Therefore we may reject this defense of alibi on the ground of the untruthfulness of the witnesses or the improbability of their statements (it appears that several of these witnesses conversed with the accused before the trial) or in consideration of the fact that the witnesses are all relatives of Larion. The accused is the husband of the witness Concepcion, and the witness Telesforo is his brother-in-law. Furthermore, another witness, Tolentino Vinas, absolutely denies that Pedro Larion was stopping at his house in the barrio of Aksam, or that the witness ever took Larion in his banca from Aksam to the village of San Antonio in the month of August, 1902. Therefore, the alibi of the accused having been destroyed, we must believe the charge of the prosecution that he is guilty of the murder of Maria Somallo, and that the judgment appealed is fully supported by the evidence.

In connection with the commission of this crime, we must consider the concurrence of the aggravating circumstances Nos. 7 and 35 of article 10 of the Penal Code, the crime having been committed *en cuadrilla* and with deliberate premeditation, there being no mitigating circumstances. We find that there was premeditation with respect to the murder of the woman Somallo as a generic aggravating circumstance. Its existence in the perpetration of the crime was demonstrated above as a qualifying circumstance of the other four murders. It is unnecessary to repeat the reasons there given, although it may be added that there is still further evidence of premeditation to be found in the fact that Pedro Larion, accompanied by Augusto Ygvia, Antonio Caling, and another person unknown, upon

entering the barrio went direct with these men in search of the family of Abdon Luna, and was the first one to attack the latter's wife by stabbing her in the back, Ygvia aiding him in the attack, while Oaling and the other man killed Abdon's two children and then attacked him. This act is explained by the resentment felt by Larion against Luna, because the latter had refused to allow the accused to violate some order concerning the quarantine. These horrible crimes of murder, robbery, and arson, committed in the barrio in question, were effected by a band of over thirty armed men, whose very presence terrorized the inhabitants and prevented or made impossible all resistance or attempt at defense. Therefore, in addition to the circumstance of premeditation, we may very properly take into consideration the existence of a cuadrilla. The circumstance of abuse by superior force is included in the circumstance of alevosia as to the death of Maria Somallo. We do not consider it proper to apply article 11 of the Code in mitigation, nor No. 14 of article 10, inasmuch as the criminal acts were committed by a large band of armed malefactors, and as to such crimes these circumstances do not apply.

Even supposing that the testimony of Abdon Luna, the principal witness for the prosecution, Avho lost his wife and two children in the course of a few minutes and himself barely escaped being murdered, were not acceptable, nevertheless, from the statements made by him, which in our judgment should be considered as satisfactory, in view of the state of mind in which he must have been when he testified, a few days after the occurrence, before the justice of the peace in that town, and while he was still under the impression of the bloody spectacle which had been enacted before him, in which the victims were members of his own family—it is not strange that he should have remembered the name of Pedro Larion in mentioning the aggressors. But even excluding the testimony of Abdon Luna, the record still contains more than sufficient evidence to unquestionably show the guilt of Larion as one of the principals in the crime of murder prosecuted, the penalty for which must be imposed in the maximum degree, by reason of the concurrence of two aggravating circumstances without any mitigating circumstance.

For the reasons stated, therefore, we are of the opinion that the judgment below, by which Pedro Larion was condemned to death, should be affirmed. The judgment will be executed in the manner prescribed by articles 101 and 102 of the Penal Code; the defendant being also condemned to pay the sum of 1,000 Insular pesos to the widower and heirs of the deceased Maria Somallo, and to the payment of the costs of both instances. So ordered.

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

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