

4 Phil. 543

[ G.R. No. 2180. May 05, 1905 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO CANDELARIA ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

Domingo Candelaria, Nicolas Rus, and Marcelo Cabaltea were convicted of assassination and robbery in the court below and sentenced to death. The case comes here *en consulta*.

We have no doubt of the guilt of Domingo Candelaria and of Nicolas Rus, but we do have as to Marcelo Cabaltea. Although he was present at the time Mariano Villar was killed by Domingo and Nicolas, he took no active part in the deed, but fled with the woman Teodora, the companion of Mariano. The judge below based his conviction of Marcelo upon a statement made by Domingo before the justice of the peace to the effect that Marcelo had induced him and Nicolas to commit the crime, and upon certain evidence in the case indicating that at the time in question Marcelo had ordered the carriers of the baggage to pursue their journey in advance of the rest of the party. The Solicitor-General in this court also relies upon the fact that during the journey there were secret conferences between Domingo and Nicolas on one side and Marcelo on the other.

Domingo Candelaria was not a witness at the trial in the Court of First Instance. The statements made by him before the justice of the peace, having been properly proved at the trial in the Court of First Instance, were evidence against Domingo but were not evidence against Marcelo Cabaltea. As to the latter, they were hearsay and incompetent.

(United States vs. Caligagan,<sup>[1]</sup> 1 Off. Gaz., 665, Aug. 21, 1903, No. 1302.)

That these porters were some distance in advance of the rest of the party at the time Mariano Villar was killed, is established by the evidence, but it does not appear that Marcelo ordered them to so precede; on the contrary, the evidence of Antonio Alarcon, one of them, is to the effect that they were ordered to precede by Mariano himself, and Marcelo. Nor does it appear in the case that Marcelo held any secret conversation with the other two defendants. This same witness, Antonio Alarcon, testifies that they were talking together, but he could not hear what they said, because it was raining and there was a strong wind. It also appears that Mariano Villar carried on conversation with these two defendants, Domingo and Nicolas, during the journey. We think, on the whole, that there is sufficient doubt concerning the complicity of Marcelo as to require us to acquit him.

There remains the question as to whether there were any aggravating circumstances so as to raise the punishment for the offense of robbery with homicide to the maximum degree—that is, to death. The court below considered that evident premeditation existed, but it based its statement upon the finding made by it to the effect that Marcelo and these defendants formed the plan of killing Mariano Villar before the party left the house of Domingo. As has been said above, we do not think the evidence is sufficient to support this view. The participation of Marcelo in the crime being eliminated, the testimony as to evident premeditation is very much weakened. The fact that when Domingo and Nicolas left the house of the former, and later joined the party, they carried no arms, and that the homicide was committed with the bolo of Mariano himself is indicative of the fact that they had not formed any deliberate plan to commit such homicide. We accordingly reduce the penalty as to these two defendants Domingo Candelaria and Nicolas Rus to life imprisonment (*cadena perpetua*). In all other respects the judgment as to them is confirmed, with two-thirds of the costs of this instance against them. As to Marcelo Cabaltea the judgment of the court below is reversed and he is acquitted with one-third of the costs of this instance *de officio*.

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

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<sup>[1]</sup> 2 Phil. Rep., 433.

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Date created: April 24, 2014