

[G.R. No. 1865. February 03, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GREGORIO LACANELAO SANTOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint filed by the provincial fiscal of the Moro Province on October 26, 1903, in the Court of First Instance of Zamboanga, Joaquin Ramirez, Vicente Saavedra, Gregorio Lacanelao Santos, and Ampan, a Moro, were charged with the crime of murder. The complaint stated that on or about the 26th day of May of said year these defendants, with treachery (*alevosia*) and known premeditation, killed an American, John Smith, while he was on board a small boat at sea near the town of Lampinigan, Island of Mori, district of Zamboanga; that they wounded him with a bolo (*called ulipas*) and a dagger; all with abuse of confidence, under cover of night, and in an uninhabited place, killing him instantly; that these acts constitute the crime of assassination; all contrary to law.

The case having come up for trial in pursuance of the aforesaid complaint, from the evidence adduced in same it appears that John Smith lived in the pueblo of Santa Maria, Province of Zamboanga; that he had in contemplation a trip over to the Islands of Jolo and Siasi to buy copra and chickens; that for this purpose he made some arrangements with Gregorio Lacanelao Santos whereby the latter, upon payment of 30 pesos, should act as his pilot in conducting him to said islands; that the proposition was accepted by Lacanelao Santos; that the latter made an arrangement with the defendants Ramirez and Saavedra to accompany him as sailors; that these three last-named persons rented a boat

belonging to one Bernabe Macapili, assuring the latter that they were going to take the family of Gregorio Lacanelao Santos to Basilan and that they would be back within four days; that at 8 o'clock on the evening of the 25th of May, 1903, the sailors engaged by Santos went for and prepared the boat which they had rented and took it to Bonansa, near Adives Street; that at about 5 o'clock the following morning John Smith, accompanied by Lacanelao Santos, drove over to the place where the boat was anchored, carrying with him a bundle of provisions and a small box containing 500 pesos and some bank notes; that when they arrived at the boat they found the sailors Ramirez and Saavedra already in it, as well as the Moro, Ampan; that Vicente Saavedra told John Smith that Ampan was his servant, who wanted to travel with them; that Smith consented to his going with them and immediately they started on their trip. That at about 8 o'clock that evening they arrived at the town of Lampinigan, where they stopped and Smith and Ramirez went ashore in order to purchase some food and clothing; that when the latter returned the party proceeded on their journey. That John Smith went to sleep in the center of the boat, Vicente Saavedra and the Moro, Ampan, brag in the bow and Joaquin Ramirez and Gregorio Lacanelao in the stern; that the latter four were all awake; that at about 9 o'clock that night, and when they were about a quarter of a mile away from Lampinigan, the Moro, Ampan, suddenly arose and struck John Smith with his bolo, almost cutting him in half; that he then told Ramirez to stab the deceased, which he did, stabbing him in the left side of the chest; that Ampan then ordered Vicente Saavedra to tie the anchor chain around the deceased's neck and throw the body overboard, which was done; that after the crime was consummated the Moro, Ampan, took the small box containing the money of the deceased and gave from its contents 140 pesos to Ramirez, 40 to Lacanelao, and promised to give Vicente Saavedra his part later; that Lacanelao took the belt-of the deceased containing about 40 pesos, while Ampan kept all the rest of the money belonging to the deceased. That these defendants distributed among themselves the clothes of the deceased which were not stained with blood; and finally, that these defendants continued on their journey to the Island of Basilan, where they landed. Lacanelao Santos and Ampan remained there, while Saavedra and Ramirez, after cleaning the boat,

returned to Zamboanga and delivered same to its owner.

It must be noted that the judge, on motion of the prosecution, dismissed the case as to Gregorio Lacanelao Santos, acquitting him by an order dated January 15, 1904, and that the Moro, Ampan, was killed in an effort to escape from the prison, as is to be seen on page 25 of the record. The trial, then, was held only as against Joaquin Ramirez and Vicente Saavedra. After the complaint was read to these men they pleaded not guilty.

The evidence establishes that John Smith was killed for the purpose of robbing him. The crime, therefore, is the complex one of robbery with homicide, provided for and punished by articles 502 and 503 of the Penal Code. Confining ourselves to the complaint, it is undeniable that the crime of murder provided for and punished by article 403 of the Penal Code was committed. The violent killing of John Smith was executed with treachery (*alevosia*), inasmuch as the culprits used means tending to insure the consummation of the crime without any risk to themselves. This circumstance stamps the crime as that of murder and determines the penalty therefor as that of *cadena temporal* in its maximum degree to death.

The participation of the defendants Joaquin Ramirez and Vicente Saavedra in the killing of John Smith can not be denied. They made arrangements with Gregorio Lacanelao Santos and were employed by the latter in the name of the deceased to conduct him from Zamboanga to Jolo. They planned the killing of said John Smith in order to rob him. The Moro, Ampan, was the one who did the actual killing. In order to commit the crime, and without the consent of the one who chartered the boat, they displayed a great desire to have the said Moro go with them in the boat as a sailor, or traveler, pretending that he was the servant of Saavedra. The fact that they concealed the name of the party who chartered the boat from the owner thereof, telling him that they were going to take the family of Lacanelao to Basilan; the fact of Joaquin Ramirez seconding the sudden attack made by Ampan, stabbing the deceased in the breast; the apparent passive conduct of Saavedra at the moment of the attack without doing anything or attempting to do

anything to prevent the consummation of the crime; the persistence of the Moro, Ampan, in remaining in the boat when he was asked by Lacanelao Santos to disembark and remain in the town of Lampinigan; the fact of the tacit consent of the other coprincipals in the crime, Ramirez and Saavedra, the former taking part of the money and clothes stolen and the latter relying on the promise of his portion when they reached the town of Basilan; and, finally, the fact that they concealed the crime and did not report the occurrence to the authorities for more than six months afterwards, until they were discovered, all these facts taken together and taken into consideration with the other circumstances of the case, and considering them according to the rules of sound reasoning, produce on the mind a clear conviction of the guilt of the two defendants, Ramirez and Saavedra, as coprincipals with Ampan in the crime of murder, for which they are now prosecuted.

When, as in the present case, the purpose of the crime is robbery, and when in order to consummate the same defendant prepared themselves and arranged for the commission of the crime, beginning with the killing of the victim and ending with the stealing of his effects, thus accomplishing their purpose, all are to be considered principals who, by common consent, resolve upon the commission of the robbery and take part therein intentionally and by overt acts, accompanying the one who does the actual act to the place of the crime and cooperate in the consummation of same, and, finally, taking part in the distribution of the stolen property. They are therefore liable as principals for all the consequences of the punishable acts committed, whether they took any material part in the murder or not. The defendant Saavedra finds himself in this position: He pretended to be the master of the Moro, Ampan, the person who actually carried out the crime; he took part in the distribution of the clothing and accepted the offer of Ampan to receive his portion in cash when they should arrive at the Island of Basilan. This offer and his acceptance thereof cooperates perfectly with the understanding which existed among the defendants and which becomes evident from the first pages of the record.

The allegations made by the defendants in their defense do not constitute a defense, and, even if they did, they do not offset the

testimony adduced by the prosecution, notwithstanding the fact that the defendants pleaded not guilty.

In the commission of the crime we must consider the presence of the aggravating circumstances of premeditation, nocturnity, treachery (*alevosia*), and its having been committed on a small boat out at sea. There is no extenuating circumstance to offset any of the former. It is evident that the defendants conceived and planned the crime before entering for the first time into the boat and before leaving Zamboanga; they attacked their victim and killed him in accordance with the plans they had laid at a moment when he was asleep on board the boat, at a great distance from land and in the middle of the night. It must be noted that, even taking into consideration the circumstance provided for in article 11 of the Penal Code in favor of the defendants, it would not relieve them from the maximum penalty, which is death.

Therefore, by virtue of the reasons above stated, we are of the opinion that the judgment below, dated January 18, 1904, should be affirmed and Joaquin Ramirez and Vicente Saavedra sentenced to death, this sentence to be executed in Zamboanga at such hour and day not a holiday to be appointed by the judge of the district and in the manner prescribed by Act No. 451, dated September 2, 1902. The defendants are also sentenced to pay, jointly and severally, to the heirs of the deceased John Smith the sum of 1,000 pesos, with the accessories provided for in article 53 of the Penal Code in case of pardon, and with half of the costs in both instances. This case to be remanded to the court below with a certified copy of this decision and of the judgment which shall be rendered in accordance herewith. So ordered.

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

