

2 Phil. 514

[G.R. No. 1190. September 24, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. HONORIO DE JESUS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On July 11, 1902, shortly after 8 o'clock in the evening, while Ramon Osete was in his dining room taking supper with his family, three men suddenly entered the house. One of them remained on the stairway near the dining room. The other two, who were armed with bolos, after warning the people in the room not to move or cry out under pain of death, immediately attacked Osete. Several slashes were given him with the bolos which they carried, causing some fifteen more or less serious wounds on the head, face, arms, and other parts of Osete's body, as a result of which he died on the 20th of August following. After Osete had been thus wounded and was stretched out on the floor, one of his assailants entered the room, apparently looking for someone else, while the other seized the deceased's daughter, Maria Osete, by the throat. As a result of the cries for help set up by Osete's wife and his children, Vicente and Ramon, and of the disturbance occasioned among the neighbors thereby, the two assailants decamped, followed by the man who had remained on the stairway. In the course of their flight one of the malefactors, who proved to be Jose Consuelo, was apprehended by the police and Osete's neighbors. Consuelo, when arrested, had spots of blood on his hands and was identified by the deceased's widow as one of the two men who had entered the room and inflicted the wounds upon her husband. Honorio de Jesus was also identified as the other of these two.

On the 21st of August, the day following Ramon Osete's decease, an autopsy was held upon his body. From this autopsy it appeared that he was a man of about 55 years of age. Six wounds were found, apparently healed, in the head. His lungs were in normal condition. On the right side of the heart a clot of blood was found, although that organ presented no

evidence of disease. One of the wounds on the left side of the head had produced an irregular fracture of the skull, splinters of bone having been found in the Avound, this constituting a *lesion grave*. The physician who made the examination, Avhieh Avas carried on in the presence of other physicians, Avas of the opinion that the man's death had been caused by the clot of blood which, as a result of blows given by an instrument and of his consequent weakened condition, had formed on his heart. The examining physician stated that such frightful wounds as those which appear from the drawing of the skull, exhibited in the record, might be expected to produce fatal consequences, or to bring about intestinal disease.

Dr. Browns, who held the autopsy, in his testimony stated further that the wounds received by the deceased must have been inflicted with a cutting weapon; that although the deceased had no organic disease of the heart, nevertheless his death was due to a dyspnoea and to the clot of blood, referred to, caused by the debility and anaemia resulting from the great loss of blood which he had suffered, and that the intestinal trouble was merely a symptom. Drs. H. W. Yemans and Augusto Anguita, the latter of whom was one of those present at the autopsy, corroborated the testimony of Dr. Browns. They stated that the wounds of the deceased had caused anaemia, due to great loss of blood, and that in consequence thereof the circulation had become sluggish. They testified that to this sluggishness of circulation was due the formation of the clot of blood on the heart, which, by bringing on cardiac paralysis, was the immediate cause of Osete's death. Dr. Isidro Santos, who attended the wounded man from the night of the occurrence, and visited him at intervals down to the day of his death, testified that the wounds of the deceased had healed over and that on the 8d of August he removed the bandages. He stated that although Senor Osete only complained of weakness, on the 7th of August intestinal catarrh due to defective digestion set in. His feet commenced to swell, and a feiv days afterwards dyspncea set in, and then Dr. Santos says he observed the heart trouble. He states that notwithstanding the efforts of himself and Dr. Anguita, it was impossible to save the patient, who died on the 20th. This witness added that in his opinion the most serious wounds were those inflicted on the frontal bone, those on the body being merely superficial. He says that the patient continued to enjoy his mental faculties until his death, which, he testifies, was produced by the heart trouble! He also states that the anremia was due to the great loss of blood which the deceased had sustained.

Sixta Santos, the wife of the deceased, and his children Vicente and Ramon Osete having been called as witnesses, they testified to the occurrence substantially as above related, adding that the man who later proved to be Honorio de Jesus, and who lived near the house,

was the one who, when the assailants entered, ordered the family not to move or speak if they did not wish to die. These witnesses stated that after the deceased was seriously wounded, one of the assailants, the said Honorio, who had on a sinamay shirt, entered an interior room in search of some one. They testified that at the same time the other man seized the girl Maria by the throat, but quickly released her and ran for the stairway. This man, who wore a white shirt, turned out to be Jose Consuelo. During the assault Osete's wife and children screamed for help and thereby aroused the neighbors. These witnesses identified the bolos Nos. 1 and 2, the first as the one used by Honorio and the second as the one used by Consuelo. They testified further that the two assailants of the deceased attacked him from the front and that he defended himself against the assault with a chair; that the boy Ramon, by his mother's direction, jumped out of the window to seek assistance and, upon reaching the ground, observed five men running from the doorway of the house; that two of them in their flight dropped their shirts, but that he could not see whether or not they were carrying arms; that the two boys were quite well acquainted with Honorio de Jesus, he having been in the yard of the house playing with Ramon some days before; that they did not see Estanislao de los Reyes in the upper story of the house and can not say whether he was below with the others or not. Maria Osete testified to the same effect, saying that after she was released by the man who had seized her by the throat she, while the other was attacking her father, hid away in the bathroom and therefore was unable to give further testimony concerning the occurrence and does not remember the appearance of the two men who entered the house.

The defendant Jose Consuelo, who testified in the case as a witness for the prosecution and against whom a separate case is being prosecuted for the same crime, stated that he was acquainted with the defendants Honorio de Jesus, Estanislao de los Reyes, Juan Nicodemus, and Tomas Espiridion; that at 6 o'clock in the afternoon of the 11th of July, 1902, these men came to his house in San Lazaro in a quilez looking for him and that Estanislao, the only one who entered the house, invited him to accompany them for the purpose of abducting a woman; that upon the witness's replying that his mother would not permit him to do so, Reyes spoke to the latter and told her that they were going to a wake and that thereupon his mother consented; that the defendant accordingly followed Reyes and entered the quilez, which was driven to Tondo; that upon arriving at Angustias Street the quilez stopped and his companions pointed out the house where the woman lived"; which was situated near by on Lemery Street; that they then told him that Estanislao de los Reyes, Honorio de Jesus, and the witness were to enter the house; that he did not observe that his companions were armed; that upon entering the house Honorio and Estanislao commenced to make a noise

and that therefore the witness, who had remained below on the staircase, advanced three steps higher to see what was going on and observed that his two companions, Jesus and Reyes, were attacking the owner of the house with bolos, while the other members of the family were crying and shrieking; that thereupon he fled without having observed what had become of Juan Nicodemus and Tomas Espiridion who remained in the street standing by the quilez, although he observed that Tomas had a bolo; that on account of the excitement and disturbance among the people, the witness was arrested in his flight by a policeman; that he was not acquainted with Osete or his family; that on entering the house they found the street door merely latched; that Estanislao at that time was wearing a white shirt and white trousers and a hat, but no shoes; that the bolo designated "No. 1," which was shown him at the trial, appeared to be the one used by Estanislao de los Reyes, and the one marked "No. 2" the weapon carried by Honorio de Jesus, but that while in the quilez he did not observe that his four companions were armed; that after they had all been arrested his companions were very angry with him for having made this accusation against them—so much so that Honorio wanted to beat him; and that while in prison his codefendants threatened him and told him that he had better deny the occurrence so they might all be acquitted.

The defendants Estanislao de los Reyes, Honorio de Jesus, Juan Nicodemus, and Tomas Espiridion pleaded not guilty to the charge. All of them protested their innocence with respect to the crime attributed to them, alleging that they knew nothing of the occurrence in Osete's house, which they had not entered, and that they had not been to the house of Jose Consuelo in a quilez on the afternoon of July 11, 1902, and that they did not know where his house was. Reyes stated further that on the night of the occurrence he was at his home in Timbugan, barrio of San Lazaro, Santa Cruz; that his father was sick with cholera at the time and the witness was nursing him, and that he did not leave the house that night; and that some time after his arrest, which occurred on Friday night, his mother informed him that his father had died on the following Monday; that the bloody shirt which they made him try on in the barracks did not fit him, and because he would not confess that it was his he was beaten; that the bolos designated Nos. 1 and 2, and which were found in the kitchen of his house, were used for domestic purposes; that he did not see Jose Consuelo on that night and that he was not identified by the widow of the deceased. He further denied that he had any quarrel in prison with Consuelo.

Honorio de Jesus testified that early in the evening of the 11th he had supper with his family and that, as he was very tired after his day's work, did not again leave the house; that after supper, while in conversation with his companions in the house, he heard people shouting,

“Stop him!” “Stop him!;” that he therefore approached the window and from there saw two men running down Angustias Street; that one of the men was caught by the crowd and taken to a place in the street in front of the witness’s house where there was a light; that some hours afterwards, while he was asleep, Captain Cranie came to his house to arrest him and took him to the house where the crime had been committed, but that the widow of the deceased could say nothing concerning him, although while he was in the barracks in the presence of Jose Consuelo they accused him of having been one of the men who entered the house and assaulted the owner; that he did not know Consuelo and had never seen him before; that he had not been in the yard of the house of the deceased a few days before the occurrence; that he did not know Estanislao de los Reyes nor Juan Nicodemus, but was acquainted with only Tomas Espiridion, and that he quarreled with Consuelo in the Postigo prison on account of the resentment he felt against him.

Juan Nicodemus testified that on the night of the occurrence he was at home sick; that he did not leave his house and was asleep when the policeman who took him in the carretela to the barracks came to arrest him. He said that as to the fact of his being ill at the time,; Dr. Valdez, who attended him, could testify; that he had not left his house, which was situated in Mendoza Street, Quiapo, and that he knew nothing about the occurrence.

Tomas Espiridion testified that on the 11th of July he spent the entire evening in his house; that after supper he went to sleep, and that it was late that night when the police arrested him; that before supper he borrowed a bolo from a neighbor called Mauricia, to split some wood, and afterwards returned it; that shortly after 8 o’clock that night he heard the people shouting “Stop him!” “Stop him!,” and went out on the porch of his house to see what was going on, from which he observed an unknown man running down the street; that he did not then recognize this man as his neighbor, Honorio de Jesus. The witnesses called by the defendants corroborated their statements with respect to the *alibi*.

Upon the evidence adduced at the trial (which does not include any testimony by the deceased, the latter, according to Captain Orame’s statement, having been unable because of his debilitated condition to give satisfactory answers when interrogated on the day following the assault, and he having died several days before the case was commenced), the judge on the 26th of November, 1902, condemned Honorio de Jestis to death, Estanislao de los Reyes to life imprisonment (*cadena perpetua*), and each of the other accused, Juan Nicodemus and Tomas Espiridion, to the penalty of twenty years each of *cadena temporal* and to the payment by each of a quarter of the costs. The Solicitor-General asks that the judgment appealed be so modified as to condemn the defendants Honorio de Jesus and

Estanislao de los Reyes to death, Jfico demus and Espiridion each to seventeen years and four months of *reclusion temporal* with the accessory penalties, and to the payment in solidwn to the heirs of the deceased of an indemnification of 1,000 pesos; and to the payment *in solidum* of the costs.

In the absence of any of the qualifying circumstances enumerated by article 403 of the Penal Code, the violent killing of a human being constitutes only the crime of homicide, punishable under article 404. This classification must be given to the killing of Ramon Osete, brought about by mortal wounds inflicted upon him in his own house in Tondo on the night of July 11.

It is fully established in the record by expert testimony and evidence as to the result of the autopsy held upon the body of the deceased Osete, that he died forty days after having been seriously wounded, his death resulting from cardiac paralysis, dyspnoea and intestinal catarrh produced by his debilitated condition, and the extreme anaemia brought about by the serious loss of blood suffered by reason of the wounds which had been inflicted upon him. It is therefore unquestionable that he was the victim of a homicide, as without the wounds there would have been no hemorrhage and its consequent anaemia; nor would the clot of blood have formed on the heart or the dyspnoea, the cardiac paralysis, or the intestinal catarrh been suffered. All these were effects more or less pi'oduced by the wounds inflicted, which were at least the immediate cause of his death. In order to define the nature of the crime, it is necessary to consider the effects of the criminal act and the extent and consequences of the damage caused.

Notwithstanding the allegations of the complaint or the arguments advanced in the brief of the Solicitor-General, we can not find that premeditation or *alevosia* was present in the commission of the crime, because the agreement entered into between the defendants and the invitation by Estanislao de los Reyes to Jose Consuelo, who was taken from his house in a quilez by the other four, had for its purpose the abduction of Maria Osete, a daughter of the deceased; that is, that the agreement was for the purpose of the commission of the crime of abduction, which had been planned by Reyes.

Qualifying circumstances such as premeditation must be proven by competent evidence, the same as the principal facts constituting the crime, because these circumstances determine the classification of the offense and the penalty to be inflicted. It is not sufficient that a suspicion exist. The proof must be clear and positive and must establish the existence of the circumstances beyond a reasonable doubt. That is, the evidence must disclose that the

commission of the crime was preceded by such a degree of reflection and meditation as to indicate that the guilty agent had previously formed a plan for carrying it into effect.

There is no evidence, not even circumstantial, to indicate that the assailants of Ramon Osete had, with evident premeditation or reflection, conceived the idea of killing him, for the evidence in the case does not show that they had any intention to inflict wounds upon him or to cause his death until the very moment in which the assault was made.

With respect to the *alevosia*, the evidence disclosed beyond a doubt that when two of the accused entered the house and climbed the staircase, one of them ordered the inhabitants not to move or cry out under pain of death; and that, when one of them or both together attacked the owner of the house, they attacked him from the front and did not select means tending to secure the consummation of the crime without risk to themselves arising from any defense the deceased might have attempted to make; in fact, he did attempt to defend himself, in a way with the chair upon which he was sitting; and although in the course of the struggle he was overcome and seriously wounded, it was because he was unarmed and succumbed to the superior number of his assailants, of whom there were two and who were provided with large bolos. There was indeed an abuse of superiority on the part of the assailants, but this does not constitute the qualifying circumstance of *alevosia*, because it does not appear that Osete was wounded by his assailants treacherously and without any peril to themselves.

The circumstance of *alevosia*, as well as all other qualifying circumstances which raise the classification of the crime and augment the penalty, can not be inferred or presumed in any given case, but must be established by evidence of proved facts; that is, it must be clearly demonstrated beyond all possibility of doubt, and the evidence must disclose that the accused in committing the crime did so by means or methods which can legally be regarded as *alevosia*, this does not appear in the present case.

The defendants Honorio de Jesus and Estanislao de los Reyes, together with another man who is being prosecuted in a separate case, are guilty as principals of this crime of homicide. Notwithstanding their plea of not guilty and the exculpatory allegations, the record contains evidence which, when considered as a whole and according to the precepts of common sense, is sufficient to fully convince the mind of the guilt of these two defendants as the assailants of the deceased Ramon Osete.

The charge against Honorio de Jesus is substantiated by the testimony of the widow and two

children of the deceased, who recognized him at the time of the occurrence, and subsequently identified him in the presence of the police as one of the men who entered the house and assaulted the owner, Ramon Osete, with bolos. According to their testimony, Honorio was the one who, after Osete had been wounded, entered one of the interior rooms of the house looking for some one. The guilt of de Jesus is also shown by the testimony of Jose Consuelo, one of the three men who entered the house of the deceased and who was called as a witness. He gave a detailed statement of the assault committed by Honorio and Estanislao on the owner of the house, both to the police and at the trial. Furthermore, the denial on the part of Honorio—denial of having been in the yard of the house in question on the day before the crime watching the Osete children play—may be regarded as circumstantial evidence of his guilt, as the fact of his presence there has been proven by the testimony of persons who had known him intimately for a long time. The evidence of the prosecution can not be regarded as overcome by the testimony of the wife and mother of the defendant Jesus, owing to the natural interest which they had in saving him, and even if it be true that Honorio was seen in his house very shortly after the occurrence, it must be remembered that his dwelling was very close to that of the deceased.

With respect to Estanislao de los Reyes, we have in the record as proof of the guilt of this defendant the testimony of Jose Consuelo, who says that Reyes was one of the men who assaulted and wounded Ramon Osete, and that Reyes was the one who came to the witness's house and invited him to go and take part in the abduction, and by deceit obtained his mother's consent to his accompanying Reyes and his companions in a quilez to the house of the deceased. Furthermore, we have the circumstance that a white shirt spotted with blood, which was found in a canal near Angnustias Street on the night of the crime, fitted the defendant Reyes, and the evidence discloses that one of the assailants had on a white shirt at the time of the occurrence. In addition to this we must consider the statements made by the defendant Reyes to the police captain, Jose Crame, and to another policeman, to the effect that he had gone with others to the house of Ramon Osete and had wounded the latter, although he added at the time that his purpose was to abduct the girl Maria, which statements were made by him after his denial, at the commencement of the investigation, that he had in any way participated in the perpetration of the crime. Then again, the evidence shows that the police who went to his house to arrest him found him hiding under a mat, covered by the skirts of his sister, in one of the interior rooms of his house. This fact indicates that he had some occasion to conceal himself, for he certainly would not have acted in this manner if he had been innocent and had known nothing of the occurrence. Furthermore, beneath the same mat under which Reyes was hiding were found the two

bolos Nos. 1 and 2. These were identified by the children of the deceased who were eyewitnesses to the assault. Captain Crame testified to the facts above stated that Reyes was surprised upon being confronted in the police station with Jose Consuelo, who charged him with participation in the crime; and when the defendants were taken to the house where the crime was committed, the wife of the deceased and Osete's youngest child identified all three, Estanislao de los Reyes, Honorio de Jesus, and Jos6 Consuelo, as the men who entered the house, the first two being those who made the assault upon the deceased. Sergeant Jose Fernandez in his testimony corroborated the statement of Captain Crame.

It is worthy of note that the testimony of Jose Consuelo is not overcome or contradicted, but rather in part corroborated by the testimony of the family of the deceased and by that of Captain Crame. The latter said that, although at the beginning he doubted the truth of the statements of Consuelo, he became convinced, by the evidence subsequently brought forward, that what he had said was true. Again, two witnesses, Manuela de Jestis and Gregorio de la Cruz, testified that Estanislao de los Reyes, notwithstanding his denial, had in fact been at the house of Jose Consuelo to get the latter, on the evening of the occurrence, and that they left together in the quilez, in company with some other persons unknown. The witness Manuela stated that she had taken no special notice of this man, and the witness Gregorio testified that he had been unable to see him because he was on the porch of the house.

These facts, established by the testimony of the witnesses for the prosecution, constitute conclusive and indubitable evidence of the guilt of the defendant Estanislao de los Reyes, notwithstanding the *alibi* testimony given by his relatives and fellow-lodgers. The testimony of these witnesses, all of whom were interested in favoring him, was not sufficient to overcome the incontestable proof of his guilt presented by the prosecution.

The discrepancy to be observed between the testimony given in court by the widow and children of the deceased, and the statements made by them to the police, with respect to Estanislao de los Reyes, as to whether he was or was not one of the assailants of the deceased, and as to Jose Consuelo, whether he took part in the assault or remained outside on the stairway, it must be presumed that this discrepancy was due to the fact that these witnesses did not fix their attention upon the appearance of the assailants, or that they were confused or mistaken by reason of the terror inspired in them by the assault committed by the defendants. It may also perhaps have been due to deficiencies in the interrogations addressed to them in court when they were confronted with the three

accused.

With respect to the other defendants, Tomas Espiridion and Juan Nicodemus, the evidence is sufficient to establish the guilt of these defendants as accessories who aided and abetted the principals in the crime. They remained in the street in front of the house, standing by the quilez which had brought them there, while the other defendants committed the crime in the upper story of the house. Although it is true that the agreement entered into was for the purpose of abducting the girl Maria Osete, it is none the less true that it was proposed to effect this crime by the use of force, and with this end in view two of the men who entered the house carried weapons, as well as the defendant Espiridion, who remained in the street. Consequently it, is to be presumed that they were ready to overcome any obstacle or opposition which they might meet, as in fact they did, and for this reason the two accessories who remained in the street in front of the house have incurred the criminal responsibility of those who, although not principals, nevertheless performed acts before or at the time of the commission of the crime and necessarily related thereto.

The *alibi* evidence which each of them set up is insufficient to overcome the evidence introduced against them by the prosecution. It is worthy of note that, notwithstanding the fact that they heard repeated accusations made against them by Jose Consuelo in the presence of the police, and subsequently before the judge below, to the effect that they were parties to the crime herein prosecuted, as accomplices, it does not appear that they have alleged any facts demonstrating their innocence, or that they showed in any way that they considered themselves innocent and falsely charged.

In the commission of the crime we must consider the existence of aggravating circumstances Nos. 9, 15, and 20 of article 10 of the Penal Code, with no mitigating circumstances to offset their effects, because the facts established by the evidence show that the assailants availed themselves of the darkness of night for the purpose of committing the crime with impunity. They moreover attacked the deceased in his own house, assaulting him without any provocation, and, by availing themselves of the fact that they were two in number, both armed with bolos, were guilty of abuse of superiority. The deceased was unarmed and unable to do more than to attempt to defend himself with a chair, and was overcome in the struggle. For these reasons, the proper penalty should be imposed upon the two principals in the maximum grade.

The information charges the defendants with the crime of murder, but as the crime of homicide is necessarily included therein, under section 29 of General Orders, No. 58, the

defendants can be found guilty of homicide and the penalty prescribed by article 404 of the Penal Code inflicted upon them.

For the reasons stated, we are of the opinion that the judgment below should be reversed. The crime of which the accused are guilty should be classified as homicide, and the defendants Honorio de Jesus and Estanislao de los Reyes should each be condemned to the penalty of twenty years of *reclusion temporal*, with the accessory penalties of absolute temporal disqualification to its full extent and subjugation to the vigilance of the authorities during the period of the penalty and for an equal period thereafter. The other two defendants, Juan Nicodemus and Tomas Espiridion, should be condemned, as accessories, each to the penalty of ten years and one day of *prision mayor*, together with suspension from all public office and of the right of suffrage during the period of the penalty. The first two defendants should also be condemned to the payment, *pro rata* or *in solidum*, to the heirs and widow of the deceased of an indemnification of 1,000 Insular pesos, and in case of the insolvency of the said two defendants, the two defendants last named shall, as accessories, be subsidiarily responsible in the same manner for the payment of the indemnification, and each of the defendants herein to the payment of one-fourth part of the costs of both instances. The bolos seized will be confiscated. The case will be remanded to the court below for execution of judgment. So ordered.

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

WILLARD, J., dissenting:

I am of the opinion that the defendants Juan Nicodemus and Tomas Espiridion should be convicted as coprincipals, and I therefore dissent from the decision with respect to them, but concur with respect to the others.