

2 Phil. 417

[ G.R. No. 1255. August 17, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELIPE ABAIGAR,  
DEFENDANT AND APPELLANT.**

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

**MAPA, J.:**

The testimony of the witnesses and the confession of the accused himself show unquestionably that the latter stabbed Constantino Nabaonag to death while he was bound, and therefore unable to defend himself against the aggression. This circumstance constitutes *alevosia*, and the offense is therefore properly classified as murder, defined and punished by article 403 of the Penal Code. It follows, therefore, that the judgment of the court below now before us in consultation is correct, in so far as it finds the defendant guilty of the crime of murder.

This judgment condemns the accused to the penalty of death, the court considering that the crime was committed with the aggravating circumstances of deliberate premeditation, the employment of means tending to add ignominy to the necessary effects of the act, and the commission of the crime with the assistance of armed men.

The opinion of the court in this regard does not meet with our approval. There was no premeditation, because an examination of the record shows that the purpose of killing Constantino arose suddenly in the mind of the defendant, and was instantaneously carried into effect, upon information that the deceased had spoken ill of the defendant.

The accused says: "As soon as I heard of this I became furiously enraged; I seized my dagger and killed him at once." This part of the defendant's testimony was not disproven in the course of the trial. The determination to kill was, then, followed immediately by the execution of the crime; and consequently between the determination to commit the act and its actual commission there was no opportunity for the cold, meditative, and persistent

reflection which constitutes premeditation, which is essentially different from a simple determination of the will, which is always presumed in the commission of every offense. ,

The circumstance of ignominy was not present because ; no means were employed nor did any circumstances surround the act tending to make the effects of the crime more humiliating. Ignominy is a circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime. The fact that the deceased was killed in the presence of his wife certainly could not have such a signification, and this is the circumstance which the court below had in view when declaring that this circumstance had concurred.

Furthermore, the evidence shows that the crime was not committed with the assistance of armed men. The testimony of the accused, corroborated by that of the witness for the prosecution, Francisco Abadiano, is that the crime was committed by the defendant alone, without assistance from any one. It is true that in the house near the place where the crime was committed there were ten men armed with daggers, according to the statements of the witness referred to, and live without arms, according to the accused, but as these men took no part, directly or indirectly, in the commission of the crime, and it does not appear that they heard the conversation which caused the sudden determination on the part of the accused to kill the deceased, and still less that they had in any way participated in this determination, we can not, within the law, find that this circumstance concurred in the commission of the crime prosecuted for the purpose of augmenting the criminal responsibility of the accused. The mere casual presence of armed men, more or less numerous, near the place of the occurrence does not constitute an aggravating circumstance when it appears that the defendant did not avail himself in any way of their aid, and did not knowingly count upon their assistance in the commission of the crime.

In the present case, there being no circumstance tending to modify the guilt of the defendant, the penalty is that prescribed by article 403 of the Penal Code in its medium grade, to wit, the penalty of life imprisonment, and not the penalty of death imposed by the court.

For the reasons stated we reverse the judgment in so far as it condemns the defendant to death, and impose upon the latter the penalty of life imprisonment, and condemn him to the payment of an indemnification of 1,000 Mexican pesos to the heirs of the deceased, together with the costs of this instance.

*Arellano, C. J., Torres, Cooper, Wiliard, and McDonough, JJ., concur.*

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