

[G.R. No. 1076. May 09, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JACINTO MARTINEZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On June 7, 1902, Domingo Uson and Victor Pano were arrested at the place called Dalagud, of the town of Zaragoza, Nueva Ecija, by Jacinto Martinez, an officer or secret agent of the Constabulary forces stationed in that province. He was accompanied by the policemen Sebastian Garcia and Daniel Layug, and by Victoriano Nucum, a private citizen. Uson and Pano were suspected of being guilty of the theft of certain carabaos, the majority of which were the property of Mariano Baun. The two suspects, with the carabaos found in their possession, were taken to a place called Atiuc, in the barrio of San Miguel, in the town of Murcia, where they were tied elbow to elbow and cruelly ill treated by the defendant Martinez, who beat them with the butt of his revolver and submerged them in an estero near that place. Afterwards, while they were completely drenched, he took them to the police station of the barrio, where he again beat them to such an extent that Victoriano Pano died on the morning of June 9 in the station, and Domingo Uson three days later in the municipal presidency of Tarlac.

An examination of the body of Pano made in the justice's court of Murcia, by Prudencio Rodriguez, a medical student, on June 9, disclosed signs of blows on the breast, the left side, the back, and the neck. One rib was broken and the back of the neck was beaten into a jelly, showing that the deceased had met his death in consequence of the injuries caused by the blows inflicted upon him. The body of Domingo Uson was examined by Dr. Jose Espinosa, who has certified that it showed a contusion on the right wall of the thorax, another in the right lumbar region, and several in the abdominal region. From the autopsy held it appeared that the right lung and the pleura were adhering to the anterior wall of the thorax; that the

fourth right rib was broken, and that the left lobes of the liver and of the spleen were congested, and that therefore it was his opinion that the death of the deceased was caused by the blows inflicted upon him.

Prosecutions have not been instituted for each one of the two murders committed. At the instance of the counsel for the defendants the provincial fiscal, who had filed a separate information for each offense, consolidated the two cases, and filed an amended information. (Folio 32.) The judge thereupon directed the consolidation of the two cases, and the prosecution of the two charges of murder in one action. (Folio 34.)

The facts related constitute two crimes of murder, committed on the persons of Victoriano Pano and Domingo Uson, denned and punished by article 403 of the Penal Code. These two men met a violent death from blows inflicted upon them by Jacinto Martinez, while they were tied elbow to elbow, and in such a condition that it was impossible for them to defend themselves or to impede the blows by which they received injuries which resulted in their death. It follows, therefore, that the accused availed himself of means for the execution of his purpose which directly assured its accomplishment without risk to himself arising from an attempt at self-defense on the part of the victims, and consequently it is unquestionable that the circumstance of treachery (*alevosia*) concurs.

The defendant Jacinto Martinez plead not guilty. Notwithstanding his denial and exculpative allegations, the record nevertheless discloses evidence sufficient to convince the mind that he was .the sole author of the blows and ill treatment inflicted upon the two deceased. This was affirmed by four witnesses to the ill treatment, who also stated that Martinez fired his revolver at Domingo Uson, and that the bullet passed so close to his face that it left a black mark; that after the deceased were submerged, with their hands tied, in the Atiuc estero, the defendant took them to the police station of the barrio, where Victoriano Pano was again beaten with the butt of a revolver, and that he fell to the ground, never again to rise. They added that the two deceased were at that time completely drenched and complained of pains in the chest. The testimony of these four witnesses, Domingo Tejero, Pedro Mendoza, Potenciano Mendoza, and Agaton Baun, is further corroborated by the testimony of two other witnesses, Guido Mendoza and Eleno Mallari.

The witnesses presented by counsel for the defendant, Gavina de los Santos, his wife, Proceso Aguilar, and Juan Cantos, testified that Jacinto Martinez, after having turned the prisoners over at the police station of San Miguel on the afternoon of June 8, returned to his home and there remained, according to his wife's statement,

Aguilar and Canlas testified that the accused did not ill treat the deceased. This was also affirmed by the other three accused, Sebastian Garcia, Daniel Layug, and Victoriano Nucum, acquitted below, who further stated that the deceased were not illtreated on the road, and that they did not complain of any pains.

This testimony is evidently insufficient to overcome the evidence of the prosecution, and is wholly insufficient to show the innocence of Jacinto Martinez. It was demonstrated in the course of the trial that he alone inflicted the blows received by the deceased.

In the commission of the double crime of murder—and as such this homicide must be classed, by reason of the concurrence of the circumstance of treachery (*aleviosa*)—mitigating circumstance No. 3 of article 9 of the Penal Code must be applied, as also the special mitigating circumstance established by article 11 of the Code, in view of the nativity and illiteracy of the accused. The latter when beating the deceased, abusing his authority and in an excess of zeal, doubtless had no intention of killing them, but simply to inflict upon them the punishment which, in his opinion, they deserved.

Consequently, he could'have had no intention to cause them so serious an injury as that which resulted. These two circumstances are regarded as strongly marked, and there being no aggravating circumstance present, we should apply the provisions of paragraph 5 of article 81 of the Code, in accordance with which the accused should be condemned for each one of these two murders to the penalty immediately inferior to that prescribed by article 403, to wit, the penalty of *presidio mayor* in its maximum degree to *cadena temporal* in its minimum and medium degrees, applied in the medium degree.

We are of the opinion that in the commission of the two murders referred to the aggravating circumstances Nos. 6, 7, and 11 of article 10 of the Code should not be applied. The condition of the defendants, tied elbow to elbow, was such that Martinez had no occasion to avail himself of his capacity as a secret-service agent of the Constabulary forces in order to illtreat the deceased with impunity, he having undertaken to punish them without authority to do so and without a just cause. It is not possible to determine which of the several blows received caused the mortal wounds, and which of them occasioned unnecessary suffering, as it is to be presumed that this ill treatment as a whole resulted in the wounds received, and the consequent death. Neither can we consider that there was premeditation or reflexive intention to kill them, because if, as we have stated, it does not appear in the record that the accused had any intention to kill them, still less can it be said that he had reflexive and premeditated intention to take their lives.

The judgment appealed has been impugned by the defense in this second instance upon the ground that the defendant has been tried on one information for two separate offenses, against the provisions of section 11 of General Orders, No. 58. Apart from the fact that the two murders prosecuted are intimately connected and were committed by the same person, Martinez, at the same time and place, it must be remembered that at the instance of counsel for Jacinto Martinez the two cases were consolidated, and the provincial fiscal amended his former informations and substituted one information for them, and upon this agreement the judge below tried the defendants in the one prosecution upon the double charge of murder. This has not caused any substantial violation of the rights of the defendant.

For the reason stated, therefore, and considering the two attenuating circumstances above mentioned, we are of the opinion that the judgment below should be reversed with respect to Jacinto Martinez, and that he should be condemned for each one of the murders to the penalty of fourteen years of *cadena temporal*, with the accessories of civil interdiction during his imprisonment, and to absolute, perpetual disqualification and subjection to the vigilance of the authorities during his lifetime, to pay 1,000 Mexican pesos to the widow and heirs of each one of the two deceased, and to pay one-fourth of the costs of the first instance and all the costs of this second instance. So ordered.

Arellano, C. J., Willard, Mapa, and Ladd, JJ., concur.

Cooper, J., dissents.

McDonough, J., did not sit in this case.