

[G.R. No. 1274. September 25, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TOMAS GUEVARA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

On February 6, 1903, an information was filed charging Tomas Guevara, Lucas Feliciano, and Tomas Bernardo, members of the Constabulary stationed at San Miguel de Mayumo, Province of Bulacan, with the crime of homicide. The information alleges that at about 8 o'clock on the night of September 16, 1902, information having been secretly received from Segundo Carpio that one Veronico de Leon had a Remington rifle in his possession, the three defendants, with other soldiers of the corps, all commanded by the defendant Guevara, a corporal, went with Carpio to the house of the suspect, located in the barrio of Salangan in said town. Veronico de Leon was there arrested, and after being conducted to a secluded place about 20 *brazas* from the house was beaten with the butt of a gun, receiving injuries from which he shortly after died.

The three defendants pleaded not guilty to the charge of homicide brought against them, and in the course of the trial in the court below the defendant Tomas Bernardo was acquitted.

Dr. Ramon Lopez, who, by order of the justice of the peace, held an autopsy on the body the day after the occurrence, stated that it was due to an internal hemorrhage induced by a rupture of the spleen, caused either by heavy blows, the marks of which were observable on the exterior part of the epigastric region, or by some other more violent pressure which left no exterior marks. After careful examination both of the interior and exterior of the body the physician was able to give no other explanation of the death.

The facts above related constitute the crime of homicide, defined and punished in article

404 of the Penal Code. It does not appear from the record that in the commission of the crime any qualifying or generic circumstance was present which would require a different classification of the offense or the imposition of a heavier penalty.

The court below convicted Lucas Feliciano and Tomas Guevara and condemned each to fourteen years eight months and one day of *reclusion temporal*.

With respect to Lucas Feliciano, there is sufficient evidence to show that after arresting Veronico de Leon he beat him with the butt of his gun, and that Leon shortly after died.

With regard to Tomas Guevara, Tomas Bernardo says that the former turned Veronico de Leon over to the soldier Feliciano, telling the latter not to illtreat him. Segundo Carpio explicitly says that it was Feliciano who struck Veronico de Leon with the gun and that while Feliciano was beating the prisoner Guevara did nothing, but, the witness states, merely formed a group with Feliciano and Veronico de Leon. The witness adds that he was standing near by at the time and heard no conversation whatever between them. Tomas Guevara testified that he was ordered to take Veronico de Leon to the barracks, owing to a report that he was in possession of a gun; that he threw his men out into a skirmish line a short way from the house of Veronico de Leon; that he made the latter come out of his house and turned him over to the soldier Feliciano; and that he was then engaged in getting his men together, which took him about half an hour. The same statement is made by Tomas Bernardo, the latter adding that the party then started for the barracks. Upon being asked how it was that he consumed half an hour in getting his men together, he said he called them together as a matter of precaution, because he had been informed that there were a great many people in that vicinity who had guns. Upon being interrogated by the judge as to how long Veronico de Leon had been out of the control of this defendant, after the latter turned him over to Feliciano, he said it was about half an hour. "Were you half an hour in getting your soldiers together?" asked the judge. "Yes," said the accused, "because they were stationed some distance away." Finally having been asked if he could not have assembled them by whistling, he said that he had no whistle.

The court below regarded this allegation that the defendant had been engaged for half an hour in getting his soldiers together as puerile, and also considered unsatisfactory his statement that he had no whistle, such officers being required by the rules of the corps to carry them. The court below accordingly found this defendant guilty as coprincipal.

From the facts above related (and the record contains nothing further upon this point) it

does not appear that there was any direct act of inducement, command, advice, or suggestion on the part of the defendant Corporal Guevara from which it might be inferred that he had any direct participation, even morally, in the ill treatment of Veronico de Leon by the soldier Lucas Feliciano.

Can he be held as an accomplice by reason of his having been present, and because he was the one who arrested Veronico de Leon and turned him over to the other defendant, Lucas Felieiano?

In a similar case, in which an ensign had arrested a man and turned him over to some soldiers who, after the column started, remained behind at the starting point and there murdered the prisoner, the supreme court of Spain, deciding the writ of error sued out by the ensign who had been convicted as an accomplice, laid down the following rules: (1) That the indirect and mediate participation in the commission of a crime by an accomplice always presupposes that the principal and accomplice acted in conjunction and directed their efforts to the same end, even though the cooperation and actual commission of the crime were distinct from each other; (2) that as the only cooperation in the commission, of the crime attributed to the ensign, and upon which he was convicted as an accomplice, is the fact that he arrested the deceased, there being no evidence to show that between the ensign and the principals there was an agreement or understanding, it follows that the arrest and the murder must be regarded as wholly independent facts and that no responsibility for the crime can rest upon one who merely took part in the arrest of the deceased. (Judgment of the supreme court of Spain of June 7, 1886.)

Such an agreement or understanding can not be presumed from the mere fact that Corporal Guevara was present when the soldier Feliciano beat Veronico de Leon, even upon the hypothesis that the testimony of the witness Carpio to this effect, which is contradicted by that of Guevara and Bernardo, is true.

Mere presence does not of itself constitute a simultaneous act of cooperation sufficient to make one an accomplice. This was so held by the supreme court of Spain, in a criminal case in which a father had been convicted as an accomplice simply because he had been present at the commission of a homicide by his sons. (Judgment of June 25, 1886.) In a case against Juan Gomez and Jose Martinez in the *Audiencia de Albacete*, in which the former was convicted as principal of the crime of murder, because, according to the complaint and the evidence presented, it was he who had inflicted blows upon the victim; and the latter as accomplice, because he had been in the room in which the crime was committed, having

entered it with the other defendant through a window, late at night, the supreme court of Spain in an opinion written by Mr. Justice Martinez del Campo, said that “the responsibility of the accomplice is to be determined by acts of aid and assistance, either prior to or simultaneous with the commission of the crime, rendered knowingly for the principal therein, and not by the mere fact of having been present at its execution, unless the trial court finds that the object of such presence was to encourage the delinquent or to apparently or really increase the odds against the victim, and in the absence of such an intent specifically shown, concurring with some overt act, which together form the basis of the responsibility of the indirect author of the crime, such a conclusion is erroneous and constitutes an infraction of article 15 of the Penal Code.” (Judgment of June 25, 1886.)

We therefore affirm the judgment appealed with respect to the conviction of Lucas Feliciano and reverse it with respect to Tomas Guevara, whom we acquit, with one-half of the costs *de oficio*.

Cooper, Willard, Mapa, and McDonough, JJ., concur.

DISSENTING

TORRES, J.:

I accept the statement of facts and conclusions of law of the majority opinion with respect to the defendant Lucas Feliciano, and concur as to the penalty imposed upon him as proven author of the homicide committed on the person of Veronico de Leon.

I dissent, however, from the opinion of the majority of the court with respect to the acquittal of the other defendant, Tomas Guevara, as he, in my opinion, should be punished as an accomplice in the commission of the crime. It is true that the record contains no evidence, even of a circumstantial character, to show that Guevara was a coprincipal even by induction, in the violent killing of the deceased, but the merits of the case, especially the important testimony of the witness Segundo Carpio, are convincing as to Guevara’s guilt as an accomplice.

From the testimony of this witness, corroborated by other evidence in the record, we have such information with respect to the criminal act as to authorize us to find Lucas Feliciano guilty as author thereof, notwithstanding his denial and the unsupported statements of

Guevara and Tomas Bernardo. There is no legal reason why this testimony should not be regarded as also proving that Corporal Guevara was present at the time the deceased, Leon, was illtreated by Lucas Feliciano.

The presence of Corporal Tomas Guevara at the time of the commission of this crime is unquestionable and has been as fully proven as the crime itself. Not the slightest doubt upon this point can arise by reason of the improbable allegations of Guevara or the testimony of the other policeman, Tomas Bernardo. The testimony of the only eye-witness, Segundo Carpio, which has not been attacked, should be accepted as a whole, there being no reason in law why it should be accepted in part and rejected in part, inasmuch as the general trend of the evidence tends to establish his veracity.

Upon this supposition, the silence of Corporal Tomas Guevara, the officer in command of the squad of seven policemen who arrested Veronico de Leon, denotes an implied authorization and tacit consent to the illtreatment of the prisoner by the policeman Feliciano, since, if the latter were not true, he would have opposed this illegal and unjust assault.

Corporal Guevara was not a private individual or another policeman of the same rank as the assailant, who by accident or chance happened to be present at the time these injuries were inflicted by a police officer. Guevara was in command of this officer, and it would be impossible to justify his passive and indifferent attitude while the prisoner Leon was in his presence repeatedly beaten by the policeman Feliciano, until he screamed with pain and threw himself on the ground. Moreover, Corporal Guevara himself went into the prisoner's house and got clothing for him and made him change his muddy garments before taking him to the barracks. When the officer in command of the squad of policemen consented to this illegal procedure on the part of one of his subordinates—conduct permitted in no civilized country—without preventing or opposing it, he by his silence showed a tacit approval of the assault. This, in connection with the arrest of Veronico de Leon by Corporal Guevara and the delivery of the former to the policeman Feliciano, who immediately took him to a secluded spot and in a cruel and inhuman manner maltreated him in the presence of Guevara, shows the commission of such prior and simultaneous acts as make Guevara an accomplice in the crime.

Corporal Guevara, who was the commanding officer of the arresting party, by his presence at the time these fatal injuries were inflicted, and by his silence during the commission of the assault, gave moral aid and protection to the guilty agent, and such approval as to encourage the commission of the crime. Consequently it is undeniable that he is guilty, at

least as an accomplice, of the homicide in question.

If the prisoner had made opposition and attempted to defend himself against the assault, unquestionably Corporal Guevara would have interfered on behalf of the policeman who committed the assault, from which it may be believed that his silence and passive attitude was an encouraging consent as well as a moral aid and protection to the assailant.

The criminal law punishes not only unlawful acts but omissions or failures to perform duties. It was the duty of the corporal in command of the squad of policemen to prevent such an outrage from being committed. He, on the contrary, remained silent and did nothing to prevent the execution of the crime, and therefore incurred criminal liability. It is not competent for him to allege that he was under no obligation to prohibit these acts or to oppose such illegal procedure, because it was his strict duty, as commanding officer of the party, to enforce the law and the regulations of his corps.

Since February 6, 1903, on which date Act No. 619 was passed, any discussion as to the responsibility of an officer present at the commission of such acts has become unnecessary.

I refrain from examining the facts in the cases, in which the judgments cited in the majority opinion were rendered, because a mere perusal of them is sufficient to show that they are not analogous or similar to the facts in this case.

For the reasons stated, I am of the opinion that the judgment of the court below should be reversed and that the defendant Tomas Guevara should be declared guilty as an accomplice in the commission of the crime and condemned to eight years and one day of *prision mayor*, with the accessories of article 61 of the Code, and with the subsidiary obligation to pay indemnification to the heirs of the deceased, in case of the insolvency of the principal offender, and to the payment of one-half of the costs of this instance.

Judgment affirmed as to the defendant Feliciano; Guevara acquitted.