

1 Phil. 346

[ G.R. No. 562. August 30, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CARLOS VELASCO ET AL., DEFENDANTS AND APPELLANTS.**

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

**TORRES, J.:**

One day in the month of July, 1900, Carlos Velasco, having heard that Juan Custodio and a lad called Pedro, whose surname is unknown, both of them residents of the town of Cainta, were bandits and engaged in assaulting and robbing travelers, he proceeded to arrest them. By order of the revolutionary general, Francisco de log Santos, to whom he reported upon the case, he turned the prisoners over to Gavino Ramos, with directions to kill them. This order was carried out by Gavino Ramos in the presence of Carlos Velasco, by striking the deceased with an iron crowbar. The bodies of the two deceased were then buried in a hole dug by the accused. Cirilo Vergara, who was plowing a field a short distance from the place where these crimes were committed, was an eyewitness to the crimes, and he it was who pointed out the graves to Mateo Custodio, a brother of one of the deceased, who, accompanied by the police, was looking for the missing man. In a hut close by the place of burial were found two belts and two hats which had belonged to the deceased, a Remington rifle with forty cartridges, and two carabaos belonging to the defendant Velasco. It appears from an investigation of the record that these goods and animals were turned over to the municipal president of Cainta.

The facts related constitute two crimes of murder, because the violent killing of Juan Custodio and the lad Pedro is homicide, qualified by the specific circumstance of *alevosia*, which, under article 403, makes the penalty applicable heavier than that prescribed by article 404 of the Penal Code, inasmuch as the deceased were bound, unarmed, and unable to defend themselves, or even to avoid by flight the criminal aggression of their heartless slayer, who, in killing them, acted without risk to himself in the perpetration of these

horrible crimes, in the commission of which means were used which completely assured their consummation.

Velasco is guilty because he induced or ordered Ramos to kill the deceased, and Ramos is guilty because he it was who actually committed the crime as described in articles 12 and 13 of the Penal Code.

It does not appear from the record that Velasco, when ordering Ramos to kill the two men whom he had arrested, was acting in obedience to orders from General Francisco de los Santos, and even if he had so acted, he would not thereby be relieved from responsibility, nor would Gavino Ramos, the person who actually committed the crimes. The allegation of the latter that Velasco it was who killed the lad Pedro can not be believed, because of the lack of evidence and because the statement is denied by Velasco, who affirms that it was Ramos who killed both the deceased by his order, which statement is corroborated by the testimony of Cirilo Vergara, the only eyewitness, whose testimony is of the greatest importance in this case and is worthy of full credit. Thanks to this witness, the full details of the crimes were ascertained, and the record contains nothing which tends to offset or destroy the truthful statement by this witness of the fate of the unfortunate victims.

Upon the merits of the case, and more especially upon the testimony of Velasco himself, it is evident that with respect to him in the commission of the double crime of murder, the aggravating circumstance of premeditation must be considered, by reason of the fact that he it was who arrested the deceased and subsequently ordered his codefendant to kill them in his presence, later assisting in the burial of the bodies. These acts demonstrate conclusively that Velasco deliberately formed the criminal intention of killing the two men he had arrested, without any legal reason or authority therefor, in order to effect their death by means of his codefendant. It follows, therefore, that he unquestionably acted after thinking over and meditating upon the perpetration of these grave crimes.

With respect to Ramos, the actual guilty agent in the commission of these murders, the circumstance of premeditation can not be considered, as Ramos simply committed the crimes in obedience to the orders from Velasco. The record does not disclose evidence showing that he took part in the arrest or detention of the deceased, or that he acted after reflection and meditation upon the perpetration of these crimes. The facts which constitute circumstances that either increase or mitigate criminal responsibility must be proven in order that such circumstances may be taken into consideration, and consequently, as the record does not contain evidence showing whether the place of the killing was or was not

inhabited, or what was the age of the lad Pedro, deceased, there is no basis upon which to rest the application of any other circumstances connected with the facts indicated.

Furthermore, in consideration of the abnormal condition of affairs consequent upon the state of war at that time prevailing in the Province of Rizal, as well as in other provinces of the Archipelago, and the moral and material disturbance prevailing at the time when these crimes were committed, and which had practically broken down all authority, in consequence of the revolution started several years ago, the respect for the law was with difficulty maintained outside of the towns held by military garrisons, and consequently the writer is of the opinion that the circumstance established in article 11 of the Code should be applied to mitigate the penalty, in view of the character of the crimes committed and the personal condition of the defendants. Consequently, the aggravating circumstance of premeditation, the only one existing against Velasco, is offset, and, with respect to Ramos, no aggravating circumstance having been appreciated, it is evident that Velasco must suffer the medium grade of the penalty assigned by article 403 of the Penal Code, and Ramos the minimum degree of the same penalty for each one of the two crimes of murder, article 87 and the last two paragraphs of article 88 of the Penal Code, however, to be applied. Therefore, by virtue of General Orders, No. 58, April 23, 1900, the act of August 10, 1901, of the Civil Commission, and rule 51 of the provisional law for the application of the Penal Code, the judgment of the court below should be reversed and Carlos Velasco condemned to life imprisonment (*cadena perpetua*) for each one of the crimes of murder, it being understood, nevertheless, that in computing the duration of each one of the two penalties indicated thirty years will be allowed for each one, and to the accessory of civil interdiction, and subjection to the vigilance of the authorities during the lifetime of the convict; and in case the principal penalty should be remitted by pardon, then absolute, perpetual disqualification and subjection to the vigilance of the authorities for life shall be imposed, unless this accessory penalty shall be expressly remitted in the pardon of the principal penalty. Gavino Ramos is condemned for each one of the two crimes of murder to the penalty of twenty years *cadena temporal* and the accessories of civil interdiction during the duration of the penalty, to absolute disqualification and subjection to the vigilance of the authorities during the lifetime of the convict, and to the payment, jointly and severally with his codefendant, Carlos Velasco, of 1,000 Mexican pesos to the heirs of each one of the deceased, and of one-half each of the costs of both instances, the court to act in accordance with law with respect to the two carabaos belonging to the defendant Velasco, delivered to the municipal president of Cainta. So ordered.

*Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.*

*Mapa, J.*, did not sit in this case.

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