

[G.R. No. 476. January 07, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LIOBRIO ABIJAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the evening of the 25th of October, 1899, while Andres Opao, the vice-president, was inspecting the barrio of Dos Hermanas of the pueblo of Talisay, in order to ascertain whether its residents were complying with the order to place lights in front of their houses, he noted that Licerio Abijan, one of them, had not placed a light in front of his house. Therefore, since he failed to present himself when called twice through the medium of the deputy, Eugenio Area, that officer stationed himself in the neighborhood of Abijan's house. The latter, having been called anew, descended and was taken to task for his failure to comply with the order. He then heard Opao order his arrest, and thereupon assaulted Opao, inflicting upon him a mortal wound in the left groin and another light one on the palm of the hand. The defendant fled immediately. Opao died as a result of the wound in the groin, according to the medical report.

The accused confessed having attacked the deceased, for the reason that the latter (because of his failure to have a light in the window of his house as was ordered) called him out and on his descending took him to task with harsh words and struck him with a cane. He received the blow on his hand in attempting to ward it off and the intense pain he suffered in his little finger blinded him, and, drawing the dagger which he carried in his belt, he assaulted Andres Opao with it and then set out to run.

These facts, proved in the cause by ocular inspection, expert testimony, the declarations of credible witnesses, and by the confession of the accused, constitute the compound crime of attack upon an agent of the Government and homicide—included in articles 249, 250, and 404 in relation with' article 89 of the Penal Code—in that the defendant without legal reason

or justifiable motive assaulted with a dagger the local president of the barrio of Dos Hermanas while the latter was in the discharge of his duties as a representative of the Government; and in consequence of the mortal wound which he inflicted in the left groin the said president died a few moments later. The excuse alleged by the defendant can not be entertained for failure of proof thereof since it is not confirmed by the only witness who was present, Eugenio Area. The order of arrest given by the deceased, for the violation of an ordinance committed by the accused, furnishes neither cause nor reason for the latter to have made a fatal assault with a deadly weapon upon the said representative of the Government.

For these reasons it is not proper to consider the extenuating circumstances fourth and seventh of article 9 applied by the Superior Court of Negros, nor the intoxication of the accused, for the reason that such state was habitual to him; but there should be considered the aggravating circumstance No. 24 of article 10 of the Code, since the crime was committed by making use of arms prohibited by the regulations. This circumstance is offset, however, by the mitigating circumstance established by article 11 of the Code, and therefore, according to article 89 above cited, the accused has incurred the penalty for the crime of homicide applied in the medium grade of its maximum degree.

Furthermore, this court is fully authorized to increase the penalty and apply the proper provisions of the penal law, since the right of appeal exercised by the accused confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from.

In virtue, therefore, of the considerations above set forth, it is just and proper that the judgment rendered by the Superior Court of the Island of Negros be reversed, and that Licerio Abijan be condemned to the penalty of eighteen years two months and twenty-one days of *reclusion temporal* as the perpetrator of the compound crime of attack upon an officer of the Government with homicide, to the accessory punishments provided in article 59 of the Code, to the payment of an indemnity of 1,000 pesos, Mexican, to the widow and heirs of the deceased, and to the payment of the costs in both instances.

It is so ordered.

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

Ladd, J.; did not sit in this case,

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