

[G.R. No. 432. February 06, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GERONIMO LEAL ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the morning of June 29, 1900, Segundo Labitoria was present in the house of Geronimo Leal for the purpose of ascertaining from the latter who had stolen two jars of basi belonging to him. Pablo Laranang appeared in the house and after the three had been drinking basi with Baldomero Lacasandeli and when they had become intoxicated, Laranang, upon the prompting of Leal, whom Labitoria accused of the theft of the two jars of basi, assaulted Labitoria with a bolo, inflicting upon him seven wounds which then and there produced his death. The wounds upon the head and side were necessarily mortal, and the remainder serious, according to the practitioner who examined them. Although Lacasandeli endeavored to leave the said house upon seeing Labitoria dead, the slayer of the latter, Laranang, detained him and likewise called to Rufino Lastimosa, who was passing casually in front of the house where the occurrence took place, in order that they should assist them in burying the corpse. This they did in a cane field near the house. On the fourth day, and after investigations made at the instance of the family of the deceased, the corpse of Labitoria was there found by the local authorities of the town of Taguding.

The facts related and fully proved at the trial by ocular inspection, expert evidence, the testimony of witnesses, and the confession of the accused constitute the crime of homicide defined and penalized in article 404 of the Penal Code. In the commission of the homicide there do not appear to have been any general or specific circumstances of aggravation or mitigation which might increase or decrease the penalty. The evidence shows that Pablo Laranang and Geronimo Leal are guilty of the crime as principals and Baldomero Lacasandeli and Rufino Lastimosa as accessories. Laranang pleaded guilty, confessing that

he attacked the deceased with a bolo upon the instigation of the owner of the house, Geronimo Leal, and stated he was so intoxicated at the time that he could not give an account of what he did after Leal had told him to kill Labitoria. He is, therefore, the actual author of the crime.

The owner of the house, Geronimo Leal, at first pleaded guilty of the crime of which he was accused, but later on he withdrew this plea and stated that he was not guilty of the criminal act. Nevertheless the guilt of this defendant is established beyond a doubt in spite of his denial and of his statement that he merely assisted in the burial of the corpse, by the testimony of his confessed partner in crime, Laranang, that he had killed Labitoria upon the inducement of the owner of the house, Geronimo Leal, who witnessed the execution of the crime in his own house; the fact that Leal disappeared and absented himself from his house from the date of the occurrence; and the fact that the deceased, a few moments before, had had an altercation with him concerning the disappearance of the two jars of basi which the defendant accused him of having stolen. From this it follows that Leal alone had motives of resentment or revenge which might lead him to desire the death of Labitoria, and it would appear that after inviting the latter to come to his house Leal lacked the determination to kill him himself, and therefore induced Laranang to do so. There is nothing in the case to show that the latter had any motive for killing Labitoria, and this circumstance strongly tends to show that he acted upon inducement. Again, if this were not the case, and if there had been no ill feeling toward the deceased on the part of Leal, he would not have been an indifferent spectator of a crime such as this, perpetrated in his own house, and which it was his duty to have attempted to prevent. These conclusions, drawn from an examination of the case, are quite sufficient to convince us of the guilt of the defendant Leal.

There can be no doubt as to the participation in the crime of the other defendants, Baldomero Lacasandeli and Kufino Lastimosa, as accessories. Lacasandeli was present when the crime was committed, and although this is not true as to Lastimosa, nevertheless upon entering the house he saw a corpse covered with wounds, and although neither of these defendants took part in the perpetration of the crime itself, they nevertheless aided the principals to conceal the body by unlawfully burying it in a field to that end and by neglecting to inform the authorities of the facts known to them.

The provisions of article 9, paragraph 6 of the Penal Code must be applied in mitigation of the penalty, as the crime was committed while the principals were in an intoxicated condition, and it does not appear that they were habitual drunkards. We do not think it proper to allow the principals, Leal and Laranang, the benefits of the special circumstance

established in article 11 of the Penal Code, because of the conditions of these defendants, and of the fact that the crime committed by them has of late become very frequent. There are, however, no aggravating circumstances against them to increase the criminal liability they have incurred.

For the sole purpose of reducing the penalty we are of the opinion that we are justified in giving the accessories, Lacasandeli and Lastimosa, the benefit of article 11, as there are no aggravating circumstances against them, and because from the nature of their offense and their personal conditions it is to be presumed that they did not fully realize that it was their duty to report the facts to the authorities, and that they would become criminally responsible for their failure to do so and for their participation in the occurrence.

For the reasons stated, therefore, the defendants Laranang and Leal are subject to punishment by the minimum grade of the penalty of *reclusion temporal* and the defendants Lacasandeli and Lastimosa also by the minimum grade of the penalty of *prision correctional*, which is the penalty two degrees below that assigned by the law to the consummated offense. Therefore the defendants Pablo Laranang and Geronimo Leal are condemned each one to thirteen years of *reclusion temporal*, together with the accessories prescribed by article 59 of the Code, and to the payment of 1,000 Mexican pesos to the widow and heirs of the deceased; the accessories Baldomero Lacasandeli and Rufino Lastimosa are condemned each one to six months and one day of *prision correctional*, the accessory penal ties fixed by article 61, and to subsidiary liability for the payment of the indemnification, *pro rata* or *in solidum*, in case of the insolvency of the principals, or else to subsidiary imprisonment not to exceed one-third part of the principal penalty, and to the payment by each one of the four defendants of one-quarter part of the costs caused, the defendants Lacasandeli and Lastimosa to be given credit for one-half of the time they have been detention prisoners in the computation of the principal penalty. The court below will take such action as may be proper with respect to the property attached.

With respect to the contention of the Solicitor-General that the court should set aside the judgment as a nullity on the ground that it was rendered after the 16th of June last by a judge who at the time of his decision had ceased to be such, and was therefore without jurisdiction, the court, upon the authority of the case of the United States vs. Cayetano Abalos, *supra*, holds that the objection can not be sustained.

Cooper, Willard, and Ladd, JJ., concur.

Arellano, C. J., and Mapa, J., dissent.

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