

[G. R. No. 868. December 16, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN SANTIAGO, 2D,
ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

LADD, J.:

The defendants have been convicted of murder by the court below. That court finds one aggravating circumstance to be present, which is stated to be "the fact of the robbery committed at the same time as the murder." This supposed aggravating circumstance the court compensates with the circumstance of article 11 of the Code, that of race, considered as extenuating, with the result that the defendants have been sentenced to *cadena perpetua*, which is the medium grade of the penalty assigned to the crime of murder.

The following facts are established by uncontradicted evidence: The deceased, Elias Acogido, his wife, Benita Baldilosa, and their two sons, one 17 and the other 21 years old, residents of the pueblo of Bacarra in Ilocos Norte, were awakened early in the morning of December 3, 1901, by the voice of a man outside their house calling to the deceased. Benita answered that her husband was not in the house. Immediately thereafter five men entered the house, seized the deceased, who had hidden behind a door, and dragged him downstairs. Three of the men were armed with clubs, one had a bolo, and the other a dagger. At the foot of the stairs they all fell upon the deceased, beating him with the clubs and inflicting four wounds upon his head and face with the bolo and dagger, two of which were of a mortal character. They then carried him upstairs to the *bataUnij* where they beat him again and choked him. They then allowed his wife to take him into the house. Three of them also went into the house and demanded money from the woman. She replied that she had none, whereupon they proceeded to search the upper part of the house while the other two did the same in the lower part, but they found nothing and went away without having taken anything. The deceased died in six days in consequence of the injuries received.

Benita and the two sons identified the defendants, who lived in the same pueblo as themselves, and whom they had known previously, as the men who entered the house and assaulted the deceased. Their evidence was corroborated by that of three witnesses, neighbors of the deceased, who testified that on the night in question they went to the house for the purpose of rendering assistance, but instead of going in at first concealed themselves in the bushes in the yard, and from their hiding place saw the robbers as they left the house and recognized them as the defendants.

Each one of the defendants undertook to establish an *alibi*. Six witnesses testified that they were in the house of the defendant Santiago during the entire night in question, taking care of the latter's brother, who was lying at the point of death, and that Santiago did not leave the house at all during the night. Three witnesses testified that they were in the house of the defendant Acosta during the entire night, Acosta's concubine being sick, and that Acosta was there all night. Four witnesses testified that they were in the house where the defendants Ceferino and Benito Eumbaoa lived, the entire night, and that those defendants were there all night taking care of a sick daughter of Benito. Two witnesses testified that they were with the defendant Carlos Eumbaoa in his house during the entire night.

The Solicitor-General in his brief points out several contradictions in the evidence of these witnesses, but his references are to the testimony taken at the preliminary investigation, which is not a part of the record properly before the court, and the contradictions are not found in the testimony given at the trial. The evidence, however, all comes from witnesses who are relatives or connections of the respective defendants in whose favor they testify; the details of the three independent *alibis* set up by Santiago, by Acosta, and by Ceferino and Benito Kumbaoa, respectively, are precisely similar, a suspicious circumstance to say the least; and having regard to the facility with which such a defense may be fabricated, we can not attach to the evidence sufficient weight to bring into doubt the positive and in all respects satisfactory evidence of the prosecution connecting the defendants with the crime. We regard their direct participation in the crime as principals as established beyond a reasonable doubt.

These being the facts, of what specific crime should the defendants be convicted? The complaint designates the crime charged as simple murder; but describes it in a manner which shows that the crime of frustrated robbery was committed in connection with that of murder, and it may be that a conviction could be had upon the complaint for the complex crime defined in article 506 of the Code.

We think the deceased was killed under circumstances which imply *alevosia*. (Judgment of the supreme court of Spain of May 6, 1876.) The crime of murder was therefore committed either as an independent crime or as one of the constituent elements of the complex crime, referred to. If the latter is the true construction of the facts, still we see no objection to a conviction of murder upon this complaint, because as the penalties prescribed for simple murder and for the complex crime of frustrated robbery with murder are identical (article 506 of the Code), no prejudice results to the accused from such conviction. It is therefore of no practical importance in this case whether the crime was simple or complex. If the defendants should hereafter be prosecuted for frustrated robbery, that question might arise, and if it should be held that the crime was complex, such prosecution, involving a liability to punishment additional to that here imposed, could not be maintained.

We have not thought it necessary to discuss the theory advanced in the brief of counsel for the defendants, that the case is governed by article 64 of the Code, fixing the rules for the application of penalties where the crime committed is distinct from that which the accused intended to commit. It is perfectly apparent here that there was a distinct intent to assault the deceased as well as an intent to rob.

Both generic circumstances appreciated by the court below must be discarded. The result is that the penalty was imposed in the proper grade.

The judgment with the modifications indicated is affirmed.

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