

[G.R. No. 1093. March 31, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SANTIAGO MERIN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The complaint designates the crime with which the defendant is charged as “*quintuple asesinato and robo*”. It sets forth the facts constituting the crime as follows: “In the early hours of the night of April 22, 1902, the said Santiago Merin went to the house of Diego Misa, in the municipality of Santa Cruz, Province of Zambales, the proprietor of the house being at the time in Masinloc. He allowed himself the same freedom and familiarity which Diego Misa and his wife had been for a long time accustomed to allow him, lying down at once on a *lancape* which was there. The woman, with her two children of tender age, Juan and Felicidad by name, and another child a few years older, named Pedro Muya, Was in the house. Santiago Merin remained on the *lancape*, and a few moments after he saw Engracia Monsalud go to bed he approached her and attacked her with a large-sized clasp knife, causing several injuries in different parts of her body and leaving her dead, besides destroying the foetus which she had in her womb. Not content with this, he took possession of the money and jewelry belonging to the proprietors of the house, the taking of which was undoubtedly the principal motive of these murders.”

The complaint is unskflfully drawn, but it is sufficient to charge the commission of the complex crime of *robo* with *homicidio*, denned and punished in article 503, No. 1, in connection with article 502 of the Code.

Upon being arraigned upon this complaint the defendant stated “that he dfd murder Engracia Monsalud and her two children, Juan and Felicidad, and another child by the name of Pedro Muya, in the manner and form charged in the said complaint, but that he did not commit the robbery with which he is charged in the said complaint.”

The prosecution then introduced the testimony of two witnesses, Francisco Sanchez and Diego Misa. The evidence of Sanchez is not important and does not require notice. Diego Misa testified in substance that while in Masinloc he heard that his son Juan had been killed by ladrones; that he returned home, arriving there at 11 o'clock on the morning of April 22 and found the dead bodies of his wife, his two children, Juan and Felicidad, and his nephew, Pedro Muya, lying side by side, with their throats cut, on the floor of his house; that he heard the defendant confess to Patricio Lesaca that he had killed the family of the witness, saying that he was drunk at the time. The witness identified a knife shown to him as one that had belonged to his wife, and stated that he found it near the bodies in the house on his return home. He further testified that when he returned to Ids house lie found a large number of articles of jewelry and 50 pesos in money missing, and that he had since received most of the articles of jewelry from Patricio Lesaca, "who had received them from the defendant, Santiago Merin," and that "Santiago Merin had told Patricio Lesaca that he had hidden the things in a big tree in the pueblo of Infanta, and that he, Patricio, had gone there to get them." He also stated that he had recovered the money.

The defendant was then called to the stand by the court, and was shown a knife, presumably the one identified by Misa, and stated that that was the knife he had "used in killing Engracia Monsalud and the others," and that it did not belong to him. There was no further evidence.

The court found as facts that the defendant "did on the night of the 22d day of April, 1002, in the pueblo of Santa Oruz, in the Province of Zambales, and in the house of one Diego Misa, in the said pueblo, with evident premeditation, kill and assassinate Engracia Monsalud, the wife of Diego Misa, Juan Misa and Felicidad Misa, children of Engracia Monsalud, and another child named Pedro Muya," and "that the said Santiago Merin did at the same time and place take possession of the sum of 50 pesos, Mexican, and several pieces of gold jewelry, the property of the said Diego Misa, with the intent then and there to appropriate the said money and gold jewelry to his own use, and with the intent to deprive the owner of the property therein," and by virtue of the confession of the defendant that he was guilty of the crime charged in the complaint presented in said cause, and by virtue of the foregoing findings of fact from the testimony given in said cause, it sentenced the defendant to the penalty of death, to be executed by hanging, "at a time and in a public place and by a person to be hereafter designated by the court, in accordance with the existing laws and the laws hereafter enacted."

The case comes to this court *en consulta*.

As respects the killing of Engracia Monsalud no question can arise in view of the defendant's confessions before and at the trial. As he denies that he committed the robbery it is necessary to determine whether there is sufficient evidence in the record to warrant us in finding that this element of the complex crime with which he is charged has been established. There is the testimony of Misa as to Lesaca's having received the jewelry from the defendant, and as to what the defendant told Lesaca concerning its hiding place, and although this is apparently hearsay, it was received without objection, and we may properly attach to it such probative force as we think it possesses, which under the circumstances of the case is considerable. There is, moreover, the testimony of Misa that when he arrived home a few hours after all his family had been killed in his house by the defendant he found the money and jewelry missing. To this latter testimony we attach decisive weight. In the absence of any other known motive for the crime it would be, in our judgment, to reject the universal teaching of experience to refuse, to draw the inference that the same person who killed the occupants of the house also committed the robbery.

We can not, therefore, bring ourselves to doubt, taking the record as it stands, that both the homicide and the robbery were committed by the defendant, although we are constrained to say that the failure of the fiscal to utilize at the trial the very complete evidence of the defendant's guilt as respects the robbery, which the record of the preliminary investigation shows was available, indicates a misconception as to the nature and degree of proof required for conviction, which might under some circumstances easily lead to a serious miscarriage of justice.

The fact that the crime was committed in the house of the victim is to be appreciated as an aggravating circumstance. (Code, art. 10, No. 20.) The extenuating circumstance is suggested that the defendant was drunk when he committed the crime, but there is no sufficient proof of this. The penalty prescribed for the crime of *robo* with *homicidio* is *cadena perpetua* to death, and under the rule for the application of a penalty composed of two indivisible penalties, where there is an aggravating circumstance and no extenuating circumstance, as in the present case (Code, art. 80, rule 1.), it is to be applied in its maximum degree.

Although we are of opinion that the crime of *robo* with *homicidio* was committed by the defendant, and although our judgment is based upon that view of the facts, we are not to be understood as holding that a conviction could not also be had for *asesinato*, on the theory that that crime is sufficiently charged in the complaint, inasmuch as the facts set out therein may be regarded as showing *alevosia*, and that the defendant pleaded guilty of murdering

Engracia Monsalud *"in the manner and form charged in the said complaint."*

We find the defendant guilty of having committed the crime of *robo*, on account or on occasion of which homicide has resulted, as said crime is defined in article 503, No. 1, of the Penal Code, in connection with article 502 of the same, with the aggravating circumstance above stated and with no extenuating circumstance, and we sentence him to the penalty of death, and to the payment of an indemnity in the sum of 1,000 pesos to Diego Misa, the husband of Engracia Monsalud, and to the restitution of such of the articles stolen as have not been recovered, and, in case this j)enalty is not executed by reason of the defendant's being pardoned, to the accessory penalties of perpetual, absolute disqualification and subjection to the vigilance of the authorities for the term of his natural life, unless said accessory penalties shall have been expressly remitted in the pardon.

As the crime was committed and the prosecution for the same was pending prior to September 2, 1902, the date of the enactment of the Commission abolishing the use of the garrote in executions of criminals, the sentence will be executed in accordance with the provisions of the preexisting law relating to executions. (Act No. 451 of the Commission, sec. 3.)

The judgment of the court below will be modified in conformity with this opinion, and affirmed in other respects, and the cause will be returned to that court for the execution thereof. So ordered.

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

Mapa, J., dissents.