

2 Phil. 162

[G.R. No. 1131. April 23, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. NICASIO SEVILLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 20th of April, 1902, Charles E. Manison, inspector of Constabulary, together with Pablo del Rosario, Pablo Reyes, and Cayetano Bacleon, Constabulary soldiers, together with a spy, went to a place called Caignin, near the town of Caloocan, to a house in which a man called Andres was living, for the purpose of arresting the latter. This was at about 7 o'clock in the morning. They did not succeed in arresting Andres because the latter, who, at the time of their approach, was eating, jumped up, and, seizing a revolver, ran away, jumping to the ground from the porch of the house. They were unable to overtake him, although he was followed. They returned to the house and arrested all whom they found there and proceeded to conduct them to this city. On the road, however, at a place called Matalahip, they were attacked at a street corner which they were passing by several men, among whom they recognized Andre's, the accused, Nicasio Sevilla, and Marcelo Magsalin, who fired at them several times, the result of the shooting being the death of Cayetano Bacleon.

The facts constituted the crime of homicide, defined in article 404. together with an armed attack upon agents of the authorities in the exercise of the duties of their office, defined and punished in articles 249 and 250 of the Penal Code, although the latter offense does not appear to be charged in the information filed by the provincial fiscal. The offense was committed by several men, who, armed with carbines or guns, intercepted five members of the Constabulary who were returning to this city from the place where they had attempted to arrest one Andres, who succeeded in making his escape and attacked them by repeatedly firing upon the officers, the result of the attack being the death of Cayetano Bacleon by a gunshot wound received in the head.

The record discloses the fact that Andres, immediately after having succeeded in escaping from the police who were attempting to arrest him, undertook to attack the latter, in company with the other aggressors, among them the accused, Nieasio Sevilla, with the purpose of preventing his companions, who had been arrested in the house, from being taken to this city or to revenge himself for his own attempted arrest. This was upon an express agreement, even if entered into upon the spur of the moment, all of them having united for the exclusive purpose of attacking the police. To that end they stationed themselves at the corner of the street, through which the police were passing and attacked them, each assisting and cooperating with the others, with the express intent to commit the said crimes of attack upon the authorities and homicide, the latter being the only one which is now the subject of this prosecution. Therefore, there was no confused and tumultuous quarrel or affray, nor was there a reciprocal aggression between both parties, inasmuch as the police simply defended themselves from the simultaneous and uniform attack upon them by the aggressors, each one of whom, therefore, became responsible for the homicide in question, as all of them, with malicious intent to do harm, took part in the aggression upon the said policemen, one of whom was killed.

Consequently this was not homicide in a confused and tumultuous affray, as the court below regarded the crime charged. The violent killing of the policeman, Cayetano Bacleon, constitutes the offense of homicide, of which the accused, Nicasio Sevilla, is one of the persons responsible, as he, in company with Andres and Marcelo Magsalin, took direct part in the attack which they together, and by means of firearms, made upon the said police. In the commission of the offense we must consider the aggravating circumstance of the use of prohibited arms, which private parties are not allowed to have in their possession. There are no mitigating circumstances, and therefore the proper penalty should be imposed in the maximum degree.

On these grounds we are therefore of the opinion that the judgment below should be reversed and that Nicasio Sevilla, as guilty of the offense of homicide, should be convicted and sentenced to seventeen years four months and one day of *reclusion temporal*, together with the accessories designated in article 50 of the Code, to the payment of one thousand Mexican pesos to the widow and heirs of the deceased, and to the payment of the costs in both instances.

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

McDonough, J., did not sit in this case.

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