

2 Phil. 397

[ G.R. No. 1149. August 03, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GREGORIO MABILANGAN, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

This was an appeal by the defendant, Gregorio Mabilangan, from a judgment of December 5, 1902, entered in a case [No. 204] prosecuted against him in the Court of First Instance of Batangas upon the charge of homicide, and by which he was condemned to fourteen years' imprisonment, with the accessory penalties, and to the payment of the costs.

One night in the month of January, 1900—the precise date does not appear—the defendant and Victor Medalla were in the house of Lucia Manso, situated in the barrio of San Joaquin, of the town of Santo Tomas, Batangas. On account of a misunderstanding which arose between them concerning a song they were singing together, a dispute ensued, in the course of which many hard words were said. For this reason the owner of the house ordered them to leave, which they did. When Victor was about 20 *brazas* from the house he was pursued by the defendant, Gregorio, and, although he endeavored to escape, was overtaken by the latter, who immediately plunged a dagger into his left breast, leaving him dead on the spot. These facts were observed by six witnesses and by the mistress of the house, and their testimony substantially bears out the facts charged in the information. They all testified to having seen the body of the deceased with this wound, after the pursuit and attack upon the deceased by the defendant.

These facts constitute the crime of homicide, defined and punished by article 404 of the Penal Code. None of the circumstances enumerated in article 403, which defines the crime of murder and imposes a heavier penalty, con curred in the violent killing of Victor Medalla.

The defendant plead not guilty to the charge, and alleged in his sworn testimony that, as an

insurgent, he had been instructed by his captain, Mauricio Sanchez, to arrest Medalla and to kill him if he resisted, because the latter was a thief and a spy; that when he met the deceased on the night in question he told him politely to go with him, in order that the defendant might turn him over to his captain, but that Medalla resisted and attacked the defendant with a bolo; that the defendant endeavored to avoid his blows, but received a wound on the calf of the leg; that he was therefore obliged to defend himself, and unintentionally inflicted upon the aggressor, Medalla, with his dagger, a wound in the left breast, from which the hitter died a few hours afterwards.

The counsel for the defendant asked that a description of the scar on the body of the defendant be made to appear in the record. The provincial fiscal consented to this, upon the condition that it be proved that this wound was received in the course of the defendant's quarrel with the deceased. The defense also asked that the defendant be included in the amnesty, upon the ground that the latter was, at the time, an insurgent, and had committed the offense by order of his superior officer in the revolutionary army—apart from the fact that he was attacked by the deceased and wounded the latter in self-defense with the dagger he was carrying.

Notwithstanding these exculpatory allegations and the testimony of the two witnesses who affirmed that the defendant was an insurgent in 1900, and the testimony of the witness Simon Cueva, who, although he in part corroborated the statement of the defendant, did not bear him out in the important detail as to the witness having been the person who conveyed Captain Sanchez's message to the defendant, the record contains sufficient evidence to show that the defendant is guilty as principal of the killing of Victor Medalla.

The record clearly shows that there was no attack upon the defendant by the deceased, as affirmed by the former, even admitting that the deceased was at that time provided with a large bolo. The facts established are that when Medalla left Lucia Manso's house he was pursued by the defendant, Gregorio, who overtook him and inflicted upon him the wound which caused his immediate death, all this taking place in the presence of several eyewitnesses. The defendant has failed to prove that his scar, which was not on the calf of his leg but on the left ankle, was the result of a wound inflicted upon him by the deceased at the time in question. For this reason we can not admit in his favor the plea of self-defense, as there is an entire absence of the principal of the three requisites established by paragraph 4, article 8, of the Penal Code—that is, an unlawful aggression—notwithstanding the dispute and quarrel which occurred between them.

The crime of homicide, of which the accused is guilty, not being of a political character, he is not entitled to be included in the amnesty. Even if it be regarded as proven that the defendant was an insurgent at that time, the record does not contain sufficient evidence to show that he had received any orders from his superior to arrest the deceased, nor does it appear that he went to the house of Lucia Manso for that purpose. What does clearly appear is that the two had a dispute concerning a song which they were singing, and that when they were expelled from the house for the purpose of avoiding what subsequently occurred, the defendant pursued the deceased and stabbed him to death. Consequently the unsupported, statements of the accused are insufficient to overcome the conclusive evidence of the commission of the crime and the guilt of the defendant.

In the commission of this homicide no generic aggravating circumstance is present, hut the accused will be given the benefit of the special circumstance established by article 11 of the Penal Code, and which was applied by the court below, in consideration of the character of the crime and the personal conditions of the deceased and of the defendant.

The penalty should therefore be imposed in its minimum grade, and we are accordingly of the opinion that the judgment appealed should he affirmed, with the addition that the defendant is condemned to the payment of 1,000 Mexican pesos to the heirs of the deceased and to pay the costs of this instance.

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

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