

[G.R. No. 1703. April 01, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EUSEBIO CAPADUCIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On September 28, 1903, Eusebio Capaducia was charged by the provincial fiscal with the crime of homicide. The court below sentenced him to thirteen years and four months' imprisonment, to pay the costs, to indemnify the heirs of the deceased in the sum of 1,000 pesos, and to suffer subsidiary imprisonment in case of insolvency, with all the accessories of the law.

From the evidence adduced during the trial it appears that at about 3 o'clock on the morning of March 22, 1902, the defendant, Eusebio Capaducia, a first-class private in the Constabulary, together with four individuals of the same body, were patrolling one of the streets in the town of Guimbal, Iloilo, and upon arriving near the house of Matias Tamisin, they heard a noise in the interior of the same, for which reason they entered the house and inquired the cause. They learned that a person by the name of Apolonio Camdao, who was believed to be crazy, was among the persons in the house, buying fish and crabs, and that said Apolonio was the person making all the noise; that for this reason the defendant threatened Camdao that he would take him to jail if he did not stop the noise; that the insane man then addressed the defendant and insulted him with vile words; that he also insulted the other Constabulary soldiers.

The defendant, Capaducia, then punished the insane man, striking him with the ramrod of his gun, and at every answer which the insane man made to him he repeated his punishment, in spite of the advice which the people present gave the defendant and notwithstanding the advice of his own companions not to strike the man because he was crazy; that after this ill treatment to Camdao the latter went to the stairway in order to

leave the house and when he got to the door of same the defendant, without heeding the advice given, that the man was insane, kicked him so violently that the victim fell to the ground from the upper floor of the house, a distance of about 7 feet; that at the foot of the staircase there was a stone and that Apolonio Camdao lay there. After the defendant and his companions had left, and also some of the people who had witnessed the occurrence, Camdao was found dead by some policemen of the town who passed by the place on patrol. Several of the eyewitnesses at first did not give the occurrence any importance and did not believe, offhand, that the insane man, Camdao, had died from the results of the fall. The owner of the house, Matias Tamisin, thought that after the insane man had fallen he had gotten up and gone to his house and he closed the door of his house, it being yet dark; that after the body of the insane man was found he was called by the authorities.

It must be noted that these eyewitnesses of the blows and the kick, Francisco Tacardo, Tiburcio Tababo, Gabriel Tudic, Antonio Tabingo, and Adriano Taglima, left the house through another stairway at the back of the house and for this reason they did not know the consequences of the fall of the insane man.

According to the physician, Eusebio Tababa, who held an autopsy on the deceased, the latter had several bruises and had died in consequence of the blows received, especially the ones in the back, and in his opinion the man's liver had been injured; that he had known the deceased for many years and that he was strong and robust, although he was not in his right mind. Some of the other witnesses, however, affirm that the deceased had stopped eating some days before and must have been weak at the time of this occurrence.

It is a fact which can not be denied, because it has been fully proven at the trial of this case, that the insane man, Apolonio Camdao, was a strong and healthy man and that he had always gone around freely through the town of Guimbal until the morning of the 22d of March, 1902, that on that day at about 3 o'clock in the morning he was illtreated by blows on different parts of his body and especially in the back, and fell through a stairway, a distance of 7 feet, by reason of a kick from his aggressor, who was wearing shoes, which he received between the waist and hips; that after this fall he was found dead near the bottom of the stairs and several bruises were found on his body. From these facts it must be concluded that the man suffered a violent death as the result of the ill treatment and from the fall he received because of the kick, and, therefore, that the crime of homicide provided for in article 404 of the Penal Code has been committed. The defendant, Eusebio Capaducia, is the only principal found guilty of the aforesaid crime.

It does not make any difference whether at the time the deceased was killed he was weak or not. The aggressor has infringed the law and is therefore responsible and liable for all the unlawful acts executed by him and all the consequences resulting from same, since the physical condition of the injured party can not limit or reduce the gravity of the evil wrought. The gravity of a crime does not depend on the more or less violent means used, but on the result and consequences of the same. If the defendant had not ill treated the deceased, Camdao would not have died and the defendant would not have been guilty of the crime charged against him. The death of the deceased can not be attributed to causes other than the ill treatment inflicted by the accused.

In the commission of the crime there is no aggravating circumstance to be considered. The extenuating circumstance provided for in paragraph 3 of article 9 of the Penal Code exists in the commission of the crime, because, no doubt, the defendant only sought to punish the insane man and never intended to kill him.

For this reason the penalty imposed should be in its minimum degree.

For the reason above stated we are therefore of the opinion that the judgment below should be affirmed, with the costs in this instance, it being understood, however, that there will be no subsidiary imprisonment in case of insolvency, because the same has been unduly imposed, in direct violation of articles 49, 50, and 51 of the Penal Code.

This case to be returned to the court below with a certified copy of this decision and of the judgment to be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.