

[G.R. No. 1951. July 15, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CANDIDO BADINES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

From the evidence introduced at the trial of this case we are of opinion that the appellants are guilty of the crime of homicide, with which they are charged, Pascasio Davasol as principal, and Candido Badines, Potenciano Davasol, and Rufino Davasol as accomplices.

The trial court found all and each of the accused guilty as principals, but it is to be observed that while Candido Badines, Potenciano Davasol, and Rufino Davasol "cooperated in the execution of the crime by other simultaneous acts," these acts were not such that "without them it could not have been accomplished," and therefore, under the provisions of articles 13 and 14 of the Penal Code, they are guilty as accomplices and not as principals.

The trial court further found that in the commission of the offense the accused took "advantage of superior strength," and for that reason the penalty was imposed in its maximum degree, under the provisions of paragraph 9 of article 10 of the Penal Code. We find no evidence in the case to support this finding, for it appears that the fatal blow was struck during a quarrel which arose unexpectedly over a game of cards, and that the principal aggressor and his victim were at that time engaged against each other as man to man, so that the accused had no such advantage of superior strength, as is contemplated in the above-mentioned provisions of the code.

We are of opinion that the judgment and sentence of the trial court should be reversed and that there should be imposed upon Pascasio Davasol the penalty of seventeen years *reclusion temporal*, with the accessory penalties prescribed in article 59 of the Penal Code, and upon Candido Badines, Potenciano Davasol, and Rufino Davasol, and each of them, the penalty of eight years and one day *prision mayor*, with the accessory penalties prescribed in article 57 of said code; and that all the defendants, jointly and severally, should pay an indemnity of P1,000, Philippine currency, to the heirs of the deceased, and each of them one-fourth of the costs of the trial in both instances. So ordered.

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