

4 Phil. 635

[ G.R. No. 1640. August 12, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MAGDALENO SANTA MARIA ET AL., DEFENDANTS AND APPELLANTS.**

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

**CARSON, J.:**

The accused in this case were tried upon the following information :

“The undersigned provincial fiscal accuses Magdaleno Santa Maria, Ambrosio Tolentino, Gregorio Santa Maria, Angel Copia, and the absent Casimiro N. of the crime of robbery in a gang with homicide, as defined in article 505 and penalized in paragraph 1 of article 503 of the Penal Code, committed as follows:

“That on the night of the tenth of January of last year (1901), the said accused kidnaped, one Elena Eliserio from the house in which she was living, in Moguin, in the municipality of Banga, and took her to a place some distance from the house, and after taking away from her two watches which she had in her possession, the said Magdaleno gave the said Elena a cut with the bolo which he carried, inflicting a wound which almost severed her head from her body, as a result of which she died.”

It was proven beyond a reasonable doubt that on the night in question there was a fire in one of the barrios of Banga, and that because of this fire a number of women and children, including the said Elena Eliserio, took refuge for the night in the house of one Evaristo; that about 10 o'clock Magdaleno Santa Maria, with the four other accused,

entered the house and demanded money; that the women, having replied that they had no money, the said Magdaleno Santa Maria struck the said Elena Eliserio with his fist, and that thereafter the party carried her off to the bank of a river some distance away; that upon arriving at the river one of the party snatched from under her arm, a bundle containing two watches, the property of one Procopio Orquiola, who had intrusted them to her for safe-keeping during the fire; and that almost at the moment when the robbery was committed, the accused Magdaleno Santa Maria struck the woman a blow with his bolo, which almost severed her head from her body, and killed her instantly.

All the accused were tried together except Casimiro N., who had not been arrested at the time of the trial; but on motion of the defendants separate judgment was rendered as to Ambrosio Tolentino, Gregorio Santa Maria, and Angel Copia, who were found guilty of robbery in an armed band and sentenced to five years and six months imprisonment, from which judgment and sentence they did not appeal.

The trial court rendered the following judgment and sentence in the case of Magdaleno Santa Maria:

“In this case Magdaleno Santa Maria is accused of the crime of robbery in a band with homicide, in violation of articles 503 and 505 of the Penal Code.

“From the facts proven at the trial, the court finds that on the 10th of January, 1901, the accused Magdaleno Santa Maria, accompanied by four others, all armed with bolos, entered a house in the barrio of Moguin, municipality of Banga, Province of Capiz, where they found a woman named Elena Eliserio, whom they compelled to leave the said house and accompany them some distance away. One of the gang named Gregorio took away from the said Elena a bundle containing a pair of trousers and two watches, and almost at the same moment the accused, Magdaleno Santa Maria, struck her a blow in the neck with his bolo, inflicting a mortal wound from which she there and then died. The court finds that the accused, Magdaleno Santa Maria,

having killed the said Elena Eliserio, is guilty of the crime of homicide in violation of article 404 of the Penal Code. The court further finds as an aggravating circumstance that the accused was a member of a gang at the time when he committed the offense.

“The court, therefore, sentences the accused, Magdaleno Santa Maria, to the penalty of eighteen years’ imprisonment and to pay the costs of the trial. It is so ordered.”

From this judgment and sentence the said Magdaleno Santa Maria appealed.

We are of opinion that the evidence adduced at the trial fully sustains all the findings of fact set out in this judgment as well as those herein before stated, and that the accused Magdaleno Santa Maria should have been found guilty of the complex crime of “robbery with homicide” as charged in the complaint, and not of simple “homicide,” as found by the trial court.

The judgment and sentence of the trial court should be reversed, and we find the appellant, Magdaleno Santa Maria, guilty of the crime of robbery with homicide, as defined in paragraph 1 of article 503 of the Penal Code, marked with the aggravating circumstance that in the commission of the crime advantage was taken of the darkness of night, and with the further aggravating circumstance that the robbery was perpetrated by an armed band.

In view, however, of the unsettled condition of the country at the time of the commission of the crime, we think we should give the appellant the benefit of the provisions of article 11 of the Penal Code, so far as to reduce the penalty from capital punishment to life imprisonment, and we therefore should sentence the said Magdaleno Santa Maria to life imprisonment (*cadena perpetua*), to the accessory penalties prescribed in article 54 of the Penal Code, and to the payment of P1,000 civil damages to the heirs of the deceased, and the costs of this appeal, and one-fourth of the costs of the proceedings in the trial court. So ordered.

*Arellano, C. J. Torres, Mapa, and Johnson, JJ., concur.*  
*Willard, J., did not sit in this case.*

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