

34 Phil. 620

[G.R. No. 11388. July 28, 1916]

**THE UNITED STATES, PLAINTIFF AND APPELEE, VS. DANIEL CABANOG
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This defendant was charged with the crime of assassination. On the 27th of August, 1915, a complaint was presented against him in the court of the justice of the peace of the Province of Cebu. A preliminary examination was held, at the conclusion of which the defendant was held for trial in the Court of First Instance.

On the 16th of October, 1915, the prosecuting attorney of the Province of Cebu presented a complaint against the defendant, charging him with the crime of assassination. The complaint alleged:

“That on or about the 25th of August, 1915, in the municipality of Malabuyco, within this province and judicial district, the said Daniel Cabanog, treacherously, maliciously, and feloniously, with a penknife with which at the time he was provided, attacked Tomas Lomocso, inflicting wounds which resulted in the death of the latter a few moments afterwards. In violation of law.”

Opon said complaint the defendant was duly arraigned and pleaded not guilty. The cause was brought on for trial at the close of which the Honorable Adolph Wislizenus, judge, found the defendant guilty of the crime of assassination, with the qualifying circumstance of *alevosia*, without any mitigating or aggravating circumstances, and sentenced him, in accordance with the provisions of article 403 of the Penal Code, with the penalty of *cadena perpetua*, to indemnify the heirs of the deceased in the sum of ₱1,000 and to pay the costs. From that sentence the defendant appealed to this court.

In this court the appellant alleged that the lower court committed an error in its finding of facts as to the circumstances under which the offended party was killed; that there did not exist the qualifying circumstance of *alevosia*; that he was not guilty of the crime of assassination; and that he did not cause the death of the deceased, the said Tomas Lomocso.

Said assignments of error present but a question of fact. An examination of the record shows that there is a helpless and irreconcilable conflict between the evidence adduced by the prosecution and that adduced by the defense. The theory of the prosecution is that the defendant attacked, without sufficient provocation, the said Tomas Lomocso; while the theory of the defense is that the appellant wounded the deceased in self-defense.

The lower court, in a carefully prepared opinion, reached the conclusion that the defendant, with a knife in his hand, while the said Tomas Lomocso was seated upon the floor of a *camarin* (storehouse), approached him from behind and by means of said knife cause a wound on the throat of the said Tomas Lomocso from the effects of which the said Tomas Lomocso died within a few moments. The conclusion of the lower court is supported by the declarations of three or four witnesses who practically unanimously agree as to the manner in which and the method by which the crime was committed. The declarations of said witnesses support the conclusion of the lower court as to the manner and the method by which the defendant committed the crime charged. The lower court did not believe the declarations of the witnesses for the defense. We have examined the record carefully and we find that the lower court was justified in not giving the declarations of the witnesses for the defense the same credit which he gave to the declarations of the witnesses for the prosecution for the reason that some of them had made statements before the cause was brought on for trial which were in direct conflict with their declarations at the trial. And not only that, but we find that their declarations were not as impartial and disinterested as the declarations of the witnesses for the prosecution.

We are of the opinion, after weighing the evidence and measuring the same by every rule for measuring evidence, that the same shows beyond a reasonable doubt that the defendant committed the crime charged against him in the complaint, in the manner and form therein charged. The record clearly shows that there existed the qualifying circumstance of *alevosia*. The defendant attacked the deceased from behind, without any notice or warning, and without giving the deceased an opportunity to protect himself. The record discloses no aggravating nor mitigating circumstances. The penalty must therefore be imposed in the medium degree. We find nothing in the record which justifies us in altering or modifying the sentence of the lower court. The same is, therefore, hereby affirmed with costs. So

ordered.

Torres, Moreland, Trent, and Araullo, JJ., concur.

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