46 Phil. 838

[G.R. No. 20353. July 17, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MANDAGAY (ATA) AND TAQUIAWAN (ATA) DEFENDANTS AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

The appellants invoke the benefits of reasonable doubt, for, among other reasons set up by counsel for the defense, it is said that it was not directly and clearly proven that the deceased died as a result of the aggression alleged by the prosecution, nor does it appear when such death occurred.

We find, however, that these points were established by the testimony of the witness Talome or Dalome. From such testimony it appears that, about three months before the trial of the case, which was held on September 19, 1922 (the crime took place on June 18, 1922), the deceased Tambonan was on a certain night, while he was sleeping, assaulted and killed by the defendants. The witnesses for the defense do not deny the assaulting and killing of Tambonan on the night and place in question. What Lumantay, wife of the accused Mandagay, says is that said Talome or Dalome had told her that the author of such death is her (Talome's or Dalome's) son by the name of Insing. But the latter denies having killed Tambonan, and Talome or Dalome, in turn, denies having made such a communication to Lumantay.

The alibi alleged by the accused Taquiawan cannot be held proven. The defendant Mandagay pretends not to have taken part in the aggression, saying that he could not have done so, because he was sick as he had been since one year ago; but from the testimony of his wife Lumantay it does not appear that he had been sick for so a long a period of time, but was engaged in his labor; and that he was not sick is shown by the fact that he did not allow Tambonan to help

him in his work, for he was his uncle. (Fol. 9, transcript of stenographic notes.)

It is true that details are scarce in the testimony of the witness Talome or Dalome, the only eyewitness aside from the defendants themselves and the wife of one of the latter; but considering the evidence as a whole, we see no reason whatever why we should deviate from the findings of the trial court.

Both appellants are, according to the evidence, the authors of the murder of Tambonan, for although Taquiawan's intervention consisted in having struck a cut on the forearm of the offended party after the latter had received from Mandagay a cut on the neck, Taquiawan's presence in the house where the crime was committed at that late hour of the night, when his residence was in another place, and the aggression perpetrated by himself on the person of Tambonan who was sleeping, almost simultaneously with that committed by Mandagay, sufficiently show that said Taquiawan was not ignorant of the design to take the life of the deceased on that occasion. Taquiawan is also responsible for that death as principal by direct cooperation, in the same manner as those declared so by the supreme court of Spain in a judgment rendered April 16, 1877 (1 Viada, 344, 4th edition) wherein all the four individuals therein prosecuted for a single wound inflicted upon the offended party were convicted as principals, who had assaulted him, one by striking his head with a club, another by striking a second blow upon his elbow which was thereby fractured, and the other two by striking other blows and throwing stones against him while they were fleeing, which did not reach him.

As to the penalty imposed, neither do we find in the record sufficient ground for altering the same, having in mind the modifying circumstances taken into account in the judgment appealed from, to wit, the aggravating circumstance of nocturnity and the mitigating one consisting in the lack of instruction of the defendants provided in section 11 of the Penal Code, as amended by Act No. 2142, which is of stronger application in this case which comes within section 106 of the Administrative Code of the Department of Mindanao and Sulu, inasmuch as the crime was committed within the municipal district of Guianga, Province of Davao.

The judgment appealed from is affirmed in all its parts, with the costs of

both instances against the appellants. So ordered.

Araullo, C.J.,
Johnson, Street, Malcolm, Avanceña, Villamor, and *Johns, JJ.,*
concur.

Date created: June 17, 2014