

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SEVERINO PEREZ, ABDON DE LEON, FAUSTINO MAÑAGO, AND LORENZO REYES, DEFENDANTS AND APPELLANTS.

G.R No. 10174. November 06, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

The four men above named were prosecuted in this cause in the Court of First Instance of Pampanga, by virtue of a complaint filed by the fiscal of the said province, on June 6, 1914, and drawn up in the following language:

"The undersigned charges Severino Perez, Abdon de Leon, Faustino Mañago and Lorenzo Reyes, with the crime of robbery with murder, committed as follows:

"That the said accused, on or about the 4th of July, 1912, in the barrio of Lawa, municipality of Lubao, Pampanga, P. I., together with Julio Santos, now deceased, did wilfully, unlawfully and criminally, being armed with a revolver and bolos and acting together and in a band, at a late hour of the night of the said day, month and year, under the pretext that they were going to buy fish from Damaso Valencia Enriquez, call at the door of the latter's house; that on opening this door the said Damaso Valencia Enriquez suddenly and unexpectedly received several cuts with the bolos the said accused were carrying, and when thus wounded and defenseless received a shot fired at him with a revolver by the accused Severino Perez; that these accused dragged his dead body toward some mangroves near the house of the deceased; that these acts were performed by the accused without risk to their persons such as might have arisen from any defense Damaso Valencia Enriquez might have made; that the said accused did wilfully, unlawfully and criminally inflict upon the said Damaso Valencia Enriquez 38 wounds, some of them necessarily mortal and others less serious, which caused his immediate death; that with the use of violence and force on persons and things, they did seize the sum of P327 in paper money, P48 in silver coin, and jewelry valued about P600, which were in a trunk, and that for the purpose of effecting the robbery of this property, they bound Miguela Sibug, the wife of the deceased Damaso Valencia. The foregoing acts were committed with the aggravating circumstances of treachery, nocturnity, unlawful entry and unusual cruelty, all in violation of law."

The accused were arraigned and pleaded not guilty. At the commencement of the trial the accused Lorenzo Reyes was, on motion by the fiscal, excluded from the complaint with one-fourth of the costs de oficio, for the purpose of using him as a witness for the prosecution. At the close of the trial the said Court of First Instance, on July 31, 1914, rendered judgment in which it found the said Severino Perez, Abdon de Leon and Faustino Mañago guilty of said crime and that it was attended by the aggravating circumstances of treachery and of having been committed in the nighttime and in the dwelling of the offended party, without any extenuating circumstance. It therefore sentenced the said three accused to the penalty of death, to indemnify the heirs of the deceased in the sum of P1,000 and to pay one-fourth of the costs.

The cause having been brought before this Supreme Court for review of the said sentence, counsel for the defendants has alleged that the trial court erred:

1. In holding that the defendants' guilt was established beyond all reasonable doubt, and
2. In sentencing them for the crime of robbery with murder, and not for the crime of robbery independently of murder.

After a careful review and due consideration of the evidence presented by the prosecution and by the defense, we find proved beyond all doubt that early in the morning of July 4, 1912, the four defendants, together with Julio Santos now deceased, three of them armed with bolos, and Severino Perez carrying a revolver as well as a bolo, left the pueblo of Hagonoy, Province of Bulacan, in two small bancas; that Severino Perez went alone in one of them and his four companions embarked in the other; that they traveled toward the barrio of Lawa, of the pueblo of Lubao, Province of Pampanga; that between the hours of three and four of that morning, they arrived at the fishery, belonging to the married couple Damaso Valencia and Miguela Sibug, where these latter had a small house in the lower part of which they were then sleeping; that one of the defendants, Severino Perez, hailed the inmates of the house, saying that he and his companions wished to buy fish; that Damaso Valencia came out of his house in response to the calls and told them that he was not selling fish because he had not yet caught any; that a few moments afterwards, while Valencia was about to urinate and had his back turned toward the defendants, he was assaulted, first by Abdon de Leon with his bolo and immediately afterwards by Faustino Mañago, Julio Santos and Severino Perez who, on his attempting to escape, pursued him to the other side of his house and Severino Perez fired a shot at him with his revolver; that immediately thereafter the defendants Faustino Mañago and Abdon de Leon entered the house and the latter, after making a light, tied up Miguela Sibug and together with his companion Mañago took her to the upper floor of the building, the other defendants remaining below; that while De Leon and Mañago kept Miguela Sibug beside another woman who was on the same floor, De Leon who held Miguela Sibug by the hair, after making a gesture to indicate that he would cut her throat with his bolo, broke open with this weapon a closed trunk there was in the room, removed therefrom and took possession of about P300 in paper money, P50 in silver coin, as well as various articles of jewelry belonging to the said spouses of the approximate value of P600; that these two defendants then took Miguela back to the lower floor of the house; that, after Miguela had been removed from the house, and when she inquired of the defendants about her husband, they told her that he was in the banca; that she went there to look for him and, not finding him there, continued her search for him until, just at the break of day she found him, wounded and dead, among some bacawan trees that grew on a pilapil or embankment toward the front of the lot on which the house stood; that the body of the said Damaso Valencia, on being examined by the Doctor Julio Layog at seven o'clock in the morning of the following day, July 5, 1912, was found to have thirty-eight wounds in the neck, face, abdomen, thigh and groin, all of which wounds affected the bones and were necessarily mortal, with the exception of one just above the navel which was slight and superficial; that all the wounds were caused by a bolo or a pointed, cutting instrument, except one in the cheek which was inflicted by a bullet.

The testimony given at the trial by Miguela Sibug, widow of the deceased (with respect to the acts of violence committed against her by the defendants Abdon de Leon and Faustino Mañago, and to the seizure by them when, after being bound, she was held in the upper story of her house, of the sums in paper money and silver coin and of the jewelry which she and her husband, Damaso Valencia, had kept in a trunk in that room) is very clear and conclusive of the existence of the money and jewelry, as well as of the fact that the said spouses then had that property, and there is no evidence to the contrary. Moreover, it was shown by the testimony of Lorenzo Reyes, a witness for the prosecution, that when the defendants withdrew they carried money with them; that Severino Perez gave witness P23 of it; that the said Perez and the other defendants Abdon de Leon, Julio de los Santos and Faustino Mafiago, after reaching Hagonoy on the said 4th of July, went to their respective homes, but later returned to Lorenzo Reyes' house and invited him to gamble secretly at the cockpit; and that, several days afterwards, Severino Perez, through witness' mediation, offered for sale various articles of jewelry, among which

were some earrings and a scarf-pin, to a brother-in-law of Reyes, but that the sale was not effected because the latter and Perez failed to agree on the price.

The said Miguela Sibug stated that while she and her husband were in bed in the lower part of the said house early that morning she heard some people outside calling out that they wished to buy some fish, whereupon her husband went out of the house to see them; that shortly afterwards she heard a noise like that of a persons running, and, peering from a window at one side of her bed, she heard her husband cry out and saw, for the night was clear, that he was being pursued by four men who were striking him with a cutting instrument; she also heard a shot, possibly from a revolver, because the report was loud; that she then called for help, but nobody answered because the fishery watchman, named Camilo Fabia, who was in the house with her and her husband at the time, instead of helping her, ran away in fear and jumped into the water; that some moments afterwards the two defendants Abdon de Leon and Faustino Mañago entered the house (these men were identified by her at the trial as being the same who took her when bound to the upper floor of the house, performed the other acts of violence upon her person, committed the robbery aforementioned and took her afterwards downstairs) ; that below she saw the other men, the companions of the two who had gone up into the house; that when she went to the banca belonging to the robbers, being taken there by them to look for her husband who they told her was in it she saw there were five men, all of whom she did not recognize; that she only noticed the two who were in front of the light and Severino Perez but made no effort to recognize them all, because she was worried over the death of her husband; that she knew none of those men before the occurrence, with the exception of Severino Perez, whom she had seen a little while before in the vicinity of the fishery and whom she pointed out at the trial as being the person referred to in this part of her testimony; that, among the said five men she also saw Lorenzo Reyes whom she also pointed out at the trial, adding that he defended her, for when she was outside of the house where she had been taken by the others, she heard the men talking in a low voice and Reyes told them that they ought not to kill a woman like her because she did not resist.

Lorenzo Reyes, also accused but who as aforestated was excluded by the prosecution in order to be used by it as a witness, testified that, having been invited by the defendants, Severino Perez, Faustino Mañago, Abdon de Leon, and the man Julio de los Santos mentioned in the complaint, to go with them to buy fish, they all left the pueblo of Hagonoy, Province of Bulacan, in two small bancas in one of which Severino Perez went alone and in the other witness and the other three companions; that shortly before three o'clock on the morning of July 4, 1912, being in the barrio of Lawa of the pueblo of Lubao, Province of Pampanga, Severino Perez called to the inmates of a shack or small house at a fishery of the said barrio, and asked them to sell them some fish; that then a man, Damaso Valencia, came out of the house and said that he was nojt selling fish because the catch had not yet been made; that afterwards Damaso Valencia turned his back to his said visitors and appeared to be urinating when witness, who was beside the pilapil or embankment of the said fishery, first saw Abdon de Leon approach Valencia and strike him with a bolo and as Valencia started to run witness also saw that Julio, Faustino and Severino pursued him; that the latter fired a shot at him and witness did not see what these men did afterwards because he was a considerable distance away from them, though they continued to pursue Valencia to other side of the house; that Valencia's pursuers were then carrying bolos called panaud, and Severino Perez had also a revolver; that after this they all entered Damaso Valencia's house, remained a little while, and then came out of it with a woman and carrying some money; that it was Severino and Julio who brought the woman out of the house; that these occurrences took place between three and four o'clock in the morning of July 4, 1912; that when the defendants invited witness to go with them to Lawa he did not know that they intended to commit assault and robbery; that he was beside the banca, that is, on the pilapil (embankment) as aforesaid, when Severino Perez called to the inmates of the house of Damaso Valencia, and from there he saw the latter come out of his house; that when Valencia turned his back to the defendants and was apparently urinating, Abdon de Leon struck htm with a bolo and

Severino Perez fired a shot at him, whereupon he was pursued by all the defendants and by Julio de los Santos as he started to run toward the other side of the shack or house, and therefore was unable to enter the building; that it was then bright moonlight; that the distance between the place where witness stood and the house was about four meters; that he had previously known Damaso Valencia because he had frequently gone with him to Hagonoy; that it was his understanding that the house had a lower part; that those four men, namely, the three defendants and Julio de los Santos, entered the house and two of them remained below inside the fence that surrounded it and the other two men entered the building; that he saw them do so, because the door was opened and there was a light within; that he could not prevent these men from performing these acts because he did not know what they intended to do, for they only invited him to accompany them to buy fish; and, finally, that these men gave him P23.

After the order of arrest had been issued for Severino Perez, Abdon de Leon, Faustino Mañago and Julio de los Santos, and prior to the filing of the complaint against them in this cause, these four men, armed with talibones and a revolver, were seen in the sitio of Sapangbalot, in some mangrove swamps between the pueblos of Hermosa and Orani, Province of Bataan, on August 19, 1913, by Valeriano Calma, a secret service agent of the Constabulary, and a corporal of the same organization who had gone there in search of them, but as they resisted and fired a shot at the officers attempting to arrest them these members of the Constabulary fired at Severino Perez and his three companions, seriously wounding Julio de los Santos and Abdon de Leon; Julio de los Santos died in the hospital as a result of his wound and De Leon was removed to the municipality of Hermosa. From these two men and from the others, Faustino Mañago and Severino Perez who succeeded in escaping, the said officers then seized two revolvers, a talibon and a dagger which were turned over to the captain of the Constabulary of the said Province of Bataan. Subsequently Severino Perez was also arrested by a Constabulary detachment and before the end of August, 1913, the other defendant Faustino Mañago gave himself up to the chief of police of the pueblo of Hagonoy and was therefore arrested in that municipality.

Lieutenant Cristobal Cerquella of the Constabulary in the Province of Bulacan was presented as a witness by the prosecution and testified that on August 24, 1913, Faustino Mañago, while held in detention in the municipal building of Hagonoy, voluntarily stated that in company with Severino Perez, Abdon de Leon, one De los Santos and Lorenzo Reyes he went to the house of one Damaso Valencia; that he, Mañago, and Lorenzo Reyes remained in the banca and the others continued on their way to the said house; that afterwards when Damaso Valencia was near the house beside the river and not expecting any danger Abdon de Leon struck him a cutting blow and then Severino Perez shot him once; that Faustino Mañago made the said statement voluntarily, without the witness having exercised any force upon him, as Cerquella was in the said municipality for the purpose of conducting the proper investigation; and that there were then present, if he remembered rightly, the chief of police, a member of the Constabulary, and another man.

The municipal president of Hagonoy, Francisco Sebastian, also testified that, while Faustino Mañago was a prisoner in the municipal building of the said pueblo, this defendant told him that in the assault made in the sitio of Lawa, of the municipality of Lubao, he was in the company of Severino Perez and others, but that he did not enter the house on the night of the crime, but remained on guard below. The said municipal president further testified that Mañago made this statement to him freely and voluntarily on an occasion when the chief of police was present.

Finally, Eustasio Martin, a municipal policeman of the same pueblo of Hagonoy, testified that he had an opportunity to talk with Faustino Mañago in the said municipal building on August 24th, as this defendant had given himself up to the chief of police as one of the robbers, and that, when witness then asked him about the assault upon Damaso Valencia's house and told him that for some time past they had been looking for him,

Mañago freely and voluntarily told witness that Severino Perez, Abdon de Leon, Julio de los Santos and Lorenzo Reyes were his companions in the assault. Mañago not only made this statement to this witness, but also to the municipal president, on being interrogated by the latter.

The foregoing testimony clearly shows the direct and positive participation of each one of the three defendants, Severino Perez, Abdon de Leon and Faustino Mañago, in the commission of the acts referred to at the beginning of this decision, and the mode and manner in which these three men, together with Julio de los Santos, now deceased, cooperated in the performance of those acts. The truth of the incriminating statements of Miguela Sibug, Damaso Valencia's widow, in connection with each one of the said three defendants, is proved by those made by the other witness for the prosecution, Lorenzo Reyes, and by the confession, although extra judicial, made by Faustino Mañago himself in the municipality of Hagonoy to the lieutenant of the Constabulary, Cristobal Cerquella, and to the municipal president and a policeman of the said pueblo; and this confession is worthy of credence and is admissible against him, as it is likewise credible and admissible against his codefendants, Abdon de Leon and Severino Perez, his accusation of their participation in the crime, inasmuch as the confession is corroborated both by the testimony of Miguela Sibug herself and by that of Lorenzo Reyes and confirmed by the other evidence related thereto and found in the record.

With respect to the testimony of Lorenzo Reyes, also one of the accused, though he was excluded by the prosecution and used by it as a witness, its admissibility and relevancy are unquestionable and it also must receive due consideration and perfect credence, although this witness be deemed an accomplice in the perpetration of those acts, or, at least, an accessory after the fact, on account of his having, with knowledge of such acts, shared in the proceeds of the robbery, to wit, to the extent of the P23 which the other defendants gave him (for he confessed and affirmed his share in the booty and explained the reason why he went with the others to the barrio of Lawa, and how he witnessed all that occurred there, with the exception of what took place on the upper floor of Damaso Valencia's house when two of the defendants were in that part of the building with Miguela Sibug) as the accusations made by him against the defendants Severino Perez, Abdon de Leon and Faustino Mañago constitute proof against them because those accusations were also corroborated by all the facts proven by the evidence of the prosecution and especially by the testimony of Miguela Sibug and by the reality of those facts themselves, as the body of the deceased Damaso Valencia bore a wound in the cheek caused by a firearm, and thirty-seven other wounds in various parts produced by a pointed cutting weapon or instrument—wounds which on account of their number must have been inflicted by more than one person using the said kind of weapon or instrument. Finally, no discrepancy or contradiction appears between the testimony given by Lorenzo Reyes and Miguela Sibug with respect to the presence at that time of Severino Perez in the house of those spouses, and the testimony given in regard to the entrance of the three defendants and Julio de los Santos in the house and Miguela Sibug's departure therefrom, inasmuch as, since the house had two floors, while two of the defendants were on the upper floor with Miguela Sibug and were maltreating her there, Severino Perez and Julio de los Santos could have entered the lower part of the house, and this must have been the case because Miguela Sibug stated that only two persons went up into the house, and when asked: "And where were the others?" replied: "When I went down below, I found them there." On the other hand, it is not strange that Lorenzo Reyes should have said that Severino and Julio afterwards went out of the house with a woman, that is with Miguela Sibug, because such must have been the case if these two men were in the lower part of the house at the time Miguela came down with the other two defendants, Abdon de Leon and Faustino Mañago, who also went outside the house with her after the robbery of the money and jewelry. It could very well have happened that Miguela Sibug did not then notice Severino Perez and Julio de los Santos, on account of her agitation and because Abdon de Leon and Faustino Mañago had come with her from the floor above. However this may be, it is unquestionable that this woman, although she stated in the beginning of her testimony that she did not know whether or not Severino Perez was in the shack early that

morning, did state further on that she saw Severino Perez among the defendants when she was outside of the house and when she was being taken to the banca to look for her husband, for she replied in the following manner to the questions put to her:

"Q. You said you saw only four persons pursuing your husband; but you afterwards said there were five. Which is the truth? Were they four or five persons, those who assaulted your house?—A. Although I said I had seen those four persons pursue my husband, I did not know whether behind them there were still others pursuing him.

"Q. Why, then, did you say that you saw five persons?—A. Because, when they took me to the banca, I saw that there were five.

"Q. Did you know those five persons?—A. No sir; I paid no particular attention to them, but only to those two who were in front of the light and to Severino Perez. I made no effort to identify them all because I was worried over my husband's death."

The two men to whom Miguela Sibug referred in her answers above transcribed were, as shown by her testimony, Abdon de Leon and Faustino Mañago; and, with respect to Severino Perez, as this same witness also stated, she was already acquainted with him for, some time prior to the crime, she had seen him at the fishery. These three defendants were also pointed out by the said Miguela Sibug during the trial as being the men to whom she referred in the testimony she was then giving. All of which constitutes the most perfect corroboration of the testimony given by Lorenzo Reyes and the most complete and conclusive proof of the guilt of the said three defendants, and the lower court, therefore, in so holding in the judgment under review did not err.

The three defendants, testifying as witnesses in their own behalf, denied all participation in the acts charged against them and furthermore stated that the testimony given by the witnesses for the prosecution was not true. Severino Perez testified that he had no knowledge of the said acts and stated, as did also Abdon de Leon, that Lorenzo Reyes, the prosecution's witness, was angry at them because, having sought to be admitted to membership in the katipunan society to which Abdon de Leon already belonged and which Severino Perez was organizing for the revolution that was to break out in 1912, they did not include him for the reason that he had told them that he had made an assault and killed a person, and that, because of this exclusion, Lorenzo Reyes implicated them in this cause and testified against them as a witness.

This same defendant, Abdon de Leon, and another defendant, Faustino Mañago, also attempted to prove an alibi by alleging that, on July 4, 1912, they did not absent themselves from the pueblo of Hagonoy, Bulacan, and to establish this defense the former presented two witnesses and the latter one.

Januaria Bautista and Ambrosio de Leon, Abdon de Leon's witnesses, testified that the latter had a house near theirs in the municipality of Hagonoy, and that he did not leave this pueblo on the 4th of July, 1912. Januaria Bautista also stated that on that date Abdon de Leon was in his house, though he did not live there, and that she saw him in Hagonoy every day during the said month of July.

Aguedo Trillana, also a witness for Faustino Mañago, testified that he saw the latter in his barrio in the pueblo of Hagonoy on the said 4th of July, and that he did not leave the barrio during that day. He added that Faustino Mañago slept in his house with his family that night and awoke there on the morning of the following day.

Such evidence in support of an alibi is of course of no value whatever. It does not prove that the said two defendants were not in the barrio of Lawa, of the pueblo of Lubao, Pampanga, between 3 and 4 o'clock in the morning of July 4, 1912, because they could have left Hagonoy at a late hour on the night of the 3d or at an early hour of the 4th, as the evidence shows that they did, embark in the two bancas aforementioned and, after performing the acts mentioned in the first part of this decision, they could have returned to the same pueblo of

Hagonoy, as they did do, also according to the evidence, very early that same morning, without their absence from the pueblo being noticed. Moreover, it is impossible to believe that these witnesses to the alibi had the said defendants constantly in sight during the early and later hours of the morning of July 4th, or even during that day, as they stated that they had.

Nor can any importance be attached to the statements made by the other defendant, Severino Perez, and by Abdon de Leon himself, for the purpose of offsetting the testimony given against them by Lorenzo Reyes at the trial, while on the other hand nowhere else except in the latter's own testimony does it appear that such enmity existed between them and this witness Reyes.

It cannot, therefore, be held that the evidence of the prosecution has been destroyed, weakened or offset in any manner by that of the defense.

The evidence of record clearly shows that the purpose of the defendants Severino Perez, Abdon de Leon, Faustino Mañago, and of their companion, Julio de los Santos, in going to Damaso Valencia's fishery early in the morning of July 4, 1912, was to commit a robbery, and that, in order to carry out this purpose, they first killed the deceased and immediately thereafter two of them, by means of threats and violence upon the person of the said Valencia's wife, while she was still inside of her husband's house adjoining the fishery, seized the sums of money and the jewelry beforementioned, contained in a closed trunk which they broke open. There is a direct relation and close connection between the robbery and the death of Damaso Valencia, inasmuch as the latter preceded the former and as the idea that prompted the crime was that of the robbery for the perpetration of which the malefactors began by first killing the victim. Therefore these criminal acts cannot be divided into two separate crimes, one of robbery and the other of homicide or murder, nor, consequently, can a division be made of the criminal liability of the defendants as to their respective participation in one act or the other; nor can they be sentenced, as the defense claims that they should, for the crime of robbery independently of that of homicide or murder, because, as held by the supreme court of Spain in its decision of December 17, 1875, article 516 of the Penal Code of Spain, in its subarticle 1 (which is article 503, subarticle 1, of the Penal Code in force in these Islands), which punishes any person guilty of robbery by the use of violence or intimidation upon any person with the penalty of cadena perpetua or death, when in consequence of or on the occasion of the robbery a homicide is committed," disregards the fact that two crimes exist which are provided for and punished separately in other articles of the Code, but, entirely ignoring the separate classification that might have been given to both offenses, it has united them, thus constituting and creating a special complex crime that makes of the two offenses one single, indivisible crime, for the definition of the statute connects them by the phrase in consequence or on the occasion of the robbery; so that if this consequence and this occasion were not present they might be divisible, always, however, with due regard to the circumstances of the case." Therefore, the crime in question cannot be divided into two distinct offenses, nor can the liability of those who participated in its commission be divided.

The killing of Damaso Valencia was unquestionably committed by the defendants, in a treacherous manner inasmuch as for the purpose of winning his confidence, in view of the hour in which they appeared at the fishery, it being still nighttime, they pretended that they wanted to buy fish, and by this pretense succeeded in inducing Valencia in spite of the unseasonable hour to come down out of his house and put himself within their power and when he had done so, taking advantage of a moment when he had turned his back to them, they suddenly and unexpectedly assaulted him with the weapons they were carrying, pursued him and finally left him dead in the vicinity of the house. So that the defendants used means and forms which directly and especially tended to insure the killing of Damaso Valencia without risk to their persons such as might have arisen from any defense he could have made.

The element of treachery cannot, however, be taken into account in this case as a qualifying circumstance, that is,

to classify as murder the crime of the violent killing of Damaso Valencia and to punish this crime independently of that of robbery, as the defense contends, nor conjointly therewith considering it as a necessary means for the commission of the robbery, because, as aforesaid, the offense under prosecution is a special, complex crime, composed of two distinct crimes and converted into one single indivisible crime under a definition of its own and provided for by a special penalty in the Penal Code.

The facts, then, which were proved at the trial, constitute not the crime of robbery with murder, as they were improperly classified by the lower court and in the complaint, but that of robbery with homicide, provided for and punished by article 503, No. 1, of the Penal Code, and the defendants Severino Perez, Abdon de Leon and Faustino Mañago, as the perpetrators thereof by direct participation, are criminally liable therefor. In the commission of the said crime, besides the aggravating circumstance of treachery aforementioned as generic, account must be taken of the other aggravating, generic circumstances of the crime having been committed: (1) by a band, for the three defendants and their companion, Julio de los Santos, all armed with bolos and one of them also with a revolver, took part in the perpetration of the crime; (2) in the nighttime, because this time was purposely chosen and taken advantage of by the malefactors to execute their criminal designs; and (3) in the dwelling of the offended persons, where the crime was completely consummated with no provocation on the part of the victims; and as there is no extenuating circumstance to be considered in favor of the defendants, the greater of the two indivisible penalties provided for the crimes must be imposed, together with the accessories specified in article 53 of the Penal Code in case the said penalty be not executed by reason of the granting of pardon, and they must also be sentenced to satisfy the pecuniary liabilities arising out of the criminal liability they have incurred.

Therefore, affirming the judgment under review in so far as it is in agreement with this decision and reversing it in so far as it is not, we should, as we do hereby, sentence the defendants Severino Perez, Abdon de Leon and Faustino Mañago, as guilty of the crime of robbery with homicide, to the penalty of death, which shall be executed in conformity with the provisions of Acts Nos. 451 and 1577 of the Philippine Commission, and, if the said penalty be remitted, then they shall suffer the accessory penalties of absolute perpetual disqualification and subjection to the vigilance of the authorities for the remainder of their lives, unless these accessory penalties be remitted in the pardon; to indemnify jointly and severally the heirs of the deceased Damaso Valencia in the sum of P1,000; to restore, likewise jointly and severally, to the said heirs the money and the jewelry stolen or to pay the value thereof in case such restitution is not made; and, finally, to pay, each of them, one-third of the costs of both instances. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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