

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CANDIDO BACONG AND DIEGO CAPALAC, DEFENDANTS AND APPELLANTS.

G.R. No. 15251. November 15, 1919

Ponente: TORRES, J.

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TORRES, J.:

Upon an information filed by the fiscal in the Court of First Instance of Cebu, accusing Candido Bacong and Diego Capalac of the crime of homicide, the present case was heard and, on March 4th of the present year, judgment was rendered condemning Candido Bacong, as author of said crime, to fourteen years, eighteen months and one day of reclusion temporal, to indemnify the heirs of the deceased Dionisio Pepito in the sum of one thousand pesos (P1,000), and to pay one-half of the costs; and Diego Capalac, as an accessory, to two years, four months and one day of prision correctional, deducting therefrom one-half of the time suffered by reason of his detention, and to pay the other half of the costs. Counsel for the accused appealed from this judgment.

On the night of September 30, 1918, Geronimo Naval, Felix Enriquez, Marcelo Jaime, and others played a game of monte in the kitchen of the house of the accused Candido Bacong, situated in the barrio of Mulao, municipality of Liloan, Cebu, and because said Naval, Enriquez, and Jaime had gone home at about 9 o'clock that night, the remaining players, Dionisio Pepito, Raimundo Calo, Valeriano Atis, Diego Capalac, and the owner of the house, Bacong, continued playing in the sala [parlor] of the house. At the beginning of the game, Bacong was betting thru Raimundo Calo, but upon seeing that he was losing, began doing it himself though he was still unlucky. As the banquero, [banker] Dionisio Pepito, saw that those who were betting had no more money, but only words promising: payment afterwards, and that their hands were moving the cards placed on the table, he refused to continue the game. The owner of the house, Candido Bacong, objected, saying he wanted to continue. Thereupon, Pepito and Bacong had a warm quarrel which would have become a fight had not Raimundo Calo intervened. At this moment Diego Capalac gave the banquero, Dionisio Pepito, a blow with his fist whereupon the accused Bacong took an instrument used for cutting stones and attacked Dionisio Pepito, giving him a blow in the region of the left temple. As a result of this the person attacked at once fell on the floor, blood gushing from his head, unable to utter a single word. It should be noted that said instrument, called "maret," has a wooden handle about one yard long in one end of which is a piece of iron sharpened like a pick-axe.

The foregoing facts were witnessed by said Valeriano Atis and Raimundo Calo and referred to by them in their testimony just as they actually happened—which testimony was corroborated by Anacleto Calo, who affirmed having seen the accused inflict with the aforesaid instrument a blow on the head of the deceased.

After the consummation of the crime, Candido Bacong threw out of his window the body of the deceased, went down from his house, and placed said body in a basket, 24 inches in diameter and 2(H inches tall, made of palasan [bamboo strips]. On the morning of October first, the day following the night in question, the owner of the basket Julio Pitogo, in attempting to pick it up was surprised to find it containing, instead of coal, the body of a man apparently dead, being cold, whereupon, frightened and afraid, he ran away. At dawn of same morning Diego Capalac, at the request and entreaty of Candido Bacong, carried the body of the unfortunate Dionisio Pepito to the

river, and the said body was never again seen in spite of the investigation conducted.

Felix Enriquez, Geronimo Naval, and Marcelo Jaime, refuting what was alleged by the defense of the accused, unanimously testified that altogether they went away from the house of Candido Bacong that night, leaving therein Dionisio Pepito.

After pleading not guilty, the accused Candido Bacong, in his sworn testimony, denied that there had been any ill feeling between him and the deceased; but admitted that there had been, in the kitchen of his house, gambling among several individuals; that on arrival therein Dionisio Pepito took his supper together with Raimundo Calo, the aforementioned Gav'ino and Anacleta and another woman; that without anyone's permission they played the game of monte after supper; that in about half an hour Dionisio and Felix quarrelled; that at about 7.30 that night the game stopped so that when his father arrived home he did not find them playing any more; that Dionisio left his house in company with Felix, Marcelo, and Geronimo; that on the morning of the following Tuesday the wife of the deceased, on passing by his house, asked the witness if her husband, Dionisio, had been in said house; that he replied Dionisio had been there the night before but left later in company with Geronimo, Marcelo, and Felix, the latter having invited the deceased to go to the sitio of Basac.

At the close of the evidence for the defense and in the verification of the same, a window shutter, some pieces of wood taken from the house where the crime took place, and the aforementioned basket, in which the corpse had been placed, all covered with blood stains, were exhibited.

The foregoing facts, duly proven in this case, constitute the crime of homicide provided for and penalized in article 404 of the Penal Code, inasmuch as it has been conclusively shown that the accused Candido Bacong, after the altercation with Dionisio Pepito on account of a dispute arising from a disagreement in the game of monte which was being played in his house, attacked the deceased with an instrument used for cutting stones and inflicted therewith a mortal wound in the left temple of his head. The commission of the crime is not attended by any qualifying circumstance determinative of a more serious classification and penalty, as well as by any mitigating or aggravating ones, so that the accused Candido Bacong has incurred the penalty provided for by law in its medium degree.

The violent death of a person ordinarily constitutes the crime of homicide, it not being possible to classify this crime as murder or parricide unless, in its commission, there were present, according to the evidence presented at the trial, some of the conditions or circumstances mentioned in articles 402 or 403 of the Penal Code, which give a classification of the crime distinct from the criminal act and impose a much more serious penalty than that imposed in ordinary homicide, which may reach to the last of the graduated penalties established by the Code.

The fact that Diego Capalac had cooperated, upon request of the author of the crime, in hiding and disposing of the body of the victim for the purpose of preventing the discovery of the crime and the corresponding punishment of its author, shows that Capalac is an accessory in its commission and that, as such, he has incurred, according to article 68 of the Code, the penalty two degrees lower than that mentioned by law for the consummated crime, there being no circumstance which will modify the responsibility of the accused Capalac as such an accessory.

For the foregoing reasons the judgment appealed from is hereby affirmed, provided however that Candido Bacong is condemned to the accessory penalties mentioned in article 59, and Diego Capalac to those mentioned in article 61 of the Code; that Bacong is further condemned to indemnify the widow and heirs of the deceased Dionisio Pepito in the sum of one thousand pesos (Pi,000) ; that Diego Capalac, in case of the insolvency of the principal author of the crime, is to subsidiarily bear this obligation of paying said sum according to article 125 of the Code; and that both of them pay the costs of this instance share and share alike. So ordered.

Arellano, C.J., Araullo, Street, Malcolm, and Avanceña, JJ., concur.

Judgment modified.

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