

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EMILIANO PORTENTO AND NICOLAS PORTENTO, DEFENDANTS AND APPELLANTS.

G.R. No. 21750. July 25, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The appellants pray for the reversal of the judgment rendered by the Court of First Instance of Marinduque against them, sentencing each of them for the crime of homicide to fourteen years, eight months and one day reclusion temporal, and to indemnify the heirs of the deceased jointly and severally in the sum of P500, with the costs.

The appellants assign as errors committed by the trial court the finding that certain statement attributed to the deceased Venancio Parley as a valid and admissible ante mortem declaration; the giving of credit to the witnesses for the prosecution, Alejandra Murillo and Dalmacio Prado; and its failure to give the appellants the benefit of the reasonable doubt, convicting them of the crime of homicide. The question presented by the first assignment of error was raised for the first time in this court. The testimony of the mother of the deceased as to the latter's statements at the point of death was not opposed or objected to during the first hearing of the case. At any rate, taking into account the circumstances of the case and specially the fact that said statements were made immediately after the aggression, they can, as the Attorney-General says, be considered as a part of the *res gestae*.

We find in the record no sufficient reason for discrediting the testimony of Alejandra Murillo and Dalmacio Prado whom the trial judge saw when testifying and gave credit to.

We find sufficiently proven beyond a reasonable doubt the guilt of the defendants as responsible for the death of Venancio Parley, whom they killed, according to the evidence, in a joint aggression with their brother Gabino Portento, who has pleaded guilty and was convicted in another case for the same crime.

Case for the same crime.

The circumstantial evidence as to abuse of superior strength is not sufficient, in our opinion, to establish it as an aggravating circumstance, and cannot be taken into consideration in the imposition of the penalty as recommended by the Attorney-General.

For the foregoing, the judgment appealed from is affirmed in all its parts, with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, and Ostrand, JJ., concur.

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