

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCELO HERNANDEZ, DEFENDANT AND APPELLANT.

G.R. No. 21896. August 07, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant is accused of the crime of robbery with homicide, the information alleging "that on or about the 31st day of August, 1923, in the municipality of San Pablo, Province of Laguna, Philippine Islands, the herein accused did wilfully, unlawfully, and criminally and with intent to kill, attack and assault the Chinaman Si Song, inflicting several wounds on his body and head, the wound on the nape of the neck being necessarily fatal, which caused the immediate death of the said Si Song; and once the latter was dead, the accused seized and took the sum of ₱25 belonging to the said offended party and converted the same to his own use and personal benefit.

"Contrary to law and with the concurrence of the aggravating circumstances of evident premeditation, treachery, cruelty and of the crime having been committed in an uninhabited place."

The trial court found the defendant guilty of the double crime of murder and robbery, the murder having been perpetrated as the means of committing the robbery and sentenced him to suffer the death penalty.

That the defendant committed the crime substantially as alleged in the information is not disputed by the defense and admits of no doubt, but we agree with the Attorney-General that the court below erred in finding the defendant guilty of the double crime of murder and robbery instead of the complex crime of robbery with homicide. The judge of that court took the view that where the death of the victim precedes the robbery the crime cannot be considered the complex crime of robbery with homicide defined in paragraph 1 of article 503 of the Penal Code and cites a sentence of the supreme court of Spain of February 5, 1886, to that effect. It is, however, well settled in this jurisdiction that when, as in this case, there is "a direct relation, an intimate connection between the robbery and the killing—whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time—it is unquestionable that they constitute the complex special crime defined and penalized in article 503, paragraph 1, of the Penal Code." (Sentence of supreme court of Spain of May 26, 1877; *U. S. vs. Landasan*, 35 Phil., 359; *U. S. vs. Antonio*, 31 Phil., 205.)

The court below found that the defendant was entitled to the benefit of the mitigating circumstance of lack of instruction, but this is offset by the aggravating circumstance that the defendant is a recidivist inasmuch as he has served a sentence in Bilibid Prison for robo en cuadrilla. The aggravating circumstances alleged in the information have not been sufficiently proven. The penalty for robbery with homicide must therefore be imposed in its medium degree and the defendant is hereby sentenced to suffer the penalty of cadena perpetua, with the accessory penalties provided for in article 54 of the Penal Code, to indemnify the heirs of the deceased in the sum of ₱1,025, and to pay the costs. So ordered.

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

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