

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAIN ET AL. (ATAS), DEFENDANTS. MAIN, APPELLANT.

G. R. No. 22779. December 08, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This action deals with the crime of murder of which the defendant and appellant was accused and who was found guilty of homicide by the Court of First Instance of Davao and sentenced to fourteen years, eight months and one day reclusion temporal, to indemnify the heirs of the deceased in the sum of 1N500 and to pay the costs. The defendant appeals from this judgment and assigns the following errors as committed by the trial court: In not applying the penalty taking into consideration the mitigating circumstances provided in article 11 of the Penal Code; in not taking into consideration the evidence of the defense and in convicting him.

We have examined the evidence and find it proved beyond a reasonable doubt that the appellant, prompted by resentment, was one of those who killed Mampudian while the latter was sleeping.

These facts are not sufficiently overthrown by the evidence of the defense.

The trial court, therefore, did not commit an error in convicting the appellant. Neither did it do so in imposing the penalty above-mentioned inasmuch as the accused is a non-Christian inhabitant of Mindanao to whom the provisions of section 106 of the Administrative Code of the Department of Mindanao and Sulu are applicable, by virtue of which the courts may use their prudent judgment and discretion. Said legal provision is as follows:

"SEC. 106. Sentences upon Moros and non-Christians.— In pronouncing sentence upon a Moro or other non-Christian inhabitants of the Department, convicted of crime or misdemeanor, the judge or justice may ignore any minimum penalty provided by law for the offense, and may impose such penalty not in excess of the highest penalty provided by law, as, in his opinion, after taking into consideration all the circumstances of the case, including the state of enlightenment of the accused and the degree of moral turpitude which attaches to the offense among his own people, will best subserve the interest of justice. The judge or justice may also, in his discretion at any time before the expiration of the period allowed for appeal, suspend the execution of any penalty or part thereof so imposed, subject to such conditions as he may prescribe.' Taking this special provision into consideration, we cannot follow the recommendation of the Attorney-General that the penalty of cadena perpetua be imposed upon the appellant which is, under general circumstances, the penalty for the crime in question, alleged and proved as murder, inasmuch as the record does not show abuse or undue use, on the part of the trial court, of the discretion granted in the legal provision above quoted.

For the reasons stated, we find no error in the judgment appealed from the same is hereby affirmed, with the costs against the appellant. So ordered.

Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.

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