

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MATEO BERSABAL, DEFENDANT AND APPELLANT.

G.R. No. 24532. December 11, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This prosecution was commenced by the following information:

"That on or about May 8, 1925, in the municipality of Pototan, Iloilo, the above named defendant did intentionally, maliciously, criminally and treacherously and with cruelty, strike Pablo Cordoba with a bolo with which he was provided, inflicting a wound on the right side of the latter and cutting off afterwards his two arms and legs as a result of which he died; and in order to conceal his crime, the defendant set fire to the house where the act had taken place, which was completely burnt, the body of said Pablo Cordoba having consequently been reduced to coal. Contrary to law."

After trial, the Court of First Instance of Iloilo sentenced the defendant to cadena perpetua, and to indemnify the heirs of the deceased in the sum of P1,000, with the accessories provided by law and the costs. From this judgment, the defendant appeals through his counsel, assigning as errors the finding of the trial judge that the crime in question was committed by the defendant, his holding that its commission was attended by the circumstance of treachery, and that the acts alleged in the information were performed, and in not finding that there exists reasonable doubt.

We find it sufficiently proven beyond a reasonable doubt that the defendant is the person responsible for the death of Pablo Cordoba, as well as of the arson alleged in the information. We find in the record no sufficient ground for doubting the veracity of the witnesses for the prosecution, who affirmed having witnessed the act. On the other hand, one cannot overlook the natural interest of the witness Laurencia Panes, as mother of the defendant, when explaining the death of the deceased in a manner favorable to her son and exempting him from liability by saying that it occurred without the latter's intervention. Moreover, the trial judge who saw, heard and observed her while she was testifying, did not find her worthy of credit.

The evidence shows that the appellant treacherously assaulted Pablo Cordoba and caused his death, and afterwards set fire to the house where the crime had taken place, which was completely burnt down.

Such a criminal act was not in any manner whatsoever justifiable, and we do not find any merit in the assignments of error.

The information charges two crimes,—murder and arson,—which cannot be considered as a complex crime, because neither was a necessary means for committing the other, nor is this a case of one single act constituting two or more crimes. Article 89 of the Penal Code is, therefore, not applicable here.

In view of the fact that it was not proven that after Pablo Cordoba had fallen to the ground, he was still alive when the defendant continued to attack him, cutting off his extremities, it seeming, on the contrary, to be inferred from

the evidence of the prosecution that said Cordoba was then already without life, the aggravating circumstance of cruelty, that is, the act of increasing the pain of the offended party, cannot be taken into account, but that of the defendant being stepson of the deceased can. (Art. 10, No. 1, Penal Code; decision of the supreme court of Spain of July 26, 1877; I Viada's Penal Code, question V under article 10, No. 1.)

This aggravating circumstance is compensated by the mitigating one consisting in the lack of instruction of the defendant considered by the trial court.

As to the arson, the information does not allege the value of the house in question, nor that it was inhabited; neither is there any evidence of its value. This, however, does not mean that the act is not punishable, which must be punished under article 557 of the Penal Code, case No. 1. We, therefore, find the defendant guilty of the crime of arson punished by said legal provision, with the compensation of the above-mentioned circumstances, and for this reason the penalty to be imposed for the crime of arson is the medium degree of the penalty, which, in the instant case, is from 3 months and 11 days to 4 months and 20 days.

Wherefore, the judgment appealed from is modified, and the appellant sentenced for the crime of murder to the penalty of cadena perpetua, with the accessories provided by article 55 of the Penal Code, and to indemnify the heirs of the deceased in the sum of P1,000; and for the crime of arson, to 3 months and 11 days of arresto mayor, with the accessories provided by article 61 of the Penal Code, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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