

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EMILIANO TRUMATA AND ZACARIAS BALIGASA, DEFENDANTS. ZACARIAS BALIGASA, APPELLANT.

G. R. No. 25412. August 05, 1926

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Oriental Negros, finding the appellant, Zacarias Baligasa, and his coaccused, Emiliano Trumata, guilty of the offense of murder and sentencing them to undergo imprisonment for twenty years, cadena temporal, jointly and severally to indemnify the heirs of the deceased in the amount of P1,000, and to pay each his half of the costs.

It appears in evidence that on the night of December 2, 1925, the appellant, Zacarias Baligasa, and his co-accused, Emiliano Trumata, found themselves on the bank of the Masaplod River, in the limits of the municipality of Dauin, of the Province of Oriental Negros, occupied in preparing for food a goat which they had stolen from one Juan Copino and which they had slaughtered at the place stated.

While they were thus engaged, one Alfonso Asdillo came upon them and observed upon the fact that they were killing a goat. Seeing that their act of theft had been discovered, one or the other of the two assaulted Asdillo with a bolo, in which assault he was assisted by his companion, likewise using a bolo. Together the two accused speedily made an end of Asdillo, inflicting upon him many wounds. After life was extinct in Asdillo, the two accused threw his body into the river and proceeded on their way home, carrying with them the slaughtered goat and a cock they had in their possession. The body of Asdillo was found in the river the next day, when it was taken in charge and examined by the sanitary inspector of the locality, one Jacinto Araula. That the homicide was committed by the two accused is clearly established by their respective voluntary confessions, in which each admits complicity in the offense but attributes to his companion the role of chief actor. That the two were at or near the spot where the crime was committed upon the night of the homicide is proved by the testimony of Martin Tabungan, who says that he saw them at about 10 o'clock that night on the road near the Masaplod River and that he noticed that they were then carrying a cock and an object the exact character of which he did not ascertain. That a goat was stolen from Juan Copino, a resident of the barrio of Masaplod, on the same day is proved by the testimony of said Copino.

The guilt of the two accused is so clearly shown in the proof that the attorney for the appellant raises no question in this instance as to the appellant's participation in the commission of the offense. Nevertheless, it is maintained that the crime committed was not murder but merely homicide. The Attorney-General concurs with the attorney for the appellant on this point and we think that this appreciation is in harmony with the facts. The qualificative circumstance alleged in the information is alevosia, but; it cannot be clearly made out from the confessions of the two accused that this element was present, The circumstance that all of the wounds found on the body of the deceased were in front shows that he was not assaulted from behind and there is nothing to show clearly that the

attack was committed by surprising the deceased in an unguarded moment. It is suggested in the brief of the Attorney-General that the court might take into consideration the aggravating circumstance of abuse of superior strength, in view of the fact that the deceased was slain by the bolos of the two accused, cooperating with each other. We are of the opinion, however, that even this circumstance is not shown with sufficient clearness to warrant its being taken into account. Nocturnity should not be estimated as an aggravating circumstance, since the time for the commission of the crime was not deliberately chosen by the accused.

It results that the appellant should have been convicted of homicide instead of murder, in connection with which no circumstance either of an aggravating or attenuating nature is to be appreciated. The penalty to be awarded to the appellant is therefore to be found in the medium degree of the penalty appropriate to the crime of homicide; and considering all the circumstances of the case, we are of the opinion that he merits a sentence to seventeen years, reclusion temporal; and it being understood that seventeen years, reclusion temporal, is substituted for twenty years, cadena temporal, the judgment appealed from will be affirmed. So ordered with costs against the appellant.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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