

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DAYUG AND BANNAISAN, DEFENDANTS AND APPELLANTS.

G. R. No. 25782. September 30, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the Igorrotes Kalingas Dayug and Bannaisan from the judgment of the Court of First Instance of the Mountain Province, finding each of them guilty of the crime of double murder, with the qualifying circumstance of evident premeditation, and sentencing them, in view of the aggravating circumstance of treachery and that the crime was committed in an uninhabited place, which circumstances are offset by the special extenuating circumstance provided in article 11 of the Penal Code, as amended, to suffer life imprisonment, with the accessories of the law, each to indemnify the heirs of the deceased in the sum of P1,000, and to pay one-half of the costs.

The attorney de oficio appointed by this court, in compliance with his duty, has presented a statement in which he declares that after a careful examination of the evidence contained in the record he can find no reason justifying the revocation of the appealed judgment.

The facts prove at the trial, beyond a reasonable doubt, are as follows:

Tile Igorrotes Kalingas Abauag and Gumpad were previously accused, convicted, and sentenced to life imprisonment for having killed the family of another Kalinga Igorrote named Suguian. The herein accused are relatives of Suguian and wanted, to revenge the death of the family of their relative. Having been informed that Kalinga Daupan; a relative of Abauag and Gumpad, and Kalinga Panabang had gone to the barrio of Laya, an Igorrote woman named Banayan told them to intercept the travellers on the road. On January 5, 1926, the accused started out ahead of them and upon arriving at; the barrio of Pakik waited in ambush. At about noon Daupan and Panabang passed by them. The accused followed them at a distance of about 80 yards, trying not to be seen. At Belen they overtook them, Dayug attacking Panabang and Bannaisan attacking Daupan, each using his respective bolo. Dayug first wounded Panabang on the right shoulder and later in the back. Panabang started to run away, Dayug pursuing him and when he overtook him, Panabang faced him. Dayug then gave him a third blow with the bolo which penetrated the abdomen. As Panabang again attempted to run away, Dayug gave him the fourth blow which struck his right leg above the knee, causing him to fall face downward on the ground when he again stabbed him in the buttock. Panabang died instantly. After his death Dayug searched his clothes and found P18, consisting of 10 silver pesos, 4 one-peso bills and 2 two-peso bills, in a purse wrapped in a handkerchief. He also found five silver rings on the person of Panabang. While Dayug was engaged with Panabang, Bannaisan pursued the Igorrote Daupan, inflicting a wound in her abdomen, another in the right lumbar region, another across the left cheek and another in the right buttock. The accused divided the money and the rings, Bannaisan taking the P10 in silver and three rings and Dayug the rest.

The facts above related were freely and voluntarily confessed by the accused. Undoubtedly the accused, urged by the members of their tribe and following their traditional custom, wanted to avenge the death of the family of a relative of Bannaisan who had been murdered by Abauag and Gumpad. As they were unable to take revenge on the latter because of their imprisonment, they selected Daupan, a relative of Abauag and Gumpad, and Panabang as their victims and took advantage of the occasion when they set out for Laya. There having been a concert of mind and unity of purpose, each of the accused carrying out his part of the plan, each is liable for the death of the two victims.

The crime committed by them is double murder with the qualifying circumstance of evident premeditation, as shown by the fact that they agreed to kill the two victims, started out ahead of them and waylaid them in the road.

The trial court has held that the crime was committed with the generic aggravating circumstance of treachery, with which the Attorney-General agrees. The rule of procedural law is that the aggravating circumstances must be conclusively proven. According to the accused Dayug, he and his coaccused were pursuing their victims and it was during the pursuit that they wounded them. The fact that a person is being pursued by another does not save the latter from all danger that might arise from a resistance on the part of the former, because during the pursuit it might occur to the pursued to turn upon his pursuer and suddenly attack him. The wounds on the back and shoulders of the victims alone are not sufficient to legally establish the existence of the aggravating circumstance of treachery, inasmuch as it is necessary to prove that the aggressor did not run any risk which might have arisen from a defense on the part of the offended party.

The Attorney-General is of the opinion that the aggravating circumstance of abuse of superior strength should be taken into account. As we have seen, the fight was single-handed and, there is no evidence in the record to show that the aggressors, individually and collectively, were greatly superior in strength to the offended parties.

In regard to the accused Bannaisan, the aggravating circumstance of disregard of sex must be taken into consideration inasmuch as his victim was a woman.

The Attorney-General is also of the opinion that the aggravating circumstance of cruelty should be taken into account. This circumstance has its own value and meaning in law. There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary moral and physical pain in the consummation of the criminal act which he intends to commit. The mere fact of inflicting various successive wounds upon a person in order to cause his death, no appreciable time intervening between the infliction of one wound and that of another to show that he had wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration. Briefly, the only aggravating circumstances in regard to the two accused which, in our opinion, can properly be considered are, the uninhabited place and the disregard of sex in respect to the accused Bannaisan, all of which are offset by the special extenuating circumstance provided in article 11 of the Penal Code, as amended by Act No. 2142, more especially in regard to the members of the non-Christian Tribes, to whom, due to their custom and traditions, it is second nature to revenge the death of a relative, which only instruction and education can eradicate.

For the foregoing, we have arrived at the conclusion that each of the accused is guilty of the crime of double murder and there being no circumstance to modify the criminal liability, the penalty provided by law of cadena temporal in its maximum degree to death, must be imposed in its medium degree, or life imprisonment.. But inasmuch as each of the accused must suffer two life imprisonments, the total duration of which is sixty years, and, also, according to article 88 of the Penal Code, when a person is guilty of two or more crimes, all of the penalties corresponding to the several violations shall be imposed, the same to be simultaneously served, if possible, and when not, the court can only impose the triple penalty corresponding to the gravest crime, in

accordance with article 89 of the Penal Code, but never exceeding forty years. The duration of the two penalties of cadena perpetua must never exceed forty years. (People vs. Cabrera, 43 Phil., 64 and 82.)

In view of the foregoing, with the sole modification that the joint duration of the penalties imposed upon each of the accused shall not exceed forty years of cadena perpetua, the judgment appealed from is affirmed, with the costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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