

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ERIBERTO CALLE, DEFENDANT AND APPELLANT.

G.R. No. 26360. September 07, 1927

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The appellant is one of the herein accused and was convicted by the Court of First Instance of Cavite of the crime of robbery in band with homicide. The penalty imposed upon the herein appellant is that of cadena perpetua.

The facts proven are, that at midnight on May 28, 1925, the herein appellant and seven other persons approached the house of the spouses Galicano Ortega and Juana Garcia and ordered the man who was in the house to come out. Galicano Ortega hid under the house. One of the assailants focused his flashlight and as they saw Galicano Ortega, whom they had ordered to come out, they pushed him out and as soon as he was out they fired a shot at him killing him, later forcing his wife Juana Garcia to stand by his body while they all went upstairs in the house and opened a trunk and appropriated P6.50.

It was proven beyond a reasonable doubt that the herein appellant was one of those assailants. He admitted it in his extrajudicial statement Exhibit C, the admissibility of which as evidence is impugned by the defense. But it sufficiently appears that the admission[®] contained in said document were voluntarily and spontaneously made. The torture alleged by the defense to have been employed as a means of obtaining said admissions has not been proven.

That Eriberto Calle, the herein appellant, was the one who fired the shot that killed Galicano Ortega has not been sufficiently proven because that point only appears in the extrajudicial declarations of his coaccused, later denied by them at the trial of the case; but the conspiracy revealed by the concerted and joint action of these accused having been proven (*People vs. Crisostomo*, 46 Phil., 775; and *People vs. Reyes*, 47 Phil., 948), each and every one is liable for the criminal acts committed by the members in the band *U. S. vs. Macalalad*, 9 Phil., 1; *U. S. vs. Reogilon and Dingle*, 22 Phil., 127; *U. S. vs. Zalsos and Ragmac*, 40 Phil., 96).

In voting the present case some of the members of the court voted that the death penalty should be imposed upon the herein appellant in view of the aggravating circumstance of nocturnity, not offset by any mitigating circumstance, inasmuch as the circumstance that the appellant had no intention of committing so great a wrong, which was taken into account by the trial court, cannot be held to have attended the commission of the crime in question. The vote of the court, however, was not unanimous on this point and the writer feels that the extreme penalty is not quite proper in the present case, taking into consideration all of the circumstances that surrounded the commission of the crime now before us.

The result of our vote in this case is the affirmance of the judgment appealed from which is therefore hereby affirmed, with the costs against the appellant. So ordered.

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

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