

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO ABEDOSA ET AL., DEFENDANTS. PEDRO ABEDOSA AND MARCIANO ABEDOSA, APPELLANTS.

G.R. No. 28600, March 21, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendants were accused of allanamiento de morada with homicide upon the following information:

"That on or about the night of the 6th day of June, 1927, in the municipality of Cuyapo, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court, the above-named accused, Pedro Abedosa, Teodoro Daet, Anatalio Gines, Roman Hernando, Juan Castaneda, Marciano Abedosa, and Juan Jacobe, forming a band of more than three persons all armed with bolos and clubs, conspiring together and mutually aiding one another did then and there, under the command of the accused Pedro Abedosa, voluntarily, illegally, and criminally assault and enter in the dwelling house of Rafael de Fiesta against the will of the latter, and once inside the said house did then and there, voluntarily, illegally, and criminally attack, beat, and strike said Rafael de Fiesta inflicting on him several wounds in his body, as a consequence of which he died a few hours afterwards; to Nicolas de Fiesta and Rufino Esteban inflicting them several wounds in different parts of the body, which took several days to heal. In the commission of the crime, the aggravating circumstances of nocturnity and superiority were present."

After the presentation of the evidence for the prosecution, the case was dismissed as to the defendants Teodoro Daet, Anatalio Gines, Roman Hernando, Juan Castañeda and Juan Jacobe. Pedro Abedosa and Marciano Abedosa were found guilty as charged in the information and sentenced to suffer reclusion temporal for the term of seventeen years, four months and one day with accessory penalties, to jointly and severally indemnify the family of the deceased in the sum of P500 and to pay two-thirds of the costs. The case is now before us upon appeal by the two convicts.

It appears from the evidence that in the early morning hours of June 7, 1927, six or seven persons attacked the house of the deceased Rafael de Fiesta, in the barrio of Bibiclat, Cuyapo. By the barking of the dogs of the deceased and the noise produced by the malefactors, the deceased and one Rufino Esteban, who was living in the same house, were awakened. Rufino, provided with a club and a light, went to the door with the intention of opening it but before he could do so, the door was forced open by the malefactors and four of them entered the house. Rafael de Fiesta offered resistance but was cut down with bolos by Marciano and Pedro Abedosa. Esteban received some contusions but escaped serious injury. Rafael's father, Nicolas de Fiesta, who was living in a house nearby, attempted to go to the assistance of his son but was prevented from doing so by persons outside of Rafael's house and after receiving a few lashes on his legs, he ran away. The malefactors, apparently alarmed by the resistance offered, desisted from further attacks and made their escape. The deceased attempted to pursue them but was overcome by his wounds and fell to the ground. He died in the evening of the same day.

The appellants make the following assignments of error: (1) That the court below erred in giving force and

validity to the confession made by the accused Pedro Abedosa before the justice of the peace of Cuyapo; (2) that the court further erred in considering the declaration made by the deceased before the chief of police of Cuyapo as a dying declaration; and (3) that the court erred in finding the defendants-appellants guilty.

Under the first assignment of error, counsel for the appellants asserts that the confession in question was obtained by the Constabulary through promises, ill-treatment and threats and that, moreover, the confession was admitted in evidence without preliminary proof that it had been made voluntarily and without duress and was therefore not admissible in evidence. In our opinion, the charge of improper treatment by the Constabulary is fully refuted by the testimony of the chief of police of Cuyapo, and the provision of section 4 of Act No. 619 which placed the burden upon the prosecution to prove affirmatively that a confession was made freely and voluntarily before it could be offered in evidence, has been repealed by the Administrative Code; the burden of proof to show that a confession was not voluntarily given, now rests upon the defense.

In discussing the second assignment of error, counsel argues that the statement made by the deceased to the chief of police cannot be regarded as a dying declaration inasmuch as the deceased did not, directly or indirectly, express any fear of impending death. We do not think that this point is well taken. The statement of the deceased was made on the day of his death; he was then suffering from seven serious wounds, two of which were fatal, and the intestines were protruding from one of them. In these circumstances, it is highly improbable that the deceased expected to survive from his injuries. We are therefore not prepared to hold that the court below erred in admitting the declaration in evidence.

The third assignment of error relates only to questions of fact and puts in question the identification of the culprits. As to the identity of Pedro Abedosa, there can be no doubt whatever; he made a complete confession before the police authorities, pleaded guilty at the preliminary investigation before the justice of the peace, and was recognized both by the deceased and by Rufino Esteban. The identification of Marciano Abedosa is, perhaps, less conclusive, but he was recognized by the deceased and by one Eulalia Mones, who met him on the road leading from the house in which the crime was committed, and we have no sufficient reason to doubt his guilt and to set aside the findings of the court below.

The court below erred in regarding the crime committed as a complex one, i. e., *allanamiento de morada* with homicide, instead of as simple homicide. The rule is that when *allanamiento de morada* is a direct means to the commission of a graver offense, the minor offense yields to the principal one and is regarded as only an aggravating circumstance (5 Groizard, *Codigo Penal*, 656). The appellants can therefore only be held guilty of simple homicide, which is sufficiently alleged in the information. As there are three aggravating circumstances and no mitigating circumstances, the penalty for the homicide must be applied in its maximum degree, the same as that imposed by the court below.

The Attorney-General suggests that in addition to the penalty for the homicide, the appellants should also be punished for the assaults upon Rufino Esteban and Nicolas de Fiesta, but as these offenses can only be regarded as misdemeanors of which only the justices of the peace and the municipal courts have original jurisdiction, we have no power to assume such jurisdiction and to impose the penalty suggested.

With the sole modification that the appellants shall be held guilty of simple homicide instead of *allanamiento de morada* with homicide, the judgment appealed from is affirmed with one-half of the costs of this instance against each of the appellants. So ordered.

Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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