

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTEBAN CARANDANG ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 32039. February 26, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Convicted of murder, the defendants appealed from the judgment of the Court of First Instance of Romblon sentencing Esteban Carandang and Pedro Marco to life imprisonment with the accessory penalties, and Marciano Marco, who was only 16 years old on the date of the crime, to seventeen years and four months of reclusion temporal with the accessory penalties, all of them to indemnify jointly and severally the heirs of the deceased in the sum of P1,000, and to pay the costs.

Several assignments of error were made. However, the Attorney-General finds no merits in said assignments of error, and contends that the evidence shows that the acts complained of constitute murder by treachery, for which the three defendants are responsible; that the acts not being accompanied by any modifying circumstance, the corresponding penalty should be imposed upon Esteban Carandang and Pedro Marco in the medium degree, or life imprisonment; and that Marciano Marco being only 16 years of age, the next lower penalty should be imposed upon him in its medium degree, or from twelve years and one day to fourteen years and eight months of cadena temporal.

The motion filed by the appellants with this court to substitute the phrase "where the fire took place" for "where the incident took place" on page 60 of the transcript of the stenographic notes taken at the trial, to which this court called the attention of the writer of this opinion, is, to our mind, correctly denied.

The evidence shows that in the afternoon of the day of record, Marciano Marco, a cloth peddler, presented himself at Perfecto Magante's house in Romblon, Romblon, offering for sale the cloth which he was carrying. Perfecto Magante who was at that time eating, told Marciano Marco to go away because they had no money. Marciano replied that the cloth could be had very cheap, whereat Juan Magante, son of Perfecto Magante, inquired as to the price of a blanket, and was told that it was worth P8.50 but that he might have it for less. Juan Magante offered P2 for it and Marciano Marco, doubtless disgusted at the low price, insulted him. Juan Magante answered the insult with a punch on Marciano's mouth, who fell to the ground with his bundle of cloth and, getting up, ran away leaving his wares behind.

From this point commences a divergence between the evidence presented by the prosecution and that adduced by the defense.

According to the latter, as soon as Marciano got up, he was pursued by Juan knife in hand, and so he ran to the town square where Esteban Carandang was selling cloth. According to the prosecution, there was no such pursuit by Juan Magante. The evidence as a whole does not, in our opinion, establish such a detail alleged by the defense.

The prosecution contends that Juan Magante, thinking that Marciano had gone for a policeman, awaited him seated on the sidewalk in front of a house.

We find it proved beyond a reasonable doubt that while Juan was thus sitting on the curb, Marciano returned followed by a crowd, and gave Juan a blow with the cane he was carrying, Juan succeeded in warding off the blow; whereupon they fought hand to hand, falling to the ground in a clinch, and rolling over in a ditch. At this, Esteban Carandang fell upon Juan Magante, trying to wound him in the back with the knife he had, but he missed him and instead wounded his companion Marciano Marco in the neck. The prosecution thus accounts for the wound in this part of Marciano Marco's body. Esteban Carandang again attacked Juan Magante from behind, while the latter was still on the ground struggling with Marciano Marco. This time he wounded Magante in the back, and then ran away. Juan Magante received two wounds in the back, besides several bruises, in consequence of which, he died the following morning.

The prosecution maintains that appellant Pedro Marco took part in the attack, wounding Juan Magante in the back. An examination of the evidence fails to disclose sufficient proof to that effect. The defence alleged, and offered evidence, that Pedro Marco did not participate in the fight. We entertain a reasonable doubt upon this point and are therefore constrained to acquit appellant Pedro Marco.

However, the trial court's findings of fact and conclusions of law as to the defendant Esteban Carandang are in our judgment correct. He is guilty of the crime of murder for the reason that he inflicted the blow upon Juan Magante's back while the latter was on the ground struggling with Marciano Marco, without any danger to his person that might come from Juan Magante, and this constitutes treachery, the qualifying element of the murder under consideration.

But Marciano Marco did not begin his attack treacherously, and so the qualifying circumstance may only be considered against Esteban Carandang. And this is because, as the Supreme Court of Spain held in a similar case decided on November 13, 1907 (Viada, Penal Code, vol V, page 31, query 32, 5th edition), although treachery, as a qualifying circumstance, is a condition which should be considered against all persons participating or cooperating in the perpetration of the crime, it is evident that in the present case it can only be imputed to appellant Esteban Carandang, because, although the two helped each other in attacking the deceased, it has not been sufficiently proved that said Esteban Carandang and Marciano Marco had conspired to take the life of Juan Magante.

Considering the evidence and the law applicable to the case, we find Esteban Carandang guilty of murder without any modifying circumstance. There was no vindication of a grave offense to Marciano Marco, neither was there passion and obfuscation aroused by said offense because it was Marciano Marco who provoked the deceased.

For all the foregoing considerations, the judgment appealed from is affirmed as to Esteban Carandang, with one-third of the costs.

With respect to Marciano Marco, the crime cannot be held as murder, and consequently he is not punishable with death or life imprisonment. Inasmuch as he was only 16 years of age when the crime was committed, the provisions of Act No. 3203 and its amendments are applicable to him. All further proceedings are therefore suspended as to him, and it is ordered that his person be placed in the custody of the Public Welfare Commissioner until he becomes of age.

Defendant Pedro Marco is hereby acquitted, with one third of the costs de oficio.

The judgment is thus modified in part and reversed in part. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa- Real, JJ., concur.

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