

THE UNITED STATES, PLAINTIFF: AND APPELLEE, VS. FLOKENDO GADILA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3727. September 30, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case having come on appeal to this court, it appears:

(1) That criminal proceedings having been instituted in the Court of First Instance of Romblon against Florendo Gadila, Simon Vicente, Patricio Vicente, Agustín Familara, and Fausto Lázaro, all of them, with the exception of the latter, pleaded guilty of the crime charged in the complaint, to wit, that on the night of the 25th of April, 1906, between 9 and 10 p. m., under the command of Severo de la Cruz, who is at present at large, the defendants, armed with talibones (large knives), proceeded to the dwelling of Juan Galiano and Benedicta Macajillas, situate in an otherwise uninhabited place on the top of a hill, and with cries of "Justicia!" entered therein, and without any warning assaulted with their large knives the said married couple Galiano and Macajillas, their two children, one aged 10 and the other 8 years, and their 6-year-old niece, killing them all instantly, and taking with them some wearing apparel belonging to the deceased, 18 pesos in Spanish-Filipino, Mexican, and Chinese coins, two large knives, and 2 cavanos of unshelled rice, all the property of the said Galiano and Macajillas.

(2) That the trial having been commenced with regard to Fausto Lázaro alone, the accused testified that on the evening of the said day he was in the company of Florencio Gadila and Agustin Familara, these names being the subject of certain question asked of him; that he was with them drinking tuba [a native wine] and that they afterwards proceeded to the river of said barrio, some 800 brazas distant from the house of the deceased, and that on hearing from his comrades that they were going to kill the couple he withdrew from the other defendants.

Simon Vicente, one of the defendants who pleaded guilty and was called to testify for Lázaro, stated that the latter had been with the other accused persons on the ground floor of the house for the purpose of protecting the operations of the attacking party; that Lázaro lived with him in the barrio of Mainit and that the other persons accused lived in the barrio of Concepción, some distance away; and that on the afternoon of April 25, 1906, they were assembled together drinking tuba.

(3) That the trial court defined the crime as that of murder, on account of the specific circumstance of alevosía, and, taking into consideration the presence of the aggravating circumstance of disregard for the respect which may be due the aggrieved parties on account of their age and sex, which is nevertheless neutralized in its effects by the mitigating circumstance of article 11 of the Penal Code, said court sentenced the defendants to life imprisonment with the accessory penalties of article 54 to pay jointly and severally to the heirs of the deceased the sum of 1,000 .pesos, to return to the said heirs so much of the stolen money as has been recovered, due regard being had to the exchange of said sum into local currency, and each to pay one-fifth of the costs, with directions that the two bolos be confiscated. Patricio Vicente and Agustín Familara have appealed from this judgment.

On a review of this appeal, the court finds that while the above-described acts should have been tried as

constituting the complex crime of robbery with several homicides, with the attendance of the aggravating circumstance of premeditation and treachery (alevosía), as well as of those of the commission of the crime by a gang and in the dwelling of the offended parties, in accordance with the precedents established in the decisions of the supreme court of Spain dated July 14, 1894, and January 29, 1895; yet, in the light of the wording of the complaint, we deem it to be in conformity with the law that the slaying of the five victims be denominated as murder, because the malefactors, soon after their arrival at the house, suddenly assaulted the defenseless family. The inhabitants of the house were unable to offer any resistance in view of the fact that Juan Galiano, on hearing the cries of "Justicia!" made a light and then went to the door of the house, which was already thrown open violently. The accused suddenly assaulted Juan Galiano, inflicting serious wounds upon him, and also attacked his wife and children. After killing their victims the assailants then stole the articles mentioned in the complaint.

In conformity with the first of the decisions above cited, rendered in cassation proceedings in the case against Andres Garcia Aquino et al. decided by the former audiencia of Vigan, it being established that the two appellants who pleaded guilty were in the company of the other accused for the purpose of attacking the house of Juan Galiano, and that in carrying out their criminal designs they entered the house with arms and took possession of some money and other articles and killed Juan Galiano, Benedicta Macajillas, Fermin and Alipio Galiano, and Petra Macajillas, these acts, which should constitute the complex crime of robbery with several homicides, punished by paragraph 1 of article 503 of the Penal Code, in this case, according to the terms of the complaint constitute the crime of murder punished under paragraph 1 of article 403, with the aggravating circumstances of known premeditation, of having committed the crime in the dwelling house of the aggrieved parties, and in a gang. "The circumstance of the culprit being a native (art. 11, Philippine Penal Code), if taken into consideration as a mitigating circumstance, would have no effect if compensated by other circumstances of the crime, such as premeditation, of the commission of the crime in the dwelling house of the parties aggrieved and in a gang (en cuadrilla)," or, as it is stated in the second decision mentioned above, rendered in cassation proceedings from the audiencia of Manila, in the case of Francisco Aguilar:

"* * * Even if said circumstance be regarded as mitigating, its effects would be neutralized by the other circumstances, and it could not reduce the maximum degree of the penalty, which is the one corresponding to the crime of murder whenever several aggravating and one mitigating circumstance are present."

In view of the foregoing, we sentence Patricio Vicente and Agustin Familara to be hung by the neck until dead, the execution to take place in Bilibid Prison on the date and at the hour to be designated by the lower court. In other respects the judgment appealed from is affirmed with respect to these two defendants, due regard being had to the proper exchange of the currency in effecting the restitution of the amount of money stolen and afterwards recovered, and each to pay, in equal parts, the costs of this instance. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

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