

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. IGNACIO BORSIED (ALIAS PEDRO AMBROSIO), DEFENDANT AND APPELLANT.*G.R. No. 3840. November 16, 1907*

Ponente: TORRES, J.

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On the morning of a certain day in the month of March, 1902, the date whereof could not be fixed, Ignacio Borsied (alias Pedro Anibrosio), the accused, was at the house which formed part of a camarin where abacd (hemp) belonging to Antonio de Lima, a grower, was stored, and situated in the town of Iriga, Province of Ambos Camarines; there were also present one Damiano, his wife, and the wife of the accused; the names of the latter do not appear in the record. At about 10 o'clock in the morning the owner of the house, Lima, sent his assistant, Mariano Santo Domingo, to the house of Juan Prima in order to get some cocoanuts, and, when the assistant left, there remained in the house the landlord, together with the accused, one Damiano, and their respective wives, all of them in friendly conversation, and without any apparent misunderstanding between them; on his return after a short time the assistant found the landlord dead and' lying face downward near the door of the house, with four wounds, while the accused was in the interior of the house gathering up some clothes and rice. Borsied, seeing that Mariano Santo Domingo, the witness, was in the house, attacked the latter with a bolo, and thereupon the witness fled and reported what he had seen to the sons and relatives of the deceased who were at the home of Juan Prima, and to the local authorities. When the latter went to the house where the affray had taken place they found nothing except the body of the deceased, which showed wounds in the abdomen, back, forehead, and arms, and upon investigation it was found that the accused and the said Damiano, with their respective wives, had disappeared from the town wherein they resided, and the accused, Borsied, was not captured until five years afterwards, at the barrio of San Agustin, municipality of Iriga.

Proceedings having been instituted by virtue of a complaint filed by the provincial fiscal on the 31st of July, 1906, accusing Ignacio Borsied, alias Pedro Ambrosio, of the crime of murder, the judge, in view of the results in the case, convicted the accused on November 19, 1906, of the crime of homicide and sentenced him to the penalty of fourteen years eight months and one day of reclusion temporal, to indemnify the heirs of the deceased, Antonio de Lima, in the sum of P500, to suffer the accessory penalties of article 58 of the Penal Code, and to pay the costs of the proceedings. From said judgment the defendant's counsel appealed.

The above-stated facts, which have been duly proven in this case, constitute the crime of homicide, defined and punished under article 404 of the Penal Code, because it has not been shown that any of the circumstances which determine the crime of murder under article 403 were present at the time of the violent death of Antonio de Lima. The unfortunate Antonio de Lima was assaulted within his own house at a time when he was alone with the accused and one Damiano, who probably took part in the commission of the crime, and two women who were in their company; the three last named," who are the only persons who witnessed the crime committed by Borsied, whether or not they participated therein, are now absent and their whereabouts is unknown, for which reason it is not proper to take into consideration any qualifying circumstance; and from the facts proved we deduce that on

the said morning and shortly before the affair took place Antonio de Lima was alive and in good health, and was engaged in a peaceful and friendly conversation in his own house with the accused and the missing Damiano and the two women; that they were thus engaged when Mariano Santo Domingo, a laborer and the only person living with the deceased, left them to go to the house of Juan Prima, not far away, in order to get some cocoanuts; that when Santo Domingo returned he found his master dead with four wounds and lying face downward near the door of the house, which he undoubtedly tried to reach upon being assailed; that when the laborer was about to enter the house he saw the accused in the interior of it engaged in collecting rice and clothes, but upon seeing him the latter let go of the articles he was holding, and attacked him with a bolo; for this reason he returned to the house of Prima and informed him and the brother and sons of the deceased of what he had seen, and they all at once went to the house where the crime was committed and found the body of Antonio de Lima lying as aforesaid.

From the foregoing facts it is only possible to deduce that the crime committed was that of homicide, since the body of Antonio de Lima was found by several witnesses with four wounds, to wit, one in the abdomen with the intestines falling out, one on the forehead, and one on each arm; no proof appears in the case of the existence of any of the qualifying circumstances which determine the crime of murder.

The culpability of the accused as the author of the above-mentioned crime has been satisfactorily established, because it has been proved that the accused and other persons were in conversation with the deceased on that morning inside the latter's house; that the accused, upon noticing the arrival, and presence of the witness Mariano Santo Domingo, attacked him with a bolo, and from that time the accused disappeared, together with the said Damiano and the two women, and was not again seen until the middle of 1906, five years later, when the accused was arrested at the barrio of San Agustin in the same town of Iriga. All of these facts, duly considered, produce in the mind a clear conviction of the guilt of the accused, as being beyond reasonable doubt the author of the death of Antonio de Lima. Nothing was alleged by the accused in his defense. In the commission of the crime herein considered the aggravating circumstance No. 20 of article 10 of the Penal Code must be considered inasmuch as the homicide was committed within the house of the deceased, and no mitigating circumstance is present to counteract its effects; therefore the penalty should be imposed in its maximum degree.

For the reasons above given it is our opinion that Ignacio Borsed, alias Pedro Ambrosio, should be sentenced to twenty years of reclusion temporal, to the accessory penalties of article 59 of the code, and to indemnify the widow and heirs of the deceased in the sum of P1,000. The judgment of the court below, thus modified, is hereby affirmed with the costs of this instance against the culprit. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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