

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDORO BASE ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 3961. October 12, 1907*

Ponente: JOHNSON, J.

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These defendants were charged with the crime of assassination, alleged to have been committed on the 2d day of August, 1906. At the close of the case made by the provincial fiscal, Eduardo Baat was dismissed upon the ground that the evidence did not show that he had taken any part in the commission of the crime.

After hearing the evidence adduced during the trial of the cause in the lower court, the judge thereof found that the defendants Iskloro Base and Fernando Lagunsad had killed, by means of a bolo, one Mariano de Paz, in a light which grew out of a gambling game. The lower court, from the evidence, found that the defendants were guilty of the crime of homicide, in violation of article 404 of the Penal Code, but extended to them the benefit of article 11 of the same code, and sentenced each of the defendants to be imprisoned for a period of six years and one day and each to pay P200 as indemnity to the family of the deceased, and each to pay one-half the costs.

From this sentence the defendants appealed to this court and made the following assignment of errors:

"First. The court erred in receiving the allegations of the accused without having first read to them the information.

"Second. That the evidence presented in the trial was not sufficient to prove that the accused were guilty of the crime charged, beyond a reasonable doubt.

"Third. That the court erred in calling and examining witnesses in the case and receiving additional evidence after the cause had been closed and submitted to the court."

With reference to the first assignment of error, the record shows that the complaint was read to the defendants and that they were given copies of the same before they were asked to plead whether they were guilty or not guilty of the crime charged in said complaint. During the trial they were also represented by an attorney, presumably of their own selection; at least the record fails to show anything to the contrary. The defendants appeared as witnesses in the cause, so far as the record shows, voluntarily and without having made any objection. Therefore the court below committed no error in receiving the voluntary testimony of the defendants.

As to the second assignment of error above noted—to wit, that the evidence, was not sufficient to show that the defendants were guilty, beyond a reasonable doubt, of the crime charged in said complaint—we have made a careful examination of the evidence and from the same it appears that one of the defendants, Eduardo Baat, and the deceased, Mariano de Paz, were, on or about the 2nd day of August, 1906, engaged in a game of chance, near the house of the latter, in the pueblo of Dulag, Province of Leyte, and that a dispute arose over the said game, resulting in a quarrel, during which quarrel the said Mariano de Paz was killed. The evidence also shows that the widow and young son of the deceased and also one Isidoro Avelin were present at the time the said Mariano de

Paz Avas killed, and from their testimony it appears that the defendants Isidoro Base and Fernando Lagunsad caused the death of the said Mariano de Paz; that the said deceased was held by Fernando Lagunsad while Isidoro Base stabbed him with a bolo, inflicting a wound in his stomach from the effects of which he died.

Fernando Lagunsad testified that the deceased assaulted Eduardo Baat with a bolo and that he (Lagunsad) intervened to protect the said Baat, and that while he was attempting to protect the said Baat he received several wounds from the hands of the deceased, and that while he was fighting with the deceased he called upon his father-in-law, Isidoro Base, to help him, and that upon the arrival of his father-in-law he released the deceased and walked away.

We can not accept this statement on the part of the accused, because the testimony of the three witnesses who were present is to the effect that Mariano de Paz was assaulted by the two defendants Isidoro and Fernando; that Fernando threw the deceased upon the ground and held him while Isidoro stabbed the deceased in the stomach with a bolo. The testimony of an American doctor who made a post-mortem examination shows that the wound received in the manner above described was necessarily fatal. The testimony also shows that the deceased died within a few moments after receiving said wound.

None of the qualifying or aggravating circumstances occurred in the commission of the crime which are necessary to qualify the crime as that of murder. The evidence is sufficient, however, to show that the defendants were guilty of the crime of homicide, punishable under article 404 of the Penal Code.

With reference to the third assignment of error above noted, the record discloses that after the prosecuting attorney and the attorney for the defendants had closed the case, the court, on its own motion, called and examined additional witnesses for the purpose of satisfying himself with reference to certain facts which had not been fully developed by the respective attorneys. This court has recently decided that if the lower court is not satisfied with the evidence adduced by the attorneys in criminal cases, with reference to a particular point, he may, on his own motion, call additional witnesses or recall some of the same witnesses, for the purpose of questioning them himself, for the purpose of satisfying his mind with reference to particular facts involved in the case. (U. S. vs. Cinco,[1] 5 Off. Ga.z.,534.)

We are convinced, therefore, that the lower court committed no errors in the trial of said case, and that the evidence shows, beyond peradventure of doubt, that the defendants were each guilty of the crime of homicide, defined and punished under the provisions of article 404 of the Penal Code, and, inasmuch as there occurred neither extenuating nor aggravating circumstances in the commission of the crime, the defendants should be punished in the medium degree of reclusion temporal.

It is, therefore, the judgment of this court that the sentence of the lower court be modified and that the defendants be sentenced to be imprisoned for a period of fourteen years eight months and one day of reclusion temporal, each to indemnify the family of the deceased in the sum of P200, to suffer the accessory penalties provided for in article 59 of the Penal Code, and each to pay one-half the costs. So ordered.

Arellano, C. J., Torres, Willard, Carson, and Tracey, JJ., concur.

[1]8 Phil. Rep., 388.

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