

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEBAN MALABANAN, DEFENDANT AND APPELLANT.*G.R. No. 3964. November 26, 1907*

Ponente: TORRES, J.

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Shortly before 6 o'clock on the morning of the 8th of November, 1900, Felino Malaran, a prisoner and assistant jailer, reported to the foreman Pedro Pimentel that Esteban Malabanan had taken some bread out of a tin can that was in the jail; Malabanan being resentful at this and also because he had received a severe blow with a cane from the said assistant jailer, attacked the latter after breakfast with a small knife, and wounded him in the chest, the right arm, and in the back. Raymundo Enriquez, another assistant jailer, upon seeing what was taking place, tried to separate them and prevent the accused from further attacking Malaran, but he did so with such bad luck that he also was wounded with the knife in the right side near the abdomen, and in consequence of said wound Raymundo Enriquez died of peritonitis and hemorrhage of the spleen eleven days thereafter. Quintin de Lemos, another assistant jailer, who also tried to stop Malabanan, was wounded in the chin. Foreman Paulino Canlas, upon becoming aware of what was going on, ordered the opening of the door of the department where detachment No. 6 of the prisoners was confined, and Malabanan upon seeing him come in tried to attack him; thereupon Canlas took hold of a stick to defend himself and to take away from Malabanan the knife he held, which, like the hand and the clothes of the accused, was covered with blood. As soon as the accused was disarmed Canlas blew his whistle to call the inspector, who on his arrival at the place where the fight had taken place ordered the three wounded men to the hospital and the aggressor locked up in the cell. It was ascertained from the accused that the knife had been found by him among the bamboo kept within the department of the detachment, and it was recognized by him when the same was exhibited.

Dr. Edwin C. Shattuck, the prison surgeon, in a sworn declaration, stated that Raymundo Enriquez died eleven days after entering the hospital in consequence of a dagger wound received in the left side and abdominal cavity, affecting the spleen, death being the result of subsequent peritonitis and hemorrhage. Felino Malaran had eight wounds, the most serious of which were on his left shoulder, left wrist, breast, and right hip. Quintin de Lemos had only a wound in the chin.

Information being filed by the foreman Paulino Canlas accusing Esteban Malabanan of the crime of homicide for having inflicted on Raymundo Enriquez a mortal wound, from the result of which he died in Bilibid Prison, Manila, and proceedings being instituted by reason thereof, judgment was rendered on the 6th of December, 1900, sentencing the accused to the penalty of twelve years and one day of reclusion temporal, from which judgment the counsel for the accused has appealed.

The facts stated above, duly proven by the testimony of eyewitnesses, constitute the crime of homicide, defined and punished by article 404 of the Penal Code, no qualifying circumstance being present in the fact that the accused inflicted on the assistant jailer Raymundo Enriquez a serious wound in the right side near the abdomen from which he died a few days later, to determine that a more serious classification should be made of the crime,

and a heavier penalty imposed.

The accused pleaded not guilty, and notwithstanding the allegations Ire made in his defense and his denial that the knife held by him with which he inflicted the mortal wound which caused the death of Raymundo Enriquez belonged to him, there is no question as to his responsibility as the convicted author of the violent death of Raymundo Enriquez, who, as has been seen, did not give the accused any reason for attacking him. but merely approached while the latter was attacking Felino Malaran in order to separate them and prevent the accused from continuing his assault on Malaran, for fear a homicide might ensue, to which pacific intervention Malabanan responded with a cut in the right side near the abdomen of the unfortunate Enriquez with the knife with which the accused was provided, as shown in the proceedings.

In the commission of this homicide there is no mitigating nor aggravating circumstance to be considered, and as to whether or not the accused was illtreated or provoked prior to his assaulting the assistant jailer Malaran, a question which will be considered in the case for lesiones graves, such a circumstance can not be dealt with in the present proceedings instituted by reason of the violent death of Raymundo Enriquez, who was seriously wounded simply because he intervened for the purpose of separating Malabanan, the aggressor, from Malaran, his victim; therefore, the proper penalty should be imposed in its medium degree.

In view of the foregoing considerations it is our opinion that the judgment appealed from should be affirmed, provided, however, that Esteban Malabanan shall be sentenced to the penalty of fourteen years eight months and one day of reclusion temporal, to suffer the accessory penalties of article 59 of the code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the proceedings. So ordered.

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

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