

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN MARINO AND DIONISIO MAPALAD, DEFENDANTS AND APPELLANTS.

G.R. No. 4063. March 25, 1908

Ponente: TORRES, J.

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TORRES, J.:

About 8 p. m. on the 5th of March, 1907, Simon Lisan was feeding a dog in the lower part of his dwelling, at the town of Ibaan, Batangas, when he was told by a boy, Pablo Gutierrez, that two persons who were out on the street wanted to see him. He thereupon Avent to the place indicated by the boy and there found Juan Marino and Dionisio Mapalad who at once said to him: "If you recognize justice, humble yourself and lie down on your face." Lisan refused to do so, and said that he did not recognize any authority in them. Mapalad then struck him a blow upon the arm with a stick, telling Juan Marino to fire at him with his revolver; but this Marino declined to do, stating that it would be heard at the municipal building; Marino, however, hit him in the head with the butt of the revolver, and from the result of the blow Lisan fell to the ground, and while he was lying upon the ground, Mapalad took away from him the bolo¹ which he used in working and which he carried at his waist, leaving the scabbard in the possession of, the assaulted person. While the two defendants were maltreating Lisan, Faustina, the latter's wife, came down from the house and asked them why they wanted to kill her husband, and Marino then ordered her not to interfere, as otherwise he would kill her, and pointed his revolver at her; overcome by fear she started to run uttering loud cries, and the assailants then departed.

Shortly thereafter, two policemen made their appearance but failed to find the accused, who had caused the injured party several lesiones which required nine days to heal; this latter fact was confirmed by the physician who examined him on the following day and who declared that the lesiones of the injured man were produced with an instrument similar to a whip, excepting the one he had behind his left ear which must have been inflicted with a heavy instrument; the lesiones were not serious and could be cured in nine days under medical treatment.

By reason of the foregoing a complaint was filed by the provincial fiscal with the Court of First Instance charging Juan Mariño and Dionisio Mapalad with the crime of lesiones menos graves, and after trial judgment was rendered on the 15th of May, 1907, sentencing each of the defendants to the penalty of six months of arresto mayor to jointly and severally indemnify the injured party in the sum of 5, and in case of insolvency to suffer the corresponding subsidiary imprisonment, and to pay one-half of the costs. From this judgment the defendants have appealed.

The above-related facts, which have been duly proven in this case, show that the crime of lesiones has been com-mitted, and as the wounds were cured within nine days without any further consequences, the offense should be qualified as lesiones menos graves, and should be considered as included within the provisions of article 418 of the Penal Code.

The denial of the accused and his exculpatory allegations, devoid of all justification and even incredible, are flatly contradicted by the witnesses for the prosecution. It appears from the record that, owing to former

misunderstandings, the accused approached the house of Simon Lisan, armed, and in the nighttime; that they then sent for him, and as he made his appearance they maltreated him; that from the result of such maltreatment, and the blow that the injured party received behind his left ear with the butt end of the revolver carried by Juan Mariuo, he fell to the ground; that while in such position Mapalad took away from the injured party the bolo which he carried at his waist, of which the scabbard alone was left in his possession. It is also further true, that the wounds inflicted upon Lisan required nine days to heal, according to the result of the medical examination; and, further, it has not been shown that a struggle took place between the injured man and his aggressors, nor that he tried to recover the bolo taken away by Dionisio Mapalad, for it appears that, when the accused left the place, the injured man was still lying on the ground. Therefore, it is unquestionable that the defendants are liable as the proven principals of the crime for which they were convicted by the court below in the judgment appealed from; that is to say, for the lesiones inflicted upon the injured party.

In the commission of the crime the two aggravating circumstances of nocturnity and abuse of superior power must be considered, since it has been proven that the accused, of common accord, attacked the offended party with arms, and that the latter, although he carried a bolo at his waist, did not make use of the same; and that in order to maltreat him in the manner described, they purposely took advantage of the darkness of night. No mitigating circumstance is present to compensate the effects of the above two aggravating circumstances, and therefore the penalty which has been imposed in its maximum degree is in accordance with the law.

For the considerations above set forth, it is our opinion that the judgment appealed from should be affirmed, with one-half of the costs of this instance against each of the defendants. So ordered.

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

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