

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NOA MAKALANGAN, DEFENDANT AND APPELLANT.

G. R. No. 40728. December 11, 1934

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a judgment of the Court of First Instance of Lanao finding the appellant guilty of the crime of murder and sentencing him to twelve years and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased Moro Banto in the sum of P1,000, and to pay the costs.

At the trial the appellant admitted having killed Moro Banto, but claimed that he committed the act because he surprised his wife Mora Kalima in the act of committing adultery with the deceased. If such were really the case, the appellant would be entitled to the benefits of article 247 of the Revised Penal Code. It is well-settled that once the defendant in a criminal case has admitted that he committed the act resulting in the death of a human being, the burden is upon him to establish the presence of any circumstance which may relieve him from responsibility, or mitigate the offense committed. (People vs. Baguio, 43 Phil., 683; People vs. Gutierrez, 53 Phil., 609, 610; People vs. Silang Cruz, 53 Phil., 635, 637; People vs. Embalido, 58 Phil., 152, 154; People vs. Baluyut, G. R. No. 32451, promulgated August 18, 1930, not reported; People vs. Ramos and Jacinto, 59 Phil., 7; People vs. Pabellan, G. R. No. 39324, 58 Phil., 964.) In the case before us, the lower court found that when Moro Banto was shot by the defendant, Mora Kalima was not with the deceased or anywhere near him. This fact was established by the testimony of three witnesses whose veracity seems to be beyond any reasonable doubt. The evidence for the defense is not, in our opinion, sufficient to overcome the positive testimony of the witnesses for the prosecution.

We agree with the Solicitor-General that the crime committed by the defendant is that of murder, qualified by treachery, because the deceased was shot while he was unarmed and unprepared for the aggression, and under circumstances tending to insure the success thereof, without any risk on the part of the defendant. The penalty provided by the Revised Penal Code, article 248, for the crime of murder is reclusion temporal in its maximum period to death, but the lower court sentenced the defendant to twelve years and one day of reclusion temporal, pursuant to the provisions of section 106 of the Administrative Code for Mindanao and Sulu.

The Solicitor-General recommends that the penalty imposed by the lower court be modified so as to conform with the provisions of the Indeterminate Sentence Law (Act No. 4103). In accordance with this recommendation, the appellant is hereby sentenced to suffer not less than six years and one day of prision mayor and not more than twelve years and one day of reclusion temporal.

Modified as above indicated, the judgment appealed from is affirmed, with costs against the appellant. So ordered. Street, Villa-Real, Hull, Imperial, Butte, Goddard, and Diaz, JJ., concur.

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