

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIGUEL PINDONG (ALIAS CAPITAN PINDONG) AND JUAN CARPO, DEFENDANTS AND APPELLANTS.

*G.R. No. 5220. August 18, 1909*

Ponente: CARSON, J.

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### CARSON, J.:

The appellants in this case, Miguel Pindong (alias Capitan Pindong) and Juan Carpo, were charged, together with others, with the crime of "robbery in an armed band, with homicide and physical injuries" (robo en cuadrilla con homicidio y lesiones), the information alleging that the crime was committed as follows:

"That at or about 8 o'clock on the night of April 12, 1908, in the barrio of Cabay-ang, otherwise known as Tabong-tabong, in the municipality of Lawaan, Province of Antique, P. L., the accused, forming a band of 12 ladrones, armed with a bari-bari rifle, lances, bolos and clubs, did intentionally, voluntarily and criminally, and for the purpose of robbery, attack the house of Domingo Marcelo, situated in the central part of the barrio of Babay-ang, and, by means of violence and intimidation, illegally capture, by surprise, the said Domingo Marcelo, who was in his house and whom they immediately bound, compelling him to descend therefrom, and when once below, two of the robbers entered the said house where they took possession of the sum of 10 pesos, Mexican currency, clothing, and other effects, the property of the said Domingo Marcelo and the girl named Genoveva Marcelino, to the total amount of P111.05; that in making the attack said accused illegally caused the violent death, with two blows from a bolo, of Eusebio Marcelo, inflicting three gunshot wounds in the breast of Mariano Marcelo, which were cured in two months, and a blow with a stone on the head of Juan Pedro, from which he recovered in seven days; all contrary to law."

The trial court convicted the appellants of the crime of "robbery in an armed band, with homicide," as alleged in the complaint, and sentenced them, and each of them, to the penalty of cadena perpetua (life imprisonment), together with the accessory penalties prescribed by law.

The evidence of record fully sustains the findings of fact as set out by the trial judge and leaves no room for reasonable doubt as to the guilt of the appellants of the crime of which they were convicted.

The information charges, and the evidence clearly discloses that the crime of robo con homicidio, defined and penalized in subsection 1 of article 503 of the Penal Code, was committed by "an armed band" (en cuadrilla) so as to mark its commission with the aggravating circumstance set out in subsection 9 of article 10 of the code, and further that in its commission advantage was taken of the darkness of the night, the aggravating circumstance set out in subsection 15 of that article. In the absence of extenuating circumstances, these aggravating circumstances would necessitate the imposition of the death penalty, that being the maximum degree of the penalty prescribed for the commission of the crime of robo con homicidio; but we think that, in view of the evidence in the record tending to disclose that the defendants were of an extremely low order of intelligence, and only partially civilized, and in view also of the fact that the commission of the homicide was not in 'itself marked by strikingly aggravating circumstances, save the fact that it was committed on the occasion of the robbery, the aggravating

circumstances above set out should be compensated with the extenuating circumstance of race, as defined in article 11 of the code.

It is true that this court, in the exercise of the discretion conferred upon it by the provision of article 11 of the code, has in most cases declined to affirm the extension of the benefits therein conferred to persons convicted of offenses against property, such as theft and robbery; but exceptions to the general rule have been made in a few instances of the complex crime of robo con homicidio, and in our opinion should be made when it appears that the guilty persons are members of uncivilized or semicivilized tribes or persons of a very low order of intelligence, and, further, that the commission of the homicide of which they are convicted was not in itself marked by strikingly aggravating circumstances. (U. S. vs. Santa Maria et al., 4 Phil. Rep., 635; U. S. vs. Sison et al., 6 Phil. Rep., 421.)

The findings of the trial court should be modified by including therein a finding that the appellants are entitled to the benefits of the provisions of article 11 of the code, and that this circumstance is sufficient to compensate the aggravating circumstances which marked the commission of the crime (U. S. vs. Bucoy et al, 4 Phil. Rep., 263; U. S. vs. Bundal et al., 3 Phil. Rep., 89); and thus modified the judgment and sentence of the trial court should be and are affirmed, with the costs of this instance against the appellants.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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