

UNITED STATES, PLAINTIFF AND APPELLEE, VS. CLAUDIO DE SILVA, DEFENDANT AND APPELLANT.

G.R. No. 5373. November 09, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with the crime of assassination, alleged to have been committed as follows:

"On or about 10 o'clock in the morning of August 9, 1908, in the barrio of Santo Toribio, municipality of Lipa, Batangas, within the jurisdiction of this Court of First Instance, the accused did, maliciously and criminally, lie in wait on a footpath and, at the moment when Primitivo Braganza passed the place, without having been seen by the latter, the defendant struck him a blow upon the head with a club with which he was armed, as a result of which the victim fell down senseless, dying three hours later. All committed in violation of article 403 of the Penal Code."

After hearing the evidence adduced during the trial of the cause the lower court found the defendant guilty of the crime charged and sentenced him with the penalty of cadena perpetua, to suffer the subsidiary penalties provided for by law, to pay to the heirs of the deceased an indemnity of P1,000, and to pay the costs.

From this sentence of the lower court the defendant appealed and presented in this court the following assignments of error:

First. The Court of First Instance of Batangas committed an error in qualifying the alleged crime as that of assassination; and

Second. The lower court committed an error in not giving the defendant the benefit of the provisions of paragraph 3 of article 9 of the Penal Code.

With reference to the first assignment of error, the facts proven during the trial seem to show, beyond peradventure of doubt, that on or about the morning of the 9th day of August, 1908, the deceased, Primitivo Braganza, and Norberto Tisbe, were walking in a footpath in the barrio of Santo Toribio, municipality of Lipa, in the Province of Batangas, when, without warning or any notice of any kind, the defendant, who apparently had been lying in wait with a club, attacked Primitivo Braganza and struck him several blows upon the head, from the effects of which Braganza died then and there. The club used by the defendant was a heavy club. The defendant remained in hiding at the side of the footpath and attacked the deceased without any warning whatever. A sudden and unexpected attack under circumstances which render the person attacked unable to defend himself by reason of the suddenness and severity of the attack, constitutes alevosia and in the present case is sufficient to qualify the crime as that of assassination. (U. S. vs. Matanug, 11 Phil. Rep., 188; Viada, vol. 1, p. 202.)

In the second assignment of error above noted the appellant attempts to justify his acts by asserting that he had been attacked by the deceased, and that in inflicting the blows upon the deceased he had no intention of committing so grave an injury as that actually inflicted. In our opinion the lower court committed no error in not

applying paragraph 3 of article 9 of the Penal Code. The evidence shows, beyond peradventure of doubt, that the defendant had lain in hiding, waiting for the arrival of the deceased, with a heavy club in his hand for the purpose of inflicting the blows which he actually did inflict. He must have intended, by reason of the means which he employed, to have committed the act which he actually did commit.

In discussing this same question, the supreme court of Spain, in a decision of the 29th of January, 1876, said:

"If the accused struck a man such a heavy blow upon the head with a club that the man fell down with such an injury that it resulted in congestion of the brain from which he died in a few days, would he be able to allege in his favor the mitigating circumstance of not having intended to commit so grave an injury as that inflicted? The supreme court decided the question in the negative, basing its conclusion upon the theory that heavy blows upon the head, whether given with a club or other hard instrument, almost always cause death sooner or later, as shown by experience; the accused could have struck the blow with less force than he did and upon any other part of the body of the victim, instead of which he committed the deed in a very different manner by employing adequate means to cause death, therefore it is not reasonable to suppose that he had a purpose other than that which tended to produce the natural consequences of his acts, or that he had no intention of committing so grave an injury as that which he inflicted."

Finding then as we do that the crime was committed with *alevosia*, which was sufficient to qualify the crime as that of assassination, and there being no extenuating or aggravating circumstances, the penalty to be imposed must be in the medium degree of that provided for the crime of assassination, or *cadena perpetua*.

The lower court committed no error in imposing the penalty which he did impose. The sentence of the lower court is therefore hereby affirmed with costs.

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

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