

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALENTIN DE JOSE, DEFENDANT AND APPELLANT.*G. R. No. 5754. September 16, 1910*

Ponente: TORRES, J.

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On the night of April 13, 1908, Valentin de Jose entered the house of Silverio de la Cruz, and, after an altercation that arose between both men, Valentin, who was armed, attacked the owner of the house with a kris or bolo, inflicting upon him five wounds - one in the right side, through which the intestines protruded; another in the back, another in the calf of the leg, and two others in the arm and the palm of the left hand. As a result of these wounds the assaulted party died at a certain distance from the house, whither he was dragged by his aggressor. A post-mortem examination of the body of the deceased showed that it bore three stab wounds, one in the right side, another in the lumbar region of the left side, and the third in the right shoulder-blade in addition to two wounds of the nature of cuts, one in the left hand and the other in the left foot. The said examination was made by a curandero, or medical practitioner, who testified at the trial of the cause, though the court decided that his testimony was admissible, inasmuch as he had seen the said wounds, but not as an expert, on account of his not being a physician nor experienced in such matters, notwithstanding that he made the examination by order of the justice of the peace.

Because of the preceding facts, a complaint was filed in the Court of First Instance of Capiz by the provincial fiscal, on May 19, 1908, accusing Valentin de Jose of the crime of murder. The trial having been held, the court, in view of the evidence adduced, rendered judgment, on December 15 of the same year, finding the defendant guilty of the crime of homicide and sentenced him to the penalty of fifteen years' reclusion temporal, to the accessory penalties, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs. From this judgment an appeal was taken.

Conclusive evidence was adduced at the trial of the violent death of Silverio de la Cruz as the result of five wounds, one of them, that received in the right side, of a serious and mortal nature. The crime committed is that of homicide, provided for and punished by article 404 of the Penal Code, inasmuch as the record does not show that its perpetration was attended by any of the specific and qualifying circumstances of homicide which convert it into murder and are enumerated in article 403 of the same code, nor by those of premeditation and treachery, expressed in the complaint. Sufficient evidence was not adduced to prove that the aggressor deliberately, and with premeditation, conceived the definite purpose of depriving the deceased of his life, nor that the said aggressor availed himself of ways and means tending directly to obtain the consummation of the crime without such risk to his person as might originate from any defense offered by the assaulted party, for the aggressor, provided with a bolo or kris and a lance, entered the house of the deceased on the night of the crime, and, after an altercation between the two, the defendant Valentin de Jose, who was drunk, seeing that De la Cruz firmly refused to accompany him to a dance hall, in anger attacked the deceased in the presence of the latter's wife and struck him repeated blows with a bolo or kris, first in the calf of the leg, then in the right side, through which wound the

intestines, protruded, on the palm of the hand, on the left arm and on the shoulder; immediately thereafter he dragged the wounded man, almost dead, outside of the house and to a distance of 20 meters, where the body was afterwards found by the agents of the Government authorities.

The defendant, Valentin de Jose, was proved to be the sole perpetrator, by direct participation, of the said serious crime and was convicted thereof. His exculpatory allegations can not be admitted, as they are absolutely devoid of proof and obviously improbable.

The facts were perfectly well established that the defendant, being armed, entered the house of the deceased on the said night and that, after a dispute brought about by the refusal of the owner of the house to accept his invitation to go to a house where there was a dance, he attacked the deceased, in the presence of the latter's wife, inflicting upon him the wounds which caused his death. Although the wife, possessed by fear because of what she had seen, fled from the house and hid herself in a nearby wood, it is certain that she saw the defendant drag the wounded man, almost dead, out of the house, which was low and had no stairs, and take him or his body to a place about 40 yards away, where in fact it was found several hours afterwards by agents of the Government authorities.

The defendant alleged that the deceased awaited him at the place where they quarreled and, armed with a bolo and a lance, attacked him, wherefore he, in order to defend himself, had to engage in a struggle with the deceased, who, in the midst of the struggle, inflicted upon himself with his own bolo the wounds from which he died, and that after defendant had succeeded in snatching away the weapon he left the place, leaving the deceased stretched out on the ground. This allegation is entirely unsubstantiated, is incredible in itself on account of its unlikelihood, in view of the number of wounds borne by the body of the deceased, and does not appear to be corroborated even by circumstantial evidence, inasmuch as it is undeniable that the assault took place in the house of the deceased on an occasion when the latter was disarmed and could not so much as defend himself from the attack, according to the testimony of the victim's wife, who saw the beginning of the assault and was present at the time; and if, afterwards, the body was found outside the house about 40 yards away, it was because it had been conveyed there by the defendant, for the purpose undoubtedly of giving an appearance of truth to the allegation, made in his defense, that the deceased awaited him there to assault him.

Under the well-founded hypothesis that Silverio de la Cruz was assaulted and received his five wounds in his house, the fact admitted by the defendant that he struggled with the deceased, though out of the house and in another place and without arms, according to his unsupported allegation, united with the fact that the deceased died as the result of five wounds, constitutes unimpeachable proof that the slayer or the author of the wounds followed by the death of the deceased was the defendant, the only one who quarreled with the latter on the night in which he was killed; and because of the lack of proof of the facts alleged by the aggressor his guilt as the author of the death of his opponent must be considered as established.

With respect to the commission of the crime, we must consider the presence of the twentieth aggravating circumstance of article 10, that is, that of the crime having been perpetrated in the dwelling of the deceased, who is not shown to have provoked the same. This circumstance is counterbalanced in its effects by the extenuating one of intoxication, the sixth of article 9 of the Penal Code, since the record does not show that the defendant was habitually intoxicated; wherefore, these two circumstances compensating each other, the penalty should be imposed upon the defendant in the medium degree.

For the foregoing reasons, and considering the judgment appealed from to be in accord with the law, it is, in our opinion, proper to affirm, and we hereby affirm, the judgment, with the costs against the appellant.

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

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