

THE UNITED STATES, PLAINTIFF, VS. THE MANOBO LIWAKAS, DEFENDANT.*G.R. No. 5867. October 17, 1910*

Ponente: TORRES, J.

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On the night of a day, the date of which is not shown by the record, in the month of July, 1908, Liwakas, a Moro of the Manobo tribe, entered the house where the Manobos named Mamacao and Santanan, husband and wife, were living and, at the time, were asleep, by passing through one of the windows, and once inside, assaulted the inhabitants of the house with the bolo with which he was provided, inflicting upon the man, Mamacao, eight wounds in the head and upon the woman, Santanan, one in the neck, killing them instantly. The aggressor on leaving the said house bore away with him Santanan's minor daughter, named Camaning, and took her into a wood and there, by force, did lie with her.

For the foregoing reasons, and in view of the preliminary investigations made by the judge of the tribal ward court of the district of Davao, the assistant fiscal filed a complaint in the Court of First Instance of the Moro Province, charging the Manobo Liwakas with the crime of murder, and the present cause having been instituted, the court, in view of the evidence adduced at the trial, rendered judgment on December 2, 1909, sentencing the accused to the death penalty, for the commission of the crimes of double murder, abduction, and rape, to pay an indemnity of P1,000 to the heirs of the deceased Mamacao and Santanan, P500 to Camaning, the girl offended by abduction and rape, and the costs. It was ordered that the said culprit should be executed in front of the house where he committed the crime and on a date that should be fixed after the affirmation of the death sentence by the Supreme Court, for a review of which the cause was forwarded to this court.

The facts related and duly proved in this cause constitute the crime of double murder, provided for and punished by article 403 of the Penal Code, inasmuch as while the Manobo-Moros, Mamacao and Santanan, were sound asleep in their house, in the barrio of Sigaboy, municipality of Davao and district of the same name, they were attacked and received, Mamacao, eight wounds in the head, and Santanan, one single wound in the neck, as a result of which they then and there died in the very bed in which they were sleeping, without having been able to arise in order to defend themselves or even to escape, owing to the suddenness of the assault and the repeated blows with the bolo inflicted upon the man and the mortal wound caused in the neck of the woman. The acts which resulted in the death of the deceased were perpetrated with perfidy and treachery, as the aggressor employed means, ways, and forms for the direct purpose of assuring the consummation of both crimes without risk to his person such as might have arisen from any defense his victims might have been able to make.

Although the defendant Liwakas did not testify in the Court of First Instance, yet, by the testimony of the judge of the tribal ward court it is shown that in the preliminary investigation the accused pleaded guilty to the said crime, and in connection with his plea made the following statements : A long while before the crime, and according to a custom of his tribe, he bought the girl named Camaning, who was about 10 years of age, from a man called Magañon, the girl's true father and the husband of the deceased Santanan. The latter, a long time before, had

separated from her husband and joined one named Mamacao, with whom she was then living. In order to marry the said girl he had to deliver, as a sablat, effects to the value of about P30 and two agunes. After his wife had been living with him, and with whom he had carnal communication, and on an occasion when he went to the hills to gather copal gum, he left his wife Camaning in the house of a woman named Atang, in the sitio of Tubotubo. On his return he did not find his wife, because she had been taken away by her mother, Santanan. He therefore went to see the latter in the house of Mamacao, with whom she was living, and demanded the return of the sablat which he had paid for the girl. This, Mamacao refused to do, whereupon the accused sought the Moros Icus, Nalayo, and Casapat, in order that they might intervene as friendly arbitrators; but Mamacao refused to compromise, saying that if his lance should tell him to return the price, he would return it, otherwise he would not. Thereupon, Mamacao looked at the lance he was holding in his hand, and, the accused being displeased with Mamacao's answer and having heard the advice given him by Maganon, that he should take the law into his own hands, sharpened his bolo in the afternoon and that night entered the house of the deceased and killed them both in the manner related by the only eyewitness, Camaning.

The latter said that on the night of the crime she was asleep in the house where her mother was living and was awakened by the noise occasioned by the assault. This witness also stated that, after the perpetration of the crime, the aggressor Liwakas caught her and carried her out of the house into a wood where by force he had carnal connection with her twice, and that on one occasion, after they had been living together, she managed to escape from the power of the accused and took refuge in the house of a man named Melecio.

The witnesses Ilaya, Masapat, and Icus affirmed that Liwakas by his having delivered a sabkit to the parents of the girl Camaning succeeded in marrying her, and one of them stated that the latter had assured him that she was the wife of Liwakas; but the girl Camaning in her sworn testimony denied that she was the wife of the accused and said that she was unmarried and had not been asked in marriage by the defendant Liwakas. She also alleged that she had not yet menstruated; that before she was raped she had had no carnal relations with the accused, and that on the night of the assault two other minors, named Enrique and Rosita, were also in the house and fled on being awakened by the disturbance therein.

From the foregoing facts it is concluded that the accused is the proved principal, by direct participation, fully convicted of the double murder under prosecution, for the testimony of the witnesses and all the circumstantial evidence of the case confirm the statements made by him in explaining his conduct and produce in the mind the most complete conviction, beyond all doubt, of the defendant's guilt.

In the matter of the perpetration of the crime it is proper to consider the presence of the aggravating circumstances 7, 15, 20, and 21 of article 10 of the Penal Code, as it was shown that Liwakas commenced to sharpen his bolo on the afternoon immediately preceding the night of the crime, which indicated that, from that time, he thought of and determined upon committing the said murders and did with premeditation deliberately resolve to deprive the deceased Mamacao and Santanan of their lives, thus preparing, by those overt acts, the execution of the crime, which he committed by availing himself of the darkness and silence of the night at a time when the deceased were sound asleep. The defendant killed his victims in their own dwelling, which he entered by scaling the wall and passing through one of the windows, not a way intended for entrance. Even though the special circumstance provided in article 11 of the Penal Code be considered, in view of the race, ferocious and savage habits of the culprit, and his lack of education, this extenuating circumstance is completely counterbalanced by one of the aforesaid aggravating circumstances, only one of the latter being thus compensated for and the three others still remaining in force; wherefore the penalty specified by law must be imposed in its maximum degree.

With respect to the errors attributed to the judgment submitted to this court for review, it must be borne in mind that Liwakas was not charged in the complaint with any of the acts that constitute the crimes of abduction or rape,

and, although the eyewitness of the said murders testified that she was taken into a wood and there raped by the accused, this fact is not the subject of this cause, nor can it be considered in reaching the decision to be rendered herein, for the reason that it was not alleged in the complaint.

In view of the statement of the acts committed by the accused, as well as of the circumstances which accompanied the perpetration of the crime, two of which, those of premeditation and treachery, are specific and either of them qualify the crime of homicide by converting it into one of murder, it would be improper, without considering them, to admit the allegation of the defense that only a crime of double homicide, and not one of double murder, was committed.

With respect to the alleged error of the lower court in failing to consider circumstance 5 of article 9 of the Penal Code, on account of the said crimes having been committed in vindication of a grave offense caused to the perpetrator of the murders, it is sufficient for the purposes of this decision to state that, even admitting as true the facts alleged by the accused and, notwithstanding the savage customs of those of his race, as there was a constituted authority in the place before whom they could apply, the conduct of Mamacao and of Camaning's mother could never justify the violent death of the deceased, nor would it have been lawful to have permitted Liwakas to take the law into his own hands to avenge his pretended injury.

For the foregoing reasons, and in view of Act No. 1577, it is proper, in our opinion, to affirm the judgment reviewed whereby the Manobo Liwakas is sentenced to the death penalty, which shall be executed in the square of the pueblo, or in such other place as the governor of the province shall designate; provided, moreover, that in case the death penalty imposed should not be carried into effect, on account of the culprit's being pardoned, he shall be sentenced to the accessory penalties prescribed by article 53 of the Penal Code, with suppression of the indemnity of P500 to the girl Camaning for the crimes of abduction and rape which were not the subject of this cause, the costs of this instance to be charged against the defendant. So ordered.

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

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