

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAMPACAN, HAMIL AND KAET, DEFENDANTS AND APPELLANTS.*G.R. No. 6491. March 23, 1911*

Ponente: TRENT, J.

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This case is before us en consulta from a judgment of the Court of First Instance of the Fourteenth Judicial District, sitting at Jolo, condemning each of the defendants, Tampacan, Hamil, and Kaet, to suffer the extreme penalty of the law death by hanging - to indemnify, jointly and severally, the heirs of the deceased, Saliling, in the sum of P1,000, and to the payment of the costs of the cause, for the crime of robbery with homicide.

About daylight on a morning in the month of July, 1910, the defendants, Tampacan, Hamil, and Kaet, all armed with deadly weapons, went to the house of the Moro Saliling, situated in the jurisdiction of Siasi, district of Sulu, Moro Province. When they arrived at this house and on finding that Saliling, his wife, daughter, and little son, were asleep, they cut the door fastenings, entered, and Hamil secured possession of Saliling's trunk, which contained various effects and wearing apparel, and started to make his escape with said trunk. At this moment Saliling awoke, jumped up, and began trying to recover the trunk from Hamil. Tampacan went to Hamil's assistance and struck Saliling across the shoulder with his barong, separating his, Saliling's, body almost to the waist. As a direct result of this terrific blow Saliling died instantly. Hamil made his escape with the trunk. Kaet then attacked Iddao, Saliling's wife, and called Tampacan, saying: "Kill her, otherwise she will report what we have done to the American lieutenant." Tampacan then struck this woman two blows with his barong, inflicting two grave wounds, one on the breast and the other on the arm. Immediately thereafter, believing that they had succeeded in killing this woman, they started after Sagdario, deceased's daughter, but she made her escape uninjured. On hearing the girl screaming for help, the defendants ran away, taking the trunk and its contents along with them.

These facts have not only been established by the direct and positive testimony of the wife and daughter of the deceased, to whom the defendants were well known, but also by the free and voluntary confession of Tampacan, made on and before the trial, in which he gave a detailed account of how the murder and robbery were committed. He having pointed out the place where the trunk was concealed, it was recovered and exhibited in court and properly identified.

The facts as above set forth constitute the complex crime of robbery with homicide, as defined and punished under article 502 of the Penal Code, in relation with paragraph 1 of article 503, which provide as follows:

"ART. 502. Those who, with intent of profiting thereby, shall take possession of the personal property of another, with violence or intimidation of the person or by employing force with regard to the personal property, are guilty of the crime of robbery.

"Art. 503. A person guilty of robbery with violence or intimidation of, the person shall be punished:

"1. With the penalty of cadena perpetua to death, if on account or on the occasion of the robbery there results

homicide."

In the commission of this crime there were present the generic aggravating circumstances set out in Nos. 9 and 20 of article 10 of the Penal Code, inasmuch as it has been shown that the crime was committed in the house of the deceased and by the three defendants, all armed with deadly weapons (barongs) who had stealthily entered the said house while the deceased and his family were asleep. After Hamil had secured possession of the trunk and while Saliling, who was unarmed, was engaged in trying to recover said trunk, he received the fatal blow from Tampacan. The defendants, taking advantage of the superior strength which their number and their weapons afforded them, overcame the deceased and took his life. There is abuse of superior strength when two or more armed men attack an unarmed person for the purpose of robbery.

We think it was error to apply nocturnity as an aggravating circumstance, for the reason that the defendants arrived at the house of the deceased just at daybreak, and when they committed this crime it was sufficiently light for the wife and daughter of said deceased to clearly and distinctly recognize and identify each one of them. Before this circumstance can be taken into consideration it must be shown that the defendants took advantage of the darkness of the night for the purpose of committing the crime charged.

In the absence of any of the extenuating circumstances mentioned in article 9 of said code, the penalty, under the provisions of No. 1, article 503, above quoted, must be imposed in its maximum degree, unless in the exercise of the discretion vested in the courts, the extenuating circumstance of race should be taken into consideration in favor of the defendants, under the provisions of article 11 of the Penal Code, as offsetting the two aggravating circumstances above-mentioned.

"In the application of the provisions of article 11, the courts may use it in their discretion to offset any number of generic aggravating circumstances." (U. S. vs. Pado, 19 Phil. Rep., Ill; U. S. vs. Bundal, 3 Phil. Rep., 89, and U. S. vs. Montecillo, 11 Phil. Rep., 109.)

It is always within the discretion of the court as to whether or not the provisions of article 11 should be applied. The defendants are all Moros, and so was the deceased. We are not unmindful of their race, their lack of education, their religion, habits, and customs; neither are we unmindful of the fact that robbery with homicide is one of the gravest crimes known to our law. The law, without any qualifying circumstances, fixes the penalty for the commission of this crime from life imprisonment to death; in fact there are only four crimes with so severe a penalty, namely; robbery with homicide, treason, piracy, and parricide. The imposition of so severe a penalty for the commission of the crime of robbery with homicide is due to the fact that when men place "filthy lucre" above the value of human life they deserve to be severely punished.

The defendants in this case deliberately and coolly planned this robbery, and determined to secure possession of the goods of the deceased regardless of the consequences. They exercised ordinary care and intelligence in carrying out this plan. They did not commit this crime under a heated passion, or blind impulse of the moment in defense of some real or imaginary injury to themselves, their families, or their property, but purely for gain.

Under all these facts and circumstances we think that, in strict justice, the defendants should not be given the benefit of the provisions of article 11 of the Penal Code.

The judgment imposing upon the defendants the death penalty is hereby affirmed, with costs. So ordered.

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

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