

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHIONG SONGCO, DEFENDANT AND APPELLANT.

G.R. No. 6503. February 27, 1911

Ponente: CARSON, J.

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CARSON, J.:

The trial court found and the evidence of record conclusively establishes that the defendant and appellant threw the contents of a bottle of sulphuric acid into the face and on the body of the complaining witness, inflicting wounds which resulted in the illness (enfermedad) of the injured man for more than thirty days. It was further proven that the attack was made treacherously (con alevosia), as that circumstance is denned in article 10 of the Penal Code, it having been made at night, from behind the shelter of a sheet of zinc, and at a time when the victim was wholly unprepared to make any defense, he not having any reason to anticipate an assault so unexpected and unusual.

The trial court found the defendant guilty of the crime of lesiones denned in subsection 4 of article 416 read together with article 417 of the Penal Code, marked with the aggravating circumstance of nocturnity, and sentenced him to imprisonment for 1 year and 1 day. But the commission of the crime having been marked with the qualifying circumstance of treachery, the special penalty prescribed in the last paragraph of article 416 should have been inflicted, that is to say, the penalty of prision correccional in its minimum and medium degrees. This penalty should have been imposed in its medium degree, the commission of the offense not having been marked by aggravating or extenuating circumstances, the aggravating circumstance of nocturnity as found by the trial court being taken into consideration in the finding of the existence of the qualifying circumstance of alevosia.

We should add that the crime as committed is not in any wise related to the offenses defined and penalized in article 417 of the code, as found by the trial court, the provisions of which clearly relate to the use of poisons and the like in an entirely different manner.

The sentence imposed by the trial court is therefore reversed, and instead thereof, we sentence the defendant and appellant to two years of prision correccional, together with the accessory penalties prescribed by law, and to the payment of the costs of both instances.

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

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