

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. COSME JUARES ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 7265. February 12, 1912*

Ponente: CARSON, J.

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The appellants were convicted of the crime of homicide by the Court of First Instance of the Province of Cebu.

The information upon which this prosecution is based charges Cosme Juares, Fernando Juares, Crispin Juares, Mariano Empalmado, Juan Caramugan, Pedro Juares, and Valentin Juares with having inflicted serious wounds upon the person of one Saturnino Lapas, from the effects of which he died. One of the defendants, Mariano Empalmado, was not before the court, and another, Cosme Juares, was acquitted. This appeal is now presented by the other five defendants, who were convicted in the court below.

It appears that on the 28th day of September, 1909, a fiesta was celebrated in the barrio of Calignan, in the municipality of Carcar, Province of Cebu. In the late afternoon of the day of the fiesta, Lapas, a man of rather violent character, was in a state of intoxication, going about the village in a boisterous and unruly manner, disturbing and abusing the people who were in attendance on the fiesta. He was especially troublesome to the tenderas, interfering with them in the conduct of their business. Crisanto Tangaro, teniente of the barrio of Calignan, took him to task and reprimanded him for his bad conduct. Hardly had Tangaro gone away before Lapas engaged in a fresh altercation with Cosme Juares, who was endeavoring to take from him a rather dangerous club which he was carrying. Cosme Juares, who was a teniente of an adjoining barrio, called upon the other defendants herein, his relatives and subordinates, to come to his aid and not to leave him alone in his efforts to get possession of the club. They responded, and a general disturbance followed, in which quite a number of persons took part. Lapas received several slight wounds and registered a complaint with the teniente of the barrio of Calignan, Crisanto Tangaro, against one Francisco Gellido, alias Butong. The teniente determined to take both Lapas and Butong before the proper authorities of the village in order that an investigation might be made of the charges. At this point the defendant Juan Caramugan, who had gone away at the beginning of the altercation between Cosme Juares and Lapas, returned armed with a pinuti (a bolo or long knife), and upon seeing Lapas approached him in a threatening attitude. Lapas apparently became frightened and attempted to make his escape. Juan Caramugan was disarmed, and about the same time Lapas broke away and was followed by Mariano Empalmado, armed with a pinuti, Fernando Juares, also armed with the pinuti which had been taken away from Juan Caramugan, and by Crispin Juares, who, though unarmed, was throwing stones and taking an active part in the pursuit. These three defendants were presently joined by Pedro Juares and Valentin Juares, who likewise threw stones at the fleeing Lapas. The deceased was last seen alive endeavoring to make his escape from these five defendants in the growing darkness of the night. The dead body of Lapas was found on the following day in a near-by field, covered with cuts, wounds, and bruises of various kinds.

Juan Caramugan took no part in the pursuit, and does not appear to have been present when the death of Saturnino Lapas took place. It is true that while the deceased was being held in custody he approached him in a threatening

attitude and apparently was the first to make the movement against the deceased which doubtless resulted in the deceased's breaking arrest and taking to flight. The court below was of opinion that Caramugan was the leader in the disturbance which resulted in the death of the deceased, and was of opinion that the fact that he did not join the pursuit did not relieve him of criminal responsibility. The record however does not disclose any evidence of conspiracy to take the life of the deceased prior to the time when the party pursued him into the fields after he had broken his arrest. There is nothing whatever in the record to show that Caramugan had any reason to believe or to anticipate that the defendants, who actually pursued Lapas, would do him to death when they caught up with him. We are of opinion, therefore, that the judgment of conviction should not be sustained as to him.

There were no witnesses present when the deceased was actually done to death, but there can be no reasonable doubt that he came to his death at the hands of the party which pursued him after he broke his arrest. There may have been others who also took a part in this tragic affair, and who may even have been more active participants than these defendants and appellants, but this in no wise relieves the appellants of their responsibility. We hold that there is no reasonable doubt as to their guilt.

We agree with the trial judge, however, that the evidence discloses no aggravating circumstances, and that the provisions of article 11 [Penal Code] should be taken into consideration under all the circumstances of this case in extenuation of the guilt of the accused, and further that the conduct of the deceased, which provoked and brought on the quarrel or disturbance which resulted in his death should also be taken into consideration as an additional extenuating circumstance.

With reference to Valentin Juares, a further mitigating circumstance was taken into consideration by the court below, in that he was under 18 years of age, and appears to have been acting under the belief that he was obeying the orders of a superior officer. The trial judge sentenced this defendant to two years four months and one day of prision correccional. The other appellants were each sentenced to twelve years and one day of reclusion temporal, and to the payment of one seventh of the costs of the action, and to indemnify jointly and severally the heirs of the deceased in the sum of one thousand pesos.

It appears that Valentin Juares was under 18 years of age and over 15. Section 2 of article 85 of the Penal Code provides that "the penalty next lower than that prescribed by law" is to be applied in its proper degree in such cases. This penalty in the present case is prision mayor in its minimum degree.

There is evidence in the record which tends to disclose that in intervening in the disturbance which resulted in the arrest of the deceased and in the attempt to recapture him when he broke from arrest, all of the convicts were acting under the orders of the teniente of their barrio, and believed that it was their duty to obey those orders; but it is very clear that no such orders could justify or excuse their conduct in doing the unarmed man to death, while he was attempting to escape from the scene of the disturbance.

The judgment of conviction and the sentence of the trial court in so far as Juan Caramugan is affected thereby should be and is hereby reversed, and he is acquitted of the crime with which he is charged, with his share of the costs in both instances de oficio. He will therefore be set at liberty forthwith.

So much of the sentence as imposes upon the defendant Valentin Juares the penalty of two years four months and one day of prision correccional should be and is hereby modified by substituting in lieu thereof the penalty of six years and one day of prision mayor, and thus modified the judgment of conviction and the sentence imposed upon all the appellants except Juan Caramugan is affirmed, with their respective shares of the costs of this instance against them. So ordered.

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

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