

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO GINOSOLONGO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7498. September 12, 1912

Ponente: TORRES, J.

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TORRES, J.:

This case has come before us through an appeal raised by the three defendants from the judgment of conviction rendered by the Honorable Adolph Wislizenus, judge.

On October 19, 1904, Hilarion Layaolayao, then lieutenant of the barrio of Tobod, of the municipality of Dumanjug, ordered several members of the police to make investigations in that barrio for the purpose of ascertaining who were and who were not provided with personal registration certificates, and to prepare a list of such persons. In obedience to this order the policemen Felix Cambonga, Cesareo Ordeliza, and Fau'sto Oatisan, together with their corporal, Cesareo Padayao, started to discharge their duty at 3 o'clock in the afternoon of that same day, and, at about 7 o'clock in the evening, went in front of the house of Santiago, Feliciano, and Ciriaco Ginosolongo. After wishing them good-evening, the officers stated to them the purpose of their presence there, whereupon they were invited by the owners of the house to come inside. Only the corporal, Cesareo Padayao, provided solely with a small whip, accordingly entered the house, the three other policemen, who carried bladed weapons, remaining in the yard below. When the corporal Padayao, asked the said men for their cedula or registration certificates, one of them replied that he would show them to him at once, offering him at the same time a cigar, and while they were getting the cedulas from some place in the house, Santiago Ginosolongo put out the light and with a pinuti, a long pointed bolo, pierced corporal Padayao through the body, the weapon entering below the left armpit and the point of the blade coming out at the right side; thereupon the wounded man shrieked and called to the other policemen for help and rushed precipitately toward the yard, but on the stairs he was wounded again by another blow on the right leg. At the first shriek of the victim, the three policemen who were in the yard below responded, but were met by the defendants who were also coming down the stairs in pursuit of the corporal, and then a struggle ensued between the former and the policeman, Felix Cambonga, the only one of the officers who made resistance, for the other two policemen, his companions, took to flight. As a result of the fight, Antonio Ginosolongo, the defendants' father, and Petra Ginosolongo, their sister, were killed in the yard, and the policeman, Cambonga, received three wounds, inflicted by the said Santiago Ginosolongo, in the forehead, in the left side and in the chest or waist.

The aforesaid facts were brought to the notice of the justice of the peace court of Dumanjug, on October 21, 1904, by Corporal Padayao's widow, and, a preliminary investigation having been made on August 28, 1911, a complaint was accordingly filed by the provincial fiscal in the Court of First Instance of Cebu, charging the said Santiago, Feliciano, and Ciriaco Ginosolongo with the crime of homicide, and this case having been instituted, the court, after due consideration of the evidence, rendered judgment on November 7, 1911, sentencing each of the defendants to the penalty of twelve years and one day of reclusion temporal and to pay one-third of the costs. From this judgment, the defendants appealed.

From the facts aforerelated, duly proven in this case, it appears that, in the evening of October 19, 1904, on an occasion when four policemen, complying with their duties as agents of the authorities, were carrying out an order from the municipal president of Dumanjug, and as soon as their corporal, Cesareo Padayao, entered the house, upon the invitation of some one of its inmates, to which latter he announced the object of his visit, he was offered a cigar to smoke, the said inmates agreeing to show him the cedula which he desired to see; that thereupon, without warning, Padayao was assaulted by Santiago Ginosolongo who stabbed him with a long, pointed bolo which pierced him through the body, the weapon entering below the left armpit and its point coming out at the right side; that, when the wounded man was running down from the house to the yard below, he was still pursued by his assailant, who inflicted upon him two other wounds as a result of which he immediately fell at full length and died at a place about 10 meters distant from the house; that as the policeman, Felix Cambonga, at the shrieks of the unfortunate assaulted corporal, approached to render aid, he was also set upon by Santiago Ginosolongo, who inflicted upon him three serious wounds, and, as a consequence of the struggle between Cambonga and the defendant just above mentioned, the latter's father and sister, Antonio and Petra Ginosolongo, were also killed, they having approached the said combatants, and whether they came near the latter to separate them or to take a hand in the fight by assisting their son and brother, is a fact not satisfactorily shown by the record.

The acts committed by Santiago Ginosolongo, besides constituting unlawful resistance to agents of the authorities while they were performing the duties of their office, are characteristic of the crime of murder, perpetrated against the corporal, Padayao, on account of the roughness and suddenness of the attack made by the aggressor at a moment when the assaulted party was unsuspecting of danger and unarmed and was waiting to be shown the cedula which he had demanded, far from suspecting that he was to be assaulted in that manner after he had been invited to enter the house and had been accorded a friendly reception therein. JJut, as the complaint only charges the accused with the crime of homicide, it would not be lawful to convict them of the more serious crime of murder, and, therefore, this case must be decided in accordance with the classification made of the crime under prosecution.

The crime of homicide is provided for and punished by article 404 of the Penal Code; and it is an unquestionable fact that the police corporal, Cesareo Padayao, met a violent death at the hands of his assailant, Santiago Ginosolongo, and, therefore, it is beyond peradventure that this defendant is the sole proved perpetrator by direct participation confessed and convicted of the said crime, classified in the complaint as simple homicide, instead of murder, as it should have been, since it was committed with treachery.

In view of the fact that in the complaint itself the crime of attempt against the agents of the authorities, is not charged, this crime may not, lawfully, be considered in this decision, which must deal exclusively with that of homicide.

With respect to the allegation made by Santiago Ginosolongo, that, in attacking Corporal Padayao, he acted in his own defense and in that of his father and sister, the record of this case does not show that the four policemen went into the defendant's house, nor that they committed any abuse or insult against the inmates thereof. Neither is there proof that when this defendant, Santiago, assaulted Padayao and pierced him through the body with a deadly weapon, he himself had previously been attacked, and his father, Antonio Ginosolongo, was already wounded; for the appellant's own brothers, Feliciano and Ciriaco, not only did not corroborate his unfounded allegation, but testified differently and contradicted him. Moreover, the facts were perfectly proven that the corporal, Padayao, was the only one of the officers who entered the house; that, after he had been seriously wounded and when he was leaving it, yelling for help, he was still being pursued by his assailant, Santiago Ginosolongo, for the latter succeeded in inflicting upon him two other wounds, one in the leg, while Padayao was still on the stairs in the act of leaving the house, and the other, in the yard below; that the struggle between this defendant and the policeman,

Felix Cambonga, the only person who attempted to aid the corporal, took place in the yard, when Padayao was already lying stretched out on the ground dying, on which occasion Felix also received three wounds from the said Santiago, and so it is true that the struggle did not take place in the upper part of the house, but in the yard below, that the assailant's father and sister were killed in the yard and not inside the house, upon their approaching the combatants, Santiago and Felix, for when Padayao, the assaulted party, ran below, pursued by the former, all of Santiago's family came out of the house; therefore, there are absolutely no grounds whatever to support the defense maintained by this defendant, to the effect that there was a prior assault on the part of the policemen, against his said father and sister.

Notwithstanding that Felix Cambonga testified that the other defendants, Ciriaco and Feliciano Ginosolongo, also took part in the assault made upon him, by throwing stones at him from a distance, while he was struggling and defending himself against their brother, Santiago Ginosolongo, yet this statement does not appear to be corroborated by any other evidence, even circumstantial, tending to prove their guilt beyond all reasonable doubt; therefore, in the absence of proof that they actually participated in the crime of homicide under prosecution, and though we deem their innocence doubtful, they must be acquitted.

In the commission of this crime of homicide, no consideration is to be had of the attendance of the special circumstance specified in article 11 of the Penal Code, for the reason that it does not appear to have been proved that the defendant, Santiago, was entirely uneducated, though unusual perversity is noticeable in his conduct, since he assaulted, suddenly, unexpectedly and without provocation, an agent of the authorities who was complying with his duties, after the defendant had promised to exhibit his cedula and had inspired confidence in the officer by inviting him to come into the house, and offering him a cigar. On the other hand, account ought to be taken of the concurrence of the circumstance of treachery attending the commission of the criminal act, for the reason that when this circumstance qualifies the crime of homicide the latter is thereby converted into murder. However, since only the crime of homicide was charged in the complaint and the case was prosecuted and decided in accordance with that charge, it is not permissible nor would it be lawful to try and convict the accused for the crime of murder, yet strict justice requires that the element of treachery which attended the commission of the crime charged, must be taken into account in the present case, as a mere aggravating circumstance.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, we are of the opinion that we should, as we do hereby, sentence Santiago Ginosolongo to the penalty of seventeen years four months and one day of reclusion temporal, to the accessories provided by article 59, to indemnify the widow and heirs of Cesareo Padayao in the sum of P1,000, and to pay one-third of the costs of both instances; and, further, that we should, as we do hereby, acquit Feliciano and Ciriaco Ginosolongo, with two-thirds of the costs of both instances de oficio, thus affirming the judgment appealed from in so far as it is in agreement herewith and reversing it in so far as it is not. Let an order be issued to the Director of Prisons for the immediate release of the two last-mentioned defendants, if they are not held on any other charge. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Trent., JJ., concur.

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