

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HERMOGENES BESUÑA, DEFENDANT AND APPELLANT.

G.R. No. 8662. March 07, 1914

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record sustains the findings of fact of the trial judge upon which he based his conclusion as to the guilt of the defendant and appellant in this case of the crime of assassination, and we find no error in the proceedings prejudicial to the rights of the accused.

It appears however from the findings of the trial judge, which are fully sustained by the evidence of record, that the commission of the offense was marked with the aggravating circumstances set forth in subsections 15 and 20 of article 10 of the Penal Code, the crime having been committed at night and in the house of the murdered man as charged in the information. Notwithstanding the existence of these aggravating circumstances, the trial judge imposed the prescribed penalty in its minimum degree, though manifestly, unless the accused be given the benefit of the provisions of article 11 of the Code as amended by Act No. 2142 of the Philippine Legislature, the penalty should have been imposed in its maximum degree and the convict sentenced to death.

Upon a review of the whole record we are of opinion that, giving the convict the benefit of the doubt with respect to the application of article 11, as amended, the prescribed penalty should have been imposed in its medium degree, setting off against the aggravating circumstances as disclosed by the evidence and the findings of the trial judge the extenuating circumstance set forth in the above mentioned article 11 of the Penal Code as amended by Act No. 2142.

We conclude therefore that the sentence imposed by the trial court should be modified by substituting for that portion thereof which imposes twenty years' imprisonment the penalty of life imprisonment, together with the accessory penalties prescribed by law, and thus modified the judgment of the court below convicting and sentencing the defendant should be and is hereby affirmed, with the costs of this instance against the appellant.

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

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