

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TUBBAN (KALINGA), DEFENDANT AND APPELLANT.

G.R. No. 9577. February 10, 1915

Ponente: CARSON, J.

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CARSON, J.:

The appellant was convicted in the court below of the crime of asesinato (murder), and sentenced to seventeen years four months and one day of cadena temporal, to indemnify the heirs of the deceased in the sum of P500, and to pay the costs of the trial.

Giving the accused the benefit of any reasonable doubt raised by the record, we are of opinion that the evidence discloses that on June 22, 1913, he was a youth less than 18 years of age and a member of an uncivilized tribe of Kalingas settled on a rancheria within the territorial jurisdiction of the Province of Cagayan; that prior to that date he had been living with the family of a young girl named Dengon, about 15 years of age, with whom he sustained relations which were recognized by the members of his tribe as that of man and wife; that some sort of tribal wedding ceremony had taken place upon which these relations were based, but that he was not married to the girl in accordance with the laws of the Philippine Islands; that on the date above indicated he discovered the girl, in flagrante, in the arms of another member of the tribe named Dumog; that he there and then struck Dumog with a head ax, inflicting a wound in the right shoulder as a result of which Dumog died on the 3d of the following July.

Counsel for appellant contends that the convict should have been given the benefit of the provisions of article 423 of the Penal Code, which are as follows:

"Any husband who, having surprised his wife in the act of adultery, shall kill her or her paramour in the act, or shall inflict any serious physical injuries upon either, shall suffer the penalty of destierro.

"If he shall inflict physical injuries of any kind, he shall be exempt from punishment.

"These rules shall be applicable under similar circumstances to parents with respect to any daughter under twenty-three years of age and her seducer while the daughter is living with the parents.

"Any person who shall promote or facilitate the prostitution of his wife or daughter shall not be entitled to the benefits of this article."

It is evident, however, that the provisions of this article are intended to apply only in cases where the husband is lawfully married to the offending wife. There is no authority in law for their extension to include cases wherein the relations between the parties are other than those contemplated by the legislator. It appears from the record that the accused in this case was living on a rancheria in the municipality of Mauanan in the duly organized Province of Cagayan, and we are not advised of any provision of law which recognizes as legal a tribal marriage of so-called non-Christians or members of uncivilized tribes, celebrated within that province without compliance with the requisites prescribed by General Orders, No. 68.

We are of opinion, nevertheless, that under the provisions of subsection 8 of article 9 of the Penal Code the fact

that the accused and the girl Dengon were living together as husband and wife, and were recognized as such by the other members of the tribe, should be taken into consideration as a marked extenuating circumstance.

We hold also that the fact that the accused is shown to be a member of an uncivilized tribe, of a low order of intelligence, uncultured, and uneducated, should be taken into consideration as a second marked extenuating circumstance. (Art. 11 of the Penal Code, as amended.)

The accused having been a youth of less than 18 years of age at the time when the crime was committed, the penalty to be imposed upon his conviction of the crime charged in the information is that next lower in degree than that prescribed by law for that offense when committed by one of full age.

Under all the circumstances of this case we think we should give the accused the benefit of article 81 of the Code as amended by Act No. 2298, which authorizes the courts, in their discretion, to impose a penalty one degree lower than that prescribed in the code where it appears that the commission of the offense was marked with two or more marked extenuating circumstances and no aggravating circumstances.

We conclude that the judgment of conviction and the sentence entered in the court below should be modified by substituting for so much thereof as imposes seventeen years four months and one day of cadena temporal, the penalty of six years and one day of presidio correccional, and thus modified the sentence imposed in the lower court should be affirmed, with the costs of this instance against the appellant. So ordered.

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

MORELAND, J., dissenting:

I cannot agree to the decision in this case. I believe article 423 of the Penal Code should be applied. The refusal of the court to apply it and the grounds on which that refusal is based completely wipe out the marriage relations among the wild tribes as an institution and make the relations between those who have married according to their tribal custom adulterous and their children illegitimate.

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