

47 Phil. 948

[ G.R. No. 20115. August 01, 1923 ]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CRISANTO REYES ET AL., DEFENDANTS. CRISANTO REYES AND GREGORIO GAMBOA, APPELLANTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

Pedro Lapus died on the evening of April 18, 1922, as a result of an aggression perpetrated against him on the morning of that date.

The defendants were prosecuted for this crime, which in the information is designated as murder, convicted by the Court of First Instance of Pampanga of homicide, and sentenced to fourteen years, eight months and one day of reclusion temporal, to indemnify jointly and severally the heirs of the deceased in the sum of P1,000, with subsidiary imprisonment in case of insolvency and to pay the costs.

In this appeal they assign as errors the finding in the judgment as to the conspiracy between them, and the punishment of Crisanto Reyes and Gregorio Gamboa, notwithstanding that Clemente Reyes was the one who killed the deceased. The appeal of Clemente Reyes was dismissed.

The facts are that there was ill-feeling between the defendants and Damaso Lapus, son of the deceased, on account of his having" abducted Maria Reyes, sister, niece, and sister-in-law, respectively, of the defendants Crisanto Reyes, Clemente Reyes, and Gregorio Gamboa. On the day of the commission of the crime, it was already about one month that Damaso Lapus and Maria had been married and were living in the house of his parents.

On the morning of the event the defendants arrived in front of the house of the deceased in a cart. A heated conversation took place between the defendants and Damaso Lapus, which ended in a blow on the latter's head struck by Gregorio Gamboa with a club taken from the

cart. Attracted by the noise, the deceased Pedro Lapus came out with the head inclined, and was received by Clemente Reyes with a blow also on the head struck with a bamboo cane, whereby he fell to the ground and died a few hours later.

These continuous, almost simultaneous, attacks by the defendants Gregorio Gamboa and Clemente Reyes against Damaso Lapus and his father, the fact that Crisanto Reyes, the other defendant, was armed with a club and was below the shedroof of the house as in ambush, in just the same manner as Gregorio Gamboa, after attacking Damaso Lapus and when Clemente Reyes was assaulting Pedro Lapus, and the previous ill-feeling between the appellants and the offended parties, constitute in our opinion sufficient indicia to establish beyond a reasonable doubt the conspiracy of the defendants for the purpose of attacking the offended parties.

This accumulation of circumstances shows that not only Clemente Reyes, the aggressor by direct act, but also Gregorio Gamboa and Crisanto Reyes were principals, and the latter by equally direct cooperation, of the crime of killing Pedro Lapus.

The Attorney-General is right, and we agree with him, in that the commission of the crime was attended by the aggravating circumstance of the same having been perpetrated in the dwelling of the offended party, and by the mitigating circumstance of the defendants not having had the intention to cause such a grave wrong as that which resulted. And with him we also agree in that these two circumstances compensate each other.

The evidence establishes beyond a reasonable doubt the guilt of the defendants of the crime of homicide, which, in view of the fact that the two circumstances of opposite character compensate each other, must be punished with the medium degree of the corresponding penalty, within the limits of which the penalty imposed by the lower court is.

Wherefore the judgment appealed from is affirmed, except as to subsidiary imprisonment, which cannot be imposed in this case, with the costs against the appellants. So ordered.

*Street, Malcolm, Avancena, Villamor, and Johns, JJ., concur.*

