

[G.R. No. 3234. January 19, 1907]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARCELO CARBORNAL AND LUIS CARBORNAL, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of murder in the Court of First Instance of the Province of Cebu. After hearing the evidence adduced during the trial, the court found that the said defendants, together with others unknown, maliciously and criminally, in the nighttime, with treachery and premeditation, did kill one Domingo Margallo, and sentenced the defendants to the penalty of *cadena perpetua* and to pay the costs, in accordance with the provisions of article 403 of the Penal Code. From this decision the defendants appealed to this court.

An examination of the evidence adduced during the trial of said cause in the lower court discloses the following facts:

That these defendants, being armed with revolvers, lances, and *pinutes*, together with other persons unknown, sometime in the year 1902, entered in the nighttime the house of one Domingo Margallo, situated in the barrio of Cansomoroy, in the pueblo of Balamaban in the Province of Cebu, and after manacling the said Domingo Margallo, his wife, his four children, and two other old persons who were in said house, took and carried said persons out of said house and to a place a short distance from said house and there, he being still manacled, they killed the said Domingo Margallo, three of his children, and the two old persons. The wife of the said Domingo escaped at or about the time the defendants were mortally wounding her husband and children and friends. One of the children of the said Domingo, called Francisco Margallo, was, while yet manacled, seriously wounded and feigned death and was left to die by the defendants. Fortunately, however, he was not so seriously injured as to produce death and lived to tell in open court the story of the inhuman

acts of the defendants and their unknown associates.

The evidence further shows that the defendants, on the same night and before killing the above said persons, robbed the house of the said Domingo. The only motive appearing from the record for the dastardly and inhuman acts of the defendants seems to be to prevent them from giving an account of the robbery which they had committed.

The fact that the defendants manacled the unfortunate persons and carried them out of their house to the place where they were subsequently killed, is sufficient evidence of premeditation on the part of the said defendants, and this qualifies their crime as that of murder. The manacling of the said Domingo Margallo and his companions and killing him and them while thus manacled is evidence of the treachery of the said accused. Besides the existence of the aggravating circumstance of treachery there also exists the aggravating circumstance of *cuadrilla*.

The foregoing facts, which were proved beyond peradventure of doubt, show that the defendants are guilty of the crime of murder with the aggravating circumstances of *alevosia* and *cuadrilla* and therefore should be punished with the maximum degree provided for under article 403 of the Penal Code.

The judgment of the lower court is hereby reversed and the defendants, Marcelo Carbornal and Luis Carbornal, are hereby sentenced to the penalty of death, said penalty to be executed in accordance with law. After the expiration of ten days judgment will be entered accordingly and ten days thereafter the case returned to the lower court for necessary action. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.