

3 Phil. 516

[G.R. No. 1655. March 29, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LEON DE LA TORRE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant in this case admitted his guilt, and the only question is as to the penalty. The court below took into consideration the aggravating circumstances numbered seven, nine, and twenty, and sentenced the defendant to death, the higher of the two indivisible penalties—life imprisonment and death—assigned to the crime of parricide by the Penal Code.

We do not think that there was sufficient evidence to prove the seventh circumstance—known premeditation. If the defendant went to the house where his wife was for the purpose of killing her, it is not apparent why they traveled for an hour after leaving the house before he attacked her. Moreover, as suggested by the defendant's counsel in his brief, the defendant would not have struck one blow only and have gone away, leaving his wife still alive, not knowing whether the blow was mortal or not, if he had entertained the fixed determination of putting an end to her existence. She did not, in fact, die until the next day. The account given by the defendant in the Court of First Instance is probably the truth. He says that his wife did not wish to go to the mountains, and quarreled with him all the way, until, in a fit of rage, he drew his bolo and struck her in the abdomen.

The circumstance of sex (No. 20) is included in the crime itself in

this particular case. The only thing which makes this offense parricide is the fact that the deceased was the wife of the defendant. To allow it as an aggravating circumstance would be to give it double effect.

The same is true of the abuse of superiority (No. 9). That existed, if at all, by reason of the same fact, viz., that one person was a woman and the other a man. Neither of these circumstances should be taken into account.

It is not necessary to consider whether the seventh extenuating circumstance existed or not. There were, in any event, no others, and in this crime one extenuating circumstance can not affect the penalty.

The judgment is reversed, and the defendant is sentenced to life imprisonment, with the accessories and the costs,

Arellano, C. J., Torres, Cooper, Mapa, and McDonogh, JJ., concur.

^[1] 2 Phil. Rep., 412.

^[2] Not published.

DISSENTING

JOHNSON, J.:

It is my opinion that the judgment appealed from should be affirmed.
