

3 Phil. 313

[G.R. No. 1522. February 11, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, POLICARPO IDICA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 17th of September, 1903, the provincial fiscal filed a complaint in the Court of First Instance of Ilocos Sur charging the defendant, Policarpo Idica, with the crime of murder, in that on the afternoon of the 14th of July of the same year, while the defendant Idica and Placido Abella, with other persons, were walking by the place called Tabigay, in the town of Sinait, toward the west of the town, the defendant, Idica, who was in advance, suddenly turned back and struck Abella, who was walking behind him, about a meter more or less distant, two blows with his bolo, inflicting on him two wounds, one above the left ear and another on the throat, from the results whereof the said Abella fell on the ground and died a few moments later.

Agapito Campos, one of the witnesses present, under oath affirmed the facts set forth in the complaint, stating that he was walking a little in advance of the defendant, and that happening to look back, he saw the attack and at once went to Abella, who was lying on the ground with two serious wounds. At the same time Esteban Abella, Roman Abella, Felix Campos, and Juan Impelido, who were walking behind, also approached the victim, and they saw that he had his bolo sheathed and by his side, and was already dead. Then some of them went to report the matter to the authorities and others were left by the corpse. They added that at the time of the attack no quarrel or dispute had taken place between the aggressor and the victim, but that some moments prior

thereto they had some talk about some lands concerning which a dispute had been pending for about four years, although the witness stated that he did not know whether this was the motive of the attack.

Juan Impelido, who was also an eyewitness to the occurrence, testified in similar terms. Raymundo Icalla and Esteban Abella stated that they did not see the actual attack, but were apprised of the fact that Placido Abella had fallen on the ground by a noise which they heard, and at the same time from a distance of 30 brazas they saw Policarpo Idica, the defendant, going away from the corpse, bolo in hand. Thereupon Icalla, terrified, ran away, while Esteban Abella approached the place where the body was lying; the other saying that the question between the defendant and the deceased originated from the fact that Placido Idica, a long time ago, changed the course of a thoroughfare. This witness also testified that the deceased had his bolo sheathed and by his side.

The defendant, Policarpo Idica, plead not guilty, and under oath testified on his own behalf that on the date above mentioned he was called by Esteban Abella and went with his brother-in-law, Raymundo Icalla, to the place of the occurrence, because Juan Impelido charged the accused with having destroyed a fence on the land of the latter. That upon arriving there he found that the townspeople assembled there had already decided which was the limit or boundary between his land and that of Impelido, to which he objected because he was deprived of a part of his land, and at this moment Placido Abella became enraged and attempted to strike him with a bolo; that the defendant, trying to ward off the blow with his bolo, struck Placido on the neck, who thereupon fell on the ground dead. Esteban Abella denied having sent for the accused.

The fact of the violent killing of a human being, without the attendance of any of the qualifying circumstances especially set forth by article 403 of the Penal Code, only constitutes the crime of simple homicide, which is made punishable by article 404 of the same code.

In the fact, fully proven, of Policarpo Idica having killed Placido Abella by inflicting upon him two serious and mortal wounds with the

bolo which he carried, the circumstances of evident premeditation and *alevosia* have not concurred, inasmuch as the record does not disclose even circumstantial evidence that Idica had conceived and reflected upon the purpose of killing the deceased. The dispute as to the boundaries of the lands belonging to the defendant and to the deceased, and which seems to have lead to the commission of the crime, is not sufficient to show that the accused had conceived the criminal design beforehand and had meditated and reflected upon the commission of the crime.

The defendant did not employ means or forms in the attack which tended directly and especially to the consummation of the crime without any risk to himself which might originate from an attempt on the part of the deceased to defend himself, and it is therefore impossible to hold that the assault was executed with *alevosia*, since according to the witnesses present the assault was made face to face and openly and originated from the dispute which they had had shortly before at the place of the occurrence and while the deceased was walking behind the accused.

In order that the qualifying circumstances of evident premeditation and *alevosia* may be considered-as being present in the commission of a crime against the person, it is indispensable that their existence be fully established by the proof, and it is not sufficient to presume or infer their existence. This has been repeatedly laid down by the courts. Therefore, in the absence of proof of such circumstances, the offense can only be classified as homicide. The defendant may be convicted of that crime, although accused of murder, a crime in which that of homicide is necessarily comprised. (Sec. 29, General Orders, No. 58.)

The guilt of the defendant as author by direct participation is indisputable, he having confessed to and been convicted of the crime of homicide. The record does not disclose any evidence to show the existence in the commission of any exculpatory circumstance, complete or incomplete, or even the mitigating circumstance established by paragraph 1 of article 9 of the code.

The exculpatory allegation of the defendant that the deceased tried to attack him is wholly unsupported by evidence, and on the contrary is contradicted by the testimony of the witnesses Agapito Campos and Juan Impelido, who testified that Idica was the first and the only one who attacked Abella, who was unable to defend himself or make use of his bolo, which was found sheathed by the side of the corpse, as seen by various witnesses. For this reason we must accept the conclusion of the judge below that in the commission of the crime no aggravating or mitigating circumstances were present.

The decision appealed should therefore be affirmed with the costs, it being understood that the accessory penalties of article 59 of the Penal Code are hereby imposed. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
