

2 Phil. 448

[G.R. No. 1331. August 25, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MELECIO
MACALINTAL ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

On the 10th of March of the present year an information was filed by the provincial fiscal in the Court of First Instance of Bulacan, charging Isidoro Palad and Melecio Macalintal with the crime of murder, in this: That on the night of the 12th of September, 1902, Maria Estevan, the mother of Isidoro, having fallen sick, he suspected that she was bewitched, and therefore struck her several blows, asking her who the witch was; that his mother then replied that the witch's name was Saturnina, whereupon her son, the accused Palad, searched for Saturnina Austria in Sibul, in the town of San Miguel, and, having found her, forcibly dragged her from her house and took her to Batong-Uling, where, with criminal intent and deliberate cruelty, the two accused cut off her two ears and threw her into the water, deliberately and inhumanly augmenting the sufferings of the victim; and then, after kicking her on the head, produced her death by causing her head to strike a rock, in all of which Palad was aided by the accused Macalintal.

The prosecution having commenced, Antonio Crespillo, the medical inspector of the town of San Miguel de Mayumo, by order of the justice of the peace of that town, made an examination of the body of the deceased, Saturnina Austria, after it had been buried, for three days in a hole under a tree at Batong-Uling. This officer testified that he observed on the body a bruise on the frontal region extending to the temple, apparently produced by a violent blow with a heavy weapon, as the skull was fractured; also that several bruises were found on the right cheek, and that both ears had been cut off. He added that at the time of the examination of the body decomposition had set in.

The witnesses Andres Castro, Margarita Gumabun, and Julia de Jesus stated that one

morning, when they happened to be going by the place known as Batong-Uling, they saw the two accused plunging Saturnina Austria into the water of the river, and entirely submerging her, and that the deceased finally sank. The woman Gumabun added that the motive was that the deceased had bewitched the mother of Isidoro Palad.

The violent death of Saturnina Austria, a woman between 50 and 55 years of age, constitutes only the crime of homicide, because her aggressors, in illtreating and wounding her as above described, had no intention of killing her; nor did they deliberately and inhumanly propose to augment her pain and suffering; but, acting under the false and erroneous belief that the illness of Palad's mother, who was also the mother-in-law of the other defendant, was due to the malignant designs of the deceased, and that the woman Saturnina willfully refused to cure her, inflicted upon her the ill treatment which unfortunately produced her death, for the purpose of compelling her to cure the sick woman and to break the spell of her witchcraft. For these reasons we can not apply the specific qualifying circumstance of cruelty.

The accused plead not guilty of the crime with which they were charged, and alleged that when Palad's mother fell sick she sent for him, he being in the forest at the time, and that upon his arrival he heard his mother groaning and saying that Saturnina Austria was squeezing her throat, and that upon this Isidoro told his brother-in-law, Macalintal, to send for Saturnina. Upon her arrival they implored her to cure the patient, who was suffering under the spell of her witchcraft. This petition was denied by Saturnina, and therefore, in order to compel her to cure the sick woman, Macalintal seized one of her ears in a pair of shears and told her to cure the patient, and as Saturnina appeared to be indifferent and happened to move, her left ear was accidentally cut. Upon this Palad conducted her to Batong-Uling Kiver, on the banks of which he again besought her to cure his mother, and that thereupon Saturnina told him to go home and that he would find his mother well. But Palad, on returning home, found his mother was not only still sick but was worse, and he therefore returned to the place when he had left Saturnina, and, seizing her by the shoulder, flung her into the water, and when the two accused pulled her out they saw that she had a wound on her head, produced by striking it against some stones in the river, and that she was breathing with difficulty; that thereupon Macalintal returned to the house and was followed shortly after by Palad, who stated that Saturnina was dead.

On the testimony of the accused, which in substance corroborates the statements of the eyewitnesses, the guilt of the two accused as coprincipals by direct participation in the homicide in question is fully proved. In the commission of the crime we must consider the

concurrence of the mitigating circumstance No. 7 of article 9, and of the special circumstance established in article 11 of the Penal Code, also in mitigation; also the aggravating circumstance of abuse of superiority. The facts established show clearly that the accused acted on the impulse of passion and obfuscation, caused by the false belief that the illness of this sick woman was due to the witchcraft and incantations of the deceased Saturnina Austria, because the sick woman, groaning with pain, said that Saturnina was squeezing her throat. We must consider that the accused in fact believed in good faith that these ailments were due to witchcraft, in view of their ignorance and the vulgar belief which unfortunately still exists in such matters in many parts of the provinces. One of these two mitigating circumstances is, however, offset by the aggravating circumstance of abuse of superiority, of which the accused undoubtedly availed themselves in inflicting the ill treatment upon the victim. Consequently the proper punishment will be the minimum grade of the penalty prescribed by article 404 of the Penal Code.

Although the information charges the accused with the crime of murder, and the court below in its judgment passed sentence upon them for this crime, nevertheless as the crime of homicide is necessarily included in that of murder—as the killing of a human being is defined as homicide or as murder according to whether or not some qualifying circumstance which constitutes the higher crime concurred—the provisions of section 29 of General Orders, No. 58, are applicable, and the judgment of the court below should be reversed and the accused convicted of the crime of homicide, as such action does not affect their rights, but, on the contrary, is favorable to them.

Therefore, under the provisions of article 404 and others of general application of the Penal Code, for the reasons stated the judgment of the court below is reversed and the defendants Isidoro Palad and Melecio Macalintal are condemned to the penalty of thirteen years each of *reclusion temporal* to the accessories of absolute temporal disqualification to the full extent, and subjection to the vigilance of the authorities during the period of the penalty and for an equal period thereafter, to pay, pro rata or in solidum, the sum of 1,000 Insular pesos to the heirs of the deceased, and to pay each one-half of the costs of both instances.

The record will be returned to the court below for the execution of this judgment. So ordered.

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

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