

1 Phil. 631

[ G.R. No. 869. January 16, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BENIGNO PASCUA ET AL., DEFENDANTS AND APPELLANTS.**

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

**COOPER, J.:**

The defendants, Benigno Pascua, Remigio Quimangan, Bernardino Gampona, Juan Baldivino, and Roman Agapay, are charged in the Court of First Instance of the Province of Ilocos Novte with crimes of *lesiones graves*, arson, and robbery, committed in the following manner:

About 12 o'clock at night, on the 27th day of December, 1900, they went to the house of Sexto Rubio, claiming that they were policemen acting under the authority of the local president of the town of Aring, with orders to talse the complainant before the president, and upon the complainant replying that he could not go at that hour they wounded him by shooting him with a revolver in the left foot and afterwards by several blows with a bolo upon the head, and then set fire to the house of complainant, burning the same, and left, carrying off three goats belonging to the complainant

The judge of the Court of First Instance dismissed the charges against the defendant for robbery and arson and placed them on trial for the offense of discharging firearms and *lesiones graves*.

The defendant Prudencio Tasay not having been arrested, and it having been shown to the satisfaction of the court that Ildefonso Caifang and Policarpio Gamit had died, and that Melchor Mangobo had escaped, the trial was proceeded with as against Benigno Pascua, Remigio Quimangan, Bernardino Gampona, Juan Baldivino, and Roman Agapay, and the first four named were found guilty of the charges of *lesiones graves* and discharging firearms at the injured party, and sentenced to four years and two months *prision correccional*, with its

accessories, and to pay to the injured party 67 pesos and 50 cents. The defendant Roman Agapay was acquitted of the charges.

The conviction was under article 408 of the Penal Code, for discharging firearms at the injured party, and article 416 of the same Code for causing serious physical injury to the injured party, by which he was ill and disabled for his usual occupation for a period of more than ninety days. These two articles, in connection with article 89, present a case in which a. single act constitutes two or more crimes, and the penalty corresponding to the more serious crime is imposed in its maximum degree.

But the complaint does not charge the offense of discharging firearms at the persons of another, and the judgment is erroneous in convicting the defendants of this offense.

The defense of the defendants in the case was an alibi for each of them. While the proof as to the alibi is well supported by the testimony of witnesses, yet such proof can have little weight when the identity of the defendants as the persons who committed the offense has been fully established by eyewitnesses.

The testimony of both the complainant Sexto Rubio and his wife is direct and positive, identifying the defendants as the persons who committed the acts. They testify that they had known the defendants for a number of years; that the defendants lived in the same town, and they fully identify them as the persons who on the night in question came to the house of Sexto Rubio and committed the offense.

Sexto Rubio testifies that on the night in question the accused Benigno Pascua fired seven shots at him with a revolver, striking and wounding him on the left foot, which incapacitated him for nine months. The accused Juan Baldivino fired three shots at him from a Remington rifle, one shot striking him on the right foot, causing a slight wound which was cured in two days. The accused Remigio Quimangan gave him three blows on the head with a bolo, which caused three wounds, from which he recovered in nine months. The accused Melchor Mangobo also inflicted two wounds upon him by kicking him in the right side and on the shoulder, from the effects of which he recovered in fifteen days, and the accused Bernardino Gampona was the party who set fire to the house when Pascua and Baldivino were discharging their firearms.

The defendants have made application for discharge under the provisions of the amnesty proclamation of the President of the 4th of July, 1902.

While an examination of the record discloses that the defendants were members of the insurgent army, and there is apparently no motive shown for the commission of the offense, Sexto Rubio testifying that there was no ill feeling between him and the defendants, still there is an entire absence of proof to show that the acts were the result of political dissensions or disturbances.

The defendants will still have opportunity of applying to the Civil Governor for pardon, and presenting such proofs as they may have in support of an application for discharge under the amnesty proclamation.

In view of the fact that there were present in the commission of the crime the aggravating circumstances numbered 15 and 20 of article 10 of the Penal Code, inasmuch as the defendants entered the house of the complainant in the nighttime for that purpose, the judgment of the court below must be reversed as to the conviction of the accused for the offense of discharging firearms, and the defendants Remigio Quimangan, Benigno Pascua, Bernardino Gampona, and Juan Baldivino are convicted of the crime of *lesiones graves*, punishable under article 416, section 3, of the Code, for the wounds inflicted upon the complainant, and by which he was ill and disabled from his usual occupation for a period of more than ninety days; and we sentence each of them to the penalty of four years and two months of *prision correccional* in its maximum degree, with the corresponding accessory penalties, to pay to the injured party \$67.50, Mexican, as indemnification, under a joint and several obligation, they to suffer a subsidiary imprisonment in case of insolvency, and to one-fourth part of the costs each. The motion for amnesty is denied.

*Arellano, C. J., Torres, Willard, Mapa, and Ladd, JJ., concur.*

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