

2 Phil. 104

[G.R. No. 1024. April 03, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TIMOTEO CANDELARIA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

Five members of the Constabulary and three members of the municipal police of the town of Santa Rosa, in Nueva Ecija, having set out to look for Jacinto de Jesus, named by Antonio Mendoza as one of several men who had assaulted his house, located the said Jacinto in the vicinity of the town of Jaen, in the same province. Sergt. Alejandro de los Reyes, of the Constabulary, says that he found Jacinto de Jesus tied to a tree and in a very bad condition, as a result of a beating inflicted upon him by the three defendants, Salunday, of the municipal police of Santa Rosa, and the Constabulary men, Candelaria and Carandang. Three hours after he was untied Jacinto de Jesus died. A physician certified that he was covered with bruises from head to foot. The doctor stated that blows on the thorax probably caused the death.

The testimony for the prosecution is convincing, and is supported even by the statements of the accused themselves. According to Alejandro Reyes (but testifying as to what he had heard the accused say), it appears that Jacinto de Jesus had tried to resist with one of the bolos which he was carrying, having made the motion of putting his hand to his belt or sheath. The witness says, however, that the deceased was carrying this bolo because he was cutting cane, and that the other bolo he had with him was a short one, about a span in length. Another member of the Constabulary there present testifies that Jacinto de Jesus threw himself into an attitude of resistance, as though about to draw his bolo, but the same witness affirms that Espiridion Salunday had ordered them to hang up Jacinto, and that after he was suspended he confessed that he had been kidnaped by some malefactors. So that either because he attempted to resist or for the purpose of forcing him to make some

statement, the accused Avere guilty of the ill treatment which caused the death of Jacinto de Jesus.

The court below condemned Espiridion Salunday and Timoteo Candelaria, as principals, to the death penalty, and Dionisio Carandang, as accessory, to fourteen years and nine months of *cadena temporal*. Dionisio Carandang was not a mere accessory. He also illtreated Jacinto de Jesus, as appears from the testimony of several witnesses. Although his participation was nothing more than that of having tied Jacinto de Jesus to the tree, such participation in the act would be that of a coprincipal.

In tying Jacinto to a tree the three defendants acted treacherously (*alevosamente*). Whether it was to prevent him from making resistance, whether it was to torture him for the purpose of making him give information, or whether it was for the purpose of inflicting further punishment, the fact is that by this means the defendants secured themselves against any risk which might have arisen from an attempt at self-defense on the part of the victim. We are of opinion that they had no intention to cause so great an evil as that which resulted, but this does not neutralize that, other qualifying circumstance of the resulting death, because if there was no *aleviosa* for the purpose of killing there¹ was *aleviosa* for the purpose of ill-treating. The means employed were not made use of for the precise purpose of making certain the death of Jacinto de Jesus, but as a safe means of ill treating him without risk to the persons who were doing so. If by this means the ill treatment was aggravated, it follows that it is a qualifying circumstance in the death which resulted. It was not a condition of the purpose, but it was a condition of the criminal act itself, in whatever sense this be taken.

What we can not consider is the circumstance of extreme cruelty. The death of Jacinto de Jesus was not produced by any special, precise act done for the purpose of producing that result, as the violence and ill treatment, doubtless excessive, were¹ principally directed to extorting a confession or to the repression of an attempt at resistance, and it was only by these acts as a whole that the homicide resulted. Therefore in this case there is no starting point which permits us to determine which were the evils necessarily included in the commission of the crime, and which were only the result of a deliberate intent to increase the sufferings of the victim. (Decision of the supreme court of Spain of June 16, 1897.)

Dionisio Carandang did not appeal from the judgment, by which he was condemned to fourteen years and nine months of *cadena temporal*, with the accessories of absolute temporary disqualification to the full extent, and to subjection to the vigilance of the authorities during the period of the penalty and for an equal period after the expiration

thereof, and to pay, jointly and severally with the two other accused, the sum of 1,000 Mexican pesos to the heirs of the deceased, with a third part of the costs. This part of the judgment is final.

With respect to the other accused, Espiridion Salunday and Timoteo Candelaria, this court applies as a mitigating circumstance the fact that they did not have, when inflicting this ill treatment, an intent to cause so great an evil as that which resulted—that is, the death of Jacinto de Jesus. This having been committed with *alevosia* the *aleviosa* with which the deceased was illtreated), the killing must be classified as murder. Notwithstanding the presence of *alevosia*, as the aggravating circumstance of extreme cruelty did not concur, the accused can not be condemned to death.

We therefore condemn Espiridion Salunday and Timoteo Candelaria to seventeen years four months and one day of *cadena temporal*, with the accessories of absolute temporary disqualification in its full extent, and subjection to the vigilance of the authorities during the period of the principal penalty and for an equal period thereafter, beginning from the time of the expiration thereof, and to pay, jointly and severally, to the heirs of the deceased the sum of 2,000 pesos, and to pay one-third part of the costs each, the judgment of the court below being reversed in so far as it may be in conflict herewith, and being otherwise confirmed. So ordered.

Torres, Cooper, Willard, Mapa, and Ladd, JJ., concur.