

4 Phil. 407

[G.R. No. 1939. April 13, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GUILLERMO MACALINAO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

In a complaint dated the 30th day of November, 1903, Guillermo Macalinao is charged by the provincial fiscal of Bulacan with the crime of murder committed as follows: That on the night of April 6, 1902, while one Pedro Panganiban was asleep in the store of Eulogio Salamat, located in the town of Hagonoy, said province, along with others and the accused, Guillermo Macalinao, the latter, with premeditation and treachery, attacked said Panganiban, inflicting several wounds with a sharp weapon, from which Panganiban died a few hours later—all contrary to law.

The case came on for trial by virtue of said complaint and the court below sentenced the accused to ten years and one day of *presidio mayor*, the indemnity corresponding thereto, and to pay the costs, from which sentence the accused appealed.

It appears from the record that on the night of April 6, 1902, Pedro Panganiban slept in the store of Eulogio Salamat in company with Justo and Fortunato Salamat, Pablo del Rosario, the boy Martin Macalinao, and the accused, Guillermo Macalinao, who arrived there at 10 o'clock that night; that when all were sleeping in the late hours of said night, the deceased was awakened by receiving blows from a bolo dealt by his aggressor, and when he arose as best he could he recognized his aggressor as Guillermo Macalinao, who at once ran away, taking with him the weapon with which he was attacking the deceased, and the deceased failed to overtake him, although he tried to do so, because of the weakness he suffered as a result of the wounds he had received. The deceased told his father, Pablo Panganiban, and the others present at the scene of the crime that his aggressor was Guillermo Macalinao and that he presumed the crime was committed through hatred and for revenge on the part of

the accused, as the latter was under the impression that he, the deceased, had killed one of his brothers some years before. These statements were heard by the father of the deceased, Eulogio Salamat, Fortunato Salamat, and Pedro Aduna, the justice of the peace before whom the deceased made a dying declaration to the effect that he was attacked and wounded while asleep by Guillermo Macalinao, whom he recognized and whom he pursued a few steps without being able to catch him or to continue in the pursuit on account of his weakness.

It was also shown that according to the practitioner Severo Trajano the deceased received four wounds inflicted with a sharp instrument, one being in the head, one in the wrist of the right hand, one in the right forearm, and another in the side, which wounds were of a serious character, especially the first and last, which were mortal wounds and of reserved diagnosis, the said Pedro Panganiban having died at 11 o'clock on the morning following his injury and as a result of his wounds.

It also appears that the accused was not found at his residence until the 31st of October, 1903, when he was arrested, and the record shows furthermore (see p. 42) that the accused, upon being arraigned and the charges read to him, pleaded guilty and stated that he committed the crime in revenge for the death of his brother, Pedro Macalinao, whose death was caused by said Pedro Panganiban, deceased. The statement made by the deceased before his death in the preliminary investigations, the certificate of the autopsy (record, p. 10), and the plea of the accused (see p. 42) were presented and admitted as evidence during the trial.

The above-mentioned fact of the violent death of Pedro Panganiban constitutes the crime of murder provided for and punished in article 403 of the Penal Code, insomuch as the deceased received several wounds of a serious and mortal nature while he was asleep, the aggressor employing means and manner which tended directly and specially to the consummation of the crime without any risk to himself which might result from the defense which might be offered by the deceased, it being therefore undeniable that in the commission of said crime the qualifying circumstance of treachery was present, which circumstance is one of those which determines the crime of murder.

Guillermo Macalinao is proven the sole principal in said crime by direct participation and therefore is guilty without the confession; still he contradicted his previous statement and said that he was not pleading guilty and that if he had done so, it was because his uncle, Miguel Pa-ayung-ayung, had advised him to make such confession in order to use it as a

means of defense and alleged, moreover, that on the night of the occurrence he called at the house of Andres de los Reyes, arriving there after 10 o'clock, coming from the store of the said Eulogio Salamat, which store he could not enter, as it was locked, and for this reason he went to said Reyes's house, who was then awake. He alleged further that he had not had any trouble with Pedro Panganiban, and, although he was feeling resentful over the death of his brother, he had resigned himself to patience. Notwithstanding these exculpatory allegations, the case offers particulars sufficient in number and character, based on facts perfectly proven, tending to show in a conclusive manner the liability of the accused. That is to say, the fact that the accused was sleeping with the deceased in the store of Salamat and was charged by said deceased as being his aggressor, as stated by the deceased to the parties who first arrived on the scene; the circumstance of the accused having disappeared from the place of his residence from the night of April 6, 1902, and not being seen again until the 31st of October, 1903, in the town of Hagonoy, where he was arrested, and the confession of his guilt made by himself before the justice of the peace to the effect that he had killed the deceased out of revenge for the death of one of his brothers caused by the deceased; all these facts and particulars in the case, related one to the other, produce a clear conviction of the liability of the accused, Macalinao, as sole principal in the crime for which he is prosecuted; against this conclusion the evidence of the defense can not prevail, because, among other things, of the short distance between the store in which the crime was committed and the house of Andres de los Reyes, it was not impossible for Macalinao to have been successively and alternately in each place. The isolated statement of Dimas Panganiban is neutralized or counterbalanced by that of his father, of the owner of the store, and of the others who heard the declaration of the deceased and the other evidence in the case, and, moreover, owing to the serious condition in which the injured man was at the time, it was not at all strange that he should have given a different reply to his brother Dimas than he gave to the others who questioned him as to his assailant.

In the commission of the crime the circumstance of nocturnity, which is considered a part of the qualifying circumstance of treachery, is not to be considered, nor any other correlative circumstance outside of the special one to which paragraph 2 of article 85 refers because of the alleged and uncontradicted fact that the accused was under 18 years of age on the date of the commission of the crime, and for this reason he should be punished with the penalty next lower, to that of *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree, which should be imposed in its medium degree, which is the minimum degree of *cadena temporal*.

Therefore, by virtue of the considerations above set forth, it is our opinion that Guillermo

Macalinao be sentenced to the penalty of three years of *cadena temporal* with the accessories provided for in article 56 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs, the sentence appealed from being modified in all that does not conform hereto. Let this case be remanded to the court below with a certified copy of this decision and the judgment which shall be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

Willard, J., did not sit in this case.
