

4 Phil. 261

[G.R. No. 1931. March 13, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE CARIASO ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

In a complaint dated May 28, 1902, Jose Cariaso was, among others, charged by the provincial fiscal of Tarlac with the crime of assassination. The complaint stated that late in the night of a day in the month of April of that year, the exact date of which does not appear, the defendants entered the house of Domingo Legaspi in the town of San Clemente; that they took him out after tying his wrists and conducted him to a place called Cabalansian and there in some bushes killed him and afterwards burned his body:

In a case against Gervasio Ynong and others for the crime of murder judgment was rendered on May 19, 1903, in which said Ynong was sentenced to *cadena perpetua*, Eutiquiano Cabuling to thirteen years of *cadena temporal*, and the four other defendants acquitted, the case having been separated as to the other defendants. Among the latter is Jose Cariaso, against whom this case has been brought.

The allegations of the complaint are sustained by the evidence adduced in the case. On the said night the defendants Jose Cariaso and Andres Pelaez went to the house of the deceased, Domingo Legaspi; they were armed with a bolo; they took Legaspi prisoner, and after binding his wrists conducted him, with the aid of others outside, to the place called Cabalansian, where he was killed. On a day in the month of May the burned remains of the deceased were found in that place.

The defendant acknowledges that he was one of those who went to the house of Domingo Legaspi and took him prisoner late that night, but he states that on the way to the place where the deceased was killed by Andres Pelaez he left his companions.

The crime of assassination has been fully proven. It was committed with the qualifying circumstance of a price having been paid for the commission of the same, as appears in the judgment rendered in the case against the principals in the crime. We have to determine only the character of the participation of Jose Cariaso in the crime.

This defendant took part in the murder by acts previous to the execution of the crime by reason of having taken part in the taking of the deceased prisoner, although the defendant left his companions while they were en route to the place where the deceased was killed, and for this reason he did not witness the killing of the deceased.

In order to determine the responsibility of the defendant in the commission of the crime we must take into consideration the existence of the aggravating circumstances defined in subsections 7 and 15 of article 10 of the Penal Code. The effect of these aggravating circumstances are counterbalanced by the special extenuating circumstance provided for in article 11 of the same code, and for this reason the penalty which the defendant has incurred should be imposed in its medium degree.

By virtue, then, of the reasons above stated, we are of the opinion that the judgment below should be affirmed.

The defendant Jose Cariaso is sentenced to the penalty of thirteen years of *cadena temporal*, with the accessories provided for in article 56 of the Penal Code, and to pay, jointly and severally with Gervasio Ynong and Eutiquiano Cabuling, to the heirs of the deceased, Domingo Legaspi, the sum of 2,000 pesos, without having to suffer subsidiary imprisonment, and to pay the costs, it being understood, however, that the indemnification to which he is sentenced has a subsidiary character.

This case to be returned to the court below with a certified copy of

this decision and of the judgment which shall be rendered in accordance
herewith. So ordered.

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

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