

4 Phil. 175

[G.R. No. 1957. January 29, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SATURNINO ASILO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

It has been proved in the record that about 2 o'clock of the night of December 20, 1903, several individuals (among them the appellant) arrived at the house of Anastasio Claridad whom the accused asked to come downstairs, and, as the former refused to do so, they fired two shots at him, inflicting a wound in his breast, by reason of which he died in the course of three hours. The judge of the Court of First Instance was correct in finding the appellant guilty of the said killing as principal, although the evidence does not clearly demonstrate that it was he who fired the shot which wounded and killed the deceased. According to article 13 of the Penal Code, the principal is not only he who materially commits the crime but all those who participate directly in the execution thereof, and it is evident that the accused is within this case, since he was a member of the band which appeared at a late hour of the night at the house of the deceased for the purpose of attempting the latter's life. This circumstance is necessarily presumptive of a previous understanding between him and the others who formed the band, whereby he voluntarily lent his assistance of thought and action for the realization of that criminal object, increasing, at least with his personal cooperation, in an effective manner, the offensive strength of said band.

The court below classified the facts in the case as murder as charged in the complaint, considering that it was committed with the

concurrence of the qualifying circumstance of treachery (*alevosia*). In our opinion the evidence does not justify this appreciation. The deceased, having been asked to come down from his house by a party of armed individuals, and at an unusual hour of the night, must have necessarily suspected that their intention was not lawful, as it is proven by his refusal to go downstairs and which tends to show his decision in not placing himself in the hands of those who called him in a manner so unusual and suspicious. With such facts it can not reasonably be presumed that the deceased was taken entirely unawares; and it being not established, on the other side, that the aggressors employed any means which might have rendered all defense impossible for the deceased, inasmuch as no one witnessed the very act of the aggression, there is not sufficient ground to establish the conclusion that the attempt which deprived Anastasio Claridad of his life was made with treachery (*alevosia*). The treachery can in no way be presumed, but must be fully proven in order to be appreciated for the effects of the Penal Code.

Therefore the facts in the case should only be classified as homicide, provided for and punished by article 404 of the Penal Code. The aggravating circumstances of nocturnity and of the crime having been perpetrated in the deceased's house should be taken into consideration, and for this reason the penalty prescribed by said article should be imposed upon the appellant in its maximum degree.

Although the complaint was drawn on the charge of murder, there is no objection, however, to the appellant being sentenced for that of homicide, as it is plainly authorized by section 29 of General Orders, No. 58; and this court has repeatedly stated in its decisions that the crime of homicide is necessarily included in that of murder.'

Therefore, we reverse the judgment appealed from and sentence the appellant, as guilty of the crime of homicide, to eighteen years of *reclusion temporal* with the accessories thereof, and to pay the costs of this instance. So ordered.

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

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