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[G.R. No. 2444. November 11, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO CAGARA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant was charged with the crime of murder, was tried by the Court of First Instance of the Province of Leyte, was found guilty of the crime charged, and sentenced to life imprisonment (*cadena perpetua*) and to pay the costs. From this decision the defendant appealed to this court.

The evidence adduced during the trial of the cause in the court below shows that the defendant did, on or about the 21st day of October, 1904, by means of a dagger, inflict a wound upon one Urbano Barcelona, from which the said Urbano Barcelona died. The proof also shows that at the time the said wound was inflicted the defendant was somewhat intoxicated and that he was in the habit of becoming intoxicated. There was no evidence adduced during the trial which shows the existence of any of the circumstances mentioned in article 403 of the Penal Code.

The offense, therefore, can not be qualified as the crime of murder. The existence of one or more of the circumstances mentioned in article 403 of the Penal Code is absolutely necessary in order to qualify an offense as that of murder. The evidence must disclose, beyond peradventure of doubt, the existence of one or more of these qualifying circumstances. They are essential elements of the crime of murder and their existence can not be assumed. In the absence of the qualifying circumstances mentioned in said article 403, the act of the defendant

must be qualified as that of homicide, punishable under article 404 of said Code. Neither aggravating nor extenuating circumstances attended the commission of the offense, and the defendant therefore must be punished in the medium degree of *reclusion temporal*.

It is the judgment of this court, therefore, that the sentence of the inferior court be reversed and that the defendant be sentenced to be imprisoned for a period of fourteen years eight months and one day of *reclusion temporal*, to indemnify the heirs of the deceased in the sum of P1,000, Philippine currency, with the accessory penalties provided for by article 59 of the Penal Code, and to pay the costs. So ordered.

Arellano C.J., Torres, Mapa, Carson, and Willard, JJ., concur.
