

5 Phil. 251

[ G.R. No. 2322. November 10, 1905 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILISO BASTAS AND DIONISIO DE LA SERNA, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**TORRES, J.:**

On November 20, 1903, the provincial fiscal charged the accused, Basiliso Bastas and Dionisio de la Serna, in the Court of First Instance in Cebu, with the crime of murder committed as follows: One night in the month of June, 1903, in the barrio of Labangon, of the municipality of Cebu, Island of Cebu, the accused, armed with bolos willfully and treacherously inflicted certain wounds upon Venancio Araneta, as a result of which the latter died, all contrary to law.

The case having been duly tried, judgment was rendered December 10, 1903, sentencing each of the accused to twenty years imprisonment (*cadena temporal*) and one-half of the costs. From this judgment both defendants appealed to this court. Basiliso Bastas died during the pendency of this appeal (p. 47 of the record).

Our review of this case will be confined to the appeal of Dionisio de la Serna. The witness Agustin Nacua testified under oath that at about 9 o'clock one night in the month of June, 1903, while resting in his house in the barrio of Labangon, in the municipality of Cebu, he heard a voice say: "Occupants of the house; in the name of justice let all the men come down;" that he thereupon went downstairs where he found Bastas and Dionisio de la Serna, who ordered him to follow them; that he refused to obey, but was compelled by threats of death to go with them; that he then saw a man bound, who subsequently proved to be

Venancio Araneta, accompanied by a woman; that while on their way they came to an *estero*, where Basiliso Bastas handed him a *pinuti* and ordered him to stab Araneta with it; that he objected at first, but having been threatened by the two defendants with death in case of refusal, he was compelled to stab Araneta; that Bastas, in view of the fact that Araneta did not fall down, notwithstanding the wound that Nacua had inflicted upon him, took the *pinuti* away from him and with the aid of Dionisio de la Serna, who was similarly armed, killed Araneta; that, owing to the darkness of the night, he was unable to see in what part of the body Araneta was stabbed, although he heard some one say that the wound had been inflicted in the side, and while Araneta was bound; that the killing occurred at a place called Banica in the barrio referred to, there being present some twelve or more persons unknown to the witness, who accompanied the accused; that some of these unknown persons carried off to the mountains the woman who had accompanied Araneta, by order of the accused, who had directed them to kill her too; that she was, however, released the same night, and warned, under penalty of death, to say nothing about the occurrence which had taken place; that on the afternoon of the following day the witness was informed that Venancio Araneta had not died on the night in question, but that he had the following day returned to his house.

Basiliso Bastas testified that he was seized one night by various individuals who afterwards captured Venancio Araneta; that the latter was killed by Agustin Nacua; that the witness was subsequently informed that Araneta had not died on the night in question, but on the day following; that the witness himself was released on the third day after his capture; and that it was rumored that Araneta had returned to his house the day following the night of the assault. Maxima Baban, the wife of Basiliso Bastas, testified that the latter was seized one night by several men who released him three days later, and that it was reported about town that Venancio Araneta had been killed on the night referred to, as Romana Abastas also testified.

It therefore seems fully proven in this case that one night in the month of June, 1903, Venancio Araneta was seized and subsequently assaulted with a deadly weapon; that he did not return to his house

thereafter, nor was he afterwards seen in his town. It does not appear whether he ever died as a result of the assault. Some of the witnesses testified that he had died, but Nacua and Basiliso Bastas stated that he did not die, but on the contrary, was able to return to his house on the day following the assault.

The facts in this case show that the crime committed is that of frustrated murder. There is no doubt that Venancio Araneta was assaulted while bound, and in a defenseless condition, and that his assailants employed means and forms which insured the commission of the crime without any risk that might have arisen from an attempt at defense on the part of the person assaulted; but considering that although the defendants executed every act necessary to cause the death of Araneta, it was not shown, however, at the trial that Araneta had actually died, we are of opinion that the accused should be convicted under article 403 in connection with paragraph 2 of article 3 of the Penal Code.

The evidence shows that Basiliso Bastas and Dionisio de la Serna were the parties responsible for the crime charged in the complaint, their plea of not guilty and the evidence introduced in their behalf to the contrary notwithstanding. Dionisio de la Serna himself testified that Venancio Araneta was killed one night by Agustin Nacua, the latter having stated to him that he had killed Araneta. It should be noticed that Nacua testified in the presence of Bastas, now deceased, and Dionisio de la Serna that he had been ordered by the accused to stab Araneta, and that as Araneta did not fall on receiving the wound, they, the accused, killed Araneta, outright; that the accused did not make any attempt to contradict the statement of the witness, but, on the contrary, listened to him with coolness and indifference. Serna, however, stated that although he heard Nacua make the statement, he had not understood what the witness said. All these circumstances tend to show that Dionisio de la Serna is guilty of the crime of frustrated murder, as charged in the complaint.

The accused Serna may be convicted upon the testimony of Agustin Nacua alone, because the latter's statements were corroborated by other

evidence in the case. *The United States vs. Dacotan et al.*<sup>[1]</sup> is followed to the extent that the testimony of one witness alone is sufficient to convict, provided the court is convinced that the accused is, beyond a reasonable doubt, guilty. In the case at bar the testimony of Agustin Nacua, taken in connection with the other evidence in the case, should be deemed sufficient proof of the guilt of de la Serna.

There should be taken into consideration the presence in the commission of the crime of the aggravating circumstance of nocturnity only, and not that of abuse of superiority, as found by the court below. The abuse of superiority is necessarily merged in *alevosia*. There being no extenuating circumstances to consider in favor of the defendant, he should suffer the penalty next lower in degree to that assigned for the crime in article 403 of the Penal Code in its maximum degree, in accordance with article 65 of the code—that is to say, *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.

The judgment appealed from should be reversed and Dionisio de la Serna sentenced to fifteen years' imprisonment (*cadena temporal*) with the accessory penalties of article 56 of the Penal Code, and to pay an indemnity to Venancio Araneta of 500 pesos, and costs.

Let the case be remanded to the court below with a certified copy of this decision and of the judgment to be entered in accordance herewith. So ordered.

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

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<sup>[1]</sup> 1 Phil. Rep., 669.

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