

4 Phil. 487

[G.R. No. 1090. April 29, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TORIBIO GONZALEZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

The death of Pedro de Asis, which occurred at a time when he had left the house of the defendant, being sent by the latter to that in which the act occurred on the same day, facts perfectly proven, raises serious doubt in deciding the question at issue in the case, viz, whether it was the result of an illness from which the deceased suffered, which view is urged by the defense, or whether his death was caused by the beating and ill treatment which he received from the defendant, according to the charges presented by Deogracias Balitaan and urged afterwards by the prosecuting attorney.

These features do not exclude each other. They could have existed together. The beating and maltreatment might have fallen on a sick man—seriously ill, as stated by the defense—and have hastened the death which resulted.

Without offsetting the evidence for the prosecution, all of the defense was to sustain the fact of the existence of the acute illness, with the possible result of death occurring on the following day after its appearance, and this is not sufficient to set aside the consideration given the evidence by the judge in his judgment if no error or any departure from the facts established by the evidence is set up against same. The judge found the facts sufficiently proven beyond reasonable doubt to constitute the crime of homicide, and that

the defendant is the principal in the commission of the same, so the judgment appealed from is correct.

The extenuating circumstance provided for in paragraph 3 of article 9 of the Penal Code has been well taken into consideration, but not so that provided for in paragraph 7, according to the doctrine established in the judgments of the criminal branch of the court of last resort in Spain dated March 5, 1878, and October 15, 1879, cited by the prosecution. However, the extenuating circumstance provided for in article 11 of the Penal Code should be taken into consideration and paragraph 5 of article 81 should be applied.

Therefore we affirm the judgment appealed from in all respects with the further penalty of indemnifying the heirs of the deceased in the sum of P1,000, Philippine currency, and to pay the costs in this instance. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.
