

[G.R. No. 1352. March 29, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. APOLONIO CABALLEROS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The defendants have been sentenced by the Court of First Instance of Cebu to the penalty of seven years of *presidio mayor* as accessories after the fact in the crime of assassination or murder perpetrated on the persons of the American school-teachers Louis A. Thomas, Clyde O. France, John E. Wells, and Ernest Eger, because, without having taken part in the said crime as principal or as accomplices, they took part in the burial of the corpses of the victims in order to conceal the crime.

The evidence does not justify, in our opinion, this sentence. As regards Roberto Baculi, although he confessed to having assisted in the burial of the corpses, it appears that he did so because he was compelled to do so by the murderers of the four teachers. And not only does the defendant affirm this, but he is corroborated by the only eyewitness to the crime, Teodoro Sabate, who, by the way, is a witness for the prosecution. This witness says he was present when the Americans were killed; that Roberto Baculi was not a member of the group who killed the Americans, but that he was in a banana plantation on his property gathering some bananas; that when he heard the shots he began to run; that he was, however, seen by Damaso and Isidoro, the leaders of the band; that the latter called to him and striking him with the butts of their guns they forced him to bury the corpses.

The Penal Code exempts from liability any person who performs the act by reason of irresistible force (par. 9, art. 8). Baculi acted, doubtless, under such circumstances when he executed the acts which are charged against him.

As regards the other defendant, Apolonio Caballeros, there is no proof that he took any part in any way in the execution of the crime with which he has been charged; there is conclusive proof to the contrary, since Baculi, as well as one of the witnesses for the prosecution, Teodoro Sabate, expressly declare that he, Caballeros, did not take any part in the burial of the aforesaid corpses, nor was he even in the place of the occurrence when the burial took place. The confession of his supposed liability and guilt, made before an official of the division of information of the Constabulary, Enrique Calderon, as the latter states when testifying as a witness, can not be considered as legal proof, because the same witness says that Roberto Baculi was the only one of the defendants who made a confession to him *voluntarily*. It appears besides, from the statements of another witness for the prosecution, Meliton Covarrubias, that the confession of Apolonio Caballeros was made through the promise made to him and to the other defendants *that nothing would be done to them*. Confessions which do not appear to have been made freely and voluntarily, without force, intimidation, or promise of pardon, can not be accepted as proof on a trial. (Sec. 4, Act No. 619 of the Philippine Commission.)

The fact of the defendants not reporting to the authorities the perpetration of the crime, which seems to be one of the motives for the conviction and which the court below takes into consideration in his judgment, is not punished by the Penal Code and therefore that can not render the defendants criminally liable according to law.

By virtue, then, of the above considerations, and with a reversal of the judgment appealed from, we acquit the defendants, appellants, with the costs *de officio* in both instances. So ordered,

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

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