

[G.R. No. 964. November 04, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS CATALINO ORTIZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

This case was tried in the Court of First Instance of Maubau, Tayabas, for the crime of murder. The defendants Miguel Arevalo and Germiniano Almagro appealed to this court against the judgment of May 12, 1902, by which the two defendants mentioned and the third defendant, Catalino Ortiz, who did not appeal, were condemned to the penalty of life imprisonment (*cadena perpetua*), with the accessories, and to the payment of civil damages. While the case was pending here Mr. Lionel D. Hargis and the Solicitor-General filed a joint motion asking the court to declare that the defendants are entitled to the benefits of the amnesty proclamation of July 4 last, and that they be acquitted and restored to liberty, after taking the required oath.

The facts in the case are that one night in the month of July, 1901, Mariano de Mesa, who was held as a prisoner by a party of revolutionists who were scouring the province under command of Maj. Ruperto Reus, was put to death, it being supposed that he was a spy of the American Army. Catalino Ortiz and Miguel Arevalo were those who actually committed the crime by order of Germiniano Almagro, who was the captain of the party, and who in turn acted upon orders received from the said Major Reus.

The crime was classified as murder because the aggressors, in order to assure the consummation of the crime without any risk which might arise from an attempt on the part of the victim to defend himself, tied him to a telegraph pole, and while he was in this defenseless condition inflicted upon him with a cutting weapon three wounds, in the head, on the chin, and in his right side, which wounds resulted in his death. His body was found in this condition on the following day by the police of the town of Atimonan. Attached to it was

a paper stating that he had been killed as a spy.

From the facts related it follows that the murder in question is of a political character and is a result of the political hatred or of political dissensions between Filipinos, as both the deceased and the defendants were natives of the Islands. The defendants were revolutionists and were members of the revolutionary faction. Furthermore, they killed the supposed spy, Mariano de Mesa, by order of the said Maj. Ruperto Reus, who was commanding the party, his orders having been transmitted to the defendant through Almagro, who styled himself captain. It does not appear that the crime was due to any personal resentment, but simply to the belief that Mesa was in fact a spy and an enemy to the revolution.

As Almagro and Arevalo appealed from the judgment rendered against them in the court below, and the appeal is now pending before us, it is evident that they have not been convicted by final judgment, and therefore it follows that, from the facts above stated, they are entitled to the benefits of the amnesty proclamation. But the other defendant) Catalino Ortiz, did not appeal and therefore with respect to him the judgment below became a finality. He, therefore, falls within one of the excepted cases foreseen in the amnesty decree, and consequently this court is without jurisdiction to apply the amnesty to him; but he may present a special petition to that end to the proper executive authorities.

For the reasons above stated we hold that the defendants Germiniano Almagro and Miguel Arevalo are entitled to the benefits of the amnesty of July 4 last, and, upon taking before a competent officer the oath prescribed in the said proclamation, they will be set at liberty. The judge will forward to this court proof of compliance with the instructions contained herein, together with the original oaths. So ordered.

Cooper, Willard, Smith, and Mapa, JJ., concur.