

2 Phil. 194

[ G.R. No. 1053. May 07, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MAMERTO VARGAS ET. AL., DEFENDANTS AND APPELLANTS.**

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

**WILLARD, J.:**

Simeon Alberto on May 20, 11)02, was attacked and severely wounded. To the persons who went to his assistance he stated that the defendants had assaulted him. He said nothing of the motive. He died the next day. There was no other evidence for the Government. Manalastas was acquitted by the court below. The defendant Vargas testified that, on returning to his house on the day in question, he found Alberto lying with his (the defendant's) wife; that he drew his bolo; Alberto escaped through the window; that he, the defendant, pursued him, overtook him, and killed him. There was evidence that the relations existing between Alberto and the wife of the defendant had been the subject of common talk in the barrio.

The judge below apparently believed the testimony of the defendant, but, being of the opinion that article 423 of the Penal Code was not applicable, sentenced the defendant to eight years of *prision mayor*.

We agree with the court as to the facts, but not as to the application of said article 423.

This article fixes the penalty of *destierro* when the husband kills the offender "in the act." In this case the discovery, the escape, the pursuit, and the killing were all parts of one continuous act.

The judgment of the court below is reversed, and the defendant Vargas is condemned to the penalty of *destierro* for the term of two years four months and one day, to pay the heirs of the deceased 1,000 pesos, and in case of insolvency to subsidiary *destierro* for a term which

can not exceed one-third of the above penalty, he being prohibited from entering in a radius of 25 kilometers from the barrio of Santa Monica, in the pueblo of Floridablanca, in the Province of Pampanga, during the term aforesaid, with costs to the appellant.

*Arellano, C. J., Torres, Cooper, Mapa, and Ladd, JJ., concur.*

*McDonough, J., did not sit in this case.*

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