

1 Phil. 443

[G.R. No. 110. October 24, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. ANTONIO YACAT ET AL. DEFENDANTS AND APPELLEES.

D E C I S I O N

TORRES, J.:

It is a fact proven in this case that at about 11 a. m. on the 6th day of July, 1900, and for reasons which do not sufficiently appear, an armed conflict broke out between Marcos Bautista and his son, Gregorio Bautista, 20 years of age, on the one hand, at Antonio Yacat, Bautista's brother-in-law, Eugenio Yacat, Cristino Yacat, Macario Mangilit, and Pedro Lising, on the other hand, at a place called Guyonguyong, near the town of Cabiao, the result of the fray being that Marcos received eight wounds, some serious and others mortal, in consequence of which he was left dead on the scene of the fight. Gregorio, Macario, and Cristino were also wounded more or less seriously.

The violent death of Marcos Bautista, which is charged in the information filed by the fiscal as murder, is fully proven in the record. The facts constitute the crime of homicide in a confused and tumultuous affray, and the case falls within article 405 of the Penal Code. Not only does the record fail to disclose which of the five men with whom the deceased and his son, Gregorio, fought was the one who killed Marcos, but it also fails to disclose which of them inflicted upon him the wounds. As all his five adversaries, Antonio Yacat, Eugenio Yacat, Cristino Yacat, Macario Mangilit, and Pedro Lising, during the conflict in which Marcos Bautista received his eight wounds, at least inflicted upon the said Bautista more or less serious personal violence, it is unquestionable that the homicide prosecuted occurred in a confused and tumultuous affray, and that the five defendants are responsible for the killing. Of these five defendants four were arrested and prosecuted and the fifth is absent.

The four defendants before the court, Antonio Yacat, Eugenio Yacat, Cristino Yacat, and Macario Mangilit, plead not guilty. From their self-contradictory testimony it may be

inferred that all of them, together with the absentee, Pedro Using, took part in the fight with the Bautistas, father and son. Their respective exculpatory allegations can not, however, be admitted, as the same were not supported by the evidence. Nor can it be declared as a fact that they were attacked by the deceased Marcos and his son Gregorio, because, if their statement that they were at that time unarmed were true, they have failed to give any explanation of how it is that Marcos received eight wounds before he was killed, and that Gregorio was also wounded.

The record does not show that the defendants, acting on agreement or impelled by the sole purpose of killing Marcos, simultaneously attacked the latter without there having been a fight. The wounds of Macario Mangilit and Cristino Yacat show that there was a fight, but it is not possible to determine which of the contending parties provoked or commenced the quarrel,

Notwithstanding the testimony of Gregorio Bautista, it does not appear which of the five adversaries of his father, Marcos, was the one who killed the latter, nor which of them inflicted the serious wounds upon him, as Gregorio was unable to designate them. From the testimony for the prosecution it is to be inferred that the five adversaries of Marcos and his son, Gregorio, at least committed violence upon the person of the deceased.

From these statements it necessarily follows that the crime of murder has not been committed, because none of the qualifying circumstances referred to by article 403 of the Code were present in the killing by violence of Marcos Bautista. The killing occurred in such a manner as to fall within the provisions of article 405 of the Penal Code. In the commission of the crime no generic mitigating or aggravating circumstances can be considered. The guilt of the defendant Antonio Yacat appears to be aggravated by his relationship with the deceased, who was his brother-in-law by marriage with his sister, Tiburcia Yacat. Upon this ground, the reasons which led him to make this attack upon the life of his brother-in-law and leave his sister a widow, not having been proven, circumstance No. 1 of article 10 of the Code must be applied as aggravating his culpability.

If the judgment of acquittal against which the prosecuting attorney appealed is unsustainable, this can not be said of the contention of the counsel for the Government. If the crime of homicide is included in that of murder because homicide qualified by certain specific circumstances constitutes murder, it is unquestionable that upon an information for murder the courts can convict the defendants, as in this case, of the crime of homicide, under section 29 of General Orders, No. 58. It is not necessary that a new information be

filed charging, the latter offense.

It is true that the record contains no data upon which Eduardo Llanera can be held responsible as an accessory to the homicide in question. It is, however, unquestionable that Pedro Ureta, who was the local president of the town of Cabiao at the time the crime was committed, has incurred criminal liability. Abusing his public office, he refused to prosecute the crime of homicide and those guilty thereof, and thus made it possible for them to escape, as the defendant Pedro Lising did in fact. This fact is sufficiently demonstrated in the record, and he has been unable to explain his conduct in refusing to make an investigation of this serious occurrence, of which complaint was made to him, and consequently he should suffer a penalty two degrees inferior to that designated by paragraph 2 of article 405 of the Code, by virtue of article 68 thereof.

With respect to the motion of the counsel for the defendants that the case be dismissed on the ground that his clients are entitled to the benefits of the amnesty proclamation of July 4, 1902, in view of the fact that these defendants did not take part in any way in the late insurrection to which the amnesty refers, and of the further fact that the record does not disclose sufficient evidence that the homicide in question was the result of a political hatred or of political dissensions between Filipinos, we are of the opinion that the application for amnesty can not be granted.

For the reasons stated, therefore, the motion for the dismissal of the case and the application of the amnesty proclamation of July 4 in favor of the defendant is hereby overruled. The judgment of the court below is reversed, and the offense being classified as homicide in a confused and tumultuous affray, the defendant Antonio Yacat is convicted and sentenced to the penalty of five years of correctional imprisonment, and the other three, Eugenio Yacat, Cristino Yacat, and Macario Mangilit, to the penalty of four years, each one, of correctional imprisonment, with the accessories of article 61, and to the payment, jointly or severally, of 1,500 Mexican pesos to the widow and heirs of the deceased, and, in case of insolvency, to the corresponding subsidiary imprisonment, not to exceed one year, and to the payment each of one-seventh part of the costs of both instances, they to be given allowance for one-half of the time they have been held as detention prisoners. The accessory, Pedro Ureta, is convicted and condemned to three months of *arresto mayor*, the accessories of article 61 of the Code above mentioned, and with subsidiary liability for the payment of the said indemnification in case of the insolvency of the authors of the crime, and, in case of his failure to pay the same, to suffer the corresponding subsidiary imprisonment, not to exceed one month, and to pay one-seventh part of the costs of both instances. Eduardo Llanera is acquitted, by reason of the lack of proof of his guilt, with one-

seventh part of the costs *de officio*, no decision being made for the present with respect to the absentee, Pedro Lising, and Without prejudice to the criminal action which may be brought for the wounding of Gregorio Bautista, Macario Mangilit, and Cristino Yacat So ordered.

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

DISSENTING

WILLARD, J.:

It clearly appears from the evidence that there was a contest between the defendants on one side and the deceased and his son, Gregorio, on the other. It can not be doubted that Marcos Bautista was killed by the defendants, or some of them, and not by his son. It is also clear that the wounds received by some of the defendants were inflicted by Marcos and Gregorio, and not by any of the defendants.

All of the defendants were engaged in an unlawful attack upon the two Bautistas which resulted in the death of Marcos, caused by one or more of them, this, in my opinion, making them guilty of homicide. Such a conflict between two well-defined bands does not constitute a confused and tumultuous affray mentioned in article 405. The four defendants engaged in the conflict should therefore be punished for the crime of homicide, defined in article 404.
