

2 Phil. 434

[G.R. No. 1307. August 21, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE RAMOS ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

Anacleta, the daughter of Jose Ramos, having defied Pascual Rodriguez to come out of his house, the latter left it and upon tin? stairway met Jose and his three sons. Mariano and Rufino were in front and Joso and Andres behind them. Pascual was attacked by Mariano with a bolo and by Rufino with a club. He lost his left hand by a blow from the bolo, and was knocked senseless to the ground by a blow from the club given by Rufino. The court below acquitted Jose and Andres, and the case is not before us as to them. Mariano was sentenced to four years nine months and eleven days' imprisonment because his blow deprived the complaining witness of his hand; and Rufino was sentenced to four months' imprisonment because his blow only caused a contusion on the head. In thus discriminating between the two we think that the court erred. The two defendants attacked Pascual at the same time; they were joint participants in the aggression and each is responsible for the result, (Art. 13, Penal Code.)

The aggravating circumstance of noeternity should not be taken into consideration, for it is evident from the case that the defendants did not select the hour of 8 p. m. for the commission of the offense because it was then dark.

There being neither aggravating nor extenuating circumstances, the penalty should be inflicted in the medium grade.

The judgment is reversed and each of the defendants is converted of *lesiones graves*, defined and punished in article 416, 2, of the Penal Code, and sentenced to the penalty of four years nine months and ten days of *prision correccional*, to pay Pasenal Kodrignez an

indemnity of 500 Philippine pesos, and to half of the costs of the first instance and the costs of this instance.

Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.

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