

[G.R. No. 3346. February 13, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO DIMITILLO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TRACEY, J.:

The accused, pausing on a journey to wash in the river and stooping with his face near the water, was seized by the neck and trousers by Evangelista Palma and ducked repeatedly under the surface. He called for help and none coming he struggled with Palma wresting from him his pinga or carrying stick, he struck him on the neck and thereafter repeatedly on the body; finally, pursuing Palma, as he neared the shore, he struck a fatal blow. These facts as narrated by the accused are corroborated by Candido Descansota, who from a cocoanut tree near by, where he was feathering tuba, heard the accused cry for help, and running to the scene of the struggle found the dead body of Evangelista. There were no other eyewitnesses of any part of the transaction, but the defendant's story is consistent with his statements made to the officials shortly after the occurrence and with all the circumstances.

It appears that in the community Evangelista Palma was reputed a sorcerer and that Dimitillo believed that he had the power and intention to turn him into a shark, or failing in that to eat him, a belief which threw him into a state of terror and led him to use unnecessary violence in resisting the attack.

Although the defendant was not the aggressor, he is not exempt from criminal liability for the reason that it is shown that he struck several blows, among them the fatal one, after the necessity for defending himself had ceased, his assailant being then in retreat. Therefore one of the ingredients of self-defense specified in No. 4, article 8 of the Penal Code is wanting. Applying, however, article 86, the court may impose the penalty in the degree considered proper, taking into account the number and importance of the requisite of exemption present or absent.

The trial court sentenced the accused to be imprisoned for twelve years and one day, with costs and the accessories, for the reason that the judge did not consider that a lighter sentence was allowed by the code.

Under the circumstances of the case, we think that the accused should be punished with the penalty of *prision correccional* in its medium degree and imprisoned for two years four months and one day, with 1,000 pesos indemnity, applying thereto, however, No. 1 of article 50 of the Penal Code, limiting its effect to one-third of the term imposed, not exceeding one year; and he should also pay the costs of both instances. After expiration of ten days from the notification of this decision let judgment be rendered in accordance herewith, and ten days thereafter let the record be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.
