

46 Phil. 738

[G.R. No. 18660. December 22, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
FELIPE DELIMA, DEFENDANT AND APPELLANT.**

ROMUALDEZ, J.:

Lorenzo Napilon had escaped from the jail where he was serving sentence.

Some days afterwards the policeman Felipe Delima, who was looking for him, found him in the house of Jorge Alegria, armed with a pointed piece of bamboo in the shape of a lance, and demanded his surrender. The fugitive answered with a stroke of his lance. The policeman dodged it, and to impose his authority fired his revolver, but the bullet did not hit him. The criminal ran away, without parting with his weapon. The peace officer went after him and fired again his revolver, this time hitting and killing him.

The policeman was tried and convicted for homicide and sentenced to *reclusion temporal* and the accessory penalties. He appeals from that judgment which must be reversed.

That killing was done in the performance of a duty. The deceased was under the obligation to surrender, and had no right, after evading service of his sentence, to commit assault and disobedience with a weapon in the hand, which compelled the policeman to resort to such an extreme means, which, although it proved to be fatal, was justified by the circumstances.

Article 8, No. 11, of the Penal Code being considered, Felipe Delima committed no crime, and he is hereby acquitted with the costs *de officio*. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.

Judgment reversed, defendant acquitted.

Date created: November 25, 2014