

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRUCTUOSO RABANDABAN, DEFENDANT AND APPELLANT.

*G.R. No. L-2228. February 28, 1950*

Ponente: REYES, J.

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### REYES, J.:

This is an appeal from a judgment of the Court of First Instance of Leyte, convicting Fructuoso Rabandaban of parricide.

The evidence shows that appellant and the now deceased Florida Hapala were husband and wife living together in a house in one of the barrios of the municipality of Abuyog, Leyte. Coming home one night from his camote plantation, appellant found his wife lying in bed with another man. The man was able to escape through the window, but the wife received a severe scolding from her husband and was ordered to leave the house. Calling her husband names, the wife gathered her clothes and picked up a bolo in the kitchen, and when her husband followed her there, she attacked him with the bolo, wounding him twice in the abdomen. Wresting the bolo from his wife, appellant stabbed her with it in the breast. She died from her wound that same night. But appellant, though seriously wounded, survived and is now being made to answer for the killing of his wife.

We are with the trial court in not giving appellant the benefit of Article 247 of the Revised Penal Code, it appearing that although he found his wife in bed with another man, he did not kill her on that account. For her reprehensible conduct he merely unbraided her and bade her leave the house.

But we think that the trial court erred in not finding that appellant had acted in self-defense. The evidence shows unlawful serious aggression on the part of the victim without sufficient provocation, and it also seems apparent that there was reasonable necessity for the means employed to repel the assault. But speculating that appellant could have perhaps saved himself by throwing away the bolo after wresting it from his wife, the trial court opined that there was no need for him to stab her once she was disarmed. To this we cannot agree. When appellant got possession of the bolo he already must have been in a precarious condition because of his wounds, one of which was described by the sanitary inspector as "fatal" since the large intestine came out of it. And appellant, we think, was justified in believing that his wife wanted to finish him off because, according to the evidence, she struggled to regain possession of the bolo after he had succeeded in wresting it from her. With the aggressor still unsubdued and showing determination to fight to the finish, it would have been folly on the part of appellant, who must already have been losing strength due to loss of blood, to throw away the bolo and thus give his adversary a chance to pick it up and again use it against him. Having the right to protect his life, appellant was not in duty bound to expose himself to such a contingency.

The case for the present appellant is not unlike that of the accused in *U. 3. vs. Molina*, 19 Phil. 277, 231, 232, where this Court made the following pronouncement:

"\* \* \* It was clearly shown by the testimony of the accused, corroborated by the witness Elseco, that after the commencement of the assault by the deceased, the struggle between the latter and the accused did not cease for

one moment, now each combatant trying to wrest the bolo away from the other, now the deceased endeavoring to arm himself with the hatchet which undoubtedly was within his reach, until finally the deceased himself was disabled and could no longer continue to struggle in consequence of the wounds which he received during the affray. Considering the decidedly aggressive attitude of the deceased from the commencement of this struggle until its termination, it can not be said that there was a cessation of the danger for the accused, even for a single instant. If, through the various incidents of the struggle, or any favorable accident whatever, the deceased had succeeded in recovering the bolo or in possessing himself of the hatchet, as he attempted to do to the last, the result of the combat would probably have been very different; perhaps the accused, instead of being the slayer, would himself have been killed. The accused certainly was not in duty Bound to expose himself to such a contingency, and while the struggle continued, and, consequently, the danger to his person or to his life subsisted he had a perfect and indisputable right to repel such danger by wounding his adversary, if necessary, as from the circumstances of the case it was, without any doubt whatever, and even to disable him completely so that he could not continue the assault. In our opinion, the means employed by the accused were rationally necessary to repel the assault, and as the latter was in all respects unlawful and was not preceded by any provocation of any kind on the part of the accused himself, we declare the said accused to be exempt from criminal liability, in accordance with the provisions of paragraph 4 of article 8 of the Penal Code."<sup>[1]</sup>

In view of the foregoing, we think that the appellant should have been declared exempt from criminal liability on the ground of self-defense. The judgment appealed from is, therefore, reversed and appellant acquitted with costs de oficio.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.  
Paras and Feria, JJ., no part.

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[1]Now paragraph 1 of Article 11, Revised Penal.

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