

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RICARDO GAMMUAC, DEFENDANT AND APPELLANT.

*G.R. No. L-5197. August 28, 1953*

Ponente: REYES, J.

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### REYES, J.:

On July 17, 1940, the now deceased Simeon Cudal was shot to death by Ricardo Gammuac at a place called Alog ti Langan, or Langan Lake, in the municipality of Gattaran, Cagayan. The weapon used was a double-barreled shotgun and the pellets that killed the deceased were buckshots, some of which were extracted from his cadaver by the Sanitary Inspector who conducted the autopsy.

The incident was reported to the authorities on that same day, and on that same day Ricardo Gammuac also surrendered himself to the Chief of Police of the municipality, informing the latter "that he shot Simeon Andal because of a land trouble."

Gammuac was prosecuted for murder, but with the interruption caused by the war, the case was not finished until 1949, when the Court of First Instance of Cagayan rendered judgment declaring him guilty of homicide and, appreciating in his favor the mitigating circumstances of obfuscation and voluntary surrender, sentenced him to an indeterminate penalty of from 6 years and 1 day of prison mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum; to indemnify the heirs of the deceased in the sum of P2,000; and to pay the costs. The accused appealed to the Court of Appeals but that Court has certified the case here, being of the opinion that appellant should be sentenced to life imprisonment.

It is deducible from the evidence that the crime was the offshoot of some land trouble. The deceased owed appellant a sum of money, payment of which was secured by a piece of land with a stipulation that the land would pass to appellant should the deceased fail to pay. As payment was not made within the time stipulated, appellant took possession of the land and he also obtained judgment in the Justice of the Peace Court for the payment of the sum due. It seems that the deceased did not want to give up the land. So in the morning of July 17, 1940, he took his men there to plow. Some hours later, his son Roman Cudal, also went there to see how many men were working so that he could prepare enough food for them. Leaving the place after counting the men, Roman had not gone very far when he was met by appellant, who, not content with insulting him, took a shot at him but missed. Unable to take another shot at Roman because the latter took cover behind a passer-by, what appellant did was to go where the deceased was and, after addressing him: "You old fooling me," shot him.

Appellant would make it appear that he killed the deceased in self-defense. With the corroboration of two witnesses, he testified that on the day in question he had come to that place accompanied by Julio Abad to hunt wild ducks; that while they were hiding in the tall grasses waiting for the ducks to come, they were surrounded by the deceased and three other men, all of whom were armed with bolos; that, to scare them, he fired at a dog that was between him and his adversaries; that instead of being scared, the deceased advanced towards him, brandishing a bolo in his right hand, and so to defend himself, he shot him and then fled.

Since appellant admits having shot and killed the deceased, he has to satisfy the court with credible evidence that the killing was justified. This, however, appellant has failed to do. His tale of self-defense is hard to believe. If it be true as alleged by him that he had gone there to shoot wild ducks and taken cover in the tall grasses to wait for his quarry, then why was his shotgun loaded with buckshots when according to him he had with him some cartridges for birds? The lake in question was in reality a pond about 100 meters long and 30 meters wide sandwiched in between two roads and with houses around it—hardly a place for wild duck. It is also hardly believable that the deceased, who was described as an old man of 80 and very weak, would dare attack a man who was armed with a gun. Moreover, the allegation that the old man was brandishing a bolo in his right hand is discredited by the fact that he was left-handed. Finally, if the appellant had really acted in self-defense, he would surely have so informed the chief of police when he surrendered to the latter instead of merely saying that he had killed the deceased on account of land trouble.

In the circumstances, we don't think the trial court erred in accepting the theory of the prosecution and is not giving credence to the story of self-defense put up by the appellant. There are for sure some incongruities or inconsistencies in the testimony of the witnesses for the prosecution but, referring as they do to mere matters of details, they are not enough to discredit the veracity of the witnesses.

The Solicitor General suggests that appellant is guilty of murder. But we find the evidence insufficient to convict appellant of that crime. We must, therefore, accept the findings below that appellant is guilty only of homicide. We find, however, no reason for taking into account the mitigating circumstance of obfuscation which was appreciated by the trial court, and the mitigating circumstance of voluntary surrender, which was likewise appreciated, is offset by the aggravating circumstance of appellant's disregard of the respect due the deceased on account of his age, with the result that the penalty imposable is the medium degree of that prescribed for the crime of homicide. Applying the Indeterminate Sentence Law, appellant should, therefore be sentenced to the indeterminate penalty of 6 years and 1 day of prison mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum.

Wherefore, modified as to the penalty to the extent above specified, the judgment below is affirmed, with costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo and Labrador, JJ., concur.

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