

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO MARALIT, DEFENDANT AND APPELLANT.

*G.R. No. L-11979. January 25, 1917*

Ponente: MORELAND, J.

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### MORELAND, J.:

The appellant was convicted of homicide and sentenced to five (5) years of prision correccional, to the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs:

We are satisfied that the defendant below, without justification, stabbed Florentino Luistro in the side with a knife and caused his death.

Counsel for appellant vigorously and ably attacks the findings of fact of the trial court and attempts to show that he should have accepted the testimony of the defense rather than that of the prosecution as a basis for his conclusions. A careful examination of the evidence, however, fails to furnish sufficient reasons to reverse the trial court on the facts. Two witnesses testified to the occurrence on behalf of the prosecution and stated that they, with the deceased Florentino, were walking along in single file each with a bundle of zacate on his head, Florentino bringing up the rear, when they met the defendant and a companion. As they were passing each other they heard a sound similar to that made by the dropping of one of the bundles of zacate. They instantly turned and saw Florentino and the defendant fighting with their fists. They soon separated and Florentino, returning to his bundle of zacate, stooped to pick it up when the defendant ran to him quickly and stabbed him in the left side with a knife. The defendant and his companion then ran away. The witnesses and Florentino went home. Florentino died a few days later as a result of the wound thus received.

The accused and his witness tell a different story, in which it is claimed that Florentino made an attack upon the accused, after some sharp words had passed between them, and struck him several times with a club; whereupon the accused, in self-defense, made use of his dagger with the effect already noted.

Upon this evidence the trial court found with the witnesses for the prosecution. In spite of the insistent argument of counsel for the appellant we must conclude on the record that there is no reason for a reversal of the trial court with regard to its findings of fact.

Counsel for appellant strenuously contends that the accused should be acquitted on the ground that the prosecution did not prove that the accused, in stabbing the deceased, acted with discernment, that is, with a full understanding of the nature and consequences of his act. This argument is based upon the age of the accused and paragraph 3 of article 8 of the Penal Code.

The accused was less than 15 years of age at the time the crime was committed. The deceased was less than 16, the certificate of death stating that his age was fifteen. The paragraph of article 8 referred to provides that a person over 9 years of age and under 15 is exempt from criminal liability "unless he has acted with discernment." That paragraph also provides that "in order to impose a penalty upon such a person, \* \* \* the court shall make an

express finding upon this fact," that is, the fact that he acted with discernment.

While counsel admits that the trial court found that the accused acted, in the commission of the crime, with complete discernment, he contends that there is no evidence in the record upon which that finding can be based, he alleging that it was the duty of the prosecution to prove that fact by affirmative evidence.

We are satisfied that the contention of counsel is not well grounded in this particular case. It is true, as counsel asserts, that it must appear from the evidence that the accused acted with knowledge of the nature of his acts and of the results which would naturally follow therefrom; but to establish that fact it is not necessary that some witness declare directly and in words that he acted with such knowledge. It is sufficient that, from the evidence as a whole, it is a necessary inference that he so acted. The trial court taking into consideration all of the facts and circumstances presented by the record, together with the appearance of the accused as he stood and testified in court, drew the conclusion that he was of sufficient intelligence and was sufficiently endowed with judgment to know that the act which he committed was wrong and that it was likely to produce death. In pursuance of that conclusion the court made the finding that the accused in committing the act complained of acted with discernment.

We are of the opinion, however, that the penalty imposed is not correct. Article 85 of the Penal Code provides that—

"In the case of a minor of less than fifteen and over nine years of age, who is found by the court to have acted with discernment, and, therefore, not being exempt from criminal liability, a discretionary penalty shall be imposed, provided that the same shall always be less by two degrees, at least, than that prescribed by the law for the offense committed."

Following the provisions of this article the penalty imposed should have been two (2) years of prison correccional instead of five years. As so modified, the judgment is affirmed. So ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

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