

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE REYES, DEFENDANT AND APPELLANT.

G.R. No. 12635. September 25, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

A soldier of the United States Army by the name of Guiseppe Goggiano was killed by Vicente Reyes, the defendant and appellant, during a quarrel over a game of cards. The implement used by Reyes was a baston (stick). The means taken by Reyes was hitting the soldier on the head with the baston. The trial court in view of these prominent facts and because of a finding that the defendant did not act in self-defense, and considering neither aggravating nor mitigating circumstances to exist, found the defendant guilty of homicide and sentenced him to fourteen years eight months and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased Guiseppe Goggiano in the amount of P500, and to pay the costs. As the case turns entirely on the credibility of witnesses, we are not disposed to interfere with the findings of fact by the trial judge or the sentence imposed by him which is in conformity with law.

The appellant makes only one assignment of error which requires consideration. This is to the effect that the trial court incurred error in not finding in favor of the accused mitigating circumstance No. 3 of article 9 of the Penal Code, namely, that the offender had no intention to cause so great a wrong as that committed. Remembering that the implement was a baston, the use of which with force on the head of a person would ordinarily fracture the cranium and cause death, the following decisions of the supreme court of Spain collated by the Attorney-General in his excellent brief are of particular interest and are decisive of the point:

"The intention of the agent, as an internal act and of his own conscience, cannot be revealed in any other manner than by the external and overt acts which may accompany that intention, the only acts that can be appreciated by the judicial mind; consequently, if the accused cause the homicide by giving the deceased two blows on the side and neck with the yoke of a plow, neither from the kind of implement used to execute the act, nor from the intenseness and force which was employed in inflicting the injuries, neither from the principal parts of the body to which the blows were directed, could it be inferred nor deduced that he did not have the intention to cause all the evil produced." (Decision of December 12, 1876.)

"When the means employed by the accused are adequate and proportionate to the result of the crime, circumstance No. 3 of article 9 cannot be considered in his favor." (Decision of March 25, 1892.)

"The intention of the culprit must be deduced, as a rule, from the nature and extent of the tangible evil produced, as this is almost always the palpable manifestation of his will, except when the proof and other circumstances or antecedent events may be a sufficient ground to cause the belief that the material act has transcended the bounds of his intention." (Decision of June 10, 1892.)

"Mitigating circumstance No. 3 cannot be considered in the injury caused by striking with a foot stool, because the means employed by the accused were adequate to produce not only the evil which resulted but also another of greater import." (Decision of June 5, 1895.)

"This mitigating circumstance requires in order that it may legally be applied that the evil produced should not be disproportionate neither to the intensity of the means employed to execute it nor to the efficacy of the implement used to commit it." (Decision of August 10, 1900.)

"The lack of intention to cause so serious an evil as that produced, can only be considered in default of facts which may clearly show it when there is such a disproportion between the resultant evil and the means employed to cause it, so that the evil could not reasonably be presumed." (Decision of March 22, 1901.)

"Circumstance No. 3 of article 9 can only be considered when the facts proven show that there exists notable and evident disproportion between the means employed to execute the criminal act and its consequences." (Decision of January 29, 1902.)

"Mitigating circumstance No. 3 of article 9 can only be legally applied when there is a notorious disproportion between the evil produced and the means employed to execute it; and in the present case, the injury caused being in correspondence with the efficacy of the implement used by the accused (a blow on the forehead with a pitcher causing less serious injury), inasmuch as it is liable, the blow directed as it was on the head, to cause the injuries suffered by the offended party, it cannot reasonably be presumed, nor considered, that there existed in the mind of the offender an intention to limit the consequences of his voluntary act to a less degree of gravity than that actually caused." (Decision of July 2, 1902.)

"The intention of the offender is judged, when there are no other elements for consideration, by the greater or less proportion of the means employed by him to the evil produced by his act, and it being a work implement sufficiently powerful to produce the wound suffered by the offended party, and even another of more serious character, it must perforce be admitted that the extent of the evil is in proportion to the purposes of the agent." (Decision of January 4, 1905.)

Judgment is affirmed with costs of this instance against the appellant. So ordered.

Arellano, C. J., Carson, Araullo, and Street, JJ., concur.

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