

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SEVERO BATERNA, DEFENDANT AND APPELLANT.

G. R. No. 24724. February 25, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was prosecuted in the Court of First Instance of Cebu for the crime of homicide on the following complaint:

"The undersigned accuses Severo Baterna of the crime of homicide inasmuch as on or about May 18, 1925, in the municipality of Tuburan, Province of Cebu, the above- mentioned accused voluntarily, illegally, and criminally, without justification, did attack Eugenio Desapulo with a penknife which he carried, inflicting wounds upon his body which caused the instant death of the said Eugenio Desapulo. Contrary to law."

After proper hearing the lower court found the accused guilty of the crime charged and taking into consideration the mitigating circumstances of non-habitual drunkenness, his lack of instruction provided for in article 11 of the Penal Code, and passion and obfuscation, imposed the penalty next lower in degree to that prescribed by law in accordance with article 81, paragraph 5, of the Penal Code, as amended by Act No. 2298, or ten years and one day prison mayor, to pay the heirs of the deceased the sum of p1,000 by way of indemnity, and the costs. From this judgment the accused appealed and his counsel alleges that the trial court erred: (a) In considering the theory of the prosecution in regard to the facts more probable; (b) in finding the accused guilty of the crime of homicide; and (c) in not taking into consideration the exempting circumstance of self-defense in favor of the accused.

After a careful study of the evidence presented in the record, we are of the opinion that the assignments of error made by the appellant are groundless.

The Attorney-General recommends the modification of the judgment appealed from to the effect that the penalty provided for in article 404 of the Penal Code be imposed upon the accused in its minimum degree for the reason that the circumstance of non-habitual intoxication which attended the commission of the crime implies a disturbance of the accused's reasoning powers, and his lack of instruction cannot have any influence over him, nor can it be considered that he acted under the impulse of passion and obfuscation. Lack of instruction, and passion and obfuscation, as mitigating circumstances, cannot be considered independently of that of non-habitual intoxication; wherefore the judgment must be modified, imposing upon the accused the penalty in its minimum degree, or twelve years and one day reclusion temporal, with the accessories of the law. And with this modification, the judgment appealed from must be, as it is hereby, affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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