

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EPIFANIO LUCERO, DEFENDANT AND APPELLANT.

G. R. No. 24854. July 26, 1926

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Ilocos Norte finding the appellant, Epifanio Lucero, guilty of the offense of homicide, with mitigating circumstances, and sentencing him to undergo imprisonment for ten years (presidio or prision mayor), with the accessories prescribed by law, and requiring him to pay indemnity to the family of the deceased in the amount of P1,000, as well as to pay the costs of prosecution.

It appears that on August 9, 1925, a young man, named Ciriaco Calaycay, was riding a carabao in the poblacion of Badoc, Ilocos Norte. Ciriaco's legs may have been a little longer than the average; for his feet, dangling below, attracted the attention of the appellant, Epifanio Lucero, and other companions who, in a spirit of youth, began to tease Ciriaco by pulling at his legs. This incident, though evidently intended merely as a boyish prank, irritated Ciriaco very much. At about 5 o'clock in the afternoon of the same day Ciriaco was sitting at or near a bridge on the provincial road leading into Badoc; and while thus seated, he saw the appellant, Epifanio Lucero, passing on a bicycle. Thereupon, prompted no doubt by the irritation surviving from the incident of the forenoon, Ciriaco picked up a small stone, which he threw at Epifanio Lucero, just after the latter had passed. The stone struck Epifanio on the right arm and caused him to swerve somewhat from his course on the wheel. At about the same time a vehicle was seen to be approaching from the opposite direction; and, in order to avoid hitting the vehicle, Epifanio was compelled to turn his bicycle more quickly than its momentum would permit, with the result that the wheels of the bicycle slipped and Epifanio was thrown to the ground.

Upon seeing Epifanio fall Ciriaco Calaycay immediately approached him with unfriendly intentions, and the two grappled with each other and fell into a ditch by the roadside. In a moment, however, the contestants were on their feet, confronting each other in a hand to hand struggle, in the course of which Epifanio struck Ciriaco in the abdomen with a small bolo, inflicting upon him a wound from which he died the following morning. Having struck this blow, Epifanio mounted his bicycle and rode away; while by-standers came to the relief of Ciriaco and carried him away for treatment.

The defense admits that Ciriaco Calaycay died of a wound inflicted upon him by the appellant, but it is insisted that the blow was delivered in self-defense. In this connection it was claimed by the appellant and his kinsman, Bonifacio Tolentino, that when the appellant cut the deceased with the bolo the appellant was lying in the ditch on his back and that Ciriaco was then on him squeezing his neck with the left hand and at the same time with his right attempting to pick up a stone with which to beat the appellant. The trial court found against this contention and expressed the belief that when the fatal blow was struck, the two combatants were confronting each other as already stated in this opinion. A perusal of the evidence leaves no doubt in our mind that the judge was correct on this point, and we think that no error was committed by him in finding that the act which is the subject of

prosecution was not done in justifiable self-defense.

Upon the point of the qualification of the offense we concur with the Attorney-General in the opinion that the facts will bear a somewhat milder interpretation than that placed upon the case by the trial court. It is obvious that the unlawful aggression proceeded from the deceased, and not from the accused, without any adequate provocation on the part of the latter.

It should be also borne in mind that the act of the deceased in suddenly assailing the accused at the precise moment when he must have been perturbed by falling from the bicycle, a thing caused by the deceased, was calculated to excite the mind of the accused in a high degree and to generate a state of mind in him analogous to *arrebato y obcecacion*. This circumstance is the more noteworthy in view of the youthfulness of the accused, it appearing that he was only about 19 years of age at the time of the trial. The accused in our opinion is entitled to the benefit of the consideration of incomplete self-defense, and in view of the mitigating circumstances, we think that the penalty fixed by law for the crime of homicide should be reduced by two degrees; and upon consideration of all the circumstances involved in the case, we are of the opinion that the ends of justice will be sufficiently served by fixing the penalty at three years, *prision correccional*, with the accessories prescribed by law, instead of the higher penalty of ten years, with accessories, prescribed by the lower court.

It being understood that the penalty is so modified, the judgment of conviction, with the pronouncement as to indemnification, is affirmed, with costs. So ordered.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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