

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO CONCHA, DEFENDANT AND APPELLANT.

G. R. No 25168. August 09, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was sentenced by the Court of First Instance of Mindoro to twenty years reclusion temporal, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs.

The crime charged in the complaint is that of murder committed with evident premeditation and treachery, but in view of the evidence, the trial court found the accused guilty of the crime of homicide with the aggravating circumstance provided in paragraph 9 of article 10 of the Penal Code.

On the afternoon of September 3, 1923, the deceased Gabino Mascariñas, accompanied by Alejandro de Boda, went to Felipe Venturanza's house situated in the barrio of Bagumbayan in the municipality of Pinamalayan, to take part in a game of chance then being played there, where they met several other players, among whom was the accused Pedro Concha. Concha made a bet in one of the games which he lost and then discovered that the two-peso bill which he possessed had disappeared. He asked Gabino Mascariñas, who was next to him, about it and the latter replied that he knew nothing about it. The accused insisted that Gabino must know who had taken his two-peso bill, because he was next to him. Gabino felt offended at being suspected by Pedro and an altercation followed in which Gabino punched the accused in the right eye. The players pacified the combatants and continued their game. Some time later, which cannot be determined from the record, the accused got up stating that he had no money with which to play and left the house just as Alejandro Mascariñas, a brother of the deceased, came from the market and was going upstairs to call his companions (Gabino Mascariñas and Alejandro de Boda) in order to return to their homes.

Alejandro Mascariñas found his companions in Venturanza's house and invited them to leave, but Gabino said that he wished to make one more bet, and having lost in that game, the three of them then left the house. They had hardly left the stairway when Gabino Mascariñas was met by the accused who was waiting there; he inquired where they were going and hardly had Gabino answered that they were returning to their home when he was attacked by the accused with a penknife and wounded in the abdomen which resulted in the death of Gabino Mascariñas on the fifth day after the incident.

The accused admits having inflicted the wound which caused Gabino's death, but alleges that it was due to a quarrel he had with him on account of his having lost the two pesos and Gabino having struck him on the forehead and attempted to stab him with a penknife, which he dodged.

We have considered the evidence before us and are convinced that after the altercation between the deceased and the accused in Venturanza's house, they had a quarrel near said house with the result that Gabino was mortally wounded by the accused. We are of the opinion that both combatants, upon encountering each other outside of the

house, must have been prepared for a fight on account of what had occurred between them a few minutes before and we do not believe that any aggravating circumstance was proven.

We find no grounds in the record to support the errors alleged by the defense.

With the modification that the penalty provided by article 404 of the Penal Code be imposed upon the accused in its medium degree, or, fourteen years, eight months and one day reclusion temporal the judgment appealed from must be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

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

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