

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIMEON SOLANGA, DEFENDANT AND APPELLANT.

*G. R. No. 25338. September 09, 1926*

Ponente: OSTRAND, J.

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### OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Sorsogon, declaring the defendant-appellant Simeon Solanga guilty of the crime of homicide and imposing upon him a penalty of fourteen years, eight months and one day of reclusion temporal, with the accessory penalties provided for by law, and ordering him to indemnify the heirs of the deceased David Gupalao in the sum of P1,000, and to pay the costs.

The principal evidence against the defendant is his own confession made before the justice of the peace of Irosin, Sorsogon, on the day following the commission of the crime, and in which he made the following statement: "Yesterday morning after I had taken my breakfast with my mistress Catalina, I was going to the place where I was working, and while on my way there I found that I had left my cigarettes in the house. On my return to the house to get the cigarettes I found to my surprise that my mistress Catalina was having intercourse with David Gupalao. David struck me with his fist and tried to take my bolo away from me, and being excited and blind with rage in seeing the situation, and being thus attacked by David, I made use of my bolo and cut him in the arm. Seeing us fighting, my mistress Catalina jumped out of the window and I continued giving the man bolo cuts in various parts of his body and finally left the house in search of Catalina. The man David also left and went out in the abaca field where he died"

At the trial of the case the defendant told a different story and tried to make it appear that the deceased died accidentally or through his own fault. He stated on the witness stand that Catalina Habitan was his lawful wife; that he found the deceased in the act of violating Catalina, and that she was screaming and crying for help; that he asked the deceased for an explanation, but was answered with a threat and advised not to enter the house; that the deceased thereupon assaulted him and struck him with a piece of wood; that he, the defendant, picked up a stick with which he endeavored to defend himself, but that he lost the stick and was forced to use his bolo; that he tried to retreat and in doing so backed up against a coconut palm; that at that precise moment the deceased in trying to give him a decisive thrust with a pocket knife ran up against the blade of the defendant's bolo thus wounding himself.

The defendant's testimony was corroborated by that of Catalina Habitan, but her testimony is completely discredited by a sworn statement made by her before the justice of the peace immediately after the commission of the crime and introduced as evidence in rebuttal by the prosecution. The statement reads as follows, in translation :

"I, Catalina Habitan, single, 25 years of age, resident of the barrio of Casini, municipality of Irosin, Province of Sorsogon, P. I., after being sworn depose as follows:

"On the morning of Monday, August 24, 1925, my paramour Simeon Solanga asked me for permission to go to

the barrio of Batang, municipality of Irosin, for the purpose of assisting my brother in his work of sowing his land, and left our house. After a while David Gupalao came for the purpose of collecting our debt of P4. He had not been sitting long in our house when Simeon Solanga, my paramour came and I saw him seizing the handle of his bolo, and on arriving in our house without making any question immediately stabbed, David Gupalao. I was afraid and ran to the house of the lieutenant of the barrio and I saw Simeon Solanga pursue David Gupalao, stabbing him in the back. On arriving at the house of the lieutenant of the barrio, I told him that Simeon had stabbed David Gupalao, and the lieutenant immediately came to our house.

"This is all that I can declare as the real truth, and I made this declaration freely and spontaneously and without any threat by any person in authority.

"In witness whereof I hereunto set my hand in Irosin, this Monday, 24th of August, 1925."

From the evidence as a whole, it seems clear that the defendant and Catalina Habitan, while living together as husband and wife, were not legally married and that the case therefore does not fall under the first paragraph of article 423 of the Penal Code. The testimony to the effect that the deceased assaulted Catalina is very evidently also untrue. But there can be little doubt that on the occasion in question the defendant found Catalina and the deceased in a compromising situation, and that this in connection with the invasion of his home created "an impulse so powerful as naturally to have produced passion and obfuscation;" he is therefore entitled to the benefit of mitigating circumstance No.7 of article 9 of the Penal Code. The lack of instruction and education on the part of the accused should also be taken into consideration as an extenuating circumstance under article 11 of the Penal Code as amended. The appreciation of this circumstance is the more appropriate in this case for the reason that in some of the more backward communities a loose relation between man and woman, such as existed between the accused and Catalina Habitan, has somewhat the same moral sanction as the legal relation of man and wife. If these two had been formally united in marriage, article 423 of the Penal Code would have been applicable and the penalty reduced to banishment. The state of education and instruction of the accused is therefore, directly pertinent to his legal culpability.

Two mitigating circumstances having been found to be present, and there being no aggravating circumstances, paragraph 5 of article 81 of the Penal Code becomes applicable, with the result that the penalty must be reduced by one degree, and the majority of the members of the court are of the opinion that the accused should be sentenced to suffer six years and one day of prision mayor.

The judgment appealed from is therefore modified by reducing the penalty imposed upon the defendant to six years and one day of prision mayor, with the accessory penalties prescribed by law. In all other respects the judgment is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Johns, and Villa-Real, JJ., concur.  
Romualdez, J., concurs in the result.

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## DISSENTING

**VILLAMOR, J.,**

In my opinion the evidence justifies the imposition of the penalty provided in the first paragraph of article 423 of Penal Code.

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