

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEON MONTEROSO, DEFENDANT AND APPELLANT.

G.R. No. 28538. August 04, 1928

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellant, Leon Monteroso, was sentenced by the Court of First Instance of Leyte for the crime of homicide to seventeen years four months and one day reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the sum of P500 and to pay the costs.

The appellant and the deceased had a disagreement over the former having extracted tuba from a coconut tree on the dividing line between their lands. Three weeks later, or on June 19, 1927, the appellant attacked and killed the deceased.

It appears from the evidence of the prosecution that on the afternoon of that date the appellant, who was at the top of a coconut tree, called to the accused inviting him to his house for a drink of tuba. The accused and his wife accepted the invitation, but, upon reaching the appellant's house and after greeting him, the appellant, who was at the top of the stairway, instead of returning the greeting, struck him one blow after another with a bolo, inflicting various wounds which caused the death of the deceased where the incident took place.

The appellant does not deny having caused the death of the deceased, but alleges that he acted in self-defense. To this end he tried to prove that the deceased was the first to provoke and attack him with a bolo, pursuing him and upon reaching the threshold of his house the appellant grabbed a pestle which was leaning against the steps and defended himself against the aggression which was about to take place, succeeding in snatching the bolo from the deceased. As the deceased later tried to recover the bolo, the appellant gave him several blows with it. But a witness named Claudio Escalzeta, presented to establish this defense, testified that when the appellant reached his house, pursued by the deceased, he picked up a bolo and a pestle and turning towards the deceased, he faced him, saying "come on if you are brave," and a fight then commenced between them. According to this the appellant cannot allege that he acted in self-defense for what he did after believing himself to be duly armed, was to agree to the fight provoking it, in turn, which is incompatible with the plea of self-defense which exempts from criminal liability. Apparently the fight was unnecessary in those circumstances, because the appellant could have avoided it by going up into his house and locking himself in. But, instead of doing this, the appellant armed himself and sought the deceased, in turn inviting him to fight.

The trial court considered the fact of the appellant having used a bolo as an aggravating circumstance (par. 24, art. 10, of the Penal Code) and imposed upon him the maximum degree of the penalty prescribed for the crime. We agree with the Attorney-General's opinion in the sense that, in this case, the bolo cannot be considered as a prohibited weapon, determinative of this aggravating circumstance, and that the penalty should be imposed in the medium degree.

Holding that the proven facts constitute the crime of homicide, without any modifying circumstance of criminal

liability, the judgment appealed from is modified and the appellant is sentenced to fourteen years, eight months and one day reclusion temporal, said judgment being affirmed in all other respects, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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