

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINGO BASALO, DEFENDANT AND APPELLANT.

G.R. No. 29471. November 23, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant was charged with the crime of homicide before the Court of First Instance of Cebu, it being alleged in the information that "on or about the evening of January 27, 1928, in the barrio of Medio-Once, municipality of Toledo, Province of Cebu, Philippine Islands, the said accused intentionally, maliciously, and criminally attacked his mistress, Irinea Naraño, with a bolo, inflicting wounds upon her in various parts of her body, which wounds caused the instant death of said Irinea Naraño."

It appears from the evidence that upon returning home on the evening in question, the defendant was severely reprimanded by the deceased for having bought, without her consent, a sweater for his son of a former marriage. She also accused him of having spent his money on women. The defendant thereupon left the house, but Irinea followed him and continued her scolding and threatened to take his life. He then went home again, and arming himself with a bolo, went to a small cabin situated in the same town, which he used as a storehouse for bananas. Irinea followed him again and renewed her abuse of him, slapping him in the face and throwing stones at him. He thereupon attacked her with his bolo, inflicting wounds upon her from which she died immediately.

After trial the court below found the defendant guilty of homicide, with the extenuating circumstance of provocation and threats on the part of the offended party, and sentenced him to suffer twelve years and one day of reclusion temporal, with the accessory penalties, and to indemnify the heirs of the deceased in the sum of P1,000, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Upon appeal to this court it is argued that in addition to the extenuating circumstances of provocation and threats on the part of the offended party, the mitigating circumstance of obfuscation should be considered in favor of the appellant and that the penalty imposed therefore should be reduced by one degree. There is no merit in this contention. The facts upon which obfuscation might rest are the same as those upon which the extenuating circumstance of provocation is based and must therefore be regarded as one and the same mitigating circumstance. (Sentence of the Supreme Court of Spain, March 7, 1871.)

The appealed judgment is in accordance with the facts and with the law and is therefore affirmed with the costs against the appellant. So ordered.

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

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