

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AMBROSIO GUTIERREZ, DEFENDANT AND APPELLANT.

*G.R. No. 31010. September 26, 1929*

Ponente: ROMUALDEZ, J.

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### ROMUALDEZ, J.:

This appeal is taken from a judgment of the Court of First Instance of Manila, finding the accused guilty of homicide, and sentencing him to fifteen (15) years of reclusion temporal, the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

The appeal is based upon the following three assignments of error: (1) In considering only the testimony of the two interested witnesses for the prosecution, Rivero and Pantangco; (2) in not sustaining the plea of self-defense of the accused; and (3) in finding the accused guilty of the crime of homicide.

The accused does not deny having killed the deceased Emilio Paat. It is therefore incumbent upon him, for his acquittal, to show satisfactorily that he committed the act with complete justification.

He alleges self-defense; but upon a careful study of the evidence both for the prosecution and the defense, and considering it as a whole, it cannot be held that the accused's plea of complete self-defense has been sufficiently proven.

The plea of self-defense is an affirmative allegation which must be established by the accused with sufficient and convincing evidence (*U. S. vs. Coronel*, 30 Phil., 112; and *People vs. Baguio*, 43 Phil., 683).

The only thing disclosed by the evidence resulting from our examination thereof, is that the accused actually tried to defend his brother-in-law Alberto Martin, who was attacked by the deceased, which clearly shows that there was no sufficient provocation on the part of the accused. Although we also believe, as was proven, that the accused was unlawfully attacked, nevertheless, the aggressor was not the deceased but another person named Joven. Consequently, this unlawful aggression cannot be considered in this case as an element of self-defense; because, in order to constitute an element of self-defense, the unlawful aggression to which the law refers must come, directly or indirectly, from the person who was subsequently attacked by the accused. It has been so held by the Supreme Court of Spain in its decision of May 6, 1907; nor can such element of unlawful aggression be considered present when the author thereof is unknown, as was held in the decision of February 27, 1895, of said Supreme Court.

Only one of the three elements of self-defense can therefore be considered in the present case, that is, the lack of provocation on the part of the accused, which we shall consider as a mitigating circumstance (article 9, No. 1, Penal Code), not compensated by any aggravating circumstance, for we find none in the record. Article 86 of the said Code is not applicable to this case because most of the elements of complete exemption provided in said Code are not present. Wherefore, the minimum penalty for homicide must be imposed.

By virtue of the foregoing, and with the modification of the judgment appealed from as to the principal penalty, the accused is hereby sentenced to twelve years and one day of reclusion temporal, said judgment being affirmed in all other respects, with costs of both instances against the appellant. So ordered.

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

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