

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE VS. MODESTO SILANG CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 31045. October 01, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

As guilty of homicide with two extenuating circumstances, the defendant was sentenced to six years and one day of prison mayor, P300 indemnity to the heirs of the deceased, with subsidiary imprisonment in case of insolvency, and costs.

The defense opposes said judgment because the trial court admitted document Exhibit A as an ante-mortem statement; did not find that the defendant acted in self-defense; and did not acquit him.

It is true that in Exhibit A, Calixto Perea, the wounded man, did not state that he had given up all hope of living; but the evidence shows that he was in a very serious condition, so much so that while testifying, he asked the justice of the peace to let him rest, because he felt very ill on account of his wounds. And Calixto Perea died a few hours later. From the circumstances of the case we believe it may be deduced with certainty that, although he did not express in so many words that he felt he was dying and that he had lost all hope of surviving the mishap, still he was of that conviction. And this is sufficient for its admissibility as an ante-mortem statement, as held by this court in the case of *People vs. Chan Lin Wat* (50 Phil., 182).

Inasmuch as it is not disputed that said Calixto Perea was killed by the defendant, it is incumbent on the latter to establish clearly and sufficiently that he committed the act in self-defense (*U. S. vs. Coronel*, 30 Phil., 112; and *People vs. Baguio*, 43 Phil., 683), and this defense has not been proved in these proceedings. Therefore, this homicide, of which the defendant is undoubtedly guilty, remains without an explanation compatible with the innocence of said accused. "He must therefore answer for that death before the law.

With respect to the extenuating circumstances admitted by the trial court, the Attorney-General states the following in his brief:

"* * *We do not agree with the trial court that the appellant, in inflicting the wounds that caused the death of the deceased, acted from an impulse so powerful as to produce passion and obfuscation, simply because the deceased favored his friend Cornelio Enriquez's, courting of Asuncion Hernandez, whom the appellant also courted. Neither may the third extenuating circumstance of article 9 of the Penal Code be considered in favor of the defendant, for; taking into account the wound in the deceased's abdomen, and the weapon used by the appellant, the intent to kill is manifest."

We find these observations of the Attorney-General correct and well-founded in the record.

Touching the passion and obfuscation, the fact that the deceased favored a rival of the defendant in his courtship of the young woman, Asuncion Hernandez, does not constitute a legitimate and sufficient cause of that passion

and obfuscation which mitigates the guilt. As was held in the cases of *United States vs. Herrera* (13 Phil., 583), and *United States vs. Fitzgerald* (2 Phil., 419), the accused must have been actuated by such causes, both strong and powerful, as naturally produced passion and obfuscation, and those causes which merely give rise to the excitement inherent in combatants are not sufficient. Furthermore, the obfuscation must originate from lawful feelings (*U. S. vs. Flores*, 28 Phil., 29). The act of the deceased was not enough to obfuscate the defendant, nor did the latter have any right to prevent others from courting the Hernandez girl, or the deceased from favoring said courtship.

With respect to the mitigating circumstance of lack of intent to commit so great a wrong as that committed, it cannot be deemed present, considering the weapon employed by the defendant and the part of the deceased's body upon which it had been used. There is no great or obvious disproportion between the means and circumstances of the attack and the consequences thereof (*U. S. vs. Rodriguez*, 23 Phil., 22).

And there being no aggravating circumstance to be taken into consideration, the penalty must be imposed in its medium degree, as recommended by the Attorney-General according to the provisions of article 81, rule 1, of the Penal Code.

Wherefore, the judgment appealed from is modified, and the defendant is held guilty of the crime of homicide penalized in article 404 of the Penal Code, without any modifying circumstance, and he is hereby sentenced to fourteen years, eight months, and one day of reclusion temporal, to indemnify the heirs of the deceased in the amount of P1,000, to suffer the accessory penalties provided in article 59 of the Penal Code, and to pay the costs of both instances. So ordered.

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

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