

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NICOLAS PAYUMO Y PASION, DEFENDANT AND APPELLANT.

G.R. No. 31768. December 27, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The appellant admits that he killed Silverio Rendora, but alleges that he did so in self-defense.

The Court of First Instance of Manila found him guilty of homicide as charged in the information, and sentenced him to twelve years and one day of reclusion temporal, the accessories of the law, P1,000 indemnity, and the costs.

Defendant appeals from this judgment, and through counsel contends that he is exempt from all liability, or at least, it should be considered in his favor that he acted partly in self-defense, or that he committed homicide through gross negligence, or, at the very least, he should be given the benefit of the mitigating circumstance of lack of intention to cause so great a wrong.

The evidence shows that the deceased Silverio Rendora, and the defendant, were employees of the Funeraria Nacional where they were working when the crime took place; that the deceased went over to where the defendant was and brushed against him; that the defendant struck the deceased on the right shoulder whereas the latter grabbed him, and held him by the waist; that the defendant then struck the deceased again, but in a delicate part of the body, dealing a mortal blow, for the victim died a few moments later.

The appellant's plea of self-defense cannot be taken into account because it has not been proved. The deceased did not attack him. His having brushed against the defendant has not been shown to have been either deliberate or was done, aggressively. It was the defendant who began the attack and he cannot be said to have acted in self-defense, either wholly or in part.

We agree, however, with the trial court in considering the mitigating circumstance of lack of education, and with the Attorney-General in also taking into account the mitigating circumstance of lack of intent to commit so great a wrong as actually resulted.

With regard to the latter circumstance, the facts in this case lead us to the same conclusion as that reached from the facts in the case of *United States vs. Rodriguez* (23 Phil., 22). And the law requires that this mitigating circumstance be taken into account, because the perpetrator cannot be made to answer fully for the act committed, since there was a discrepancy between the intention and the result, the latter, being more serious than the former. Intent is an essential element of a crime; therefore, when the intent is less than the material act committed, reason, good sense and the public conscience cannot but fix on the guilty person a mitigated responsibility.

There being no aggravating circumstance, the two mitigating circumstances indicated remain intact, and the Attorney-General justly recommends that the penalty to be imposed upon the appellant for the homicide be

lowered to the one next lower, as provided in article 81, rule 5, of the Penal Code, as amended by Act No. 2298.

Wherefore, the judgment appealed from is modified as to the penalty, and affirmed in all other respects, and the appellant is sentenced to six years and one day of mayor, and the "costs of both instances. So ordered.

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

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