

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICTORIO GULES (ALIAS VICTOR), DEFENDANT AND APPELLANT.

G.R. No. 35756. March 23, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

The accused was charged with the crime of murder in the Court of First Instance of Leyte, the information reading as follows:

"Que en o hacia el 23 de febrero de 1931, en el Municipio de Cabalian, Provincia de Leyte, Islas Filipinas, y dentro dela jurisdiccion de este Juzgado, el referido acusado, con un bolo de que estaba provisto, voluntaria, ilegal y criminalmente, y con premeditacion conocida, agredio alevosamente al Dr. Jose Hipe en la espalda fuera de la columna vertebral al lado izquierdo, que le causo la muerte despues de dieciocho dias."

After due trial the court below found the defendant guilty of the crime charged, with the mitigating circumstance of obfuscation, and sentenced him to seventeen years and one day of cadena temporal with the accessory penalties, to indemnify the family of the deceased in the amount of P1,000, and to pay the costs. Thereupon the defendant appealed to this court.

The evidence establishes that on February 22, 1931, the defendant, Victorio Gules, asked Dr. Jose Hipe to cure him and his three children. In reply to the request, Dr. Hipe went to the defendant's residence and began treating him and his children. On the afternoon of that day one of the children died, and the defendant lost faith in Dr. Hipe. The defendant thereupon had himself and his children treated by a quack doctor. Hipe resented this, although he was prevailed upon by the defendant's wife to come and continue treating her children.

On the afternoon of the next day, Dr. Hipe went to the defendant's residence to continue his treatment, but the defendant told him not to give the same medicine as that he had already given to the child who had died. This annoyed Dr. Hipe, and he refused to continue curing the defendant's children, and at the same time he demanded the payment of the medicines that he had administered to them. The defendant remonstrated, saying that he had no money at that time. He thereupon went to the kitchen to get drinking water for the sick children, and he there saw a bolo, which he took, and then returned to Dr. Hipe, insisting that the latter should treat the children. The doctor persisted in his refusal, and as he was going down stairs, the defendant stabbed him in the back with the bolo and thereby inflicted the wound which caused Dr. Hipe's death nineteen days later.

The facts as stated above are established not only by the testimony of Narcisa Saludo and Eliseo Saludo, widow and father-in-law respectively of the deceased, but also by the testimony of the defendant himself. He admitted that he had wounded Dr. Hipe, but alleged that he could not tell how he did it, because he was then obfuscated.

There can be no question of the defendant's guilt. The crime committed is murder, which is punished under the new Penal Code with reclusion temporal. As indicated above, there is one mitigating circumstance, namely

obfuscation, in favor of the defendant, and without any aggravating circumstance against him.

The court below sentenced the defendant to seventeen years and one day of cadena temporal. As that penalty is not entirely correct, it must be modified by imposing upon the accused a penalty of seventeen years, four months, and one day of reclusion temporal. In all other respects the judgment of the court below is correct. With costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Imperial, JJ., concur.

Villa-Real, J., concurs in the result.

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