

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VALERIANO NARIO, DEFENDANT AND APPELLANT.

G.R. No. 36015. August 25, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of the Court of First Instance of Leyte finding the defendant guilty of the crime of homicide, with the presence of the mitigating circumstances of obfuscation and lack of instruction, and sentencing him to suffer ten years and one day of presidio mayor, and the accessory penalties provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

The accused was tried on a plea of not guilty to the following information:

"Que en o hacia el 4 de octubre de 1930, en el Municipio de Dulag, Provincia de Leyte, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el acusado arriba mencionado voluntaria, ilegal y criminalmente con un bolo que consigo llevaba, agredio a Evaristo Amarilla causando a este varias lesiones en las diferentes partes de su cuerpo y a consecuencia de las mismas dicho Evaristo Amarilla murio instantaneamente."

The attorney de oficio of the appellant alleges that the trial court erred in finding the accused guilty of the crime imputed to him in the information, and in sentencing him for said crime.

The assignments of error raise only questions of fact, and after considering the evidence, we find that the conclusions of the trial court as to the guilt of the accused are fully sustained by the evidence of record.

It appears from the evidence that on October 3, 1930 the defendant and the deceased played the card game known as "junkian" in the house of the deceased. After winning a peso, the deceased refused to play any longer. The defendant was angered by this action of the deceased. He went downstairs, and challenged the deceased to fight, but the deceased refused to go outside, and at the instance of his wife the defendant went home.

The next day at noon the deceased went to the house of his mother-in-law to call for his wife, who had gone there to iron some clothes. While the deceased was waiting at the door of his mother-in-law's house, the defendant arrived and challenged the deceased, who replied that it depended on the defendant. The defendant then attacked the deceased with a bolo, and inflicted on him seven wounds, two of which were mortal, one in the right side and one in the stomach. The deceased was carrying a cane, and defended himself with it as well as he could until the defendant gave him a blow on the wrist that nearly severed his hand. The injured man died immediately.

The contention of the accused is that he was attacked by the deceased, and, that he acted in self-defense, but the evidence shows that the defendant's contention is false and without merit. The incident over the card game furnished the motive for the crime.

The trial court found that the accused was entitled to the benefit of the mitigating circumstances of obfuscation and lack of instruction, but it does not appear from the evidence that the accused was entitled to the benefit of the mitigating circumstance of obfuscation, as the dispute between the accused and the deceased over the card game

occurred the day prior to the commission of the crime. It does appear, however, that in accordance with the Revised Penal Code the accused is entitled to the benefit of the mitigating circumstance of voluntary surrender, and there being present two mitigating circumstances and no aggravating circumstance, the penalty to be imposed should be one degree lower than reclusion temporal, or prision mayor, in accordance with the new Code. The accused is therefore sentenced to suffer eight years and one day of prision mayor, and the accessory penalties provided by law, to indemnify the heirs of the deceased Evaristo Amarilla in the sum of P1,000, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

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