

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCELO TURNO, DEFENDANT AND APPELLANT.

G. R. No. 37197. February 08, 1934

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was convicted by the Court of First Instance of Leyte of the crime of murder, and sentenced to suffer seventeen years, four months and reclusion temporal, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

This appeal only raises questions of fact. Appellant admits having caused the death of Mauricio Laus, but claims that he acted in self-defense. The evidence for the prosecution clearly shows that the deceased Mauricio Laus was suddenly and without any warning stabbed by the appellant with a bolo. On the other hand, the defense tried to show that it was Mauricio Laus who first struck appellant with a rattan cane, and that the latter, in order to defend himself, had to make use of his bolo.

After carefully examining the evidence presented in this case, we have come to the conclusion that the trial court did not err in convicting the appellant. One of the elements of self-defense is unlawful aggression. That there was no unlawful aggression in this case is fully established by the ante mortem statement of Mauricio Laus and by the testimony of Santiago Conig. It is true that appellant contends that the lower court erred in giving weight to the testimony of Santiago Conig, but the evidence of record shows that this contention is without merit.

The facts established by the evidence constitute the crime of murder, which is penalized with reclusion temporal in its maximum degree to death (article 248 of the Revised Penal Code). The lower court took into consideration the mitigating circumstance of lack of education. In the absence of any aggravating circumstance, the penalty prescribed by law should be imposed in its minimum degree, or from seventeen years, four months and one day to twenty years of reclusion temporal. The prison sentence imposed by the lower court of seventeen years, four months and one day is therefore in accordance with the law. Pursuant, however, to the provisions of Act No. 4103, the appellant is hereby sentenced to suffer not less than twelve years of prision mayor and not more than seventeen years, four months and reclusion temporal.

Modified as above indicated, the judgment is affirmed with costs against the appellant. So ordered.

Street, Butte, and Diaz, JJ., concur.

I certify that Chief Justice Avancena, participated in this decision and voted to affirm the judgment with modification as above stated; that his name does not appear signed hereto for the reason that he was on leave at the time of the promulgation of the decision.—STREET, J.

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