

THE UNITED STATES, PLAINTIFF AND. APPELLEE, VS. SANTIAGO CABIGAO, DEFENDANT AND APPELLANT.

G.R. No. 3807. October 08, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The accused, Santiago Cabigao, was sentenced by the Court of First Instance of the city of Manila to imprisonment (presidio mayor) for six years and one day, and to pay the costs, for having inflicted a wound 2 inches long on Eduardo Trinidad, which penetrated the eighth rib, affecting the lung, the pleural cavity through the diaphragm, and the spleen. From this judgment the defendant has appealed.

The appeal having been heard, the liability of the accused appears as having been properly considered, but not so the nature of the crime for which he is answerable. The case at bar has been classified as frustrated homicide; but as recommended by the Attorney-General in this instance, in accordance with the judgment in cassation dated October 4, 1886, "whenever a specified act, such as that of lesiones, is defined and punished separately, it is not legally proper to attribute a greater intent on the part of the offender when the crime was committed, in order to classify it as a more serious offense, except Avhen very marked circumstances reveal in a clear and evident manner that the intent was really greater."

This case being included in paragraph 3 of article 416 of the Penal Code, without any aggravating or extenuating circumstance, the accused should be sentenced to suffer in its medium degree the penalty of prision correccional in its minimum and medium degrees.

Therefore, Santiago Cabigao is hereby sentenced to two years of prision correccional with the corresponding accessories, to indemnify Eduardo Trinidad in the sum of P250, and in case of insolvency to suffer subsidiary imprisonment, and to pay the costs in both instances; one-half of the detention already endured to be credited in his favor. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

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