

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GINES ALBURQUERQUE Y SANCHEZ, DEFENDANT AND APPELLANT.

G.R. No. 38773. December 19, 1933

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-38773/>

AVANCEÑA, C.J.:

The judgment appealed from finds the appellant Gines Alburquerque guilty of the crime of homicide committed on the person of Manuel Osma and sentences him to eight years and one day of prison mayor, and to indemnify the heirs of the deceased in the sum of P1,000, with the costs.

The appellant herein, who is a widower of fifty-five years of age and father of nine living children, has been suffering from partial paralysis for some time, walks dragging one leg and has lost control of the movement of his right arm. He has been unable to work since he suffered the stroke of paralysis. One of his daughters named Maria and another, are married, while still another one is a nun. With the exception of the other married daughter and the nun, all of them, including the appellant, live with Maria upon whom they depend for support.

Among the daughters living with Maria, one named Pilar became acquainted and had intimate relations later with the deceased Manuel Osma about the end of the year 1928. It was then that the appellant became acquainted with the deceased who frequently visited Pilar in his house. The relations between Pilar and the deceased culminated in Pilar's giving birth to a child. The appellant did not know that his daughter's relations with the deceased had gone to such extremes, that he had to be deceived with the information that she had gone to her godfather's house in Singalong, when in fact she had been taken to the Chinese Hospital for delivery. The appellant learned the truth only when Pilar returned home with her child.

Naturally the appellant was deeply affected by this incident, since which time he has appeared sad and worried not only because of the dishonor it brought upon his family but also because the child meant an added burden to Maria upon whom they all depended for support. For some time the appellant wrote letters, that at times were hostile and threatening and at other times entreating the deceased to legitimize his union with Pilar by marrying her, or at least, to support her and his child. Although the deceased agreed to give the child a monthly allowance by way of support, he never complied with his promise.

The appellant was in such a mood when he presented himself one day at the office where the deceased worked and asked leave of the manager thereof to speak to Osma. They both went downstairs. What happened later, nobody witnessed. But the undisputed fact is that on that occasion the appellant inflicted a wound at the base of the neck of the deceased, causing his death.

After excluding the improbable portions thereof, the court infers from the testimony of the appellant that he proposed to said deceased to marry his daughter and that, upon hearing that the latter refused to do so, he whipped out his penknife. Upon seeing the appellant's attitude, the deceased tried to seize him by the neck whereupon the said appellant stabbed him on the face with the said penknife. Due to his lack of control of the movement of his

arm, the weapon landed on the base of the neck of the deceased.

The trial court found that the appellant did not intend to cause so grave an injury as the death of the deceased. We find that this conclusion is supported by the evidence. In his testimony the appellant emphatically affirmed that he only wanted to inflict a wound that would leave a permanent scar on the face of the deceased, or one that would compel him to remain in the hospital for a week or two but never intended to kill him, because then it would frustrate his plan of compelling him to marry or, at least, support his daughter. The appellant had stated this intention in some of his letters to the deceased by way of a threat to induce him to accept his proposal for the benefit of his daughter. That the act of the appellant in stabbing the deceased resulted in the fatal wound at the base of his neck, was due solely to the fact hereinbefore mentioned that appellant did not have control of his right arm on account of paralysis and the blow, although intended for the face, landed at the base of the neck.

Therefore, the mitigating circumstance of lack of intention to cause so grave an injury as the death of the deceased as well as those of his having voluntarily surrendered himself to the authorities, and acted under the influence of passion and obfuscation, should be taken into consideration in favor of the appellant.

Under the facts above stated, we cannot entertain the appellant's contention that he acted in legitimate self-defense inasmuch as he provoked and commenced the aggression by whipping out and brandishing his penknife.

The defense likewise claims that, at all events, article 49 of the Revised Penal Code, which refers to cases where the crime committed is different from that intended by the accused, should be applied herein. This article is a reproduction of article 64 of the old Code and has been interpreted as applicable only in cases where the crime committed befalls a different person (decisions of the Supreme Court of Spain of October 20, 1897, and June 28, 1899), which is not the case herein.

The facts as herein proven constitute the crime of homicide defined and penalized in article 249 of the Revised Penal Code with reclusion temporal. In view of the concurrence therein of three mitigating circumstances without any aggravating circumstance, the penalty next lower in degree, that is, prision mayor, should be imposed.

Wherefore, pursuant to the provisions of Act No. 4103, the appellant is hereby sentenced to suffer the indeterminate penalty of from one (1) year of prision correccional to eight (8) years and one (1) day of prision mayor, affirming the judgment appealed from in all other respects, with the costs. So ordered.

Street, Abad Santos, Vickers, and Butte, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.