

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEONCIO ROXAS, DEFENDANT AND APPELLANT.

G.R. No. 39630. November 13, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Mindoro, convicting the defendant-appellant of the crime of homicide upon the following information:

"That on or about the 22d day of February, 1933, at about 9 o'clock in the evening, in the municipality of Puerto Galera, Province of Mindoro, Philippine Islands, and within the jurisdiction of this court, the said accused, armed with an automatic pocket-knife, did then and there willfully, unlawfully and feloniously attack, assault and wound Felicisimo Garcia with said weapon inflicting upon the latter two wounds in different parts of the body, to wit: one incised wound 18½ centimeters long on the lower portion of the right chest, cutting the 6th and 7th ribs and exposing the 5th rib and lung, and another incised wound, superficial, 1 1/3 centimeters long to the left of the vertebral column; and as a result thereof, the aforesaid Felicisimo Garcia died instantaneously."

He was sentenced to twelve years and one day of reclusion temporal and required to indemnify the heirs of the deceased in the sum of P1,000. The appellant makes the following assignments of error:

"1. El Juzgado a quo erro al no estimar en el caso de autos la existencia de la circunstancia eximente de legitima defensa a favor del acusado, y al condenarle a este a doce años y un día de reclusion temporal con las accesorias de la ley, al pago de las costas del juicio y a indemnizar a los herederos del occiso en la suma de P1,000 en vez de absolverle libremente.

"2. Que en todo caso el Juzgado a quo erro al no imponer al acusado en la causa de autos la pena de prision mayor, en lugar de la reclusion temporal impuesta."

We have carefully considered the excellent brief for the appellant filed by Antonio Fuentecilla who was appointed as attorney de oficio on this appeal, in which a careful and thorough analysis of the evidence was made in support of the first assignment of error. But we have come to the conclusion that the findings of fact made by the court below are amply supported by the evidence. Even though the deceased was the aggressor, the defendant himself admits that the aggressor was not armed. There being no rational necessity shown for the means which the accused used to repel the attack of his aggressor, article 11 of the Revised Penal Code cannot be invoked here to exempt the defendant from the responsibility.

Counsel for the appellant maintains that the accused was a minor below eighteen when the offense was committed and asks that this be considered as an additional mitigating circumstance under the provisions of article 13, paragraph 2, of the Revised Penal Code. Article 13, paragraph 2, of the Revised Penal Code is as follows:

"That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of article 80."

Exhibit A, offered by the prosecution, states that the age of the accused at the time of the commission of the offense was seventeen years and eight months. We accept this as the best evidence in the record as to the true age of the accused. It is necessary, therefore, to reform the judgment of the court below and to enter one in conformity with article 80 of the Revised Penal Code. We accept and affirm the findings of fact of the court below as to the guilt of the defendant. We further find the presence of the following extenuating circumstances and direct that they be applied when final sentence may be pronounced, namely: First, the age of the accused being under eighteen (article 13, paragraph 2); second, provocation on the part of the deceased (article 13, paragraph 4); third, obfuscation (article 13, paragraph 6); fourth, voluntary surrender (article 13, paragraph 7). That part of the judgment which sentences the defendant to twelve years and one day of reclusion temporal and to indemnify the heirs of the deceased in the sum of P1,000 is hereby revoked and it is ordered that the defendant-appellant be placed in the Philippine Training School for Boys at Welfareville in the custody and care of the Commissioner of Public Welfare until the said defendant shall have attained his majority, subject, however, to the provisions and conditions of said article 80 of the Revised: Penal Code.

It is ordered that the case be remanded to the Court of First Instance of Mindoro for further proceedings in accordance with this decision. Costs de oficio.

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

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