

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DANIEL CAMPO, DEFENDANT AND APPELLANT

G.R. No. 4092. February 06, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the night of the 5th of April, 1906, as Aquilino Navesaga, the accused Daniel Gampo, and their corporal Pedro Nadela, members of the municipal police, armed with revolvers, were patrolling the barrio of Lavis, town of Talisay, Island of Cebu, they saw at a distance a group of individuals who, as afterwards was found, were playing cards in a paddy field, and, in order to find out what they were doing and the reason why they were thus gathered together, the police ordered them not to move from where they were, but instead of obeying, everyone, with the exception of one, who turned out to be Leon Ocampo, started to run. The accused went in their pursuit, and, when at a distance of about 10 brazas from one of the fugitives, he fired his revolver twice without his shots taking effect, but, managing to get within a distance of about 2 brasas, the accused fired again at the fugitive, hitting him in the right arm, fracturing it, the wounded man thereupon falling to the ground face downwards; notwithstanding the fact that Corporal Nadela shouted to him to stop firing, the accused again fired at close range at the deceased, who was still lying on the ground, the bullet entering his back on the right side and coming out through the chest. In consequence of said wounds the assaulted man, who turned out to be Julian Lavandero, died instantly.

A complaint having been filed charging Daniel Campo with the crime of homicide, and the corresponding proceedings having been instituted, the court, on the 31st of July, 1900, sentenced the accused to the penalty of fourteen years eight months and one day of reclusion temporal, to suffer the accessory penalties, to indemnify the heirs of the deceased in the sum of 1,000, and to pay the costs. From said judgment the accused appealed.

The facts stated above, fully proven in this case, constitute the crime of homicide defined and punished under article 404 of the Penal Code, inasmuch as in the violent death of Julian Lavandero, a resident of Talisay, Island of Cebu, caused by the use of firearms, none of the qualifying circumstances of article 403 of said code, determining a graver crime and penalty, are present.

The accused, Daniel Campo, pleaded not guilty, but as to his exculpatory allegations, that when trying to arrest the deceased the latter offered resistance and attacked him with a sickle, and that for said reason he was obliged to fire at him, the record contains full evidence that there was no such resistance or aggression on the part of the victim; that the sickle belonged to Venancio Panila, who was not one of the gamblers and was at that time working in a cocoanut tree; that the accused, notwithstanding the orders given by the corporal of police, Pedro Nadela, to stop firing at the gamblers who were running away, continued to do so without reason therefor and without any resistance having been offered by the parties fleeing, and particularly on the part of Julian Lavandero; that the accused used up all the cartridges with which his revolver was loaded; that notwithstanding the fact that the deceased had been wounded in the right arm and in consequence had fallen to the ground, said accused still fired at him at point-blank range, as testified to by eyewitnesses. Such conduct shows that without any reason whatever he intended to kill Julian Lavandero, who was running away unarmed and had offered no resistance at

all, and that the aggressor disobeyed the orders of the corporal to stop firing at the person he was in pursuit of; therefore, his action can not be classified as mere negligence, but as a real crime of homicide willfully and feloniously committed. The accused could not allege that he acted in the compliance of a duty or in the lawful exercise of a right, because in the case in question he was not authorized to shoot in order to capture an individual who was fleeing and who offered no resistance; whatever. The supreme court of Spain, in its decision of the 6th of October, 1887, has among other things held, that "the exercise of public authority does not warrant the use of force except in the extreme case of where one is attacked and finds no other means to comply with his duty and cause himself to be respected and obeyed." The unfortunate Julian Lavandero was running at but a short distance from his pursuer, he was unarmed, and had offered no resistance; the accused, however, without the least justification fired several shots at him, wounding him in the right arm, and after he had fallen to the ground fired still another shot in his back at such close range that the clothes of the deceased were found to be burnt; in consequence the latter died instantly.

In the commission of the crime herein no mitigating or aggravating circumstance is present; therefore the adequate penalty should be applied in its medium degree.

For the reasons above set forth, and the judgment appealed from being in accordance with the law, it is our opinion that the same should be affirmed with the costs against the accused, provided, however, that he shall be further sentenced to suffer the accessory penalties imposed by article 59 of the code. So ordered.

Arellano, C. J., Mapa, Johnson, Willard, and Tracey, JJ., concur.

Carson, J., reserves his vote.

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