

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PABLO GUEVARA, DEFENDANT AND APPELLANT.

G.R. No. 4153. January 25, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The accused was found guilty and convicted of the killing of his lawful wife, and was sentenced to life imprisonment, with the accessory penalties prescribed by article 54 of the Penal Code, to indemnify the heirs of the deceased in the sum of 1,000, and to pay the costs of the trial.

The crime prosecuted was fully proven by confessions made by the accused before and at the trial. During the trial the accused made a recital of the facts relating to his wife just as they occurred, and endeavored to make a point, in his favor, of the exempting circumstance of self-defense; but the lower court has not taken into consideration this point of the defense, and therefore this court will not consider the same. The truth reveals itself more plainly in the confession made by the accused before his trial, and those facts which so highly incensed the accused as to produce in him entire loss of reason and self-control are fully established, even by the statement of the lover of his wife. The deceased having been convicted of adultery and of having lived an unchaste life, before living with the man, her lover, who appeared as a witness during the trial, she made an effort to take away from her husband, the accused, the only daughter born during their marriage, by filing a complaint against him with the municipal president.

This official excused himself from taking jurisdiction of the matter, which was referred to the justice of the peace, and when both parties were summoned to appear before the latter, the acts of the deceased, added to the wrong done by her, were of such a nature that they amounted to an immediate provocation by her and were responsible for the sudden determination of the accused to follow her to her home and carry out the revenge which resulted in the crime before us.

The penalty imposed by the lower court is in conformity with the provisions of article 402 of the Penal Code, which punishes parricide, or anyone who kills his spouse, with imprisonment for life.

According to paragraph 2 of article 80, in cases in which the law provides a punishment composed of two indivisible penalties, such as those of life imprisonment and of death, if a mitigating circumstance and no aggravating one attended the deed (rule 3), the lesser penalty should be applied, which in the present case is life imprisonment.

And even though this court should take into consideration the presence of two mitigating circumstances of a qualifying nature, which it can not afford to overlook, without any aggravating one, the penalty could not be reduced to the next lower to that imposed by law, because, according to a ruling of the court of Spain, article 80 above-mentioned does not contain a precept similar to that contained in rule 5 of article 81. (Decision of September 30, 1879.)

Yet, in view of the excessive penalty imposed, the strict application of which is inevitable and which, under the law, must be sustained, this court now resorts to the discretionary power conferred by paragraph 2 of article 2 of the Penal Code; and

Therefore, we affirm the judgment appealed from with costs, and hereby order that a proper petition be filed with the executive branch of the Government in order that the latter, if it be deemed proper in the exercise of the prerogative vested in it by the sovereign power, may reduce the penalty to that of the next lower. So ordered.

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

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