

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DIOSCORO HUBERO, DEFENDANT AND APPELLANT.

G. R. No. 42301. December 17, 1934

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Iloilo of the crime of homicide and brings this appeal claiming that the trial court erred in not accepting the theory of the defense that the accused acted in defense of his person.

On this question the evidence of the prosecution and defense are in direct contradiction, and the trial court believed that the witnesses for the prosecution were telling the truth.

We have carefully reviewed the evidence and are convinced that the trial court did not err in this particular. When the location of the wound that caused death is considered, it is clear that the wound could not have been inflicted as claimed by defendant.

Appellant also claims the mitigating circumstances (a) that the offender had no intention to commit so grave a wrong as that committed and (b) that sufficient provocation or threat on the part of the offended party immediately preceded the act.

The first ground at first seemed to have some merit, but after sending for Exhibit A, the piece of wood with which the fatal blow was struck, we find that it is heavy and when a blow with it was struck, it is not surprising that the skull of the deceased was crushed and a cerebral hemorrhage causing death ensued. Therefore, the instrument used and the wound inflicted make it impossible for us to allow that mitigating circumstance.

As to the other claim of the appellant, a true interpretation of the evidence is that he was the aggressor and was not provoked to the assault. The evidence shows, however, that the accused cannot read nor write, and we find the mitigating circumstance of lack of instruction.

The period of confinement is fixed at a minimum of six years and one day of prision mayor to a maximum of twelve years and one day of reclusion temporal.

As thus modified, the judgment appealed from is affirmed. No expression as to costs. So ordered.

Avancena, C. J., Abad Santos, Vickers, and Diaz, JJ., concur.

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