

THE UNITED STATES, PLAINTIFF AIID APPELLEE, VS. FELIX YAPE AND ANDRES ALDE, DEFENDANTS AND APPELLANTS.

G.R. No. 4402. February 21, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of homicide, in the Court of First Instance of the Province of Samar, alleged to have been committed as follows:

"That the said accused, on the morning of the 12th day of May of the present year, in the barrio of San Jose in the municipality of Llorente of this province, willfully, unlawfully, and criminally assaulted Marcelino Guira with a bolo and a club, on account of which aggression the said Marcelino Guira received three mortal wounds about the head, in consequence of which he died twenty days later. Contrary to article 404 of the Penal Code."

After hearing the evidence adduced during the trial of the cause, the court found that the proofs were insufficient to support the charges against the said Andres Aide, and therefore discharged him from the custody of the law.

From the evidence, the court below found that the defendant Felix Yape was guilty of the crime charged, but that the crime was committed by the defendant while he was intoxicated, and sentenced him to be imprisoned for a period of twelve years and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, to suffer the accessory, penalty provided for in article 59 of the Penal Code, and to pay the costs.

From this sentence the defendant appealed to this court. The lower court found from the evidence the following facts: That the deceased, Marcelino Guira, came to his death from certain blows inflicted upon him with a club in the hands of the defendant Felix Yape; that the deceased and the two defendants were in a house in the barrio of San Jose, pueblo of Llorente, drinking together; that the defendants were somewhat intoxicated and tried to force the deceased to sing; that the deceased did not accede to their request and, seeing that the defendants were drunk, attempted to leave and make his escape from the house, whereupon the defendant Felix Yape seized the deceased and endeavored to take away from him the bolo which he carried. A struggle ensued over the bolo, the deceased was disarmed, and then the defendant Felix Yape, according to his own testimony, seized a large club and struck the deceased three blows on the head, from the effects of which blows the deceased died a few days later.

An examination of the evidence brought to this court fully justifies the findings of fact made by the lower court. The Attorney-General in his brief filed in this court claims for the benefit of the defendant the application of paragraphs 3 and 6 of article 9 of the Penal Code as mitigating circumstances. The fact is not denied that the defendant was intoxicated at the time of the commission of the alleged offense and that said intoxication was not habitual. "We are satisfied also from the evidence that the defendant had no intention of killing the deceased for the reason that, after he obtained possession of the bolo from the deceased, he cast that to one side and picked up the club which lie used; and in addition to this fact he immediately surrendered himself to the authorities. We therefore adopt the recommendation of the Attorney-General and hold that the defendant is entitled to the benefit of the two aforementioned mitigating circumstances. Therefore, in accordance with the provisions of paragraph 5

of article 81 of the Penal Code, the sentence of the lower court is hereby modified and the defendant is sentenced to be imprisoned for a period of eight years and one day of prision correccional, to indemnify the heirs of the deceased in the sum of, 1,000, to suffer the accessory penalty provided for in article 58 of the Penal Code, and to pay the costs. So ordered.

Arellano, C. J., Torres., Mapa, and Carson, JJ., concur.

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