

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

*G.R. No. 4581. November 16, 1908*

Ponente: ARELLANO, C.J.

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### ARELLANO, C.J.:

This case was submitted to this court on appeal by the accused against the judgment of the Court of First Instance of Ilocos Sur, by which he was sentenced to twelve years anyone day of reclusion temporal, to the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. On appeal, it appears:

That, in this instance, the defense admits that the wounding of Bernardino Pisieng by Pablo Escalona can not be denied, but questions the liability of the accused for the death of the wounded man, which took place sixty days after he was injured; and further objects, that the defendant is treated as guilty of the crime of homicide when, as a matter of fact, he is only guilty of lesiones, and cites the testimony of the municipal inspector of health of the town, who examined the wounds, attended the wounded man, and certified to his death.

This witness testified that he attended Pisieng from the 24th of August, 1907, until his death on the 23d of October following; that Pisieng died in consequence of a wound on his wrist, which had not healed at the time of his death; that the wounded man had the tendons of the forearm severed and one of the bones broken; that three days after he was wounded he had an attack of fever which continued until he died. When the witness was expressly asked "whether he believed that, if the wounded man had been attended by a licensed surgeon, who might have made an amputation, if necessary, or assisted him in some other way, he would have recovered from the wound?" he replied:

"I believe that he would have recovered and would not have died.

"Q. So that the death of the deceased was also due to your lack of scientific experience?—A. It may be, sir, but I did everything that I could, to the best of my knowledge and understanding."

He stated that, when he examined the wounded man, he certified that the wounds could be cured within sixty days. It is proven that the injured man died at the end of sixty days, and of nothing but the wounds.

In the judgment in cassation rendered on the 22d of May, 1896, this doctrine is expressed:

"That, inasmuch as the jury has declared that the injured party died in consequence of the injury he received, the fact that, in answer to another question, their verdict was that he might have recovered, if he had received better attendance and there had been less carelessness, does not affect the correct classification of the deed as a crime of homicide, for the reason that the lack of attendance can not be attributed to the wounded man, the person who caused the wound being the one responsible for the result thereof."

Hence, the classification of the crime is in accordance with the law, but the application of article 11 of the Penal Code as a mitigating circumstance, to wit, the question of race, does not appear to be proper. No aggravating or mitigating circumstance is present. The accused was a policeman under orders to serve a subpoena, who, when he

was returning, and without any reason so far as the record shows, attacked with a bolo a man who was climbing out of a ravine. The penalty prescribed by article 4 [404] for the crime of homicide, should be imposed in the medium degree.

Therefore, the judgment appealed from is hereby affirmed, provided, however, that the penalty imposed upon Pablo Escalona shall be fourteen years, eight months, and one day, with the costs of this instance. So ordered.

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

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