

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VICENTE NABORA, DEFENDANT AND APPELLANT.***G.R. No. 48101. November 22, 1941*

Ponente: MORAN, J.

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On the night of December 3, 1940, while the accused Vicente Nabora was taking a walk along the new Luneta, the deceased Domingo de Vera met him near the site of the flagpole and pointing his finger at him (accused) asked him what he was doing there and then said: "Don't you know we are watching for honeymooners here"? Provoked by the attitude of the deceased, the accused drew out his knife and stabbed the deceased on the abdomen and on the other parts of the body which caused the latter his instant death. An information for homicide was filed against the accused wherein it was alleged that he is a "recidivist, he having been previously convicted three times of physical injuries" and "punished once of robbery, three times of theft, and twice of illegal possession of a deadly weapon, by virtue of final judgments of competent courts." Defendant pleaded guilty to the charge and was allowed to testify on mitigating circumstances in his favor. The trial court then sentenced him to an indeterminate penalty of from 10 years and 1 day of prision mayor to 17 years, 4 months and 1 day of reclusion temporal and to pay the heirs of the deceased an indemnity of P2,000, without subsidiary imprisonment in case of insolvency. This judgment is now sought to be reviewed in this appeal.

By defendant's plea of guilty, he admits the aggravating circumstances of recidivism and reiteracion alleged in the information. In partial offset, he is entitled to one mitigating circumstance—voluntary plea of guilty. His claim to another mitigating circumstance—that of sufficient provocation on the part of the deceased—cannot be sustained. The provocation, to constitute a mitigating circumstance, must, in the language of the law, be "sufficient", that is, adequate to excite the person to commit the wrong and must accordingly be proportionate to its gravity. In the instant case, it can hardly be said that the acts of the deceased in pointing his finger at the defendant and uttering the question aforementioned constitute a sufficient cause for him to draw out his knife and kill the deceased.

Appellant is accordingly sentenced to an indeterminate penalty of not less than 10 years and 1 day of prision mayor and not more than 18 years of reclusion temporal, and in all other respects, the judgment is affirmed, with costs against appellant.

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

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