

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOLAS JAVELLANA ET AL., DEFENDANTS.-FRANCISCO RUFO, APPELLANT.

G.R. No. 4887. September 18, 1909

Ponente: CARSON, J.

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CARSON, J.:

Francisco Rufo, the appellant in this case, was convicted of the crime of homicide, and sentenced to twelve years and one day of reclusion temporal, the trial court imposing the prescribed penalty in its minimum degree, because it was of opinion that the crime was immediately preceded by strong provocation on the part of the deceased, one of the extenuating circumstances defined in article 9 of the Penal Code.

The only evidence touching the actual infliction of the fatal wounds and connecting Rufo therewith was the testimony of a justice of the peace as to an ante-mortem statement made by the deceased; but this statement taken together with satisfactory proof that the deceased came to his death as a result of a wound inflicted upon him at or about the time indicated in his statement, and that the accused was one of a party who at about the same time arrested the deceased, who was charged with disorderly conduct, in our opinion establishes the guilt of the accused beyond a reasonable doubt.

Counsel for appellant, in an interesting and exhaustive discussion of the provisions of law in force in these Islands in relation to the admissibility of ante-mortem statements in evidence, insists that the trial court erred in admitting testimony as to the ante-mortem statement of the deceased in this case, but substantially similar contentions were decided adversely by this court in the recent case of the United States vs. Gil[1] (decided April 26, 1909), published since counsel's argument was submitted in this case.

Counsel also contends that the trial court erred in failing to give the appellant the benefit of certain extenuating circumstances, but in our opinion the ante-mortem statement of the deceased, the only evidence of record as to the circumstances under which the fatal wound was inflicted, does not establish the existence of either aggravating or extenuating circumstances, not even the fact found by the trial court that the commission of the crime was immediately preceded by strong provocation on the part of the deceased. It may well have been that the commission of the crime was marked with various extenuating circumstances, but the prosecution having established, prima facie, the commission of the crime without either aggravating or extenuating circumstances, it devolved upon the defendant to offer evidence as to the existence of extenuating circumstances, if he desired the court to take such circumstances into consideration in imposing the penalty.

The crime having been committed without aggravating or extenuating circumstances, the prescribed penalty should have been imposed in its medium degree, and the sentence of the trial court should be and is hereby modified, by substituting for the penalty of twelve years and one day the penalty of fourteen years, eight months, and one day of reclusion temporal, together with the accessory penalties prescribed in article 19 [59] of the Penal Code, and thus modified the sentence appealed from should be and is hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

[1]13 Phil. Rep., 530

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