

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS CIRIACO HERRERA, DEFENDANT AND APPELLANT.

G.R. No. 4960. July 17, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The crime under consideration by the court consists in that the accused wounded Silvestre Bautista at the moment when the latter was getting into his vehicle after a fight between them, in which they wrestled together without using any weapon.

After they were separated for the third time, Silvestre Bautista recovered his hat, and just as he was getting into his vehicle Ciriaco followed him up and wounded him in the right sacrolumbal region, causing a lesion which necessitated medical attendance for more than eight days. Bautista testified:

"I was wounded in the buttock when I was already in the carretela [vehicle]; I did not see the accused when he struck me, but as I turned around I saw him running away with a penknife in his hand."

The Court of First Instance of the city of Manila found the accused guilty of lesiones menos graves and sentenced him to three months of arresto mayor, to indemnify the injured party in the sum of P37 for medical expenses incurred by him, or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. From said judgment the accused has appealed.

At the hearing of the appeal before this court the defense claims that as the injured party was not incapacitated for work for more than eight days, the accused can not be prosecuted as guilty of lesiones menos graves, but simply for misdemeanor, and that circumstance 7 of article 9 of the Penal Code should have been taken into account, that is, that the accused acted under such powerful excitement that it naturally produced entire loss of reason and self-control.

While the injured party may not have been rendered unable to work, the fact is that he required medical attendance for more than eight days, which is a sufficient reason to classify the deed as the crime of lesiones menos graves according to article 418 of the Penal Code.

Mitigating circumstance No. 7 of article 9 can not be considered in this case, because it is an established rule of jurisprudence that, in order to consider said rule, the existence of that excitement which is inherent to all persons quarreling and coming to blows is not sufficient, but that it is necessary that the guilty party shall act under the impulse of special motives which may be classified according to existing circumstances. (Decisions of the supreme court of Spain of October 27, 1883, and January 10, 1870.)

Therefore, the judgment appealed from should be affirmed with the costs of this instance against the appellant.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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