

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTA LICARTE, DEFENDANT AND APPELLANT.*G.R. No. 6784. August 15, 1912*

Ponente: TRENT, J.

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This is an appeal from a judgment of the Court of First Instance of the Province of Batangas, Honorable Mariano Cui presiding, condemning the defendant to four months and one day of *arresto mayor* and to indemnify the offended party in the amount of P57, and to subsidiary imprisonment in case of insolvency, and to the payment of the costs of the cause, for the crime of *lesiones menos graves*.

The facts are these: There had been some trouble between the family of the appellant and that of the offended party prior to the occurrences which form the basis of this action. On the 18th of September, 1910, the offended party, Benita Soyso, sent her small son to the house of the accused for the purpose of obtaining a bolo which her husband had loaned to the husband of the accused. On arrival of the messenger at the house, he found that neither the accused nor her husband was there, and on asking Filomena, daughter of the accused, for the bolo, Filomena replied by saying that she knew nothing about it. The offended party, on hearing this reply (her house and that of the accused being opposite and very near each other), began abusing Filomena, calling her vile names. The accused and her husband being in a neighbor's house nearby, heard these insulting words, and thereupon the accused left the house where she was and appeared in front of that of Benita Soyso and demanded of the latter an explanation of the insult to her daughter Filomena. A quarrel ensued between Benita and the accused, in which abusive language was exchanged. The accused becoming very angry and very much excited, and having in her hand at that time a short working bolo, entered the house of Benita and began striking her with the bolo. As a result of the wounds inflicted, Benita was incapacitated and required medical attendance for a period of fifteen days. The court below, in fixing the penalty imposed, took into consideration the aggravating circumstance of *morada*, inasmuch as the crime was committed in the house of the offended party. In this we think the court erred.

Article 10 of the Penal Code reads:

"The following are aggravating circumstances:

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"No. 20. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation."

In the case at bar the offended party, by calling Filomena vile names, started the trouble. This vile language was not directed at the accused, but to her daughter. This was, however, a sufficient provocation to cause the accused to demand an explanation why her daughter was so grossly insulted. So, under these facts, it was error to hold that the aggravating circumstance of *morada* existed. (Decision of the supreme court of Spain, October 24, 1894.)

The accused was a woman about fifty years of age. She heard her single daughter grossly insulted. She appeared in front of the house of Benita and demanded an explanation. The explanation was not forthcoming, and a quarrel immediately ensued between these two women. The accused was laboring under great excitement and passion when she entered the house of Benita and inflicted the wounds. These facts should be considered as a circumstance mitigating the offense. (Art. 9, No. 7, Penal Code,) There being no aggravating circumstances present, and one mitigating circumstance, the penalty should have been imposed in its minimum degree.

The judgment appealed from is hereby modified by imposing upon the appellant a penalty of one month and one day of *arresto mayor*, instead of four months and one day of *arresto mayor*. As thus modified, the judgment is affirmed, with costs against the appellant.

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

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