

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROSALINO RODRIGUEZ, DEFENDANT AND APPELLANT.

G.R. No. 7123. August 17, 1912

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Rosalino Rodriguez is charged with having dealt Marciano Magno two blows with the fist, one on the left side toward the stomach and the other on the back, which knocked him down. He got up by the assistance of two witnesses who were present at the time of the occurrence and by their aid endeavored to return to his home, which he did not reach, for the reason that, having gone a distance of twenty brazas from the place, he again fell to the ground, this time dead.

Two witnesses testified to having seen the defendant strike those two blows.

The following were offered by the defendant as defenses: (1) The testimony of his daughter and two other witnesses; (2) the fact that his right hand was disabled; and (3) the medical certificate issued by a physician as a result of the autopsy.

The defendant's daughter averred that it was she who struck Marciano Magno the blow with the fist, for the reason that the deceased had caught hold of her hand with unchaste designs, and testified that her father arrived after Magno had fallen to the ground, which testimony was supported by two witnesses.

This defense was not sustained by the trial judge. But on the contrary, he accepted the preponderance of evidence for the prosecution, sustained by three witnesses, of whom two were eyewitnesses to the crime, and the other, of the confession alleged to have been made to him by the defendant when arrested by this witness, to the effect that the victim's death was an unlooked-for misfortune.

Nor was the defense advanced by the defendant to the effect that his right hand was crippled and he was unable to work with it sustained by the trial court, and rightly, since, as the defendant testified, he worked with his left hand and sometimes used a spoon with his right; moreover, it was not proved that it was impossible for him to strike blows with either hand.

The defense founded on the medical examination of the corpse consists in that the physician who made the autopsy declared that he had observed hypertrophy of the heart, a discharge in the spleen, an increase of this latter organ to four times its ordinary size, and abdominal peritonitis; and in that, according to this examination, the cause of death can not be determined for the blows which he may have received could have coincided with the traumatism, and "the traumatisms which that body received hastened the death of the said individual;" and, finally, this witness being questioned by the defense as to whether the cause of death was a traumatism or a shock,

replied that he was unable to determine which it was.

As was proper, neither was this defense sustained by the trial judge. The defendant was, therefore, found guilty of the crime of homicide and sentenced to twelve years and one day of reclusion temporal, to the accessory penalties and an indemnity of P1,000 to the heirs of the deceased, and to the payment of the costs; from which judgment he appealed.

This appeal, forwarded from the Court of First Instance of Nueva Ecija, having been heard, together with the allegations and arguments therein made by the parties, whereby it appears to have been well proven that the defendant did strike Marciano Magno in the abdomen and in the back two blows with his hand, as a result of which the latter fell to the ground, and scarcely had he gotten up and started to walk when he fell down dead, we hold that the crime is properly classified as homicide and that Rosalino Rodriguez is responsible therefor,

A blow with the fist or a kick, though causing no external wound, may very well produce inflammation of the spleen and peritonitis and cause death; and although the assaulted party was previously affected by some internal malady, if, because of a blow given with the hand or the foot, his death was hastened, beyond peradventure he is responsible therefor who produced the cause for such acceleration as the result of a voluntary and unlawfully inflicted injury.

But in the complaint itself it is alleged that the cause of the assault was the fact that the defendant saw the deceased catch hold of his daughter Roberta's hand, for the purpose of making love to her, and the provincial fiscal stated at the trial that this assertion was the result of a careful investigation made by him, which was indeed confirmed by the facts proven.

It therefore appears that the defendant's act was preceded by an immediate provocation on the part of the deceased, and, evidently, the defendant did not intend to cause so grave an injury as he produced.

With the existence of these two well-defined extenuating circumstances and without any aggravating circumstance, rule 5 of article 81 of the Penal Code must be applied and the penalty immediately inferior to that fixed by law imposed. Consequently, modifying the penalty imposed by the lower court to eight years and one day of prision mayor, the judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Mapa, Johnson, Carson, and Trent, JJ., concur.

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